

SUMMARY OF RESOLUTION

Authorization to Adopt the Pennsylvania Public Transportation Association's 2011 Public Transportation Legislative Reforms Agenda

The Pennsylvania Public Transportation Association (PPTA) is a non-profit professional trade organization that advocates for, and supports the interests of, public transit and public transit agencies across the Commonwealth of Pennsylvania. Over the past several months, PPTA has been collaborating with its members and other stakeholders, including Port Authority of Allegheny County (Authority), to develop a comprehensive legislative reforms agenda to advance the needs and interests of public transit and public transit agencies with the new Governor and Pennsylvania Legislature.

Relevant Authority staff has reviewed the final Public Transportation Legislative Reforms Agenda (Agenda), attached hereto as Exhibit A, that PPTA proposes to advance with the Governor and Pennsylvania Legislature this year. The Authority staff believes that Agenda addresses issues and concerns that are critical and relevant to the long-term viability of the Authority and public transit in general across the Commonwealth of Pennsylvania. Accordingly, the Authority staff recommends that the Authority's Board adopts Agenda and authorizes the Authority staff to support and advocate for adoption of the legislative reforms it proposes.

In accordance with the Authority's Limits of Authority Policy, this resolution hereby adopts Agenda and authorizes the Authority staff to support and advocate for the legislative amendments and reforms proposed by same. This resolution further authorizes the Authority to support and advocate for other legislative initiatives and/or reforms that may be proposed that would advance the interests and needs of the Authority and public transit in Allegheny County and across the Commonwealth of Pennsylvania.

RESOLUTION

WHEREAS, over the past several months, the Pennsylvania Public Transportation Association (PPTA) has been collaborating with its members and other stakeholders, including Port Authority of Allegheny County (Authority), to develop a comprehensive legislative reforms agenda to advance the needs and interests of public transit and public transit agencies with the new Governor and Pennsylvania Legislature; and

WHEREAS, a copy of the final Public Transportation Legislative Reforms Agenda (Agenda) that PPTA intends to advance and advocate to the Governor and Pennsylvania Legislature this year is attached hereto as Exhibit A; and

WHEREAS, the Authority staff believes that Agenda addresses issues and concerns that are critical and relevant to the long-term viability of the Authority and public transit in general across the Commonwealth of Pennsylvania; and

WHEREAS, the Authority staff therefore recommends that the Authority's Board adopt Agenda and authorize the Authority staff to support and fully advocate for adoption of the legislative reforms that it proposes; and

WHEREAS, pursuant to paragraph 12 of the Authority's Limits of Authority Policy, as amended, the Board reserves the right and power to approve recommendations for new legislation or amendments to existing legislation that may be recommended by the Authority staff; and

WHEREAS, upon due consideration, the Board has reviewed Agenda and concurs with staff's recommendation to adopt and advocate for the legislative reforms proposed by Agenda and PPTA.

NOW, THEREFORE, BE IT RESOLVED, that the Board adopts Agenda attached as Exhibit A hereto and authorizes the chief executive officer, assistant general manager Service Planning and Development and/or assistant general manager Legal and Corporate Services, to support and advocate for the legislative reforms set forth in Agenda, in a form approved by counsel.

BE IT FURTHER RESOLVED that, in recognition of the often dynamic and fast moving nature of proposed legislation and legislative action, the chief executive officer, assistant general manager Service Planning and Development and/or assistant general manager Legal and Corporate Services, are further authorized to support and advocate for other legislative reforms and/or initiatives not necessarily contained in Agenda that, in the Authority staff's good faith belief, advance the interests and needs of the Authority and public transit in Allegheny County and across the Commonwealth of Pennsylvania, in a

form approved by counsel, and also to take all such other actions necessary and proper to carry out the purpose and intent of this resolution.



Public Transportation Legislative Reforms

Prepared by: The Pennsylvania Public Transportation Association

December 2010

I. FUNDING PRINCIPLES

In response to the funding crisis confronting the Commonwealth's Transportation System, the Pennsylvania Public Transportation Association recommends the following principles as the basis for a funding solution.

