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AMALGAMATED TRANSIT UNION

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# STATE LEGISLATIVE AGENDA

A 12-Step Plan to Reward Our  
Essential Frontline Transit Heroes



The Amalgamated Transit Union – the largest labor union representing transit and allied workers in the U.S. and Canada – fights for the interests of its hard-working members and promotes mass transit.

Founded in 1892, the ATU today is comprised of over 200,000 members, including: metropolitan, interstate, and school bus drivers; paratransit, light rail, subway, streetcar, and ferry boat operators; mechanics and other maintenance workers; clerks, baggage handlers, municipal employees, and others. ATU can be found in 44 U.S. states and the District of Columbia, and nine Canadian provinces.

The Union fights for transit workers by helping them organize local unions, negotiating collective bargaining contracts between its members and their employers, representing members in disputes with management, and making sure that employers adhere to the provisions of their collective bargaining agreement.

The Union also represents the interests of its members at all levels of government, in courts, and in legislatures. ATU is a member of the AFL-CIO, and the CLC – the national labor organizations of the United States and Canada, respectively.

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For more information and updates regarding transit workers and riders please visit [www.atu.org](http://www.atu.org)

## INTRODUCTION

The Amalgamated Transit Union (ATU) is the largest union representing public transit, school bus, and intercity bus workers in North America, with more than 200,000 members in nearly 250 bargaining units throughout 45 states and nine provinces. ATU members are bus and rail operators, maintenance workers, and other surface transportation employees. We've been moving Americans safely since 1892.

The following is a 12 point plan for state legislatures to consider in an effort to improve the lives of the people who rely on public transit and school bus services and those who make the buses roll. Issues addressed in this plan include funding, fairness, safety, efficiency, governance, ridership, technology, workforce development, and other matters.

Public transit and school bus transportation are by their nature local issues influenced heavily by the policies put in place by state legislatures. Without adequate funding and oversight, these incredibly important industries and their workers cannot survive.

Transit and school bus workers have shown their true colors since the COVID-19 pandemic began, risking their lives so that their passengers can get where they need to go. They are true frontline heroes, and should be treated as such.

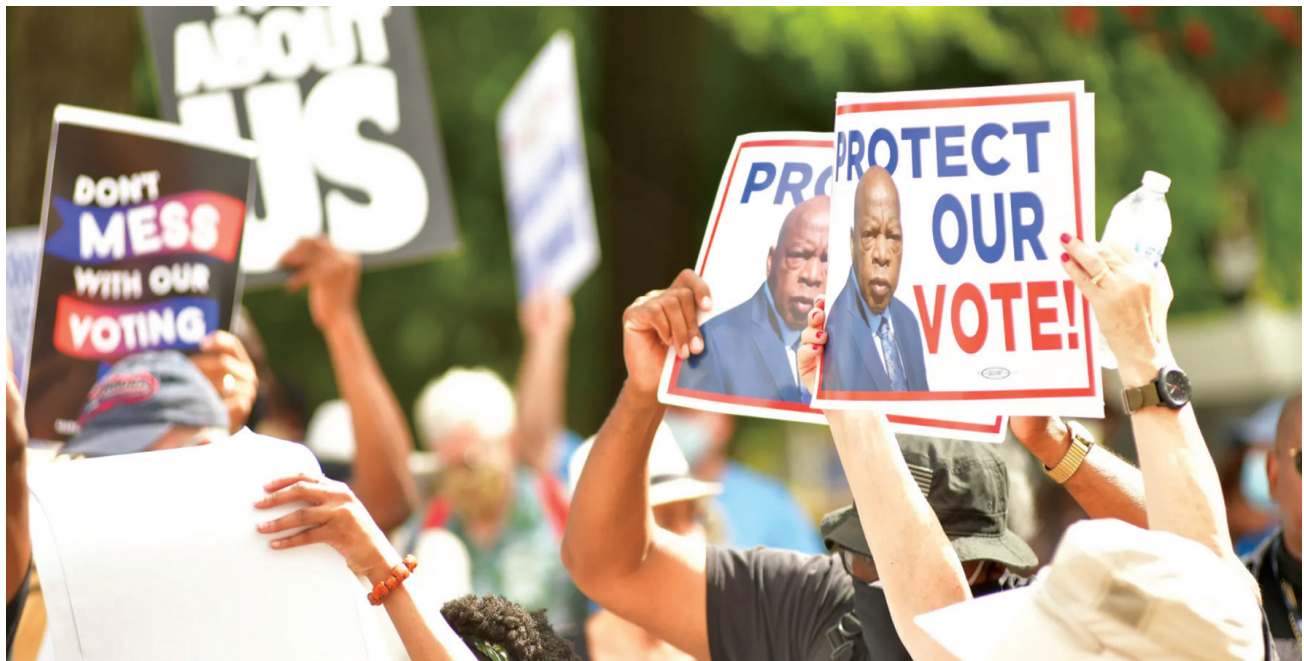
Wherever you live in America, there's a good chance that despite enormous challenges, an ATU member recently transported you or your child somewhere, and they did so safely. It's time to enact policies that address these changing and trying times in the transportation field for the people who rely upon and work in the transit and school bus industries.

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## PRESERVE THE RIGHT TO VOTE

ATU is a strong union that does more than just negotiate contracts. We help workers become active citizens who stand up for their democratic rights.

Yes, we are union of transportation workers, but even before that, we are Americans. Our country was built on the foundation of free and fair elections. The people get to choose who will represent and lead them. While we may disagree with some elected officials on policy matters such as transit funding or labor rights, if the person was elected fairly, we respect their right to take their positions. The remedy to win a battle with a politician who is not in your corner is to defeat them at the ballot box. But that process of course assumes that the election is fair.



Tragically, in state legislatures all throughout the nation, voting rights are under assault. States are getting rid of drop boxes and severely restricting mail-in voting. Absentee ballots are becoming increasingly hard to request. In some states, water cannot even be distributed to people waiting in line to vote. It is voter suppression on steroids. Working families are affected the most by these outrageous Jim Crow era laws that are being resurrected to silence people, especially in communities of color where many ATU members live.



In some states, legislatures are actually considering bills that would allow them to overturn free and fair elections. This is beyond suppression; it's nullification -- the equivalent of torching the U.S. Constitution. These lawmakers are fixing the game. If they succeed, America as we know it will cease to exist. We will no longer be a Democracy. We will be ruled by tyrants. Our ability to change our leaders and the course of our lives will end.

Unions know all about voter suppression. Workers trying to vote in union elections often face intense voter suppression campaigns by their employer. We

listen to bogus claims about the dangers of voting by mail, as employers cite "fraud and coercion." Workers are forced to attend "captive audience" meetings to convince them to vote against the union. Companies place massive pressure on workers living in poverty with their families and tell them lies about what it means to join a union. We have to deal with rules that prevent us from helping each other cast ballots. Just like with the general population, people of color, students, the elderly, and people with disabilities are the usual targets and victims of this suppression.

**ATU opposes all efforts to deter or deny eligible voters from registering and/or casting their vote in a manner that is most convenient for them. We also strongly oppose any legislation that would nullify legally-cast votes and take away the rights of people to choose their elected representatives at any level.**

## ATU SUPPORTS:

- 1) Expansion of voter registration;
- 2) Mail-in voting;
- 3) Widespread ballot boxes, especially in working families' communities;
- 4) Ensuring that people have adequate time to vote on Election Day without any hindrances or interference;
- 5) Preserving and counting the votes that have been legally cast;
- 6) Eliminating discriminatory voter identification laws; and
- 7) Protecting voter rolls

## INCREASED FUNDING FOR PUBLIC TRANSPORTATION

While transit ridership is of course down since the pandemic, an alarming decrease had already taken place before COVID-19. Americans' travel habits are changing. While the younger generation is rejecting drivers' licenses, they are not crowding onto buses and trains either. Transportation network companies offering ride share options have revolutionized the way people travel, pulling people off of transit. Others are concerned about safety. The level of transit service plays a huge role too. In many urban areas, it still takes many people more than an hour to get to work via transit – an inconvenient and increasingly expensive ride, as average fares have risen faster than inflation, possibly deterring riders. The relatively low price of gasoline over the past few years and the growing popularity of bike share services has also played a role.

Of course, since the coronavirus, everything has changed. So-called “choice” riders have been working at home since the beginning of the pandemic, and they've gotten used to it. Some people may never return to the office. Downtown areas are like ghost towns. Fare box revenues are therefore a fraction of what they were just a few years ago, making service cuts and fare increases inevitable. Historically, when transit systems reduce service, routes with marginal ridership are selected, and it's the most vulnerable people – traditionally communities of color – that get hurt the most.

While the U.S. Congress provided nearly \$70 billion in emergency funding (COVID relief) to keep our transit systems running, additional federal operating aid seems unlikely in the near future. Long standing rules generally prohibit federal transit funds from being used for operating assistance (capital only). The states will therefore need to step up once again and provide the bulk of funding to keep transit services on the street.

Only increased investment in transit can improve the quality of service and encourage choice riders to come back. Transit-dependent people will always be there. The question is: Will they have a ride to work, the doctor, the grocery store, and home?

### ATU SUPPORTS:

- 1) **Increased funding for public transportation;**
- 2) **Legislation to create dedicated sources of revenue for public transportation, such as gas tax revenues, rental car taxes, motor vehicle excise taxes, tolls, or other resources, for transit use; and**
- 3) **In those states that currently have restrictions on the use of their gas tax revenues, legislation that would allow such funds to be used for both highways and transit.**



# HAZARD PAY FOR TRANSIT AND SCHOOL BUS WORKERS

The coronavirus has shown the world the true meaning of “essential” workers. They are the ones who people rely upon to survive when everything around us shuts down. Since the pandemic began, transit workers have put their own lives on the line, bravely reporting to work every day, driving riders in our communities to the doctor, the grocery store, and the pharmacy. They make sure that nurses and other hospital workers get to their jobs to care of our family members and friends who are suffering. Thanks to bus drivers, grocery store workers are able to keep the shelves stocked so we can all eat.

During the pandemic, we’ve learned that driving a tin can with bad air circulation down the road without the necessary personal protective equipment (PPE) is one of the most hazardous jobs on the planet. Each time a passenger coughs just a few feet behind a bus driver, the operator’s hands grip the wheel a bit tighter, as they know they are in a potential death trap. Social distancing on a bus is extremely hard to do. Passengers are at times packed together like sardines – nowhere near the CDC guidelines – and it’s gotten worse since the economy reopened.

And even if they were fortunate enough to avoid the toxic air on the bus, so many ATU members, who have become the “mask police,” have been viciously beaten for simply enforcing federally-mandated rules designed to stop the spread of the virus.

ATU school bus members are responsible for transporting the nation’s most precious cargo. Now, in addition to their normal duties, school bus workers make sure that children are seated far enough apart to avoid the spread of COVID-19. They also constantly sanitize the vehicles, hoping that their employers provide the proper PPE to keep them safe.

Yet, among the millions of Americans who face a higher risk of getting sick or passing COVID-19 to their families by going into work, many still make less than \$15 per hour – the “living wage” standard even under safer conditions. Thousands of transit workers and school bus employees have been infected with coronavirus, and hundreds of our members paid the ultimate price.

During the crisis, ATU members have been praised as heroes, especially by elected officials. Now, however, it appears that America is ready to move on. At the bargaining table, it seems we have transformed from “heroes” to “zeroes.” While we appreciate the ticker tape parades for front line workers, our members



deserve hazard pay to reward, retain, and recruit essential employees.

## THE BUFFALO NEWS

“Buffalo bus driver saves woman from jumping off bridge”

— October 30, 2020

## wtop

“Metrobus driver administers CPR to slumped over taxi driver near Union Station”

— March 6, 2020

Our employers have told us that while they agree that transit workers should be rewarded for the sacrifices they have made, it is the responsibility of the state and federal government to provide the resources to make hazard pay a reality.

It is time to recognize the sacrifices that frontline workers have made during the deadly pandemic with a small token of appreciation. The U.S. Congress made certain COVID relief funds eligible for hazard pay, but it is up to state legislatures to mandate distribution to front line workers.

## ATU SUPPORTS:

**Hazard pay for essential workers (including public and private transit and school bus workers) -- a minimum \$13 per hour raise for essential workers from the date the U.S. declared a public health emergency in 2020 through the end of the pandemic.**

## PROTECTING TRANSIT WORKERS FROM ATTACKS

Every year, thousands of transit employees throughout the U.S. -- mostly bus operators -- are attacked in the course of performing their duties. Considering the fact that many of these brutal assaults occur while massive buses are rolling down the street, it is actually amazing that more pedestrians, bicyclists, and other motorists are not killed. People don't like paying increased fares for less frequent service, so quite often they take out their frustrations on the drivers -- the neighborhood tax collectors. Other disputes occur when operators simply enforce safety regulations. Mental illness is also an issue in many cases. Some incidents happen for no reason at all, as juveniles act out on the bus just for laughs. There is no excuse for any of it.

Weapons vary. Some drivers get punched or kicked. Others are stabbed or strangled from behind. Some offenders spit, or throw steaming hot coffee or urine in the face of the operator.

Surveys report that more than 75% of transit workers “fear for their safety on a daily basis” because they are at risk of physical, verbal, and sexual assault from passengers. Moreover, attacks on transit workers have increased over the past few years, despite serious underreporting of all types of assault.

In addition, rail workers have also recently been frequently attacked, usually when they open their window to check for passengers boarding on the platform. Others get assaulted when they walk through rail cars and enforce regulations or wake sleeping passengers at the end of the line. Many have been punched in the face and sustained serious injuries.

Since September 11, 2001, aircraft flight decks have been totally secure, and passengers can't even wait on line for the restroom at the front of the plane anymore. Yet transit workers continue to get pummeled every day. They are sitting ducks. Some vehicles are hijacked and driven off the side of the road due to these brazen attacks. Why are buses treated differently?

Moreover, contrary to common belief, this is not just a big city, late night, “dangerous neighborhood” problem. In the past decade, we have seen a dramatic

increase in the level and intensity of senseless attacks on defenseless bus operators, and the stories reported in the news demonstrate that “Small Town America” is not immune from this epidemic.

## Tampa Bay Times

“Tampa bus driver killed in stabbing had complained about safety issues”

— May 20, 2019

## San Antonio Express-News

“VIA driver beaten unconscious by unruly passenger”

— February 27, 2020



The long term psychological impacts of being brutally assaulted behind the wheel are extensive. Many people are never able to drive a bus again. Absenteeism becomes a real issue. To understand this, just think what it would be like if you had to look around your desk every few seconds, worrying that someone in your office might strike you in the face. It is not normal behavior and should not be accepted as just another day at the office in the transit world either.

