

# Special Commission on Improving Efficiencies Relative to Student Transportation

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*FINAL REPORT*

Pursuant to Section 77 of Chapter 154 of the Acts of 2018

**December 10<sup>th</sup>, 2020**

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The Commission is appreciative of everyone who testified at the various public hearings: William Bell, Department of Elementary and Secondary Education (DESE); Colleen Cavanaugh, Massachusetts Association of Pupil Transportation; State Auditor Suzanne Bump; David Ferreira, Massachusetts Association of Vocational Administrators; Superintendent John Evans, Keefe Regional Technical School in Framingham; Superintendent Richard Martin, Franklin Regional County Technical School in Turner Falls; Edward J. Carr, MetroWest Regional Transit Authority; Susan Downs, JSC Transportation Services, Inc.; Kate Machowski, MCJ Transportation; David Strong, School Transportation Association of Massachusetts; Kevin Hinkamper and Janice Brochu, VanPool; Superintendent Michael Morris, Amherst-Pelham Regional Public Schools; Brian Foulds, Chair of Concord's Climate Action Advisory Board; Matthew Casale, MassPIRG and Eugenia Gibbons, Green Consumers Alliance.

Thank you to the staff at Monument Mountain Regional High School who hosted the Commission for its second public hearing.

Finally, we would like to acknowledge the remaining members of the Student Transportation Commission who contributed valuable knowledge, experience, and perspective throughout the Commission's work including Representative Bradford Hill, designee of House Minority Leader Brad Jones; Thomas Moreau, designee of the Secretary of Education; Superintendent Brian Forget, Designee of Senate Minority Leader Bruce Tarr; Stephanie Fisk, Appointee of Governor Baker from the Massachusetts Association of School Business Officials; Daniel Hayes, Appointee of Governor Baker from the Massachusetts Association of School Committees; and Patricia M. Lowell, Appointee of Governor Baker from the Massachusetts Association of Special Education.

Senator Adam G. Hinds  
Berkshire, Hampshire, Franklin & Hampden District  
*Co-Chair*

Representative Alice H. Peisch  
14<sup>th</sup> Norfolk District  
*Co-Chair*

# Special Commission on Improving Efficiencies Relative to Student Transportation Membership

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## Commission Chairs

**Senator Adam G. Hinds**, *Senate Chair of the Joint Committee on Revenue*

**Representative Alice H. Peisch**, *House Chair of the Joint Committee on Education*

## Commission Members

**Thomas J. Moreau**, *Designee of the Secretary of Education*

**John J. Sullivan**, *Designee of the Commissioner of the Department of Elementary and Secondary Education*

**Superintendent Brian Forget**, *Appointee of Senate Minority Leader*

**Representative Bradford Hill**, *Appointee of House Minority Leader*

**Stephanie Fisk**, *Appointee of Governor Baker, Massachusetts Association of School Business Officials*

**Holly McClanan**, *Appointee of Governor Baker, Massachusetts Association of Regional Schools*

**Joseph Maruszczak**, *Appointee of Governor Baker, Massachusetts Association of School Superintendents*

**Daniel Hayes**, *Appointee of Governor Baker Massachusetts Association of School Committees*

**Patricia M. Lowell**, *Appointee of Governor Baker Massachusetts Association of Special Education Administrators*

## Commission Staff

**Nicole Venguer**, *Research Analyst of the Joint Committee on Education*

**Danielle Allard**, *Legislative Director and General Counsel for Senator Adam G. Hinds*

## Legislative Charge

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### Chapter 154 of the Acts of 2018

**SECTION 77.** (a) There shall be a special Commission governed by section 2A of chapter 4 of the General Laws to study and make recommendations to improve efficiencies relative to transportation for the following: students attending regional schools; students in special education out of district placements; students attending out of district vocational and technical schools; and students attending out of district agricultural schools; and any other student transportation the Commission deems appropriate.

The Commission shall consist of 1 member who shall be appointed by the senate president, who shall serve as co-chair; 1 member who shall be appointed by the minority leader of the senate; 1 member who shall be appointed by the speaker of the house of representatives, who shall serve as co-chair; 1 member who shall be appointed by the minority leader of the house of representatives; 1 person who shall be appointed by the secretary of education; 1 person who shall be appointed by the Commissioner of elementary and secondary education; and 5 persons who shall be appointed by the governor, 1 of whom shall be a representative of the Massachusetts Association of Regional Schools, Inc., 1 of whom shall be a representative of the Massachusetts Association of School Committees, Inc., 1 of whom shall be a representative of the Massachusetts Association of School Business Officials, Inc., 1 of whom shall be a representative of the Massachusetts Association of School Superintendents, Inc., and 1 of whom shall be a representative of Massachusetts Association of Special Education Administrators. Members shall not receive compensation for their services but may receive reimbursement for the reasonable expenses incurred in carrying out their responsibilities as members of the Commission. The Commissioner of elementary and secondary education may furnish reasonable staff and other support for the work of the Commission.