The Pennsylvania Public Transportation Association supports:

A comprehensive, multi-modal transportation funding solution that provides an adequate, dedicated, predictable and growing source of funding. Any dedicated funding source should be broad-based, and have an established track record for growth and performance. Among existing sources that meet these criteria, the State Sales and Use Tax is recommended due to its precedent as a dedicated transit funding source in Pennsylvania, its track record for reliability, and its overall dominance as a transit funding source across the nation.

1. Maintaining the public transportation program provided by ACT 44. This includes but is not limited to the resources of the Public Transportation Trust Fund distributed directly to recipients based on needs and performance factors, local match requirements, program structure, the simplified funding distribution formula (fund systems equally for each unit of each factor in the formula), and programs of state-wide significance.
2. \$484M annual asset improvement (capital) funding level with a growth factor as identified by the Transportation Advisory Committee Report.
3. \$92M operating funding level for stabilization of public transportation.
4. \$30M annual asset maintenance program to support the Shared Ride Program.

II. FUNDING SOURCE PRINCIPLES

Historically, the Commonwealth of Pennsylvania has provided significant funding levels to public transportation, and began providing a dedicated source of funding in 1991, with the Passage of Act 26. Unfortunately, the Commonwealth's track record with respect to the identification of dedicated funding sources has not been stellar, contributing significantly to the routine run of "transit funding crises" over the past 20 years. From repeal of the periodicals tax, to exclusion of class 4 trucks from motor vehicle lease taxes, to the deregulation of the utility industry and resulting loss of Public Utility Realty Transfer taxes and, now, to the most recent loss of I80 tolling revenues, well intended funding initiatives have generally fallen flat. In many cases, these were replaced (though not fully) with

increasing, dedicated percentages of the State Sales and Use Tax, of which 4.4% now flows to the Public Transportation Trust Fund.

Any dedicated funding source should be broad-based, and have an established track record for growth and performance. Among existing sources that meet these criteria, the State Sales and Use Tax is recommended due to its precedent as a dedicated transit funding source in Pennsylvania, its track record for reliability, and its overall dominance as a transit funding source across the nation. Increasing the percentage of Sales and Use Tax proceeds dedicated to public transportation from 4.4% to 11.36% would generate the \$600 million annually recommended for the public transportation program. The Pennsylvania Public Transportation Association (PPTA) recognizes that the dedication of additional Sales and Use Tax proceeds to the Public Transportation Trust Fund would create a larger void in the General Fund, and commits to work with the Governor and State Legislature to find alternate sources of revenue to fill this gap.

III. COMMITMENT TO PERFORMANCE FUNDING AND PRINCIPLES OF ACT 44

Act 44 of 2007 went a long way toward streamlining program delivery and rewarding efficient performance in public transportation. Toward that end, the transit industry supports the continuation of those principles in Act 44 (including the formula for the distribution of Operating Assistance Funds) in any future amendments to the Public Transportation Law.

In addition to the base funding allocation formula contained in Act 44, provision should be made for those local transportation agencies to transition successful “demonstration” services (as defined by PENNDOT) without sacrificing funding to their pre-existing core services.

Finally, in terms of capital fund distribution, State Capital funds distributed by formula should account for “routine” capital needs of all transit systems, as well as the significant infrastructure in the Commonwealths two largest transit agencies, and the periodic need for significant one-time expenditures at smaller agencies for non-recurring projects, such as the replacement of a maintenance facility. Toward this end, the Association supports the following distribution of formula capital funds to eligible local transportation organizations:

1. “Takedown” to PENNDOT for distribution to eligible local transportation organizations for significant projects, at the discretion of the Secretary - 5.0%
2. From all remaining capital funds, distribution according to the following formula:
 - a. SEPTA - 69.4%
 - b. Port Authority - 22.6%
 - c. Remaining local transportation organizations, distributed According to existing formula - 8.0%

IV. ENABLING LEGISLATION FOR LOCAL DEDICATED TAXES

It is glaringly apparent that transit systems cannot reach their goals or fulfill their missions by solely utilizing funding made available by the state or federal governments. Additionally,

due to constrained local government budgets, the ability to obtain local match continues to be a concern.

Legislation for a local dedicated tax to be used for transit local match requirements, locally preferred service that performs below state standards or for substitute fare revenues would allow local governments to meet the needs of the community. The tax should be broad-based and inflation sensitive and provide for sufficient revenues. A multi-county or regional taxing authority should be allowed since a number of transit systems operate across multiple counties. Regional asset districts could be established with public transportation designated as a beneficiary of the proceeds distributed by the district.