While about 30 states provide for increased penalties for assaulting transit and school bus operators, the penalties are too often misdemeanors. In addition, most transit agencies don't post notices alerting

customers about the existence of these laws, making deterrence unlikely.

Moreover, now more than ever, we need to encourage law enforcement officials – on or off-duty – to ride public transportation whenever possible. From petty crimes to major acts of terrorism, transit is always a target, and many transit systems have implemented policies allowing police officers to ride for free in an effort to enhance safety and security. However, where such policies have been missing, legislatures have acted in the interest of the public. For example, when a gunman fatally shot numerous innocent people on the Long Island Railroad in the 1990's, the New York State Legislature passed a bill implementing a no fare program for certain police officers riding transit in the interest of public safety and security. Under this unique legislation, the transit agency is able to control its security costs by requiring police officers who ride without cost to register and indicate their regular working hours. As a result of this legislation and similar policies across the nation, there have been numerous criminal incidents that have been thwarted by police officers, who are always “on-duty.”

## ATU SUPPORTS:

- 1) **Upgraded penalties for assaulting transit workers;**
- 2) **Requiring notice of such increased penalties to be posted on transit vehicles; and**
- 3) **Legislation authorizing transit agencies to implement no fare policies for off-duty police officers and other law enforcement officials in an effort to encourage such individuals to ride transit;**
- 4) **Legislation requiring every transit bus in the state to be equipped with a two-way communication device; and**
- 5) **Permanently banning anyone convicted of assaulting a transit worker from ever riding the bus or train.**



## SETTING STANDARDS FOR TRANSIT CONTRACTING

As transit systems nationwide continue to suffer from the lack of funding, many are pushed to privatization as a proposed solution to their financial problems. Although private companies claim that they will be able to provide better service at lower cost, their promises are almost always proven false.

Often, transit systems that contract out their services to private companies must soon deal with deep service cuts, maintenance concerns, high employee turnover, fewer experienced workers and a decreased level of safety and security measures. At the same time, systems usually find that any initial incremental savings found after privatizing generally disappear in future rounds of contracting.

Private companies operate only on the profit motive with no incentives to provide high quality service, and they have no accountability. Workers that are employed by the contracting companies see their standard of living reduced, and over time, transportation services provided to the communities are diminished. Cities that contract out find that they have lost control of their transit system, leaving them powerless when residents raise real concerns.

Approximately 70% of paratransit or demand response service is contracted out, and this critical service for elderly and disabled people has been overrun with problems that seriously impact the quality of life of millions of Americans. On-time performance is a major problem, caused by poor planning and unrealistic schedules. In addition, reports indicate that serious accidents are rapidly increasing and vans for the disabled are failing more safety inspections than ever before. In fact, a remarkably high number of paratransit vans have been ordered off the roads because of dangerous safety problems.

In addition, in most states, public transit driver safety standards, including driver training and inspection of vehicles, do not apply to paratransit operations.

In order to ensure that transit systems adhere to certain standards when considering the privatization of public transit services, states should implement guiding policies

to guarantee that any potential cost savings are properly measured and weighed against potential adverse effects on safety and service.

### ATU SUPPORTS:

- 1) Legislation requiring public transit operators to ensure that all relevant factors are taken into consideration before they contract out transit services, requiring a cost analysis of the work to be done, which shall be used to assess whether it is more effective to use employees of a private business entity or existing employees;**
- 2) Requiring potential bidders to have a demonstrated ability of providing high quality transit services, which equal or exceed the quality of services which could be provided by the states' public transit agencies;**
- 3) Extending public transit driver safety standards to the paratransit industry; and**
- 4) Requiring a local government agency to give a 25% preference to any bidder on a service contract to provide public transit services who agrees to retain employees of the prior contractor or subcontractor for a period of not less than one year.**

## LABOR AND TRANSIT RIDER MEMBERSHIP ON PUBLIC TRANSIT BOARDS

Billions of trips are taken on public transportation in the U.S. each year. The quality, frequency, and overall delivery of services affect the daily lives of millions of Americans. Yet, at most transit agencies, important issues such as fares, schedules, and operations are decided by only a few individuals on the board of directors, many of whom have had little exposure to public transit issues. Some have never ridden a bus in their entire lives!

Meanwhile, even though transit riders and employees have been given primary responsibility to be the eyes and ears of our nation's transit systems, these individuals have little role in the implementation of important safety and security guidelines.

Transit riders and employees need to be at the table when critical decisions involving the future of our transportation systems are made!

Transit workers can be tremendous assets to the board, with the ability to educate other members on real world issues, such as the impact of certain actions on riders, surrounding businesses, land use, and environmental concerns. Workers are particularly helpful on issues involving transit operations, safety, security, and the implementation of new technology. In most cases, the interests of transit riders and transit employees are one and the same. If given a voice on transit boards, even in a non-voting capacity, crucial issues affecting the lives of millions of individuals could be addressed more efficiently.

### ATU SUPPORTS:

**Legislation requiring Governors to appoint the following individuals to public transit boards:**

- 1) One person who is a regular mass transit user; and**
- 2) One person who shall be recommended to the Governor by the union representing the plurality of employees at such transit agency.**

## IMPROVING SCHOOL BUS TRANSPORTATION

Every day, school bus drivers across the country are entrusted with the care and safety of millions of children as they are transported to and from school and school-related activities on public school buses. Drivers are not only responsible for the safe and proper operation of the school bus, but also must often respond to medical and other emergencies that may arise during the trip to and from school, as well as disciplinary problems and all-too frequent outbreaks of violence aboard their buses. School bus drivers, as friend and care giver to the children entrusted to them, are often the first to respond in such instances and can serve to warn school officials when a child is demonstrating violent or other potentially dangerous behavior early in the school day.



Unfortunately, however, school bus drivers are not well equipped for such situations. Typically the only authority figure aboard the bus, drivers have only a rear view mirror in which to view the students entrusted to their care, and, as a result, are not able to

closely monitor student behavior. Bullying has become a huge problem. Further, school bus drivers currently receive minimal, if any, training as to what constitutes unacceptable behavior and appropriate discipline and are often not given any instructions for reporting incidents to school officials.

School districts should recognize the necessary presence of trained matrons on each school bus. If every school bus driver was accompanied by an aide, drivers would be able to put their full attention on the road and traffic around them, ensuring that kids would get to school and back in the safest way possible.

There is also a need for practical and on-going training for school bus drivers and aides on procedures and protocols for defusing crises and responding to violent students.

## ATU SUPPORTS:

- 1) **Mandating trained matrons to be present on all school buses;**
- 2) **Requiring training for school bus drivers and aides on managing student behavior, safety and security awareness, and emergency preparedness and response;**
- 3) **Clarifying the authority of school bus drivers and aides to discipline students or enforce student conduct codes;**
- 4) **Requiring school bus drivers to be appointed to state, local or district wide committees on student discipline; and**
- 5) **Amending criminal statutes to treat physical attacks on school bus drivers and aides, including attacks by students, gang members, and others, in the same manner as attacks on other school personnel.**

## OSHA PROTECTIONS FOR PUBLIC EMPLOYEES

A few years ago, a worker at a Pennsylvania dairy suffered severe steam burns on the lower part of his body when a distribution line burst and he was splashed with water as hot as 165 degrees. Since the accident happened at a private workplace, the federal Occupational Safety and Health Administration (OSHA) investigated the incident.

Similarly, in 2014, chaos broke out at the Erie Metropolitan Transit Authority (EMTA) bus garage. Out of nowhere, there were mechanics running around and screaming, trying to get management to call 911. Jake Schwab, a veteran mechanic, was lying in a pool of his own blood. An air suspension system Jake was working on exploded and a metal disk flew into the left side of his brain. He died five days later. However, since EMTA is a public workplace, OSHA did not investigate, and the case is closed.

Two jobsites in the same state with obvious safety issues. The workplace where a man dies gets a free pass. Years later, there has been no official explanation of the cause of the EMTA incident, which would seem to be necessary to prevent it from happening again. The so-called “investigation” from the insurance company was a sham.



Was it Jake's fault? Was it equipment failure? We will never know because no one seems to care. Public employees are like second class citizens in Pennsylvania, and many other states.

The Occupational Safety and Health Act of 1970 is the federal U.S. Labor Law governing occupational



health and safety in the private sector and federal government in the United States. OSHA's main goal is to ensure that employers provide employees with an environment free from recognized hazards, such as exposure to toxic chemicals, excessive noise levels, mechanical dangers, heat or cold stress, or unsanitary conditions.

However, OSHA specifically excludes Federal OSHA's authority over employees of State and local government. The Act provides for States to assume responsibility for occupational safety and health programs under the State's own plan, which must be approved by the U.S. Department of Labor. Each State-plan must include coverage of public employees of the State, and it must be "at least as effective" as Federal OSHA's protection of private sector employees.

There are currently 22 State Plans covering both private sector and state and local government workers, and there are six State Plans covering only state and local government workers. **Unfortunately, 22 states have no OSHA protections for state and local government workers, including public transit workers.**

Public sector bus and rail mechanics represented by ATU throughout America report to workplaces in unsafe conditions far too often. Our members are exposed to high voltage wires, wet floors, toxic chemicals, dangerous fumes, defective ventilation systems, rat infested underground workplaces, etc. Mechanics may be forced to work with neglected, improper equipment on unfamiliar buses with little to no training, which has resulted in injury and death.

It is time for all 50 states to adopt legislation that would cover **all** workers, whether they are employed in the private sector or a public workplace, under OSHA protections. All people should have the right to a safe and secure workplace, and the peace of mind of knowing that they will return home alive.

## ATU SUPPORTS:

**State Legislation assuming responsibility for occupational safety and health programs for public sector employees, including public transit and school bus workers, under the State OSHA plans.**

## INCREASING TRANSIT RIDERSHIP

ATU has been a long-time supporter of the federal tax-free Commuter Benefits Program. This is an employer-provided benefit that can cover the costs of an employee's commute via transit up to a monthly cap of \$270. The benefit can be offered pre-tax, as a subsidy, or in combination. Reducing the cost of public transportation is one of the best incentives to get people on board the bus or train. When people hear about the money they can save on car maintenance, the program truly sells itself. Rarely does an employee benefit save both the employee and employer money. But through this great twist of the tax code, you can commute with tax free dollars, and save your boss tax dollars too, as employers can avoid payroll taxes on such benefits. The benefit is a win-win for everyone involved.



The biggest hurdle to implementation of the program has been that workers just don't know about the benefit. If they did, and realized that they could potentially ride the bus or train for free, they'd likely jump on board. ATU and transit advocates have launched legislation at the state and local level that addresses this issue by requiring employers with at least 20 workers to at least offer the benefit to their employees. Most recently, a bill passed in New Jersey that could potentially change the travel habits of thousands of working families. New York City, San Francisco, and the District of Columbia have also passed such legislation. These laws mandate nothing. They simply require that people are presented with information about the tax-free transit pass program so that they can make an educated decision on how they are going to get to work. This is sound public policy.

Separately, in New York City, transit passengers transfer free from local bus-to-subway, subway-to-local bus or local bus-to-local bus within two hours of the time you paid your fare. Other cities should implement this policy. Although free transfers will initially cost lost income, the plan will soon increase the number of transit riders. New York implemented the free transfer system in 1997. Within a year, ridership increased by a whopping 15%, providing increased revenue and a much needed boost to the entire system.

Moreover, while most systems offer reduced fares for seniors, transit systems should implement programs that take into account passengers' ability to pay. For instance, San Francisco's SFMTA has a "Lifeline" pass program, which provides a 50% discount on the monthly pass for residents whose incomes are

200% below the federal poverty level. This should be expanded nationwide.

Finally, our veterans who have served their country deserve free public transit. While many systems offer reduced fares to disabled veterans, this courtesy should be made available to anyone who has ever had the bravery to serve in our armed services, active or retired, disabled or able bodied. States should subsidize such programs at the local level.

## ATU SUPPORTS:

- 1) **Requiring employers with 20 or more employees to offer tax-free transit commuter benefits to workers;**
- 2) **State tax incentives for companies whose employees use mass transit, allowing for a certain credit against the state income tax (and/or other business taxes) for certain costs incurred by employers that provide commuter benefits to employees;**
- 3) **Incentivizing transit systems to offer free transfers;**
- 4) **Requiring transit systems to provide discounts for passengers whose income is 200% below the poverty level; and**
- 5) **Free fares for all veterans.**

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## SMART TRANSITION TO ZERO EMISSION TRANSIT AND SCHOOL BUSES

The transportation sector generates the largest share (29%) of greenhouse gas emissions. While U.S. bus transit, which has about a quarter of its seats occupied on average, emits an estimated 33% lower greenhouse gas emissions per passenger mile than the average U.S. single occupancy vehicle, we can and must do better to meet the existential challenge of climate change.

The U.S Congress recently passed a massive infrastructure bill which included billions of dollars to transform the nation's bus fleets from diesel to electric or other forms of zero-emission vehicles. State Legislatures are also leading the way on this issue, requiring that state transit systems transition to zero emission buses, some with very aggressive timelines.

Recognizing that transit jobs are "green jobs" ATU supports these critical efforts to save our planet. Significantly, many of these new vehicles will feature powertrain components made in the U.S., thereby supporting local jobs.



The major issue for ATU members regarding zero-emission buses is **training**. A recent poll found that a whopping 83% of local transit union leaders do not feel that their maintenance and operations members are adequately trained to work on zero-emission buses. Preventive maintenance on a transit bus nowadays is quite different than it was just a few years ago, when a skilled mechanic could likely have made do with the contents of their toolbox. Advances in computer technology have fundamentally changed the nature of the job. Yet, training has not kept pace, and huge skill gaps have developed. As a result, transit workers often lose out on work that they could easily perform, and overall transit safety is of course threatened.

While we support the important effort to transition the nation's transit and school bus fleets to electric vehicles, it is critical to ensure that resources are set aside for labor-management apprenticeship training to ensure that workers get the skills they need to safely operate and maintain these new vehicles. As other industries have demonstrated, the best way to

close skill gaps is through apprenticeship programs established through labor-management partnerships. When both sides buy in, the results can be quite effective. While labor and management often disagree on various issues, in transit, we have recognized that by working together, we can provide training to workers with a thirst for the knowledge they need to move up the career ladder, while saving management precious resources that they can put into improved and expanded service. It's a win-win for everyone.