(b) The Commission shall study and report on: (i) a review of methods districts use to transport said students, including current costs and bid processes in procuring transportation; (ii) a budget assessment for said costs; and (iii) recommendations for improving transportation services. The Commission, in formulating its recommendations, shall take into account the best policies and practices in other states. The Commission shall hold at least 5 public meetings and may hold hearings and other forums as it considers necessary.

(c) The Commission shall file its report and recommendations with the clerks of the Senate and the House of Representatives who shall forward the same to the senate and house chairs of the joint committee on education not later than December 1, 2019.

# Overview<sup>1</sup>

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Student transportation has become a significant challenge for all school districts across the Commonwealth. As Massachusetts has a diverse array of districts – including urban and rural, well resourced and underserved, as well as regional, vocational, technical and agricultural – different districts face their own distinct difficulties. A myriad of factors contribute to these difficulties, including, but not limited to increased costs, driver shortages, geographical distances, and procurement issues. The Commission was created to conduct a comprehensive study of school transportation issues and to make recommendations for efficiency improvements. In addition to the topics listed in the above legislative charge, Chairs Peisch and Hinds directed the Commission to study ways to reduce greenhouse gas emissions attributed to student transportation.

## **Current Student Transportation Funding and Governance Structure**

There are several line-items in the state budget dealing with specific types of student transportation: in-district transportation (7035-0004), regional school transportation (7035-0006), non-resident vocational student transportation (7035-0007), out-of-district placement special education reimbursement (7061-0012), rural transportation (7061-9813), and homeless student transportation (7035-0008). If sufficient funds are appropriated in these line items, districts are reimbursed for their eligible expenses. However, as each of these line-items are “subject to appropriation,” if the respective appropriations fall short, local reimbursements are prorated based on statewide transportation expenses.

Student transportation requirements are governed by both state and federal statutes and regulations. Different statutes pertain to different classifications of districts, students, or types of transportation. See Appendices A, B, and C for details regarding relevant statutes and regulations, as well as historical spending for budgetary items as referenced in this report.

## **Methodology**

The Commission met six times between March and December of 2019. Throughout this time, members reviewed the following: existing statutes relating to student transportation; current bid processes undergone by municipal, regional, vocational and agricultural school districts; perspectives of the school bus industry; the role of regional transit authorities in student transportation; and green initiatives and alternatives to the current student transportation system. The Commission solicited testimony from various experts and stakeholders, including state and

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<sup>1</sup> All meetings, subsequent research, and the majority of the drafting of this report took place prior to the March 10, 2020 State of Emergency and the disruptions caused by COVID-19. The Commission acknowledges that some observations, recommendations, and conclusions drawn within this report, as written, may be less applicable due to the constraints of the pandemic. New issues relative to student transportation that have arisen due to COVID-19 are outside of the scope of the Commission’s charge and this report.

local officials, transportation company operators and advocates from across the Commonwealth.<sup>2</sup> The Commission also discussed how to provide greater incentives for efficient student transportation systems and support for creative solutions to transportation problems. Additionally, time was set aside at each meeting for a public hearing.

After eight months of discussion and deliberation, the Commission developed the recommendations contained in the following pages in response to its primary charge. The Commission's recommendations do not propose a singular approach to promoting efficiencies in the student transportation system, nor do they include a comprehensive analysis of the merits of improving the current structure. The recommendations presented in this report are solutions identified by various stakeholders, which include incorporating efficiency strategies into existing student transportation models and identifying practical solutions to existing fiscal, educational, and capital issues. More specific research and analysis may be necessary to implement many of the proposed recommendations.

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<sup>2</sup> For a description of Commission Meetings, please see Appendix D.

## Findings and Recommendations<sup>3</sup>

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The Commission's findings and recommendations are listed below. They are generally organized based on the topics included in the legislative charge, with the addition of recommendations pertaining to the reduction of emissions related to student transportation. Additional information related to the findings and recommendations is available in the attached appendices.

### A. Generally Applicable Operational Efficiencies

The Commission was tasked broadly with making recommendations to improve efficiencies relative to student transportation. In the process of studying specific student groups and transportation-related topics, the Commission discovered a number of issues that were applicable across the scope of its purview. There are many potential opportunities for districts to increase efficiencies that may require additional guidance from state policymakers. The following findings and recommendations relate generally to procuring and providing transportation services.

#### *i. Procuring Transportation Services*

##### *Findings*

Procuring transportation providers is a significant challenge for school districts. The school transportation industry is often opaque, making it difficult to find qualified vendors. Furthermore, even if a qualified vendor is found, the current shortage of bus drivers increases costs and limits the availability of transportation services.

State policymakers could also help school districts fulfill their transportation needs by amending two specific aspects of state law. First, current state law limits the availability of state funding to start school bus services when private transportation companies are available.<sup>4</sup> Given the uncompetitive school transportation market, this makes little sense. Second, Massachusetts limits the number of years for which a school bus or van may operate. This means that vehicles used for student transportation may be replaced more frequently than necessary. Extending the service life of student transportation vehicles would reduce costs, so long as proper safety standards are maintained.