V. REIGNING IN LEGACY COSTS

For some local transportation agencies, longstanding post-retirement obligations to employees represent a millstone around the neck of the organization. As most local transportation organizations do not face these obligations, this represents an “unlevel playing field” for public transportation customers in these areas in an environment of “performance funding.” Performance funding, as it currently exists under Act 44, will result in significant service and ridership losses in those regions facing these obligations, unless there is a fundamental change in these cost elements. Toward that end, the following change is recommended:

Amend Public Transportation Law to permit a waiver, subject to PENNDOT review and approval, allowing the use of available State funds, to implement a corrective action plan to allow for the use of any State funds so approved during the term of the plan to be used to help pay for existing, extraordinary liabilities (particularly pension and post-retirement healthcare), while those obligations are reduced over time in accordance with the corrective action plan.

VI. TRANSPORTATION HEALTH BENEFITS

One of the most important components to providing compensation to employees today includes providing reasonable health insurance benefits. Health insurance plans vary but as a whole, transit systems have seen significant increases.

Because quantity of scale rules apply to a transit system’s health insurance benefit costs, a larger pool would be of benefit. Allowing transit systems to pool with the state would be a significant cost saving for transportation providers.

VII. IMPROVING EFFICIENCY AND COORDINATION IN THE PROVISION OF HUMAN SERVICE TRANSPORTATION

Pennsylvania has a long and illustrious history in providing a reliable, and efficient “transportation safety net” in all corners of the Commonwealth. The shared-ride program, administered by PennDOT, in particular is viewed as a global model for maintaining the basic mobility of Older Pennsylvanians, even in the most rural corners of the State.

The Medical Assistance Transportation Program (MATP) provides transportation for medical assistance clients and is administered by the Department of Public Welfare. Much of the service provided by the MATP program is provided by public transportation providers and are administered locally by either the transportation authorities or county transportation programs. The same vehicles providing transportation to the elderly and disabled are also providing MATP services.

To facilitate greater efficiency in human service transportation operations, responsibility for all State administered funding for human service transportation (including MATP) should be transferred from the Department of Public Welfare to the Department of Transportation. PennDOT currently administers the urban and rural fixed route programs, the Shared Ride for Seniors and Shared Ride for Persons with Disabilities program, the Free Fare for Seniors Program and all of the corresponding capital programs supporting the industry. It only makes sense that the transportation expertise that exists in PennDOT would significantly bolster the economic and operational (including service delivery) efficiency of the MATP.

VIII. SIGNIFICANTLY INCREASE PENALTIES FOR FARE EVASION AND OTHER VIOLATIONS OF LOCAL TRANSPORTATION AGENCY POLICIES

Currently, the only penalty for fare evasion on Pennsylvania transit systems is the general theft of services provision contained in the Pennsylvania Crimes Code. This statute has no deterrent value with respect to fare evasion, as fines are generally in the \$100-\$150 range, but the affected transit agency is restricted to “out of pocket” restitution (i.e., the value of the fare). As a result, enforcement of fare evasion by policing authorities is almost non-existent, as general police jurisdictions do not view the offense as significant, and transit agencies with their own police units do not recognize enough return to offset the cost of enforcement.

In order to further enhance a transit agency’s fare enforcement capabilities, amend the Public Transportation Law to enable local transportation organizations to enact significant, enforceable fines (i.e., \$200) when citations are issued by qualified law enforcement and/or security personnel, with such fines accruing to the local transportation organization when imposed and collected.

IX. SOVEREIGN IMMUNITY ACT CHANGES

The Pennsylvania Sovereign Immunity Act confers state sovereign immunity on local government agencies with certain stated exceptions. We suggest changes to limit local transportation organizations to liability for events well beyond their control:

Amend the Sovereign Immunities Act to limit “motor vehicle exception” to “vehicles in actual motion.” This would limit the ability of transit passengers to recover damages when a transit vehicle is stopped at the time of injury.

Expand the Commonwealth “real estate exception” to specifically exclude snow/ice accumulation and lessen overall exposure for Commonwealth agencies by reducing damages cap and eliminating (or drastically reducing) joint and several liability theory of recovery against Commonwealth agencies.