Now it is time to invest in human capital. State investment in infrastructure cannot and should not be the catalyst for transit and school bus workers losing their jobs or having the inability to do their jobs safely simply due to the lack of training.

## ATU SUPPORTS:

- 1) **Requiring transit systems acquiring zero-emission vehicles to submit a zero emission transition plan, which examines the impact of the transition on the agency's current workforce by identifying skill gaps, training needs, and retraining needs of the existing workers of the system to operate and maintain zero emission vehicles and related infrastructure, avoiding the displacement of the existing workforce;**
- 2) **Ensuring that no duties of existing transit/school bus employees are transferred to a contracting entity as a result of the conversion from diesel powered buses to zero-emission vehicles; and**
- 3) **Setting aside at least 20% of state funds used to purchase zero-emission vehicles to fund workforce development training, including registered apprenticeships and other labor-management training programs.**

## RESTRICTIONS ON “MICRO” TRANSIT

Public transit is changing. Transit agencies across America are implementing so-called “micro transit” solutions by operating small-scale, on-demand public transit services that offer fixed routes and schedules, as well as flexible routes and on-demand scheduling. These services involve large vans or minibuses, using mobile apps to match passengers making similar trips in a single vehicle.

Unfortunately, what started out as first mile/last mile runs or service to underserved areas has turned into an ill-advised effort to replace established fixed route service. Moreover, transit systems partnering with the private companies providing these services are being told that micro transit can be a more cost-effective way to provide service in some travel markets compared to fixed-route buses. However, the results have fallen short, and precious public resources have been wasted on routes that serve very few people.

Yet despite a string of failures, a growing number of transit agencies are contracting with private firms to give micro transit a try. It does not take them long to determine that it is clearly not the large-scale substitute for bus service that much media coverage makes it out to be.

### **The Philadelphia Inquirer**

“Uber and Lyft are hurting bus ridership and worsening traffic, new study finds”

— July 2018

### **Bloomberg CityLab**

“Another Study Blames Uber and Lyft for Public Transit’s Decline”

— January 2019

For example, an experiment with the now-bankrupt Bridj in Kansas City failed miserably. Riders made

only 1,480 trips during the course of the one-year pilot, even though each passenger got their first 10 rides for free. Only a third of riders kept using the service after the free rides expired. The local transit agency, KCATA, spent \$1.5 million to administer the service – a subsidy of more than \$1,000 per ride.

Other systems have tried as well, generating only a fraction of the boardings-per-hour threshold that systems require to keep running bus routes. The evidence is clear that on-demand transit carries fewer passengers per hour than even a low ridership fixed route. This makes it hard to justify as a replacement service, especially on a route-for-route basis.

Diverting state transit funding to micro transit that could be devoted to fixed-route bus service hurts transit-dependent riders, especially in communities of color. It also may accelerate the downward trend in transit ridership in American cities and take large fixed route buses off the road, increasing traffic congestion and pollution and accelerating climate change. This is simply bad public policy.

## ATU SUPPORTS:

- 1) **Requiring micro transit services to be targeted to areas that are underserved by fixed route bus service;**
- 2) **Ensuring that micro transit work is performed in house by existing, experienced public transit employees when current fixed route bus service is performed in house;**
- 3) **Mandating that no existing fixed route bus employees are dismissed or displaced as a result of the introduction of micro transit services; and**
- 4) **Restrictions on using public resources for micro transit services.**

## BINDING ARBITRATION

When contractual disputes arise between transit management and labor unions, sometimes the process drags on far too long. If the parties reach an impasse and cannot resolve their issues, the riding public can be impacted. Generally speaking, transit areas that are able to submit all unresolvable contract negotiations to binding arbitration have had a great deal of success in settling disputes in a time efficient manner.

Public binding arbitration panels work. In the transit arena, they ensure a fair and equitable resolution to the collective bargaining impasse for both the employer and employee, helping to ensure that public transit riders continue to enjoy uninterrupted service.

Binding arbitration avoids hostility. Since the parties in arbitration are usually encouraged to participate fully and sometimes even structure the resolution, they are often more likely to work together peaceably rather than escalate the situation, as is often the case in litigation. It is also usually less expensive than litigation because the process is quicker and generally less complicated than a court proceeding.

Arbitration is also more flexible. Unlike trials, which must be worked into overcrowded court calendars, arbitration hearings can usually be scheduled around the needs and availabilities of those involved. Litigation is costly for all parties involved, including the transit rider and taxpayers, and it can take years for a resolution to be reached.

### ATU SUPPORTS:

**Binding arbitration to resolve disputes between transit management and Labor in select states for public sector workers falling under collective bargaining regimes when the parties reach impasse.**



## MODEL BILLS

### INCREASED PENALTIES FOR ASSAULTING A TRANSIT WORKER

#### NY STATE PENAL LAW

§ 120.05 Assault in the second degree.

A person is guilty of assault in the second degree when:

1. With intent to cause serious physical injury to another person, he causes such injury to such person or to a third person; or

2. With intent to cause physical injury to another person, he causes such injury to such person or to a third person by means of a deadly weapon or a dangerous instrument; or

3. With intent to prevent a peace officer, a police officer, a firefighter, including a firefighter acting as a paramedic or emergency medical technician administering first aid in the course of performance of duty as such firefighter, an emergency medical service paramedic or emergency medical service technician, or medical or related personnel in a hospital emergency department, a city marshal, a traffic enforcement officer or traffic enforcement agent, from performing a lawful duty, by means including releasing or failing to control an animal under circumstances evincing the actor's intent that the animal obstruct the lawful activity of such peace officer, police officer, firefighter, paramedic, technician, city marshal, traffic enforcement officer or traffic enforcement agent, he or she causes physical injury to such peace officer, police officer, firefighter, paramedic, technician or medical or related personnel in a hospital emergency department, city marshal, traffic enforcement officer or traffic enforcement agent; or

4. He recklessly causes serious physical injury to another person by means of a deadly weapon or a dangerous instrument; or

5. For a purpose other than lawful medical or therapeutic treatment, he intentionally causes stupor, unconsciousness or other physical impairment or injury

to another person by administering to him, without his consent, a drug, substance or preparation capable of producing the same; or

6. In the course of and in furtherance of the commission or attempted commission of a felony, other than a felony defined in article one hundred thirty which requires corroboration for conviction, or of immediate flight therefrom, he, or another participant if there be any, causes physical injury to a person other than one of the participants; or

7. Having been charged with or convicted of a crime and while confined in a correctional facility, as defined in subdivision three of section forty of the correction law, pursuant to such charge or conviction, with intent to cause physical injury to another person, he causes such injury to such person or to a third person; or

8. Being eighteen years old or more and with intent to cause physical injury to a person less than eleven years old, the defendant recklessly causes serious physical injury to such person; or

9. Being eighteen years old or more and with intent to cause physical injury to a person less than seven years old, the defendant causes such injury to such person; or

10. Acting at a place the person knows, or reasonably should know, is on school grounds and with intent to cause physical injury, he or she:

(a) causes such injury to an employee of a school or public school district; or

(b) not being a student of such school or public school district, causes physical injury to another, and such other person is a student of such school who is attending or present for educational purposes. For purposes of this subdivision the term "school grounds" shall have the meaning set forth in subdivision fourteen of section 220.00 of this chapter.

**11. With intent to cause physical injury to a train operator, ticket inspector, conductor, signalperson, bus operator or station agent employed by any transit agency, authority or company, public or private, whose operation is authorized by New York state or any of its political subdivisions, a city marshal, a traffic enforcement officer or traffic enforcement agent, he or she causes physical injury to such train**

**operator, ticket inspector, conductor, signalperson, bus operator or station agent, city marshal, traffic enforcement officer or traffic enforcement agent while such employee is performing an assigned duty on, or directly related to, the operation of a train or bus, or such city marshal, traffic enforcement officer or traffic enforcement agent is performing an assigned duty.**

12. With intent to cause physical injury to a person who is sixty-five years of age or older, he or she causes such injury to such person, and the actor is more than ten years younger than such person.

**Assault in the second degree is a class D felony.**

#### VEHICLES

(625 ILCS 50/) Public Conveyance Notice Act.

1. (625 ILCS 50/0.01) (from Ch. 100, par. 30)

Sec. 0.01. Short title. This Act may be cited as the Public Conveyance Notice Act. (Source: P.A. 86-1324.)

(625 ILCS 50/1) (from Ch. 100, par. 31)

Sec. 1. A notice shall be prominently displayed in each vehicle or conveyance used for the transportation of the public for hire which must state substantially the following: Any person who assaults or harms an individual whom he knows to be a driver, operator, employee or passenger of a transportation facility or system engaged in the business of transportation for hire and who is then performing in such capacity or using such public transportation as a passenger, if such individual is assaulted, commits a Class A misdemeanor, or if such individual is harmed, commits a Class 3 felony.

(Source: P.A. 77-2830.)

## STANDARDS FOR TRANSIT CONTRACTING

Amending Title 74 (Public Transportation) of the Pennsylvania Consolidated Statutes, further providing for the regulation of privatization contracts.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Title 74 of the Pennsylvania Consolidated Statutes is amended by adding a subsection to read:

§1786.1 Public Policy; Regulation of Privatization Contracts.

The General Assembly hereby finds and declares that decisions to use private contractors to provide public transportation must be based on factors which promote the public interest. To ensure that citizens of the commonwealth receive high quality transit services at low cost, with due regard for the taxpayers of the state and the needs of public and private workers, the legislature finds it necessary to regulate such privatization contracts in accordance with sections

1786.2 to 1786.4, inclusive.

§ 1786.2. Definitions Applicable to §§ 1786.1 to 1786.4.

As used in sections 1786.1 to 1786.4, inclusive, the following words shall have the following meanings:--

“Business day,” any calendar day excluding Saturdays, Sundays, and legal holidays.

“Dependent,” the spouse and children of an employee if such persons would qualify for dependent status under the Internal Revenue Code.

“Privatization contract,” an agreement or combination or series of agreements by which a non- governmental person or entity agrees with a local transportation organization to provide services, valued at \$100,000 or more, which are substantially similar to and in lieu of, services heretofore provided, in whole or in part, by regular employees of the local transportation organization . An agreement solely to provide legal, management consulting, planning, engineering or design services shall not be considered a privatization contract.

§ 1786.3. Privatization Contracts; Requirements.

Local transportation organizations shall not make any privatization contract and no such contract shall be valid unless the local transportation organization first complies with each of the following requirements:--

(1) The local transportation organization shall prepare a specific written statement of the services proposed to be the subject of the privatization contract, including the specific quantity and standard of quality of the subject services. The local transportation organization shall solicit competitive sealed bids for the privatization contracts based upon this statement. The day designated by the local transportation organization upon which it will accept these sealed bids shall be the same for any and all parties. This statement shall be a public record, shall be filed at the local transportation organization, and shall be transmitted to the Auditor General for review pursuant to § 1786.4. The term of any privatization contract shall not exceed three years. No amendment to a privatization contract shall be valid if it has the purpose or effect of avoiding any requirement of this section.

(2) For each position in which a bidder will employ any person pursuant to the privatization contract and for which the duties are substantially similar to the duties performed by a regular local transportation organization employee or employees, the statement required by paragraph (1) shall include a statement of the minimum wage rate to be paid for said position, which rate shall be the lesser of step one of the grade or classification under which the comparable regular local transportation organization employee is paid. Every bid for a privatization contract and every privatization contract shall include provisions specifically establishing the wage rate for each such position, which shall not be less than said minimum wage rate as defined above. Every such bid and contract shall also include provisions for the contractor to pay not less than a percentage, comparable to the percentage paid by the state for state employees, of the costs of health insurance plans for every employee employed for not less than twenty hours per week pursuant to such contract. Such health insurance plans shall provide coverage to the employee, the employee's spouse, and dependent children. Each contractor shall submit quarterly payroll records to the local transportation organization, listing the name,

address, social security number, hours worked and the hourly wage paid for each employee in the previous quarter. The attorney general may bring a civil action for equitable relief to enforce this paragraph or to prevent or remedy the dismissal, demotion or other action prejudicing any employee as a result of a report of a violation of this paragraph.

(3) Every privatization contract shall contain provisions requiring the contractor to offer available employee positions pursuant to the contract to qualified regular employees of the local transportation organization who are displaced or dismissed, in whole or in part, because of the privatization contract and who satisfy the hiring criteria of the contractor. The local transportation organization must certify that employees directly or indirectly displaced by the terms of the contract will have priority of employment for the jobs under the privatization contract. The local transportation organization must prepare a plan of assistance for each employee displaced as a result of the contract, including any training needed to place the employee in a comparable position at the local transportation organization, or with another agency. Every such contract shall also contain provisions requiring the contractor to comply with a policy of nondiscrimination and equal opportunity for all persons, and to take affirmative steps to provide such equal opportunity for all such persons.

(4) The local transportation organization shall prepare a comprehensive written estimate of the costs of regular local transportation organization employees' providing the public transportation services in the most cost-efficient manner. The estimate shall include all direct and indirect costs of regular local transportation organization employees' providing the transit services, including but not limited to, pension, insurance, and other employee benefit costs. For the purpose of this estimate, any employee organization may, at any time before the final day for the local transportation organization to receive sealed bids pursuant to paragraph (1), propose amendments to any relevant collective bargaining agreement to which it is a party. Any such amendments shall take effect only if necessary to reduce the cost estimate pursuant to this paragraph below the contract cost pursuant to paragraph (6). Such estimate shall remain confidential until after the final day for the local transportation

organization to receive sealed bids for the privatization contract pursuant to paragraph (1), at which time the estimate shall become a public record, shall be filed with the local transportation organization, and shall be transmitted to the Auditor General for review pursuant to § 1786.4.

(5) After consulting with any relevant employee organization, the local transportation organization shall provide adequate resources for the purpose of encouraging and assisting present local transportation organization employees or their representatives to submit a bid to provide the subject public transportation services. The local transportation organization shall consider any such bid on the same basis as all other bids.

(6) After soliciting and receiving bids, the local transportation organization shall publicly designate the bidder to which it proposes to award the contract. The local transportation organization shall prepare a comprehensive written analysis of the contract cost based upon the designated bid, specifically including the costs of transition from public to private operation, of additional unemployment and retirement benefits, if any, and of monitoring and otherwise administering contract performance. If the designated bidder is headquartered outside the state, said contract cost shall be increased by the amount of income tax revenue, if any, which will be lost to the state, as determined by the Auditor General to the extent that it is able to do so.