##### *Recommendations*

- Amend Chapter 71, Section 7C of the Massachusetts General Laws to allow for more competition in the school transportation vendor contract process.
- Create a statewide registry of school transportation vendors.
- Permit transportation vans to be in service for a longer time period.

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<sup>3</sup> While a majority of the Commission members support the findings and recommendations of this report, not all were unanimously accepted.

<sup>4</sup> See: M.G.L. c. 71 § 7C

- Incentivize Commercial Driver’s License trainings to encourage people to join the bus driver workforce.
- Require faster turnaround time from the RMV for Class D licenses for school operators.

*ii. Providing Transportation Services*

***Findings***

Increasing collaboration and consolidation within and among districts can greatly improve operational efficiencies for student transportation. For example, transportation collaboratives already exist for out-of-district special education placements. They provide for efficient and cost-effective administration of the complex transportation needs associated with out-of-district placements. Districts could see similar benefits if collaboratives were utilized for general student transportation. Additionally, consolidating bus routes within districts can reduce costs while still allowing students to get to school on time. This can be encouraged by allowing districts to provide transportation only to students who will use it. However, it is worth noting that there may be limitations and additional unique obstacles for rural school districts to implement these and other changes.

Rhode Island has created a program to “[c]onserve valuable natural resources by reducing the number of vehicles necessary to transport pupils to school.”<sup>5</sup> The state allows parents or guardians to opt out of student transportation and adjusts routes accordingly in order to minimize empty bus seats and develop the most efficient bus routes.

Efforts at the district level can assist with the timing and management of transportation costs. Revolving transportation funds are a specific example of this. The South Middlesex Regional Vocational Technical School District recently established a Transportation Revolving Account through a vote of the school committee. The account was funded with a portion of the district’s year-end surplus. When the district received reimbursement from the state for the cost of transporting pupils, the amount offset by the funds in the Transportation Revolving Account was deposited for future transportation costs, along with some additional year-end surplus funding. South Middlesex Regional Vocational Technical School District ensured that at no point could the funds in the Transportation Revolving Account, exceed the state’s reimbursements for transporting pupils to and from the regional school district.

***Recommendations***

- Direct DESE to conduct a feasibility study of transportation collaboratives.
- Consolidate similar existing bus routes and permit students from different schools to ride the same bus. Because districts may have varying levels of flexibility, this process should be done in consultation with members of the community.
- Encourage districts to gather and analyze ridership data to maximize efficiency.

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<sup>5</sup> See: [16 R.I. Gen. Laws § 16-21.1](#)

- Amend Chapter 71, Section 68 of the Massachusetts General Laws to allow parents or guardians to opt out of transportation, which could reduce the number of school buses required.
- Require DESE to provide training and guidance on establishing a revolving account for transportation.

## **B. Regional School Transportation**

### *Findings*

Regional school districts face a distinct set of issues regarding transportation. This is primarily because students at regional schools generally must travel farther than students in non-regional schools. However, transportation needs still vary greatly even among regional school districts. While some regional districts simply consist of two small neighboring municipalities, others include more than a dozen municipalities and encompass over 500 square miles. At the same time, there are non-regional districts in the Commonwealth that cover similar or larger geographical areas than some regional districts.

Funding for regional school transportation is provided for in M.G.L. c. 71 § 16C and appropriated through budget line item 7035-0006. The annual appropriation has varied from year to year, but in recent fiscal years regional districts have been reimbursed for between 70 and 80 percent of their student transportation costs. Moreover, unlike other forms of education funding, regional transportation funds are not apportioned based on need. In contrast, the legislature has not appropriated funds for non-regional student transportation since FY 2003. Some argue that the generous reimbursement of regional school transportation provides little incentive to adopt efficiencies, despite a similar statutory provision.

### *Recommendations*

- Consider funding mechanisms that ensure that regional school districts with the greatest need (based on distance, low-income percentage, etc.) receive appropriate transportation funding.
- Incentivize regional districts to adopt practices that promote operational efficiencies.
- Expand funding for non-regional school transportation, especially those with unique transportation challenges, as they currently receive little state assistance.

## **C. Out-of-District Special Education Placements**

### *Findings*

Out-of-district placements are an important part of the Commonwealth's commitment to providing quality education to all students. Depending on the need of the particular student, however, such a placement might require significant travel time. Existing regulations governing special education placements generally prohibit eligible students from remaining in a vehicle operated by a

transportation provider for more than one hour each way.<sup>6</sup> Although many districts already allow parents and/or guardians to waive the durational limit if the route to their child's placement is distant or traffic heavy, regulations do not distinguish between in-district and out-of-district special education placements. This strict requirement limits options for students, parents, school districts, and transportation providers.<sup>7</sup>

### ***Recommendations***

- Amend the special education regulations under 603 CMR 28.00 so that the durational limit of one hour each way applies for in-district trips only.