Limit damages arising under the Sovereign Immunities Act to no greater than \$100,000 in favor of any plaintiff or \$500,000 in the aggregate.

X. UNEMPLOYMENT COMPENSATION LAW CHANGES

We continue to see cases where employees are terminated for willful misconduct and have unemployment benefits rightly denied, only to have them “find work” (typically from a friend or relative) and then quickly get “laid-off” by the new employer after a very short period of time, making them eligible for UC benefits. Under current UC law, the former employee is then deemed eligible for benefits and the prior employer (including the transit agency) is on the hook for benefits as the “base year employer.”

Amend Pennsylvania Unemployment Compensation Law to allow base year employers to be given notice and the opportunity to challenge subsequent applications for unemployment.

XI. ASSAULT PENALTY CHANGES

The number of assaults committed against transit operators has increased substantially over the last few years and continues to increase every year. These assaults endanger the lives of the operators as well as the lives of passengers, pedestrians and other motorists. While an assault is occurring, drivers are unable to concentrate on operating their vehicles because they must deal with their aggressor.

Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes currently protects certain public servants (i.e. law enforcement officers, emergency services, and psychiatry personnel) by upgrading assaults against these individuals to aggravated assaults. Adding employees of public transportation to the class of public servants who are currently protected will not only protect transit operators, but will also protect passengers and other motorists on the road.

XII. SEPARATIONS ACT CHANGES

The Pennsylvania Separations Act requires public entity construction projects to solicit separate bids and award separate contracts.

Relief from the Separations Act will enable local transportation organizations to use design/build techniques under a single contractor resulting in significant cost savings to the Authority. Additionally, this change would be helpful if transit systems decided to use a design-build-operate-maintain approach where appropriate and as permitted under federal law. A general increase in contract value thresholds for application of the Separations Act in traditional design-bid-build projects would also be helpful.

XIII. PENNSYLVANIA STEEL PRODUCTS PROCUREMENT ACT CHANGES

Under the Pennsylvania Steel Products Procurement Act, Pennsylvania transit systems are required to use Pennsylvania Steel regardless of cost.

The Pennsylvania Steel Products Procurement Act should be made consistent with the applicability of the federal Buy America provisions as they affect transit projects.

XIV. INCENTIVIZE TRANSIT ORIENTED DEVELOPMENT (TOD)

While many communities are struggling, public transportation is proven to have a positive effect on the quality of life of many residents and greatly improves the “livability” of a community and/or region. Additionally, the added economic activity that development provides adjacent to existing transit service can add significant ridership and fare box revenue to a transit system. However, transit oriented development (TOD) is not yet generally recognized in Pennsylvania as a catalyst for reinvigorating the core of a community. Although Transit Reinvestment District (TRID) legislation has increased focus and coordinated planning toward TOD, there is a general lack of understanding of TOD and how it plays a positive role in communities. Largely, this is because few (if any) of the TRID planning studies have made the transition from “interesting concept” to “finished project.”

Beyond planning, an energized TRID program that offers incentives and/or funding for private developers and transit systems to close project financing gaps would present opportunities for economic development throughout the commonwealth. This could occur through State tax incentives to private developers who undertake approved projects, and funding through the Department of Community and Economic Development (DCED) through public agencies such as cities, redevelopment districts or local transportation agencies to undertake eligible project elements.

XV. INCREASED RESPONSIBILITY OF PENNDOT FOR PARK-AND-RIDE FACILITIES

Many large park-and-ride facilities serve transit patrons throughout the Commonwealth, and particularly in its larger cities. These facilities help to alleviate peak period roadway congestion by removing single occupant autos from already congested highways, and conveying their patrons on public transportation. For some transit operators, the ownership and operation of these facilities (or, in some cases, the lease expense to private owners) is a financial burden for which no compensation is gained. Although some of these facilities are owned and operated by PENNDOT (theoretically, maintained with Highway Trust Fund dollars), many are the responsibility of local transportation organizations, who must pay for their operation from scarce operating dollars, reducing funds available for transit service.