(7) The local transportation organization shall certify in writing to the Auditor General that: (I) he/she has complied with all provisions of this section and of all other applicable laws;

(ii) the quality of the public transportation services to be provided by the designated bidder is likely to satisfy the quality requirements of the statement prepared pursuant to paragraph (1), and to equal or exceed the quality of services which could be provided by regular local transportation organization employees pursuant to paragraph (4);

(iii) the contract cost pursuant to paragraph (6) will be at least 15 percent less than the estimated cost pursuant to paragraph (4), taking into account all comparable types of costs;

(iv) the designated bidder and its supervisory employees, while in the employ of said designated bidder, have no adjudicated record of substantial or repeated willful noncompliance with any relevant federal or state regulatory statute including, but not limited to, statutes concerning labor relations, occupational safety and health, nondiscrimination and affirmative action, environmental protection and conflicts of interest; and

(v) the proposed privatization contract is in the public interest, in that it meets the applicable quality and fiscal standards set forth herein.

(vi) the contract is in conformance with the provisions of any applicable collective bargaining agreement and subject to the provisions of any employee protection arrangements established under 49 U.S.C. 5333(b).

A copy of the proposed privatization contract shall accompany the certificate transmitted to the Auditor General.

(8) The local transportation organization must disclose all political contributions made by the proposed contractor, any of its subsidiaries or affiliates or any principal or managerial employee of the contractor or its subsidiaries or affiliates, to any elected officer of the state or member of the General Assembly, during the four years immediately preceding the date of the bid.

§ 1786.4. Review by Auditor General; Approval or Objection; Procedures; Promulgation of Regulations.

(a) The local transportation organization shall not make any privatization contract and no such contract shall be valid if, within thirty business days after receiving the certificate required by

§1786.3, the Auditor General notifies the local transportation organization of his/her objection. Such objection shall be in writing and shall state specifically the Auditor General's finding that the local transportation organization has failed to comply with one or more requirements of said

§ 1786.3, including that the Auditor General finds incorrect, based on independent review of all the relevant facts, any of the findings required

by paragraph (7) of said § 1786.3. The Auditor General may extend the time for such objection for an additional period of 30 business days beyond the original 30 business days by written notice to the local transportation organization, stating the reason for such extension.

(b) For the purpose of reviewing the local transportation organization 's compliance and certificate pursuant to said § 1786.3, the Auditor General or his/her designee may require by summons the attendance and testimony under oath of witnesses and the production of books, papers and other records relating to such review.

(c) The Auditor General may adopt regulations and prescribe forms to carry out the provisions of this section and § 1786.3.

(d) The objection of the Auditor General pursuant to subsection (a) shall be final and binding on the local transportation organization, unless the Auditor General thereafter in writing withdraws the objection, stating the specific reasons, based upon a revised certificate by the local transportation organization and upon the Auditor General's review thereof.

Section 2. This Act shall take effect in 90 days.

## SUMMARY OF TRANSIT CONTRACTING STANDARDS MODEL LEGISLATION

### **Privatization Standards for Local Transportation Organizations**

The following is a summary of draft legislation requiring the public transportation systems in the Commonwealth of Pennsylvania to adhere to certain standards when considering the privatization of public transit services.

#### **Purpose of Legislation:**

The legislation is designed to ensure that all relevant factors are taken into consideration whenever local transportation providers are considering the

privatization of public transportation services, creating a workable procedure which allows transit agencies to make choices based on accurate information in a timely manner.

#### **Summary of Provisions:**

##### **Standards**

The term of any privatization contract shall not exceed three years.

No privatization contract with a total value of more than \$100,000 shall be entered into, renewed, or extended by a local transportation organization unless certain conditions are met. Those conditions include, but are not limited to a finding that the aggregate cost savings for the privatization contract are "substantial" (at least 15%). The bill requires the "public interest" to be met.

- The bill requires a cost analysis of the work to be done, which shall be used to assess whether it is more effective to use employees of a private business entity or to use existing transit agency employees.
- The bill requires bidders to have a demonstrated ability to provide a high quality of services, which **equal or exceed** the quality of services which could be provided by regular local transportation organization employees. Bidders must have demonstrated experience in the transit industry.
- The local transportation organization and the contractor must disclose to the Auditor General every report generated by the local transportation organization, the contractor, or any entity retained by the local transportation organization or contractor, analyzing the ability of the contractor to comply with the specifications of the contract.
- The bill would require bidders to disclose to the Auditor General all political contributions made by the contractor, any of its subsidiaries or affiliates, or any principal or managerial employee of the contractor or its

subsidiaries or affiliates, to any elected officer of the State or member of the General Assembly, during the four years immediately preceding the date of the bid.

- The legislation requires that the contractor have no record of non-compliance with any federal or State laws regarding the operation of a business, including, but not limited to, laws regarding labor relations.

### **Employee Protections**

- The bill would prohibit privatization unless the contract provides that local transportation organization employees directly or indirectly displaced by the terms of the contract have priority of employment for the jobs under the contract. Agencies would be required to prepare a plan of assistance for each employee displaced as a result of the contract, including any training needed to place the employee in a comparable position at the local transportation organization, or with another agency.
- The legislation would allow unions to propose amendments to any relevant collective bargaining agreements in order to reduce cost estimates. Local transportation organizations would be required to provide adequate resources for the purpose of encouraging agency employees to organize and submit bids to provide public transportation services.
- All contracts would be required to be in conformance with the provisions of any applicable collective bargaining agreement and subject to the provisions of any employee protection arrangements established under the transit employee protections of 49 U.S.C. 5333(b), formerly Section 13(c), of the Federal Transit Act.

### **Bill Process**

- When a local transportation organization has all the information that is necessary to make

an informed decision (after soliciting and receiving bids), it would be required to prepare a comprehensive written analysis of the contract cost based on the bid, specifically including the costs of transition from public to private operation, additional unemployment and retirement benefits, monitoring costs, and other factors. The local transportation organization would then certify this and other information to the Auditor General, who would review the information for the purposes of approval or rejection. Within 30 days, the Auditor General may (1) approve the contract, (2) state that the information is incomplete, (3) subpoena the agency for additional data, or (4) object. If the Auditor General, based on his/her processing of the information, objects to the contract, that decision is final and binding on the local transportation organization, with few exceptions.

## TRANSIT BIDDING PREFERENCES

### **California Labor Code<sup>1</sup>**

#### **DIVISION 2. EMPLOYMENT REGULATION AND SUPERVISION [200. - 2699.5.]**

*(Division 2 enacted by Stats. 1937, Ch. 90.)*

#### **PART 3. PRIVILEGES AND IMMUNITIES [920. - 1138.5.]**

*(Part 3 enacted by Stats. 1937, Ch. 90.)*

#### **CHAPTER 4.6. Public Transit Service Contracts [1070. - 1074.]**

*(Chapter 4.6 added by Stats. 2003, Ch. 103, Sec. 1.)*  
1070.

The Legislature finds and declares all of the following:

- (a) That when public transit agencies award contracts to operate bus and rail services to a new contractor, qualified employees of the prior contractor who are not reemployed by the successor contractor face significant economic dislocation as a result.

(b) That those displaced employees rely unnecessarily upon the unemployment insurance system, public social services, and health programs, increasing costs to these vital government programs and placing a significant burden upon both the government and the taxpayers.

(c) That it serves an important social purpose to establish incentives for contractors who bid public transit services contracts to retain qualified employees of the prior contractor to perform the same or similar work.

*(Added by Stats. 2003, Ch. 103, Sec. 1. Effective January 1, 2004.) 1071.*

The following definitions apply throughout this chapter:

(a) "Awarding authority" means any local government agency, including any city, county, special district, transit district, joint powers authority, or nonprofit corporation that awards or otherwise enters into contracts for public transit services performed within the State of California.

(b) "Bidder" means any person who submits a bid to an awarding agency for a public transit service contract or subcontract.

(c) "Contractor" means any person who enters into a public transit service contract with an awarding authority.

(d) "Employee" means any person who works for a contractor or subcontractor under a contract. "Employee" does not include an executive, administrative, or professional employee exempt from the payment of overtime compensation within the meaning of subdivision (a) of Section 515 or any person who is not an "employee" as defined under Section 2(3) of the National Labor

Relations Act (29 U.S.C. Sec. 152(3)).

<sup>1</sup>The text of the actual CA code has been modified to improve worker protections.

(e) "Person" means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ individuals or enter into contracts.

(f) "Public transit services" means the provision of passenger transportation services to the general public, including paratransit service.

(g) "Service contract" means any contract the principal purpose of which is to provide public transit services through the use of service employees.

(h) "Subcontractor" means any person who is not an employee who enters into a contract with a contractor to assist the contractor in performing a service contract.

*(Added by Stats. 2003, Ch. 103, Sec. 1. Effective January 1, 2004.) 1072.*

(a) A bidder shall declare as part of the bid for a service contract whether or not he or she will retain the employees of the prior contractor or subcontractor for a period of not less than one year<sup>2</sup>.

(b) An awarding authority letting a service contract out to bid shall give a 25<sup>3</sup> percent preference to any bidder who agrees to retain the employees of the prior contractor or subcontractor pursuant to subdivision (a).

(c) (1) If the awarding authority announces that it intends to let a service contract out to bid, the existing service contractor, within a reasonable time, shall provide to the awarding authority the number of employees who are performing services under the service contract and the wage rates, benefits, and job classifications of those employees. In addition, the existing service contractor shall make this information available to any entity that the awarding authority has identified as a bona fide bidder. If the successor service contract is awarded to a new contractor, the existing contractor shall provide the names, addresses, dates of hire, wages, benefit levels, and job classifications of employees to the successor contractor. The duties imposed by this subdivision shall be contained in all service contracts.

(2) A successor contractor or subcontractor who agrees to retain employees pursuant to subdivision (a) shall retain employees who have been employed by the prior contractor or subcontractors, except for reasonable and substantiated cause. That cause is limited to the particular employee's performance or

conduct while working under the prior contract or the employee's failure of any controlled substances and alcohol test, physical examination, criminal background check required by law as a condition of employment, or other standard hiring qualification lawfully required by the successor contractor or subcontractor.

(3) The successor contractor or subcontractor shall make a written offer of employment to each employee to be rehired. That offer shall state the time within which the employee must accept that offer, but in no case less than 10 days. Nothing in this section requires the successor contractor or subcontractor to pay the same wages or offer the same benefits provided by the prior contractor or subcontractor.

<sup>2</sup>Actual law requires 90 days.

<sup>3</sup>Actual law provides for a 10% preference.

(4) If, at any time, the successor contractor or subcontractor determines that fewer employees are required than were required under the prior contract or subcontract, he or she shall retain qualified employees by seniority within the job classification. In determining those employees who are qualified, the successor contractor or subcontractor may require an employee to possess any license that is required by law to operate the equipment that the employee will operate as an employee of the successor contractor or subcontractor.

*(Added by Stats. 2003, Ch. 103, Sec. 1. Effective January 1, 2004.) 1073.*

(a) An employee who was not offered employment or who has been discharged in violation of this chapter, or his or her agent, may bring an action against the successor contractor or subcontractor in any superior court having jurisdiction over the successor contractor or subcontractor. Upon finding a violation of this chapter, the court shall order reinstatement to employment with the successor contractor or subcontractor and award backpay, including the value of benefits, for each day of violation. A violation of this chapter continues for each day that the successor contractor or subcontractor fails to employ the employee, within the period agreed to pursuant to Section 1072.

(b) The court may preliminarily or permanently enjoin the continued violation of this chapter.

(c) If the employee prevails in an action brought under this chapter, the court shall award the employee reasonable attorney's fees and costs as part of the costs recoverable.

*(Added by Stats. 2003, Ch. 103, Sec. 1. Effective January 1, 2004.) 1074.*

(a) Upon its own motion or upon the request of any member of the public, an awarding authority may terminate any service contract made pursuant to Section 1072 if both of the following occur:

(1) The contractor or subcontractor has substantially breached the contract.

(2) The awarding authority holds a public hearing within 30 days of the receipt of the request or its announcement of its intention to terminate.

(b) A contractor or subcontractor terminated pursuant to subdivision (a) shall be ineligible to bid on or be awarded a service contract or subcontract with that awarding authority for a period of not less than one year and not more than three years, to be determined by the awarding authority.

*(Added by Stats. 2003, Ch. 103, Sec. 1. Effective January 1, 2004.)*

## LABOR REPRESENTATIVES ON TRANSIT BOARDS

P.L. 2009, CHAPTER 179, *approved January 11, 2010*

**AN ACT** concerning the membership of the board of the New Jersey Transit Corporation, amending P.L.1979, c.150.

**BE IT ENACTED** by the Senate and General Assembly of the State of New Jersey:

1. Section 4 of P.L.1979, c.150 (C.27:25-4) is amended to read as follows:

4. a. There is hereby established in the Executive



Branch of the State Government the New Jersey Transit Corporation, a body corporate and politic with corporate succession. For the purpose of complying with the provisions of Article V, Section IV, paragraph 1 of the New Jersey Constitution, the corporation is hereby allocated within the Department of Transportation, but, notwithstanding said allocation, the corporation shall be independent of any supervision or control by the department or by any body or officer thereof. The corporation is hereby constituted as an instrumentality of the State exercising public and essential governmental functions, and the exercise by the corporation of the powers conferred by this act shall be deemed and held to be an essential governmental function of the State.

b. The corporation shall be governed by a board which shall consist of [seven] eight members [including]. Seven of the members shall be voting members and shall consist of: the commissioner of Transportation and the State Treasurer, who shall be members ex officio, another member of the Executive Branch to be selected by the Governor who shall also serve ex officio, and four other public members who shall be appointed by the Governor, with the advice and consent of the Senate, for four year staggered terms and until their successors are appointed and qualified. No more than two of the public members shall be members of the same political party. At least one public member shall be a regular public transportation rider. Each public member may be removed from office by the Governor for cause. A vacancy in the membership of the board occurring other than by expiration of term shall be filled in the same manner as the original appointment, but for the unexpired term only. The first appointments shall be for one, two, three and four years respectively, and thereafter for terms of four years as stated. The board shall annually designate a vice chairman and secretary. The secretary need not be a member.