## **D. Non-Resident Vocational Transportation**

### ***Findings***

If a student's home district does not offer vocational education, that student may enroll in an out-of-district educational program. The student's home district must cover the transportation costs of getting the student to the out-of-district program. Although districts are reimbursed for some of these costs through line item 7035-0007, non-resident vocational transportation is a substantial financial burden.

### ***Recommendations***

- Consider permitting the sending district to charge a fee for non-resident vocational transportation. The fee should not exceed any fee for in-district transportation and should not be assessed against students from families with incomes at or below 300 percent of the federal poverty level, as determined by the U.S. Department of Health and Human Services.
- Consider alternative transportation solutions for students to attend out-of-district educational programs such as reimbursing parents for transportation and establishing a means test for vocational-technical schools to offset the costs of transportation for students attending from outside of their districts.

## **E. Reducing Greenhouse Gas Emissions**

### ***Findings***

Student transportation is critically important. However, the vehicles used to transport students do emit greenhouse gases and other forms of pollution, and their environmental impact cannot be ignored. Diesel buses in particular emit pollutants that are very harmful to children, and

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<sup>6</sup> See 603 Code of Massachusetts Regulations 28.06(8)(a)

<sup>7</sup> **NB:** Since the Commission last met, the Student Opportunity Act (Chapter 132 of the Acts of 2019) was enacted. The new law provides funding for out-of-district special education placements through the Special Education Circuit Breaker, which will relieve some of the pressure on districts associated with out-of-district special education placements.

disproportionately affect low-income communities and communities of color. The Commission acknowledged these environmental concerns and in addition to its legislative charge considered ways to reduce greenhouse gas emissions from student transportation.

Some other states have taken measures to do this. For example, California's School Bus Replacement Program has used funding from sources including the Federal Diesel Emission Reduction Act and the Volkswagen Environmental Mitigation Trust to offer grants and rebates for districts to purchase low- or zero-emissions vehicles.<sup>8</sup> However, in analyzing testimony received from various Massachusetts school districts on an electric vehicle pilot program, there are various factors that may limit the ability of municipalities to experience the benefits of electric school buses. For example, municipalities may require a significant upgrade to their infrastructure to connect electric vehicles to their electric grid, in order to support the buses being charged regularly. In addition, these buses are costly and necessitate significant coordination in order to maximize their use and distance covered with limited power.

Utilization of regional transit authorities (RTAs) can also help reduce greenhouse gas emissions associated with student transportation. However, current federal regulations limit the ability of RTAs to drop students off directly at school. As written, 49 CFR § 605 prohibits RTA buses from deviating from their designated routes. An RTA bus can drop a student off at a bus stop close to the school but cannot drop students off at the school entrance.

Finally, community-level work can help reduce emissions from student transportation. Encouraging students to walk or bike to school is an obvious way to reduce transportation emissions. Carpooling is another effective tool when walking or biking is not possible. Informal networks of friends and neighbors already facilitate carpooling, but even more can be done to incentivize the practice.

### ***Recommendations***

- Explore public-private partnerships and grant opportunities to fund the acquisition of low- or zero-emission vehicles.
- Advocate at the federal level to amend 49 CFR § 605 to allow RTAs to provide school transportation.
- Direct DESE to issue guidance to all school districts on ways to encourage carpooling, biking and walking to school.

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<sup>8</sup>California Energy Commission. "Energy Commission Awards Nearly \$70 Million to Replace Polluting Diesel School Buses with All-Electric School Buses Through California." July 15, 2019.

## Conclusion and Next Steps

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The Commission fully acknowledges the year-to-year fiscal challenges and competing priorities associated with crafting the annual state budget. Additionally, during the time that this Commission was meeting, the Legislature passed the Student Opportunity Act, which implements the recommendations of the 2015 Foundation Budget Review Commission. This new law will increase state education funding by over \$300M per year for the next seven years, adding further competition for finite state resources. Taking this into consideration, the recommendations submitted in this report generally seek to encourage efficiencies within the current student transportation framework. There are, however, some short-term and long-term steps that the legislature can take to begin implementing certain recommendations contained herein, as well as opportunities present at the district-level that do not require legislative action.

As of this writing, the Fiscal Year 2021 state budget process has begun, which presents an opportunity for the legislature to pursue potential short-term initiatives through amending or repurposing transportation-related line-items. For example, the legislature could consider inserting language into the Regional School Transportation line-item (7035-0006) to incentivize the adoption of certain efficiencies or to add a needs-based component based on distance travelled or percentage of low-income students. The legislature could also consider reintroducing the defunct Student Transportation Reimbursement line item (7035-0004) to fund non-regional school districts that face unique transportation challenges or to encourage and incentivize creative district-level operational efficiencies. Finally, the legislature could consider directing DESE to conduct a feasibility study pertaining to transportation collaboratives.

Legislation would be needed to implement other recommendations in this report. Recognizing that transportation is procured and contracted at the local level, there may be value in starting a dialogue with DESE relating to whether it is a viable possibility to create a statewide contracting system or database that local districts could utilize to promote contracting efficiencies. Additionally, the legislature can consider allowing parents and guardians to opt their children out of transportation services and require DESE to provide training and detailed guidelines for districts to create revolving transportation funds.

