

**PUBLIC TRANSIT EMPLOYEE PROTECTIONS
PURSUANT TO
SECTION 13(c) OF THE URBAN MASS TRANSPORTATION ACT OF 1964**

Prepared by the Wisconsin Urban and Rural Transit Association Legislative Committee

History of Transit System Ownership in Wisconsin

Most public transit systems in Wisconsin and throughout the U.S. were once privately owned bus companies. Beginning in the 1960's, private bus companies struggled to remain profitable. Some went out of business, while others sought financial assistance from the municipalities in which they operated.

Municipal intervention required the creation of organizational structures to facilitate asset ownership, employ existing personnel, fulfill labor contract obligations, enable access to public funding and protect local taxpayer investment.

In Wisconsin, many financially troubled private bus companies became municipal operations. Municipalities took ownership of the assets, transitioned private employees to public employment and assumed existing financial obligations, such as employee pensions. As municipal employees, state labor laws governed their employment.

A few municipalities (Milwaukee, Waukesha and Racine) decided to preserve the private bus company, but publicly fund the purchase of assets and ongoing operating expenses. They were able to avoid the transition of private employees to public employment and they retained existing private pensions. As private employees, federal labor laws governed their employment.

Public Transit Employee Protections - Section 13(c)

The federal transit program was initiated in the 1960's to help fund the purchase of transit capital assets. The program was expanded later to provide assistance for ongoing transit operations. Federal funding played a critical role as municipalities intervened to own and/or operate bus companies.

To become eligible for federal funding, municipalities were required to negotiate employee protection agreements with private sector employee unions, pursuant to Section 13(c) of the Urban Mass Transportation Act of 1964. These "13(c) agreements" remain in effect today. Municipalities must certify with each grant application that they will comply with the requirements of 13(c) including: preserving employee rights and benefits; continuing their collective bargaining rights; protecting them against a worsening of their employment conditions; assuring jobs for employees of acquired mass transit systems; providing priority of reemployment if the employee is laid off or his job is eliminated; and providing paid training.

All transit grants are reviewed for 13(c) compliance by both the U.S. Department of Labor and the national or international union representing the employees funded by the grant. Local bargaining units may provide input, but the ultimate decision as to 13(c) compliance occurs at the federal level. If either party deems that transit worker rights have been diminished or their position worsened, funding is denied until the issues in question are resolved.

Budget Adjustment Bill Impact on Transit Employee Protections - Section 13(c)

The Budget Adjustment Bill substantially diminishes collective bargaining rights and modifies conditions of employment for municipal transit workers. Although the State has the authority to implement such changes, municipalities will be forced to violate Section 13(c) requirements and they will become ineligible for federal transit funding when existing labor agreements expire. It is important to note that Wisconsin transit systems have not yet applied for federal operating assistance grants for 2011. When the Budget Adjustment Bill becomes law, transit systems without existing labor agreements will be denied federal funding for this budget year, unless adequate alternative employee protective arrangements can quickly be negotiated and approved by both the U.S. Department of Labor and the national or international union representing local employees. Without the award of federal funding, remaining state and local funds will be exhausted by mid-year. As labor agreements expire and transit systems become ineligible, the funding distribution methodology designated in Section 85.20 of Wisconsin Statutes will ensure that the loss of funding for one transit system will be shared equally by all others in that funding tier. The financial impact may dictate higher passenger fares, reduced services or the elimination of public transit entirely in communities throughout Wisconsin.

Collective Bargaining and Section 13(c) in Other States

The key to maintaining compliance with the collective bargaining requirements of 13(c) is to preserve the employee collective bargaining rights that were in place when 13(c) agreements were negotiated. Some states have never allowed collective bargaining for transit employees. They are in compliance with 13(c) because the status of collective bargaining rights has remained unchanged. The same is true for employers that maintain a non-union workforce. Some states have unilaterally eliminated collective bargaining rights for state employees, but the law change did not impact municipal transit employees. Other states have unilaterally eliminated collective bargaining rights for municipal employees, but federally funded transit workers were exempted from the impact of the law.

The “Memphis Plan”

The Legislative Fiscal Bureau (LFB) analyzed the impact of the Budget Adjustment Bill and noted that privately owned transit systems such as Milwaukee would be unaffected by changes to Wisconsin’s collective bargaining laws. Additionally, the LFB document contains a letter from the U.S. Department of Labor that refers to the creation of a “Memphis Plan” as a means to avoid losing federal transit funding.

The “Memphis Plan” refers to the consolidation of three unprofitable private bus companies some 40 years ago. After a protracted process, a single transit system emerged that was privately operated but publicly funded – much like the Milwaukee County Transit System. The unionized workforces in both Memphis and Milwaukee are employed by private companies and their employment is governed by federal labor laws. Milwaukee County Transit System employees are unaffected by changes to Wisconsin’s collective bargaining laws because they are not public employees.

Discussion regarding the creation of a “Memphis Plan” in today’s context is somewhat misleading. The Memphis/Milwaukee situations were public sector interventions that preserved 13(c) rights and privileges for private employees by maintaining the status quo. Workers continued their employ with the same private firms with the assistance of public funding. Restructuring a publicly owned transit system to create a private model is a very different proposition. It would require the transition of employees from one employer to another, from public employment to private employment, while preserving their 13(c) rights and privileges.

In order to create a private model, retain collective bargaining rights and maintain eligibility for federal funding, a municipality would have to seek the services of a private management firm and pay them a fee to operate transit services. The competitive bid process is estimated to require eight to twelve months to complete. The private firm could hire all new employees, but 13(c) agreements entitle displaced workers the payment of displacement allowances as a consequence. Faced with paying wages for displaced employees for up to six years, municipalities would likely require the management firm to retain existing employees. The private firm would then negotiate with the local union to transition public employees to private employment. 13(c) protections will ensure that existing wages, benefits and working conditions for all affected employees are preserved. Some existing benefits, such as pensions, may be difficult to replicate. Private employees would no longer be eligible to participate in the Wisconsin Retirement Fund, and an alternative pension plan with similar benefits may not be available.

The creation of a private transit model will not happen quickly. The procurement process, subsequent negotiation with labor unions and possible legal challenges may take several years to complete. In the mean time, transit systems will lose eligibility for federal funding as labor agreements expire.

There is little incentive from a cost perspective to seek the creation of a private transit model. Wages and benefits for most employees will be unchanged, while the incurrence of new contractor management fees and the loss of municipal support services will likely increase transit operating expenses. Additionally, the oversight responsibility required for state and federal grantees will remain, while the task may be more difficult to perform.

The creation of a private transit model seems to serve but one purpose – to exempt federally funded transit employees from state labor laws and preserve their collective bargaining rights. The endeavor will be time consuming, it will require the investment of considerable human capital and the result may mean greater cost for transit users and taxpayers.

The same outcome – to exempt federally funded transit employees from state labor laws and preserve their collective bargaining rights – could be achieved more simply through legislative action.