**There shall also be one non-voting 1 member of the board, who shall not be considered in determining a quorum. The non-voting member shall be appointed by the Governor upon the recommendation of the labor organization representing the plurality of the employees of the corporation. The non-voting member shall be appointed for a term of four years, provided, however, that if at any time during the**

**term of appointment the non-voting member ceases to be affiliated with the labor organization representing the plurality of the employees of the corporation, then such labor organization may, thereupon or at any time thereafter during such term, recommend a new member to the Governor for appointment to serve the remainder of the term. If the local bargaining unit decertifies its existing union affiliation and certifies a new union, the union which represents the plurality of the employees may recommend a new member to the Governor for appointment to serve the remainder of the term. The chairman of the board may, at the chairman's discretion, exclude such non-voting member from attending any portion of a board meeting or any other meeting held for the purpose of discussing negotiations with labor organizations, pending litigation involving the labor organization, [or] the investigation, evaluation, or discipline of an employee of the corporation, or matters concerning private entities engaged in the provision of motorbus regular route service, paratransit service, or motorbus charter service that would otherwise not be considered public information. The non-voting member may be removed by the Governor for cause.**

c. Board members other than those serving ex officio shall serve without compensation, but members shall be reimbursed for actual expenses necessarily incurred in the performance of their duties.

d. The Commissioner of Transportation shall serve as chairman of the board. He shall chair board meetings and shall have responsibility for the scheduling and convening of all meetings of the board. In his absence, the vice chairman shall chair the board meeting. Each ex officio member of the board may designate two employees of his department or agency, one of whom may represent him at meetings of the board. A designee may lawfully vote and otherwise act on behalf of the member for whom he constitutes the designee. Any such designation shall be in writing delivered to the board and shall continue in effect until revoked or amended by writing delivered to the board.

e. The powers of the corporation shall be vested in the voting members of the board thereof and

four voting members of the board shall constitute a quorum at any meeting thereof. Actions may be taken and motions and resolutions adopted by the board at any meeting thereof by the affirmative vote of at least four members. No vacancy in the membership of the board shall impair the right of a quorum to exercise all the rights and perform all the duties of the board.

f. A true copy of the minutes of every meeting of the board shall be delivered forthwith, by and under the certification of the secretary thereof, to the Governor. No action taken at such meeting by the board shall have force or effect until approved by the Governor or until 10 days after such copy of the minutes shall have been delivered. If, in said 10-day period, the Governor returns such copy of the minutes with veto of any action taken by the board or any member thereof at such meeting, such action shall be null and of no effect. The Governor may approve all or part of the action taken at such meeting prior to the expiration of the said 10-day period.

g. The board meetings shall be subject to the provisions of the "Open Public Meetings Act," P.L.1975, c.231 (C.10:4-6 et seq.). (cf: P.L.1992, c.214, s.1)

2. This act shall take effect immediately. Adds non-voting member to NJT board.

## SCHOOL BUS MONITORS

### TITLE 16. EDUCATION

#### CHAPTER 21. HEALTH AND SAFETY OF PUPILS

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION R.I. Gen. Laws § 16-21-1 (2006)

§ 16-21-1. Transportation of public and private school pupils

(a) The school committee of any town or city shall provide suitable transportation to and from school for pupils attending public and private schools of elementary and high school grades, except private

schools that are operated for profit, who reside so far from the public or private school which the pupil attends as to make the pupil's regular attendance at school impractical and for any pupil whose regular attendance would otherwise be impracticable on account of physical disability or infirmity.

(b) **For transportation provided to children enrolled in grades kindergarten through five (5), school bus monitors, other than the school bus driver, shall be required on all school bound and home bound routes.** Variances to the requirement for a school bus monitor may be granted by the commissioner of elementary and secondary education if he or she finds that an alternative plan provides substantially equivalent safety for children. For the purposes of this section a "school bus monitor" means any person sixteen (16) years of age or older.

## EMPLOYER TAX CREDITS FOR RIDING TRANSIT

### TAX CREDITS FOR COST OF PROVIDING COMMUTER BENEFITS TO EMPLOYEES

MARYLAND 1999 REGULAR SESSION  
HOUSE BILL 636

FOR the purpose of allowing a certain credit against the State income tax [A] , FINANCIAL INSTITUTION FRANCHISE TAX, AND INSURANCE PREMIUMS TAX <A] for certain costs incurred by employers that provide certain commuter benefits to employees; providing for the maximum amount of the credit per year per employee; [D] providing for the carryover of unused credit if the credit exceeds the total tax otherwise payable for a taxable year; <D] defining a certain term; [D] expressing a certain intent of the General Assembly; <D] providing

for the application of this Act; and generally relating to a tax credit against [D] the State income tax <D] [A] CERTAIN TAXES <A] for employer provided commuter benefits to employees.

[A] BY ADDING TO ARTICLE - ENVIRONMENT SECTION 2-901 TO BE

UNDER THE NEW SUBTITLE "SUBTITLE 9. TAX CREDITS FOR EMPLOYER-PROVIDED COMMUTER BENEFITS" ANNOTATED CODE OF MARYLAND (1996 REPLACEMENT VOLUME AND 1998 SUPPLEMENT) <A]

BY adding to Article - Tax - General Section [A] 8-220 AND <A] 10-712 Annotated Code of

Maryland (1997 Replacement Volume and 1998 Supplement)

[A] BY ADDING TO ARTICLE - INSURANCE SECTION 6-119 ANNOTATED CODE OF MARYLAND (1997 VOLUME AND 1998 SUPPLEMENT) <A]

**NOTICE:**

[A] UPPERCASE TEXT WITHIN THESE SYMBOLS IS ADDED <A] [D] Text within these symbols is deleted <D]

**TEXT:** SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

[D] Article - Tax - General <D]

[A] ARTICLE - ENVIRONMENT <A]

[A] SUBTITLE 9. TAX CREDITS FOR EMPLOYER-PROVIDED COMMUTER BENEFITS.

<A]

[D] 10-712. <D] [A] 2-901. <A]

[A] (A) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED. <A]

[A] (1) "BUSINESS ENTITY" MEANS: <A]

[A] (I) A PERSON CONDUCTING OR OPERATING A TRADE OR BUSINESS IN MARYLAND; OR <A]

[A] (II) AN ORGANIZATION OPERATING IN MARYLAND THAT IS EXEMPT FROM TAXATION UNDER SECTION 501(C)(3) OR (4) OF THE INTERNAL REVENUE CODE.

<A]

[A] (2) "INSTRUMENT" MEANS A PASS, TOKEN, FARE CARD, VOUCHER, OR SIMILAR ITEM. <A]

[A] (B) A BUSINESS ENTITY MAY CLAIM A TAX CREDIT <A] [D] AGAINST THE STATE INCOME TAX <D] [A] IN AN AMOUNT EQUAL TO 50% OF THE COST OF PROVIDING THE FOLLOWING COMMUTER BENEFITS TO THE BUSINESS ENTITY'S EMPLOYEES: <A]

[A] (1) IF PROVIDED FOR THE PURPOSE OF TRAVEL BETWEEN THE EMPLOYEE'S RESIDENCE AND PLACE OF EMPLOYMENT, ANY PORTION OF THE COST OF TRANSPORTATION IN A VEHICLE OR AN INSTRUMENT THAT IS USED TO OFFSET ANY PORTION OF THE COST OF TRANSPORTATION IN A VEHICLE: <A]

[A] (I) WITH A SEATING CAPACITY OF AT LEAST EIGHT ADULT INDIVIDUALS; AND <A]

[A] (II) AT LEAST 80% OF THE ANNUAL MILEAGE OF WHICH IS INCURRED: <A] [A] 1. FOR THE PURPOSE OF TRANSPORTING INDIVIDUALS BETWEEN THEIR

RESIDENCES AND THEIR PLACES OF EMPLOYMENT; AND <A]

[A] 2. ON TRIPS WHERE THE NUMBER OF EMPLOYEES TRANSPORTED TOGETHER

IS AT LEAST ONE-HALF OF THAT VEHICLE'S ADULT SEATING CAPACITY; OR <A]

[D] (2) AN INSTRUMENT THAT IS USED TO OFFSET THE MONTHLY COST OF TWO OR MORE EMPLOYEES COMMUTING TOGETHER IN ONE VEHICLE BETWEEN THEIR RESIDENCES AND THEIR PLACE OF EMPLOYMENT; OR <D]

[D] (3) <D] [A] (2) AN INSTRUMENT THAT: <A]

[A] (I) ENTITLES AN INDIVIDUAL, AT NO ADDITIONAL COST OR AT A REDUCED FARE, TO TRANSPORTATION ON A PUBLICLY OR

PRIVATELY OWNED MASS TRANSIT SYSTEM  
OTHER THAN A TAXI SERVICE; OR <A]

[A> (II) IS REDEEMABLE AT A TRANSIT  
PASS SALES OUTLET FOR THE PURPOSE  
STATED IN ITEM <A] [D> (3)(I) <D] [A> (2)(I)  
OF THIS SUBSECTION. <A]

[A> (C) THE CREDIT ALLOWED UNDER  
THIS SECTION MAY NOT EXCEED \$ 30 PER  
INDIVIDUAL EMPLOYEE PER MONTH. <A]

[D> (D) IF THE CREDIT ALLOWED  
UNDER THIS SECTION IN ANY TAXABLE  
YEAR EXCEEDS THE TOTAL TAX OTHERWISE  
PAYABLE BY THE BUSINESS ENTITY FOR  
THAT TAXABLE YEAR, THE BUSINESS ENTITY  
MAY APPLY THE EXCESS AS A CREDIT FOR  
SUCCEEDING TAXABLE YEARS UNTIL THE  
EARLIER OF: <D]

[D> (1) THE FULL AMOUNT OF THE  
EXCESS IS USED; OR <D]

[D> (2) THE EXPIRATION OF THE 10TH  
TAXABLE YEAR AFTER THE TAXABLE

YEAR IN WHICH THE COSTS FOR WHICH  
THE CREDIT IS CLAIMED ARE INCURRED.

<D]

[A> (D) (1) THE CREDIT ALLOWED  
UNDER THIS SECTION MAY NOT EXCEED  
THE TOTAL TAX OTHERWISE PAYABLE BY  
THE BUSINESS ENTITY FOR THAT

TAXABLE YEAR, DETERMINED BEFORE  
THE APPLICATION OF THE CREDIT UNDER  
THIS SECTION BUT AFTER THE APPLICATION  
OF ANY OTHER CREDIT. <A]

[A> (2) THE UNUSED AMOUNT OF THE  
CREDIT UNDER THIS SECTION FOR ANY  
TAXABLE YEAR MAY NOT BE CARRIED OVER  
TO ANY OTHER TAXABLE YEAR.

<A]

[A> ARTICLE - TAX - GENERAL <A] [A>  
8-220. <A]

[A> A FINANCIAL INSTITUTION MAY  
CLAIM A CREDIT AGAINST THE FINANCIAL  
INSTITUTION FRANCHISE TAX FOR THE  
COST OF PROVIDING COMMUTER BENEFITS  
TO THE BUSINESS ENTITY'S EMPLOYEES AS  
PROVIDED UNDER SECTION 2-901 OF THE  
ENVIRONMENT ARTICLE. <A]

[A> 10-712. <A]

[A> AN INDIVIDUAL OR CORPORATION  
MAY CLAIM A CREDIT AGAINST THE STATE  
INCOME TAX FOR THE COST OF PROVIDING  
COMMUTER BENEFITS TO THE BUSINESS  
ENTITY'S EMPLOYEES AS PROVIDED UNDER  
SECTION 2-901 OF THE ENVIRONMENT  
ARTICLE. <A]

[A> ARTICLE - INSURANCE <A] [A> 6-119.  
<A]

[A> AN INSURER MAY CLAIM A CREDIT  
AGAINST THE PREMIUM TAX FOR THE COST  
OF PROVIDING COMMUTER BENEFITS TO  
THE BUSINESS ENTITY'S EMPLOYEES AS  
PROVIDED UNDER SECTION 2-901 OF THE  
ENVIRONMENT ARTICLE. <A]

SECTION 2. AND BE IT FURTHER  
ENACTED, That this Act shall take effect July  
1, 1999 and shall be applicable to all taxable years  
beginning after December 31, 1999.

## REQUIRING BUSINESSES TO OFFER TAX FREE TRANSIT BENEFITS

SENATE, No. 3453

STATE OF NEW JERSEY

217th LEGISLATURE

### SYNOPSIS

Requires certain employers to provide certain  
pre-tax transportation fringe benefits.

An Act concerning pre-tax transportation fringe  
benefits, and amending and supplementing P.L.1992,  
c.32.

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

1. Section 3 of P.L.1992, c.32 (C.27:26A-3) is amended to read as follows:

3. As used in this amendatory and supplementary act:

«Alternative means of commuting» means travel between a person's place of residence and place of employment or termini near those places, other than in a motor vehicle occupied by one person. Alternative means of commuting include, but are not limited to, public transportation, car pools, van pools, bus pools, ferries, bicycling, telecommuting, and walking, which may be used in conjunction with such strategies as flextime, staggered work hours, compressed work weeks, and like measures.

«Clean Air Act» means the federal Clean Air Act, as amended by Pub.L.101-549 (42 U.S.C. s. 7401 et seq.) and as subsequently amended or supplemented.

«Commissioner» means the Commissioner of Transportation.

«Commuter transportation benefit» means the cost to employers of providing benefits to an employee for utilizing an alternative means of commuting and the cost of providing services and facilities which would encourage or facilitate use by employees of alternative means of commuting. The benefit shall include the costs of parking by employees at park-and-ride lots.

«Department» means the New Jersey Department of Transportation.

«Employee» [means an employee hired or employed by the employer and who reports to the employer's work location, as specified by regulation of the department] shall have the same meaning as provided in the "unemployment compensation law," (R.S.43:21-1 et seq.).

«Employer» [means any person, partnership, association, corporation, trust, legal representative or any organized group of persons which hires or employs employees and shall also include all public and quasi-public employers, including without limitation the United States and any of its governmental instrumentalities, the State of New Jersey and its

instrumentalities and subdivisions, and all State and bi-State authorities, corporations, commissions, boards and like bodies] shall have the same meaning as provided in the "unemployment compensation law," (R.S.43:21-1 et seq.).

«Pre-tax transportation fringe benefit» means a pre-tax election transportation fringe benefit that provides commuter highway vehicle and transit benefits, consistent with the provisions and limits of section 132(f)(1) of the United States Internal Revenue Code of 1986 (26 U.S.C. s.132(f)(1)) at the maximum benefit levels allowable under federal law, to be deducted for those programs from an employee's gross income pursuant to section 132(f)(2) of the United States Internal Revenue Code of 1986 (26 U.S.C. s.132(f)(2)).