Finally, this report encourages districts to take certain actions on their own. No legislation or authorization is needed for districts to gather and analyze ridership data to consolidate similar existing bus routes. Districts can also encourage or incentive students to walk, ride a bike, or carpool to school. These practices are efficient both operationally and environmentally. As a Commission composed of members from school and district leadership and government, we look forward to continuing our work together on these important issues related to student transportation.

## **Appendix A: Relevant Statutes**

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- ❖ Massachusetts General Laws Chapter 12, Section 7A (12:7A) defines the purpose of the office of the inspector general.
- ❖ Massachusetts General Laws 71:68 mandates regular day transportation for eligible students.
  - 71:7A provides for reimbursement to municipalities for regular day transportation for students, subject to appropriation.
  - 71:16C mandates regional schools, whether academic, vocational or charter, provide transportation to students and provides for reimbursement by the state for said transportation services, subject to appropriation.
  - 71B:8 mandates that districts provide transportation for school age children with disabilities who attend a special education program within or outside of the district.
- ❖ Massachusetts General Laws 71B:14 provides for special education transportation reimbursement, subject to appropriation.
- ❖ The state provides some reimbursement to municipalities' for transportation for nonresident students as required by the federal McKinney-Vento Homeless Assistance Act through line item 7035-0008 in the state budget, as referred to on page 7.
- ❖ Chapter 132 of the Acts of 2019, *An Act Relative to Educational Opportunity for Students*, signed into law on November 26<sup>th</sup>, 2019, amends the “Special Education Circuit Breaker” (71B:5A) to include reimbursement for transportation as well as tuition over a certain threshold.

## Appendix B: Historical Spending FY01-FY20

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Key:

7035-0004: Regular Student Transportation Reimbursement

7035-0006: Transportation of Pupils – Regional School Districts

7035-0007: Non-Resident Pupil Transportation

7035-0008: Homeless Student Transportation & Related Programs<sup>9</sup>

FY01:

- 7035-0004: \$57,600,000
- 7035-0006: \$48,684,734
- 7035-0007: \$0
- 7035-0008: \$0

FY02:

- 7035-0004: \$57,600,000
- 7035-0006: \$51,118,970
- 7035-0007: \$0
- 7035-0008: \$0

FY03:

- 7035-0004: \$51,840,000
- 7035-0006: \$41,705,180
- 7035-0007: \$0
- 7035-0008: \$0

FY04:

- 7035-0004: \$0
- 7035-0006: \$26,395,683
- 7035-0007: \$0
- 7035-0008: \$0

FY05:

- 7035-0004: \$0
- 7035-0006: \$38,000,000
- 7035-0007: \$1,600,000
- 7035-0008: \$0

FY06:

- 7035-0004: \$0
- 7035-0006: 45,000,000
- 7035-0007: \$1,600,000

FY07:

- 7035-0004: \$66,000\*
- 7035-0006: \$55,100,000
- 7035-0007: \$2,000,000
- 7035-0008: \$0

FY08:

- 7035-0004: \$0
- 7035-0006: \$58,700,000
- 7035-0007: \$1,950,000
- 7035-0008: \$0

FY09:

- 7035-0004: \$0
- 7035-0006: \$58,357,600
- 7035-0007: \$1,975,400
- 7035-0008: \$0

FY10:

- 7035-0004: \$0
- 7035-0006: \$40,521,840
- 7035-0007: \$500,000
- 7035-0008: \$0

FY11:

- 7035-0004: \$0
- 7035-0006: \$40,521,000
- 7035-0007: \$400,000
- 7035-0008: \$0

FY12:

- 7035-0004: \$0
- 7035-0006: \$43,521,000
- 7035-0007: \$400,000
- 7035-0008: \$0

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<sup>9</sup> [http://www.massbudget.org/browser/line\\_item.php?id=7035000400](http://www.massbudget.org/browser/line_item.php?id=7035000400)

- 7035-0008: \$0

**FY13:**

- 7035-0004: \$0
- 7035-0006: \$45,521,000
- 7035-0007: \$250,000
- 7035-0008: \$11,300,000

**FY14:**

- 7035-0004: \$0
- 7035-0006: \$51,520,000
- 7035-0007: \$3,000,000
- 7035-0008: \$7,350,000

**FY15:**

- 7035-0004: \$0
- 7035-0006: \$56,521,000
- 7035-0007: \$0
- 7035-0008: \$7,350,000

**FY16:**

- 7035-0004: \$0
- 7035-0006: \$59,021,000
- 7035-0007: \$1,750,000
- 7035-0008: \$8,350,000

**FY17:**

- 7035-0004: \$0
- 7035-0006: \$61,021,000
- 7035-0007: \$250,000
- 7035-0008: \$8,350,000

**FY18:**

- 7035-0004: \$0
- 7035-0006: \$61,521,000
- 7035-0007: \$250,000
- 7035-0008: \$8,099,500

**FY19:**

- 7035-0004: \$0
- 7035-0006: \$68,878,679
- 7035-0007: \$250,000
- 7035-0008: \$8,099,500

**FY20:**

- 7035-0004: \$0
- 7035-0006: \$75,856,506
- 7035-0007: \$250,000
- 7035-0008: \$11,099,500

\* The \$66,000 appropriation to 7035-0004 in FY07 was an earmark for a grant to the Greater Lawrence Community Action Council Inc.'s Spanish Community Services Program.