Recognizing the need to significantly increase funds to the road and bridge program, such funding should accommodate the ongoing operation (and some expansion) of park-and-ride facilities for transit services (as well as other rideshare activities) throughout the Commonwealth, utilizing road and bridge funding. This could either be accomplished through direct operation and maintenance of these facilities (i.e., land acquisition, construction, lighting, maintenance, security, etc.) by PENNDOT or through a transfer of fiscal resources to the local transportation organization.

XVI. RIGHT OF WAY FOR BUSES RE-ENTERING TRAFFIC CHANGE TO MOTOR VEHICLE CODE

There is a provision enacted in New Jersey which gives buses entering traffic the right of way over a vehicle pulling up next to the bus in traffic.

Enactment of such a provision in the Motor Vehicle Code in Pennsylvania would result in reduced running time, increased efficiency and, thereby, cost of service.

XVII. PORT AUTHORITY SPECIFIC ISSUES/LEGISLATION

- a. *Bonding Requirements* - Port Authority's current enabling legislation mandates performance bonding for most purchase agreements. This requirement stifles competition (particularly for smaller contracts) and is inconsistent with FTA Guidance in this regard. Amend Section 559.1(c) of the Second Class County Port Authority Act to limit the bonding requirement to construction contracts and discretionary as to all other contracts consistent with the Pennsylvania Procurement Code and FTA guidelines.
- b. *Expand Persons with Disabilities Shared Ride Program to Allegheny County* - As part of Act 44, the "Persons with Disabilities Shared Ride Program" (PWD) was expanded to all counties in Pennsylvania with the exception of Philadelphia and Allegheny. Under this program, persons with disabilities are eligible to receive deeply discounted "shared-ride" services in much the same manner as senior citizens have for many years. The program specifically excludes those customers who would be eligible for federally mandated "Complementary Paratransit" service under the Americans with Disabilities Act (ADA). In Philadelphia County, all areas of the County fall within the ADA mandated service area, rendering (literally) no one eligible for the PWD program. In Allegheny County, several hundred ACCESS system users do fall outside the ADA service area, and could be eligible for PWD service, if it were provided in Allegheny County. Currently, these trips are subsidized from Port Authority's General Fund budget, a burden no other transit system in the Commonwealth carries. By eliminating the exclusion of Allegheny County from this program in the Public Transportation Law, all citizens with disabilities in Pennsylvania would be treated equitably.
- c. *Responsibility for Roadway Bridges* - As part of the assets it assumed at inception from 33 failed private operators, Port Authority now owns and maintains a number of roadway bridges, and is responsible for their ongoing repair; maintenance; and, eventually, reconstruction. These bridges carry general traffic, and are not specific to Port Authority rail or busway operations. Ownership and ongoing maintenance responsibility for these bridges should be transferred to PENNDOT.

XVIII. SEPTA SPECIFIC ISSUES/LEGISLATION

- a. *Advertising* - SEPTA's enabling legislation prohibits advertising on the exterior of trains. This prohibition should be repealed to allow for the possibility of increased operating income.
- b. *Clarification of Tax-Exempt Status* - As an instrumentality of the Commonwealth, SEPTA is immune from taxation in some circumstances but not others. The activities which tend to be subject to taxation are those that are pursued to generate alternative means of revenue. For example, the purpose of SEPTA is to operate a transportation system in southeastern Pennsylvania. Some courts have held that leasing real estate solely to raise revenue is not an activity connected to SEPTA's purpose; therefore, the income derived from leasing real estate is not immune from taxation.
- c. *Reciprocity with New Jersey for Liability Cap Provisions* - SEPTA's liability cap is presently \$250,000 per individual and \$1 million per incident. SEPTA would be seeking a provision which would cap its liability for services in New Jersey while extending the same cap for New Jersey Transit's operations in Pennsylvania. SEPTA operates train service to Trenton and West Trenton and bus service across the state line into New Jersey. This would require the passage of legislation in both Pennsylvania and New Jersey.
- d. *Relief From Being Treated as a Private Developer* - SEPTA is required to gain approval for capital projects by local townships and municipalities. In some instances, SEPTA is required to add betterments for the benefit of the municipalities in order to obtain approval for a proposed capital project. The FTA recently identified SEPTA's state of good repairs needs at \$4 billion. Because SEPTA's capital program is so grossly underfunded, SEPTA is not in a financial position to pay for improvements to municipalities.