«Program» means the Travel Demand Management Program established pursuant to section 5 of P.L.1992, c.32 (C.27:26A-5) and continued pursuant to P.L.1996, c.121 (C.27:26A-4.1 et al.).

«Transportation management association» or «TMA» means a nonprofit corporation approved by the department as coordinating transportation services, including but not limited to public transportation, van pools, car pools, bicycling, and pedestrian modes, as well as strategies such as flex time, staggered work hours, and compressed work weeks, for corporations, employees, developers, individuals, and other groups.

«Travel demand management» or «TDM» means a system of actions whose purpose is to alleviate traffic-related problems through improved management of vehicle trip demand. These actions, which are primarily directed at commuter travel, are structured to reduce the dependence on and use of single occupancy vehicles, or to alter the timing of travel to other, less congested time periods or both.

(cf: P.L.1996, c.121, s.5)

2. (New section)

a. Every employer in the State of New Jersey that employs at least 20 persons shall offer to all of that employer's employees, that are not covered by a collective bargaining agreement, the opportunity to utilize a pre-tax transportation fringe benefit.

b. If an employer employs persons covered by a collective bargaining agreement and employs less than 20 employees who are not covered by the collective bargaining agreement, the employer shall not be required to provide the opportunity to utilize a pre-tax transportation fringe benefit.

c. If an employee is employed by the federal government and that employee is eligible for a benefit through the person's employment with the federal government for a transit benefit that is equal to or greater than a pre-tax transportation fringe benefit, then the federal government shall not be required to provide those employees the opportunity to utilize a pre-tax transportation fringe benefit.

3. (New section) Any employer found to be in violation of the requirement provided in section 2 of P.L. , c. (C. ) (pending before the Legislature as this bill) shall be liable for a civil penalty of not less than \$100 and not more than \$250 for a first violation. An employer shall have 90 days to offer a pre-tax transportation fringe benefit before the civil penalty is imposed. After 90 days, each additional 30 day period in which an employer fails to offer a pre-tax transportation fringe benefit shall constitute a subsequent violation and a civil penalty of \$250 shall be imposed for each subsequent violation. A civil penalty shall not be imposed on any individual employer more than once in any 30 day period. Any penalty incurred under this section may be recovered with costs, and, if applicable, interest charges, in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999" P.L.1999, c.274 (C.2A:58-10 et seq.).

The Commissioner of Labor and Workforce Development shall ensure compliance with the requirement provided in section 2 of P.L., c. (C.) (pending before the Legislature as this bill) and may issue citations for violations as provided for in this section.

4. (New section) The New Jersey Transit Corporation shall conduct a public awareness campaign in conjunction with the New Jersey Turnpike Authority and the South Jersey Transportation Authority, encouraging the public to contact employers about pre-tax transportation fringe benefits. The campaign shall include signs in public buildings and on roadways

of the New Jersey Turnpike Authority and the South Jersey Transportation Authority, as well as the New Jersey Transit Corporation's stations and terminals, and may also include public service announcements on radio, television, and the websites and social media of the New Jersey Transit Corporation, New Jersey Turnpike Authority, and the South Jersey Transportation Authority.

5. (New section) The Commissioner of Labor and Workforce Development, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and regulations, in consultation with TMAs, transit agencies in the State, and third-party transit benefit providers concerning the administration and enforcement of the pre-tax transportation fringe benefit requirements of P.L. , c. (C. ) (pending before the Legislature as this bill) in a manner that is most compatible with current practices for providing pre-tax transportation fringe benefits.

6. This act shall take effect immediately but shall remain inoperative for 365 days following the date of enactment or upon the effective date of rules and regulations adopted pursuant to section 5 of this act, whichever occurs first.

## STATEMENT

This bill requires every employer in New Jersey that employs at least 20 persons, not subject to a collective bargaining agreement, to offer a pre-tax transportation fringe benefit to all of the employer's employees that are not subject to a collective bargaining agreement. The federal government is only required to provide the benefit to federal employees that are not already eligible for a transit benefit equal to or greater than the pre-tax transportation fringe benefit. A pre-tax transportation fringe benefit is a benefit that allows an employee to set aside wages on a pre-tax basis, which is then only made available to the employee for the purchase of certain eligible transportation services, including transit passes and commuter highway vehicle travel. The employer is not required to offer a qualified parking or bicycle benefit, but may offer those benefits.

The bill also establishes a \$100 to \$250 penalty for the first time any employer is found to be in violation of this requirement. An employer has 90 days from the date of the violation to offer the pre-tax transportation fringe benefit program before the fine is imposed. After 90 days, each additional 30 day period in which an employer fails to offer a pre-tax transportation fringe benefit is a subsequent violation subject to a \$250 penalty. The penalty is to be imposed only once in any 30 day period. The Commissioner of Labor and Workforce Development is authorized to ensure that employers provide the pre-tax transportation fringe benefit if required and issue citations for failure to comply with the requirement.

The bill also requires the New Jersey Transit Corporation to establish a public awareness campaign in conjunction with the New Jersey Turnpike Authority and the South Jersey Transportation Authority. The campaign is to encourage the public to contact employers about pre-tax transportation fringe benefits.

Pre-tax transportation fringe benefits can be offered directly by employers or through third party providers. The federal benefit levels available for 2017 are \$255 per month and are subject to cost-of-living adjustments by the federal Internal Revenue Service for transit passes and commuter highway vehicle travel. The transportation fringe benefit is not subject to payroll tax for the employer or the employee, allowing both the employer and employee to reduce their federal tax payments.

## BINDING ARBITRATION FOR TRANSIT DISPUTES

AN ACT to amend the civil service law, in relation to resolution of disputes in the course of collective negotiations.

**The People of the State of New York, represented in Senate and Assembly, do enact as follows:**

Section 1. Paragraph (a) of subdivision 5 of section 209 of the civil service law, as added by chapter 929 of the laws of 1986, is amended to read as follows:

(a) In the event that the board certifies that a voluntary resolution of the contract negotiations between either (i)

the New York City transit authority (hereinafter referred to as TA-public employer) and the public employee organization certified or recognized to represent the majority of employees of such TA-public employer, or (ii) the metropolitan transportation authority, including its subsidiaries, the New York City transit authority, including its subsidiary, and the Triborough bridge and tunnel authority (all hereinafter referred to as MTA-public employer) and a public employee organization certified or recognized to Represent employees of such MTA-public employer not subject to the jurisdiction of the Federal Railway Labor Act and not subject to the provisions of subparagraph (i) [~~hereof~~] **of this paragraph**, which has made an election pursuant to paragraph (f) of this subdivision, **or (iii) the Niagara Frontier transportation authority, the Rochester-Genesee regional transportation authority, the capital district transportation authority and the central New York regional transportation authority (all hereinafter referred to as upstate TA-public employer) and the public employee organization certified or recognized to represent the employees of such upstate TA-public employer**, cannot be effected, or upon the joint request of the TA-public employer [~~or~~], the MTA-public employer (hereinafter jointly referred to as public employer) **or the upstate TA-public employer** and any such affected employee organization, such board shall refer the dispute to a public arbitration panel, consisting of one member appointed by the public employer, one member appointed by the employee organization and one public member appointed jointly by the public employer and employee organization who shall be selected within ten days after receipt by the board of a petition for creation of the arbitration panel.

If either party fails to designate its member to the public arbitration panel, the board shall promptly, upon receipt of a request by either party, designate a member associated in interest with the public employer or employee organization he is to represent.

Each of the respective parties is to bear the cost of its member appointed or designated to the arbitration panel and each of the respective parties is to share equally the cost of the public member. If, within seven days after the mailing date, the parties are unable to agree upon the one public member, the board shall submit to the parties a list of qualified, disinterested persons for the selection of the public member. Each party shall alternately strike from the list one of the names with the order of striking determined by lot, until the remaining one person shall be designated as public member. This process shall be completed within five days of receipt of this list. The parties shall notify the board of the designated public member. The public member shall be chosen as chairman.

# OSHA STANDARDS FOR PUBLIC EMPLOYEES

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

### AN ACT

Providing for workplace health and safety standards for public employees; providing for powers and duties of the Secretary of Labor and Industry; establishing the Pennsylvania Occupational Safety and Health Review Board; providing for workplace inspections; and imposing penalties.

This act may be referred to as “Jake’s Law.”

### TABLE OF CONTENTS

Section 1.	Short title.
Section 2.	Legislative declaration.
Section 3.	Definitions.
Section 4.	Application.
Section 5.	Employer duties.
Section 6.	Regulations.
Section 7.	Standards.
Section 8.	Variances.
Section 9.	Pennsylvania Occupational Safety and Health Review Board.
Section 10.	Appeal from review board.
Section 11.	Inspection and investigation powers
Section 12.	Inspection and investigation of violations.
Section 13.	Recordkeeping.
Section 14.	Compliance orders.
Section 15.	Enforcement procedures.
Section 16.	Injunction proceedings.

Section 17.	Penalties.
Section 18.	Discrimination against employees.
Section 19.	Research and demonstration projects.
Section 20.	Education programs.
Section 21.	Reports to United States Secretary of Labor.
Section 22.	Confidentiality of information maintained.
Section 23.	Funding.
Section 24.	Effective date.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the Public Employees Occupational Safety and Health Act.

Section 2. Legislative declaration.

The General Assembly hereby declares as follows:

(1) It is a basic right of all employees to work in an environment that is free from hazards and risks to their safety. It is the intent of the General Assembly to ensure that this right is also afforded to employees of the Commonwealth, its counties, cities, towns, boroughs and other public employers who serve the people of this Commonwealth.

(2) A significant percentage of all of those employed in this Commonwealth are employed by the Commonwealth or by one of its political subdivisions. Many of these public employees perform job functions comparable to those performed by workers in the private sector who are protected by the Occupational Safety and Health Act of 1970. The General Assembly, therefore, finds it inappropriate to continue two standards for employee safety, one applicable to those who work in the private sector and one for those who are employed by a public employer.

(3) The General Assembly has further determined that a safe place in which to work is economically advantageous to employers. Work-related accidents



and injuries and the absences caused thereby decrease employee productivity and increase workers' compensation costs. In addition, unsafe premises increase the risk of financial liability for injuries to members of the public who frequent public buildings.

(4) The General Assembly, in an exercise of the Commonwealth's police power, charges the secretary with the responsibility to ensure that all public employees are afforded the same safeguards in their workplace as are granted to employees in the private sector.

### Section 3. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Authorized employee representative." An employee authorized by employees or the designated representative of an employee organization recognized or certified to represent the employees.

"Employee organization." An organization of any kind, or any agency or employee representation committee or plan in which membership includes public employees, and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, employee-employer disputes, wages, rates of pay, hours of employment or conditions of work. The term does not include an organization that practices discrimination in membership because of race, color, creed, national origin or political affiliation.

"Occupational Safety and Health Act of 1970" or "OSHA." The Occupational Safety and Health Act of 1970 (Public Law 91-596, 29 U.S.C. § 651 et seq.).

"Occupational safety and health standard." A standard that requires conditions, or the adoption or use of one or more practices, means, methods, operations or processes, reasonably necessary or appropriate to provide safe or healthful employment in places of employment.

"Person." An individual, partnership, association, corporation, business trust, legal representative or an organized group of any of them.

"Public employee" or "employee." An individual employed by a public employer.

"Public employer" or "employer." The Commonwealth, any of its political subdivisions, including a school district and any office, board, commission, agency, authority, local transportation organization or other instrumentality thereof and any nonprofit organization or institution and any charitable, religious, scientific, literary, recreational, health, educational or welfare institution receiving grants or appropriations from Federal, State or local government. The term does not include an employer covered or presently subject to coverage under the Occupational Safety and Health Act of 1970.

"Review board." The Pennsylvania Occupational Safety and Health Review Board established under this act.

"Secretary." The Secretary of Labor and Industry of the Commonwealth or a designated agent.

### Section 4. Application.

(a) General rule.--Any occupational safety or health standards promulgated under the provisions of this act shall apply to all public employers and public employees, and the secretary shall have authority to enforce the standards in accordance with the provisions of this act.

(b) Statutory and common law rights preserved.--Nothing in this act may be construed to supersede or in any manner affect any workers' compensation law or to enlarge, diminish or affect in any manner common law or statutory rights, duties or liabilities of employers or employees under any law with respect to injuries, diseases or death of employees arising out of and in the course of employment.

(c) Employees not covered by Federal standard.--Notwithstanding any other provision in this act, an occupational safety or health standard promulgated under this act shall apply only to employees not covered by a Federal occupational safety or health standard promulgated under section 6 of the Occupational Safety and Health Act of 1970 or amendments thereto.

### Section 5. Employer duties.

(a) General rule.--An employer shall furnish to each of its employees employment and a place

of employment free from recognized hazards that are causing or are likely to cause death or serious physical harm and which will provide reasonable and adequate protection to the lives, safety or health of its employees.

(b) Compliance with act.--An employer shall comply with the occupational safety and health standards promulgated under this act.

(c) Written statement of substances.--An employer shall, upon the written request of an employee, furnish the employee with a written statement listing the substances that the employee uses or with which the employee comes into contact that have been identified as toxic or hazardous by occupational safety and health standards under 29 CFR Pt. 1910 Subpt. H (relating to hazardous materials) or pursuant to the act of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law, or both.

(d) Law compliance with regulations and orders.--An employee and employer shall comply with occupational safety and health standards and all rules, regulations and orders issued pursuant to this act that are applicable to their own actions and conduct.

(e) State plan for standards.--The Commonwealth shall promulgate a plan for the development and enforcement of occupational safety and health standards with respect only to public employers and employees, in accordance with section 18(b) of the Occupational Safety and Health Act of 1970.

## Section 6. Regulations.

The secretary may promulgate regulations to administer and enforce this act and shall:

(1) Provide for the preparation, adoption, amendment or repeal of regulations governing the conditions of employment of general and special application in all workplaces.

(2) Provide a method of encouraging employers and employees in their efforts to reduce the number of safety and health hazards arising from undesirable or inappropriate working conditions at the workplace, and of stimulating employers and employees to

institute new programs and to perfect existing programs for providing safe and healthful working conditions.

(3) Provide for appropriate reporting procedures by employers with respect to information relating to conditions of employment that will assist in achieving the objectives of this act.