## **Appendix C: Code of Federal Regulations: Title 49 – Transportation; Part 605 – School Bus Operations**

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### **Subpart A—General**

#### **§605.1 Purpose.**

(a) The purpose of this part is to prescribe policies and procedures to implement section 109(a) of the National Mass Transportation Assistance Act of 1974 (Pub. L. 93-503; November 26, 1974; 88 Stat. 1565). Section 109(a) adds a new section 3(g) to the Federal Mass Transit Act of 1964, as amended (49 U.S.C. 1602(g)) and differs from section 164(b) of the Federal-Aid Highway Act of 1973 (49 U.S.C. 1602a(b)) in that section 3(g) applies to all grants for the construction or operation of mass transportation facilities and equipment under the Federal Mass Transit Act, and is not limited to grants for the purchase of buses as is section 164(b).

(b) By the terms of section 3(g) no Federal financial assistance may be provided for the construction or operation of facilities and equipment for use in providing public mass transportation service to an applicant unless the applicant and the Administrator enter into an agreement that the applicant will not engage in school bus operations exclusively for the transportation of students and school personnel, in competition with private school bus operators.

#### **§605.2 Scope.**

These regulations apply to all recipients of financial assistance for the construction or operation of facilities and equipment for use in providing mass transportation under: (a) The Federal Mass Transit Act of 1964, as amended (49 U.S.C. 1601 *et seq.*); (b) 23 U.S.C. 142 (a) and (c); and 23 U.S.C. 103 (e)(4).

#### **§605.3 Definitions.**

(a) Except as otherwise provided, terms defined in the Federal Mass Transit Act of 1964, as amended (49 U.S.C. 1604, 1608) are used in this part as so defined.

(b) For purposes of this part—

*The Acts* means the Federal Mass Transit Act of 1964, as amended (49 U.S.C. 1601 *et seq.*); 23 U.S.C. 142 (a) and (c); and 23 U.S.C. 103(e)(4).

*Administrator* means the Federal Mass Transit Administrator or his designee.

*Adequate transportation* means transportation for students and school personnel which the Administrator determines conforms to applicable safety laws; is on time; poses a minimum of discipline problems; is not subject to fluctuating rates; and is operated efficiently and in harmony with state educational goals and programs.

*Agreement* means a contractual agreement required under section 3(g) of the Federal Mass Transit Act of 1964, as amended (49 U.S.C. 1602(g)).

*Applicant* means applicant for assistance under the Acts.

*Assistance* means Federal financial assistance for the purchase of buses and the construction or operation of facilities and equipment for use in providing mass transportation services under the Acts, but does not include research, development and demonstration projects funded under the Acts.

*Grant contract* means the contract between the Government and the grantee which states the terms and conditions for assistance under the Acts.

*Government* means the Government of the United States of America.

*Grantee* means a recipient of assistance under the Acts.

*Incidental* means the transportation of school students, personnel and equipment in charter bus operations during off peak hours which does not interfere with regularly scheduled service to the public (as defined in the Opinion of the Comptroller General of the United States, B160204, December 7, 1966, which is attached as appendix A of this part).

*Interested party* means an individual, partnership, corporation, association or public or private organization that has a financial interest which is adversely affected by the act or acts of a grantee with respect to school bus operations.

*Reasonable Rates* means rates found by the Administration to be fair and equitable taking into consideration the local conditions which surround the area where the rate is in question.

*School bus operations* means transportation by bus exclusively for school students, personnel and equipment in Type I and Type II school vehicles as defined in Highway Safety Program Standard No. 17.

*Tripper service* means regularly scheduled mass transportation service which is open to the public, and which is designed or modified to accommodate the needs of school students and personnel, using various fare collections or subsidy systems. Buses used in tripper service must be clearly marked as open to the public and may not carry designations such as “school bus” or “school special”. These buses may stop only at a grantee or operator's regular service stop. All routes traveled by tripper buses must be within a grantee's or operator's regular route service as indicated in their published route schedules.

*Urban area* means the entire area in which a local public body is authorized by appropriate local, State and Federal law to provide regularly scheduled mass transportation service. This includes all areas which are either: (a) Within an “urbanized area” as defined and fixed in accordance with 23 CFR part 470, subpart B; or (b) within an “urban area” or other built-up place as determined by the Secretary under section 12(c)(4) of the Federal Mass Transit Act of 1964, as amended (49 U.S.C. 1608(c)(4)).

#### **§605.4 Public hearing requirement.**

Each applicant who engages or wishes to engage in school bus operations shall afford an adequate opportunity for the public to consider such operations at the time the applicant conducts

public hearings to consider the economic, social or environmental effects of its requested Federal financial assistance under section 3(d) of the Federal Mass Transit Act of 1964, as amended (49 U.S.C. 1602(d)).

## **Subpart B—School Bus Agreements**

### **§605.10 Purpose.**

The purpose of this subpart is to formulate procedures for the development of an agreement concerning school bus operations.

### **§605.11 Exemptions.**

A grantee or applicant may not engage in school bus operations in competition with private school bus operators unless it demonstrates to the satisfaction of the Administrator as follows:

(a) That it operates a school system in its urban area and also operates a separate and exclusive school bus program for that school system; or

(b) That private school bus operators in the urban area are unable to provide adequate transportation, at a reasonable rate, and in conformance with applicable safety standards; or

(c) That it is a state or local public body or agency thereof (or a direct predecessor in interest which has acquired the function of so transporting schoolchildren and personnel along with facilities to be used therefor) who was so engaged in school bus operations:

(1) In the case of a grant involving the purchase of buses—anytime during the 12-month period immediately prior to August 13, 1973.

(2) In the case of a grant for construction or operating of facilities and equipment made pursuant to the FT Act as amended (49 U.S.C. 1601 *et seq.*), anytime during the 12-month period immediately prior to November 26, 1974.

### **§605.12 Use of project equipment.**

No grantee or operator of project equipment shall engage in school bus operations using buses, facilities or equipment funded under the Acts. A grantee or operator may, however, use such buses, facilities and equipment for the transportation of school students, personnel and equipment in incidental charter bus operations. Such use of project equipment is subject to part 604 of Federal Mass Transit Regulations.

### **§605.13 Tripper service.**

The prohibition against the use of buses, facilities and equipment funded under the Acts shall not apply to tripper service.

### **§605.14 Agreement.**

Except as provided in §605.11 no assistance shall be provided under the Acts unless the applicant and the Administrator shall have first entered into a written agreement that the applicant will not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators.

**§605.15 Content of agreement.**

(a) Every grantee who is not authorized by the Administrator under §605.11 of this part to engage in school bus operations shall, as a condition of assistance, enter into a written agreement required by §605.14 which shall contain the following provisions:

(1) The grantee and any operator of project equipment agrees that it will not engage in school bus operations in competition with private school bus operators.

(2) The grantee agrees that it will not engage in any practice which constitutes a means of avoiding the requirements of this agreement, part 605 of the Federal Mass Transit Regulations, or section 164(b) of the Federal-Aid Highway Act of 1973 (49 U.S.C. 1602a(b)).

(b) Every grantee who obtains authorization from the Administrator to engage in school bus operations under §605.11 of this part shall, as a condition of assistance, enter into a written agreement required by §605.14 of this part which contains the following provisions:

(1) The grantee agrees that neither it nor any operator of project equipment will engage in school bus operations in competition with private school bus operators except as provided herein.

(2) The grantee, or any operator of project equipment, agrees to promptly notify the Administrator of any changes in its operations which might jeopardize the continuation of an exemption under §605.11.

(3) The grantee agrees that it will not engage in any practice which constitutes a means of avoiding the requirements of this agreement, part 605 of the Federal Transit Administration regulations or section 164(b) of the Federal-Aid Highway Act of 1973 (49 U.S.C. 1602a(b)).

(4) The grantee agrees that the project facilities and equipment shall be used for the provision of mass transportation services within its urban area and that any other use of project facilities and equipment will be incidental to and shall not interfere with the use of such facilities and equipment in mass transportation service to the public.

**§605.16 Notice.**

(a) Each applicant who engages or wishes to engage in school bus operations shall include the following in its application:

(1) A statement that it has provided written notice to all private school bus operators operating in the urban area of its application for assistance and its proposed or existing school bus operations;

(2) A statement that it has published in a newspaper of general circulation in its urban area a notice of its application and its proposed or existing school bus operations;

(b) The notice required by paragraphs (a) (1) and (2) of this section shall include the following information:

(1) A description of the area to be served by the applicant.

(2) An estimation of the number of each type of bus which will be employed on the proposed school bus operations, and the number of weekdays those buses will be available for school bus operations.

(3) A statement of the time, date, and place of public hearings required under section 3(d) of the Federal Mass Transit Act of 1964, as amended (49 U.S.C. 1602(d)), to be held on the application for assistance.

(4) A statement setting forth reasons the applicant feels it should be allowed to engage in school bus operations under §605.11 of this part.

(c) Copies of the application for assistance and notice required by paragraph (a) of this shall be available for inspection during the regular business hours at the office of the applicant.

**§605.17 Certification in lieu of notice.**

If there are no private school bus operators operating in the applicant's urban area, the applicant may so certify in its application in lieu of meeting the requirements of §605.16. This certification shall be accompanied by a statement that the applicant has published, in a newspaper of general circulation in its urban area, a notice stating that it has applied for assistance as provided under §605.16(b) and that it has certified that there are no private school bus operators operating in its urban area. A copy of the notice as published shall be included.