(4) Provide for the frequency, method and manner of making inspections of workplaces without advance notice, provided that in the event of an emergency or unusual situation, the secretary may give advance notice.

(5) Provide for the publication and dissemination to employers, employees and labor organizations and the posting, where appropriate, by employers of informational, educational or training materials designed to aid and assist in achieving the objectives of this act.

(6) Provide for the establishment of new programs and the perfection and expansion of existing programs for occupational safety and health education for employers and employees and institute methods and procedures for the establishment of a program for voluntary compliance by employers and employees with the requirements of this act and all applicable occupational safety and health standards and regulations promulgated under this act.

## Section 7. Standards.

(a) General rule.--The secretary shall, by regulation, adopt all occupational safety and health standards, amendments or changes adopted or recognized by the United States Secretary of Labor under the authority of the Occupational Safety and Health Act of 1970 in order to provide reasonable and adequate protection of the lives, safety and health of public employees. Subject to subsection (b), the secretary shall promulgate and repeal such regulations as may be necessary to conform to the standards established pursuant to the Occupational Safety and Health Act of 1970. Where no Federal standards are applicable, the secretary shall provide for the development of such State standards as may be necessary in special circumstances.

(b) Interstate commerce.--The secretary may not adopt standards for products distributed or used in interstate commerce that are different from Federal standards for the products unless the standards are required by compelling local conditions and do not unduly burden interstate commerce.

(c) Challenge to standard or regulation.--A person who may be adversely affected by a standard or regulation issued under this act may challenge the validity or application of the standard or regulation by bringing an action for declaratory judgment.

#### Section 8. Variances.

(a) Variance procedure.--

(1) A public employer may apply to the secretary for a temporary order granting a variance from a standard or any provision of a standard promulgated under this act. A temporary order shall be granted only if the employer files an application that meets the requirements of subsection (b) and establishes all of the following:

(i) The employer is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date.

(ii) The employer is taking all available steps to safeguard employees against the hazards covered by the standard.

(iii) The employer has an effective program for coming into compliance with the standard as quickly as practicable.

(2) (i) A temporary order issued under this section shall prescribe the practices, means, methods, operations and processes that the employer must adopt and use while the order is in effect and state in detail the employer's program for coming into compliance with the standard.

(ii) A temporary order may be granted only after notice to employees and an opportunity for a hearing, provided that the secretary may issue one interim order to be effective until a decision is made on the basis of a hearing.

(iii) A temporary order may not be in effect for longer than the period needed by the employer to achieve compliance with the standard or one year, whichever is shorter, except that an order may be renewed not more than twice so long as the requirements of this section are met and an application for renewal is filed at least 90 days prior to the expiration date of the order.

(iv) An interim renewal of an order shall not remain in effect longer than 180 days.

(b) Contents of application for variance.--An application for a temporary variance order shall contain all of the following:

(1) A specification of the standard or portion of the standard from which the employer or owner seeks a variance.

(2) A representation by the employer, supported by representations from qualified persons who have firsthand knowledge of the facts represented, that the employer is unable to comply with the standard or portion of the standard and a detailed statement of the reasons therefor.

(3) A statement of the steps the employer has taken and will take, with specific dates, to protect employees against the hazard covered by the standard.

(4) A statement of when the employer expects to be able to comply with the standard and what steps the employer has taken and will take, with dates specified, to come into compliance with the standard.

(5) A certification that the employer has informed its employees of the application by giving a copy of the application to the authorized employee representative, posting a

statement giving a summary of the application and specifying where a copy may be examined at the place or places where notices to employees are normally posted, and by other appropriate means. A description of how employees have been informed shall be contained in the certification. The information to employees shall also inform them of their right to petition the secretary for a hearing.

(c) Variance for experimental program.--The secretary may grant a variance from any standard or portion of the standard whenever the secretary determines that a variance is necessary to permit an employer to participate in an experimental program approved by the secretary, which is designed to demonstrate or validate new and improved techniques to safeguard the health or safety of workers.

(d) Hearing and order.--

(1) An affected employer may apply to the secretary for a rule or order for a variance from a standard promulgated under this act. Affected employees shall be given notice of each such application and an opportunity to participate in a hearing.

(2) The secretary shall issue a rule or order if the secretary determines on the record, after opportunity for an inspection where appropriate and a hearing, that the proponent of the variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations or processes used or proposed to be used by an employer will provide employment and places of employment that are as safe and healthful as those that would prevail if the employer complied with the standard. The rule or order shall prescribe the conditions the employer must maintain and the practices, means, methods, operations and processes that the employer must adopt and utilize to the extent they differ from the standard in question.

(3) A rule or order may be modified or revoked upon application by an employer, employee or authorized employee representative, or by the secretary on the secretary's own motion, in the

manner prescribed for its issuance under this section at any time after six months from the date it was entered.

(e) Challenge to standard or regulation.--A person who may be adversely affected by a standard or regulation issued under this act may challenge the validity or applicability of the standard or regulation by bringing an action for declaratory judgment.

#### Section 9. Pennsylvania Occupational Safety and Health Review Board.

(a) Establishment.--The Pennsylvania Occupational Safety and Health Review Board is established to have and exercise the powers and duties provided by the provisions of this act. The board shall consist of five persons appointed by the Governor from among persons who, by reason of training, education or experience, are qualified to carry out the functions of the review board under this act.

(b) Terms of members.--Members shall serve terms of four years and until their successors are appointed. The Governor shall designate one of the members to serve as chairperson.

(c) Power to hear appeals.--A member of the review board shall hear and rule on appeals from compliance orders, notifications and penalties issued under the provisions of this act. The secretary shall adopt and promulgate rules and regulations with respect to the procedures for review board hearings.

(d) Schedule for hearing appeals.--A board member hearing an appeal or appeals under the provisions of this act shall be paid a per diem amount to be determined by the secretary. The members shall alternate the hearing of appeals according to a schedule adopted by the secretary. If a member is unable to hear an appeal, the next available member, in accordance with the schedule, shall hear the appeal. A member shall be selected to hear the appeal within 30 days after the date it was filed.

(e) Necessary staff.--Any staff necessary for the purposes of conducting hearings under this act shall be provided by the Department of Labor and Industry.

(f) Subpoena power and oaths.--In the conduct of hearings, the review board member may subpoena and

examine witnesses, require the production of evidence, administer oaths and take testimony and depositions.

(g) Ruling on appeal.--After hearing an appeal, the review board member may sustain, modify or dismiss a compliance order or penalty, provided that decision shall be issued within 120 days after the appeal was filed.

#### Section 10. Appeal from review board.

A person, including the secretary, adversely affected or aggrieved by an order of the review board, after all administrative remedies provided by this act have been exhausted, is entitled to judicial review.

#### Section 11. Inspection and investigation powers.

##### (a) Right to inspect.--

(1) In order to carry out the purposes of this act, the secretary, upon presenting appropriate credentials to the employer, may:

(i) enter without advance notice and at reasonable times any workplace or environment where work is performed by an employee of an employer;

(ii) inspect and investigate, during regular working hours and at other reasonable times and in a reasonable manner, any place of employment under subparagraph (i) and all pertinent conditions, structures, machines, apparatus, devices, equipment and the materials therein; and

(iii) question privately any employer or employee.

(2) Whenever the secretary, proceeding pursuant to this section, is denied admission to any place of employment, the secretary may obtain a warrant to make an inspection or investigation of the place of employment from any judge of Commonwealth Court.

##### (b) Witnesses and evidences.--

(1) In making inspections and investigations under this section, the secretary may require the attendance and testimony of witnesses

and the production of evidence under oath. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of this Commonwealth.

(2) In case of a failure or refusal of any person to obey an order, the court of common pleas for the judicial district wherein the person resides, is found or transacts business shall issue to the person an order requiring the person to appear to produce evidence if asked, and when so ordered, and to give testimony relating to the matter under investigation or in question.

(3) A failure to obey an order of the court may be punishable by the court as a contempt.

##### (c) Persons to accompany secretary or representative.--

(1) Subject to regulations issued by the secretary, a representative of the employer and an authorized employee representative shall be given an opportunity to accompany the secretary during the physical inspection of any workplace for the purposes of aiding the inspection. Where there is no authorized employee representative, the secretary shall consult with a reasonable number of employees concerning matters of health and safety in the workplace.

(2) No employee who accompanies the secretary on an inspection may suffer any reduction in wages as a result thereof.

#### Section 12. Inspection and investigation of violations.

##### (a) Request for inspection.--

(1) An employee or authorized employee representative who believes that a violation of an occupational safety or health standard exists or that an imminent danger exists may request an inspection by giving notice of a violation or danger to the secretary.

(2) The notice and request shall be in writing, shall set forth with reasonable particularity the grounds for the notice and shall be signed by an employee or authorized employee representative.

(3) A copy of the notice shall be provided by the secretary to the employer or its agent no later than the time of inspection, except that on the request of the person giving notice, the names of individual employees or the authorized employee representative shall be kept confidential.

(b) Action by secretary.--

(1) Whenever the secretary receives a request for inspection and determines that there are reasonable grounds to believe that a violation or danger exists, the secretary shall make an inspection as soon as practicable to determine if a violation or danger exists. The inspection may be limited to the alleged violation or danger.

(2) If the secretary determines there are no reasonable grounds to believe that a violation or danger exists, the secretary shall notify the employer, employee or authorized employee representative in writing of the determination. Notification may not preclude future enforcement action if conditions change.

(c) Notice of violation during inspection.--

(1) Prior to or during any inspection of a workplace, an employee or authorized employee representative employed in the workplace may notify in writing the secretary or any representative of the secretary responsible for conducting the inspection of any violation of this act that the person has reason to believe exists in the workplace.

(2) The secretary shall by regulation establish procedures for informal review of any refusal by a representative of the secretary to issue a citation with respect to any alleged violation and shall furnish a written statement to the employer and the employees or authorized employee representative requesting a review of the reasons for the secretary's final disposition of the case. Notification may not preclude future enforcement action if conditions change.

(d) Summary by secretary.--The secretary shall compile, analyze and publish in either summary or

detailed form all reports or information obtained under this section.

(e) Rules and regulations.--The secretary shall prescribe such rules and regulations as the secretary may deem necessary to carry out the secretary's responsibilities under this act, including rules and regulations dealing with the inspection of an employer's or owner's establishment.

Section 13. Recordkeeping.

(a) Employer's duties prescribed by regulation.-  
-In accordance with the secretary's regulations, an employer shall make, keep and preserve and make available to the secretary such records regarding its activities relating to this act as the secretary deems necessary or appropriate for developing information regarding the causes and prevention of occupational accidents and illnesses. The regulations may include provisions requiring an employer to conduct periodic inspections. The secretary also shall issue regulations requiring that an employer, through posting of notices, training or other appropriate means, keep its employees informed of their protections and obligations under this act, including the provisions and regulations of this act.

(b) Records relating to death and injury.--The secretary shall prescribe regulations requiring an employer to maintain accurate records and to make public periodic reports of work-related deaths, injuries and illnesses, other than minor injuries requiring only first aid treatment and not involving lost time from work, medical treatment, loss of consciousness, restriction of work or motion or transfer to another job.

(c) Exposure to toxic or harmful agents.--

(1) The secretary shall issue regulations requiring an employer to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents that are required to be monitored or measured under any occupational safety and health standard adopted under this act. The regulations shall provide employees or the authorized employee representative with an opportunity to observe monitoring or measuring and have access to the records. The regulations shall make appropriate

provisions for each employee or former employee to have access to records that will indicate the employee's own exposure to toxic materials or harmful physical agents.

(2) An employer shall promptly notify any employee who has been or is being exposed to toxic materials or harmful physical agents in concentrations or at levels that exceed those prescribed by an occupational safety and health standard promulgated under this act and shall inform any employee who is being thus exposed of the corrective action being taken.

#### Section 14. Compliance orders.

(a) Issuance.--Whenever the secretary, upon inspection or investigation, determines that an employer has violated a provision of this act or an occupational safety or health standard or regulation promulgated under this act, the secretary shall with reasonable promptness issue a compliance order to the employer. Each compliance order shall be in writing and shall describe the nature of the violation, including a reference to the provisions of this act or the standard, regulation or order alleged to have been violated. The compliance order shall fix a reasonable time for the abatement of the violation.

(b) Posting of order.--Each compliance order issued under this section or a copy or copies of the order shall be prominently posted as prescribed in regulations issued by the secretary at or near each place a violation referred to in the compliance order occurred and at other locations within the workplace reasonably accessible to the employees.

#### Section 15. Enforcement procedures.

(a) Notice of order and penalty.--

(1) If, after inspection or investigation, the secretary issues a compliance order under section 14, the secretary shall, within a reasonable time after the termination of the inspection or investigation, notify the employer by certified mail of the penalty, if any, proposed to be assessed under section 17. The notification shall inform the employer that the employer has 15 working days from the receipt of notice within which to notify the secretary that the employer

wishes to contest the compliance order or proposed assessment of penalty.

(2) If the employer fails to notify the secretary within 15 days and if no notice is filed by an employee or authorized employee representative under subsection (c) within 15 days, the compliance order and the assessment, as proposed, shall be deemed a final order of the secretary and not be subject to review by any court or agency.

(b) Notice of failure to correct violation.--

(1) If the secretary has reason to believe that an employer has failed to correct a violation for which a compliance order has been issued within the period permitted for correction, the secretary shall notify the employer by certified mail of the failure and of the penalty proposed to be assessed under section 17 by reason of the failure. In the case, however, of a review proceeding initiated by the employer under this section in good faith and not solely for delay or the avoidance of penalties, the period permitted for correction of the violation may not begin to run until the entry of a final order by the review board. Notification by the secretary shall inform the employer that the employer has 15 working days from the receipt of the notice within which to notify the secretary that the employer wishes to contest the notification or the proposed assessment of penalty.

(2) If, within 15 days from receipt of notification under this section, the employer fails to notify the secretary that it intends to contest the notification or proposed assessment of penalty, the notification and assessment, as proposed, shall be deemed a final order of the review board and not be subject to review by any court or agency.

(c) Action by review board.--

(1) If an employer notifies the secretary that it intends to contest a compliance order issued under section 14(a) or a notification issued under subsection (a) or (b) or if, within 15 days after the issuance of a compliance order issued

under section 14(a), an employee or authorized employee representative files a notice with the secretary alleging that the period of time fixed in the compliance order for abatement of the violation is unreasonable, the secretary shall immediately advise the review board of the notification, and the review board shall afford an opportunity for a hearing.