**§605.18 Comments by private school bus operators.**

Private school bus operators may file written comments on an applicant's proposed or existing school bus operations at the time of the public hearing held pursuant to section 3(d) of the Federal Mass Transit Act of 1964, as amended (49 U.S.C. 1602(d)). The comments of private school bus operators must be submitted by the applicant to the Administrator together with the transcript of this public hearing.

**§605.19 Approval of school bus operations.**

(a) The Administrator will consider the comments filed by private school bus operators prior to making any findings regarding the applicant's proposed or existing school bus operations.

(b) After a showing by the applicant that it has complied with the requirements of 49 U.S.C. 1602(d) and this subpart, the Administrator may approve its school bus operations.

(c) If the Administrator finds that the applicant has not complied with the notice requirement of this part or otherwise finds that the applicant's proposed or existing school bus operations are unacceptable, he will so notify the applicant in writing, stating the reasons for his findings.

(d) Within 20 days after receiving notice of adverse findings from the Administrator, an applicant may file written objections to the Administrator's findings or submit a revised proposal

for its school bus operations. If an applicant revises its proposed or existing school bus operations, it shall mail a copy of these revisions along with the findings of the administrator to private school bus operators required to be notified under §605.16.

(e) Private school bus operators who receive notice under paragraph (d) of this section may within 20 days after receipt of notice file written comments on the proposed revisions with the Administrator. The Administrator will consider these comments prior to his approval of a proposed revision by the applicant.

(f) Upon receipt of notice of approval of its school bus operations, the applicant may enter into an agreement with the Administrator under §605.14.

## Appendix D: Summary of Commission Meetings

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**Note:** public materials related to the Commission’s meetings are stored by the Joint Committee on Education and will be made available upon request.

1. The Commission first met on March 15<sup>th</sup> at the State House. Presentations at this meeting were made by:
  - a. William Bell, Chief Financial Officer at DESE on the work of the Homeless Student Transportation Commission; John J. Sullivan, District and School Finance Associate Commissioner at DESE on the history of transportation reimbursement; and Colleen Cavanaugh, the Administrative Coordinator at the Massachusetts Association of Pupil Transportation on out-of-district transportation.
2. The second meeting was held on May 10<sup>th</sup> at Monument Mountain Regional High School in Great Barrington. The presentation at this meeting was made by:
  - a. Commission Member Joseph Maruszczak, MASS appointee, on methods districts use to transport students including current costs and bid processes in procuring transportation, a budget estimate of costs and recommendations for improving transportation services
3. The third meeting was held on June 7<sup>th</sup> at the State House. Presentations at this meeting were made by
  - a. State Auditor Suzanne Bump on her reports *Educational Services for Students in Foster Care and State Care* and *Supporting Student and Community Success: Updating the Structure and Finance of Massachusetts Regional School Districts*;
  - b. David Ferreira, Massachusetts Association of Vocational Administrators; John Evans, Superintendent of Keefe Regional Technical School in Framingham; and Richard Martin, Superintendent of Franklin County Technical School in Turner Falls on the landscape of student transportation for regional and technical schools in the Commonwealth;
  - c. Commission member Holly McClanan, an appointee of the Massachusetts Association of Regional Schools on the landscape of student transportation for regional and technical schools in the Commonwealth.
4. The fourth meeting was held on July 19<sup>th</sup> at the State House. Presentations at this meeting were made by:
  - a. Edward J. Carr, Administrator of the MetroWest Regional Transit Authority and Kevin Hinkamper and Janice Brochu from VanPool on alternative forms of student transportation.

- b. Susan Downs of JSC Transportation Services, Inc. and Kate Machowski of MCJ Transportation on the perspectives of efficiencies in the student transportation system from the school bus industry.
  - c. David Strong and Steve Ingle of the School Transportation Association of Massachusetts on a review of the methods district use to transport students including current costs and bid processes in procuring transportation and recommendations for improving transportation services.
5. The fifth meeting was held on October 7<sup>th</sup> at the State House. Presentations at this meeting were made by:
- a. Superintendent Michael Morris of the Amherst-Pelham Regional Public Schools and Brian Foulds, Current Chair of Concord's Climate Action Advisory Board on the *Electric School Bus Pilot Project Evaluation* prepared by the Vermont Energy Investment Corporation for the Massachusetts Department of Energy Resources. The project was initiated in the fall of 2015 and subsequently selected three school districts including Amherst Regional Public School District, Cambridge Public School District, and Concord Public School District to participate in a pilot program regarding the deployment of an electric school bus.
  - b. Matthew Casale of MassPIRG and Eugenia Gibbons of the Green Consumers Alliance on green initiatives and alternatives to the student transportation system.
6. The sixth meeting was held on November 12<sup>th</sup> at the State House. The Commission members discussed recommendations for the Commission's report.