(2) The review board shall thereafter issue an order, based on findings of fact, affirming, modifying or vacating the secretary's compliance order or proposed penalty or directing other appropriate relief. The order shall become final 30 days after its issuance.

(3) Upon a showing by an employer of a good faith effort to comply with the abatement requirements of a compliance order and a showing that abatement has not been completed because of factors beyond the employer's reasonable control, the secretary, after an opportunity for a hearing as provided in this subsection, shall issue an order affirming or modifying the abatement requirements in the compliance order.

(4) The rules of procedure prescribed by the secretary shall provide affected employees or the authorized employee representative of affected employees an opportunity to participate as parties to hearings under this subsection.

#### Section 16. Injunction proceedings.

(a) Temporary restraining order.--

(1) The Commonwealth Court shall have jurisdiction, upon petition of the secretary, pursuant to law and general rules, to restrain any conditions or practices in any place of public employment that pose a danger that could reasonably be expected to cause death or serious physical harm immediately or before the imminence of the danger can be eliminated through the abatement procedures otherwise provided for by this act.

(2) An order issued under this section shall require steps to be taken as may be necessary to

avoid, correct or remove the imminent danger and prohibit the employment or presence of an individual in locations or under conditions where the imminent danger exists, except individuals whose presence is necessary to avoid, correct or remove the imminent danger.

(3) A temporary restraining order issued without notice may not be effective for more than five days.

(b) Action by inspector.--Whenever and as soon as an inspector concludes that conditions or practices described in subsection (a) exist in any place of public employment, the inspector shall inform the affected employees and employers of the danger and shall further inform them that the inspector is recommending to the secretary that relief be sought.

(c) Failure of secretary to seek relief.--If the secretary arbitrarily or capriciously fails to seek relief under this section, an employee who may be injured by reason of the failure, or the authorized employee representative of the employee, may bring an action against the secretary in Commonwealth Court to compel the secretary to seek an order and for such further relief as may be appropriate.

#### Section 17. Penalties.

(a) Willful or repeated violations.--An employer who willfully or repeatedly violates the requirements of section 4 or 5, an occupational safety and health standard promulgated under section 7 or regulations prescribed under this act may be assessed a civil penalty of not more than \$10,000 for each violation.

(b) Compliance order for serious violation.--An employer who has received a compliance order for a serious violation of the requirements of section 4 or 5, an occupational safety and health standard promulgated under section 7 or regulations prescribed under this act shall be assessed a civil penalty of not more than \$1,000 for each violation.

(c) Compliance order for lesser violation.--An employer who has received a compliance order for a violation of the requirements of section 4 or 5, an occupational safety and health standard promulgated under section 7 or regulations prescribed under this



act, which violation has been determined not to be of a serious nature, may be assessed a civil penalty of not more than \$1,000 for each violation.

(d) Failure to correct violation.--An employer who fails to correct a violation for which a compliance order has been issued under section 14 within the period permitted for its correction, which period shall not begin to run until the date of the final order of the board in the case of any review proceeding under section 15 initiated by the employer in good faith and not solely for delay or avoidance of penalties, may be assessed a civil penalty of not more than \$1,000 for each day during which the failure or violation continues.

(e) Violation causing death.--

(1) An employer who willfully violates a standard or order promulgated pursuant to section 7 or a regulation adopted under this act, which violation caused death to any employee, commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine of not more than \$10,000 or to imprisonment for not more than six months, or both.

(2) If a conviction is for a violation committed after a first conviction, the person shall be sentenced to pay a fine of not more than \$20,000 or to imprisonment for not more than one year, or both.

(f) Providing advance notice of inspection.--A person who gives advance notice of any inspection to be conducted under this act without authority from the secretary commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine of not more than \$1,000 or to imprisonment for not more than six months, or both.

(g) False statements.--A person who knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained under this act commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine of not more than \$10,000 or to imprisonment for not more than six months, or both.

(h) Violation of posting requirements.--An employer who violates any of the posting requirements as prescribed under the provisions of this act shall be assessed a civil penalty of not more than \$1,000 for each violation.

(i) Refusing entry for investigation or inspection.--An employer who refuses entry to the secretary while the secretary is attempting to conduct an investigation or inspection under this act or in any way willfully obstructs an authorized representative from carrying out an investigation or inspection commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine of not more than \$1,000 or to imprisonment for not more than six months, or both.

(j) Causing bodily harm to secretary.--An employer or individual who willfully causes bodily harm to the secretary while the secretary is attempting to conduct an investigation or inspection under this act commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine of not more than \$10,000 or to imprisonment for not more than one year, or both.

(k) Authority to assess civil penalties.--The review board shall have authority to assess all civil penalties provided for in this act, giving due consideration to the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer and the history of previous violations.

(l) Determination of serious violation.--For the purposes of this act, a serious violation shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition that exists, or from one or more practices, means, methods, operations or processes that have been adopted or are in use, in the place of employment unless the employer did not and could not with the exercise of reasonable diligence know of the presence of the violation.

(m) Disposition of civil penalties.--Civil penalties owed under this act shall be paid to the secretary for deposit in the State Treasury and may be recovered in a civil action in the name of the Commonwealth brought in Commonwealth Court.

(n) Unauthorized disclosure of confidential information.--A person who violates the provisions of section 22 commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine of not more than \$1,000 or to imprisonment for not more than one year, or both. In the event that the person is an officer or employee responsible for carrying out the provisions of this act, the officer or employee shall be removed from office or employment upon conviction under this section.

#### Section 18. Discrimination against employees.

(a) General rule.--An employer or any other person may not discriminate against an employee because the employee has filed a complaint or instituted or caused to be instituted a proceeding under or related to this act or has testified or is about to testify in a proceeding or because of the exercise by an employee on the employee's own behalf or on behalf of others of a right afforded by this act.

##### (b) Remedy.--

(1) An employee who believes that the employee has been discharged, disciplined or otherwise discriminated against by a person in violation of this section may, within 30 days after a violation occurs, file a complaint with the secretary alleging discrimination.

(2) Upon receipt of the complaint, the secretary shall cause an investigation to be made as deemed appropriate and shall, if requested, withhold the name of the complainant from the employer.

(3) If, upon investigation, the secretary determines that the provisions of this section have been violated, the secretary shall request the Attorney General to bring an action in Commonwealth Court against the person or persons alleged to have violated this act. In any such action, the Commonwealth Court shall have jurisdiction, for cause shown, to restrain violations of this act and to order all appropriate relief, including reinstatement of the employee to the employee's former position with back pay and benefits.

(c) Notice of determination of complaint.--Within 90 days of receipt of a complaint filed under this section, the secretary shall notify the complainant and the complainant's representative by registered mail of the secretary's determination of the complaint.

(d) Other rights preserved.--Nothing in this act may be construed to diminish the rights of an employee under any law, rule or regulation or under any collective bargaining agreement.

#### Section 19. Research and demonstration projects.

##### (a) Secretary to conduct.--

(1) The secretary shall conduct research and undertake demonstration projects relating to occupational safety and health issues and problems either within the Department of Labor and Industry or by grants or contracts. The secretary may prescribe regulations requiring employers to measure, record and make reports on exposure of employees to toxic substances that the secretary believes may endanger the health or safety of employees.

(2) The secretary shall cooperate with the Director of the National Institute for Occupational Safety and Health of the United States Department of Health and Human Services in establishing the programs of medical examinations and tests as may be necessary to determine the incidence of occupational illnesses and employee susceptibility to the illnesses.

(3) The programs, on the request of the employer, may be paid for by the secretary, and the secretary shall provide other assistance as may be required.

(b) Confidentiality.--Information obtained under this act shall be made public without revealing the names of individual workers covered by physical examination or special studies and shall be made available to employers, employees and their respective organizations.

#### Section 20. Education programs.

##### (a) Programs to train personnel.--The secretary shall

conduct directly, or by grants or contracts, education programs to provide an adequate supply of qualified personnel to carry out the purposes of this act and informational programs on the importance and proper use of adequate safety and health equipment.

(b) Short-term training.--The secretary may conduct directly, or by grants or contracts, short-term training of personnel engaged in work related to the secretary's responsibilities under this act.

(c) Additional programs.--The secretary shall provide for the establishment and supervision of programs for the education and training of employers, owners and employees in the recognition, avoidance and prevention of unsafe or unhealthful working conditions in employment covered under this act. The secretary shall consult with and advise owners and employers, employees and organizations representing owners, employers and employees as to effective means of preventing occupational injuries and illnesses.

#### Section 21. Reports to United States Secretary of Labor.

In regard to the administration and enforcement of this act, the secretary shall make reports to the United States Secretary of Labor in a form and containing information that the Secretary of Labor shall from time to time require.

#### Section 22. Confidentiality of information maintained.

All information reported to or otherwise obtained by the secretary or any member of the review board in connection with an inspection or proceeding under this act that contains or might reveal a trade secret shall be considered confidential, provided that the information may be disclosed to other officers or employees concerned with carrying out this act or when relevant in any proceeding under this act. In proceedings under this act, the secretary, the review board or the court shall issue orders that may be appropriate to protect the confidentiality of trade secrets.

#### Section 23. Funding.

Nothing in this act may prohibit the secretary from pursuing Federal or State funding for the purposes of this act.

#### Section 24. Effective date.

This act shall take effect in 60 days.

### **Smart Conversion to Zero Emission Buses**

AN ACT concerning

### **Maryland Transit Administration – Conversion to Zero–Emission Buses**

### **(Zero–Emission Bus Transition Act Revisions)**

FOR the purpose of

BY repealing and reenacting, with amendments,

Article – Transportation

Section 7–406

Annotated Code of Maryland

(2020 Replacement Volume)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

### **Article – Transportation**

7–406.

(a) (1) In this section the following words have the meanings indicated.

(2) “Alternative–fuel bus” means a motor vehicle that:

(i) Is designed to carry more than 10 passengers and is used to carry passengers for compensation;

(ii) Is not powered by diesel or gasoline;

(iii) Provides greenhouse gas emissions reductions in comparison to an equivalent diesel–powered vehicle; and

(iv) Is not a taxicab.

(3) “Bus” has the meaning stated in § 11–105 of this article.

(4) “Zero–emission bus” means a motor vehicle that is:

(i) Designed to carry more than 10 passengers and is used to carry passengers for compensation;

(ii) A zero–emission vehicle; and

(iii) Not a taxicab.

(5) “Zero–emission vehicle” means:

(i) A fuel cell electric vehicle that:

1. Is a motor vehicle;

2. Is made by a manufacturer;

3. Is manufactured primarily for use on public streets, roads, and highways;

4. Has a maximum speed capability of at least 55 miles per hour;

5. Is powered entirely by electricity, produced by combining hydrogen and oxygen, that runs the motor;

6. Has an operating range of at least 100 miles; and

7. Produces only water vapor and heat as by–products; or

(ii) A plug–in electric drive vehicle that:

1. Is a motor vehicle;

2. Is made by a manufacturer;

3. Has a maximum speed capability of at least 55 miles per hour; and

4. Is propelled by an electric motor that draws electricity from a battery that:

A. Has a capacity of not less than 4 kilowatt–hours; and

b. Is capable of being recharged from an external source of electricity.

(b) (1) This section applies to the Administration’s State transit bus fleet.

(2) This section does not apply to a bus that is part of a locally operated transit system.

(c) (1) Except as provided in paragraph (2) of this subsection, beginning in fiscal year 2023, the Administration may not enter into a contract to purchase buses for the Administration’s State transit bus fleet that are not zero–emission buses.

(2) If the Administration determines that no available zero–emission bus meets the performance requirements for a particular use, the Administration may purchase an alternative–fuel bus for that use.

(3) The full cost of zero–emission and alternative–fuel buses purchased under this subsection shall be paid from the Transportation Trust Fund.

(d) **The Administration shall provide:**

**(1) safety and workforce development training for the existing operations training workforce; and**

**(2) safety and workforce development Training for the existing maintenance workforce that enables the workforce to safely repair and maintain the:**

**(i) Zero–emission buses and all components; and**

**(ii) Charging infrastructure for zero–emission buses (3) Not less than 20% of expenditures on zero-emission buses and charging infrastructure shall be used to fund the training required under paragraphs (1) and (2) of this subsection, which shall include registered apprenticeships and other labor-management training programs, to address the impact of the transition to zero emission buses on the administration’s current and future workforce.**

(e) The Administration shall ensure the development of charging infrastructure to support the operation of zero–emission buses in the State transit bus fleet.

[(e)] (f) (1) On or before January 1, 2022, and each January 1 thereafter, the Administration shall, in accordance with § 2–1257 of the State Government Article, submit a report to the Senate Budget and Taxation Committee, the Senate Education, Health, and Environmental Affairs Committee, the House Appropriations Committee, and the House Environment and Transportation Committee on the implementation of this section.

(2) The annual report shall include:

(i) A schedule for converting the Administration’s State transit bus fleet to zero–emission buses;

(ii) An evaluation of the charging infrastructure needed for the Administration to create and maintain a State transit bus fleet of zero–emission buses;

(iii) **1. A plan for: (a) transitioning any State employees adversely affected by the conversion from a diesel–powered State transit bus fleet to a zero–emission State transit bus fleet to similar or other employment within the Administration or Department that has commensurate seniority, pay, and benefits, (b) ensuring that no duties and/or functions of State employees are transferred to a contracting entity as a result of the conversion from a diesel-powered State transit bus fleet to a zero-emission State transit bus fleet, and (c) ensuring that any entity other than the Administration which operates or maintains zero-emission buses on behalf of the Administration provides equivalent employee protections as those required by this plan; and**

**2. A certification that the Administration is adhering to the plan required under this subparagraph;**

(iv) In coordination with other appropriate State agencies, an estimate of the reduction in the amount of carbon dioxide emissions, measured in pounds, that will be obtained through the use of zero–emission buses each year until the State transit bus fleet is converted to zero–emission buses; and

(v) A financial analysis:

1. Of the projected cost of purchasing, maintaining, and providing charging infrastructure for the zero–emission State transit bus fleet each year until the fleet is converted to zero–emission buses; and

2. Comparing the projected cost under item 1 of this item to the projected cost of continuing to operate a diesel–powered State transit bus fleet.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2022.

John A. Costa, International President  
Javier M. Perez, Jr., International Executive Vice President  
Kenneth R. Kirk, International Secretary-Treasurer

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