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PRIVATIZATION IN MASS TRANSIT

An Issue Paper

**Prepared for the Florida Department of Transportation
Public Transit Office**

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PRIVATIZATION IN MASS TRANSIT
An Issue Paper for the Florida Department of Transportation

INTRODUCTION

The purpose of this issue paper is to review the overall status and direction of the two-year transit privatization study being conducted by CUTR for the Florida Department of Transportation. The two technical memoranda prepared as part of this project have resulted in an extensive review of the issues associated with the use of privatization in the transit industry.

Technical Memorandum #1 provided an overview of privatization in the transit industry and included the following sections:

- Privatization Defined
- Government Role in Transit Privatization
- The Transit Privatization Debate
- Inventory of Transit Privatization Activities
- The Contracting Decision
- Summary

Technical Memorandum #2 reviewed the status and characteristics of transit privatization in Florida and the United States and included the following sections:

- Extent and Performance of Purchased Transportation
- Privatization Legislation
- Non-Florida Transit System Privatization Initiatives
- Florida Transit System Privatization Initiatives
- Identification of Privatization Issues

The most important result of the research conducted in these two technical memoranda was the identification of privatization issues that should be addressed in the process of implementing privatization initiatives.

The information presented in Technical Memoranda #1 and #2 indicates that Tasks 1-3 and a significant portion of Tasks 5-7 (as currently structured) have been successfully completed. As a reminder, the task titles are reiterated below:

- Task 1: Overview of Privatization in Public Transit.
- Task 2: Describe Privatization Efforts Nationally.
- Task 3: Describe Privatization Efforts in Florida.
- Task 4: Refine Project Direction and Subsequent Task Structure.
- Task 5: Evaluate and Analyze Privatization Efforts in Florida.
- Task 6: Compare Florida Results With National Results.
- Task 7: Findings on Privatization Strategies for Florida.

At this point in the project, CUTR believes that a sufficient amount of research has been conducted and that subsequent efforts should be directed toward addressing selected issues more thoroughly and toward determining and implementing activities regarding privatization that will be of the greatest benefit to the transit industry in Florida. As a result, it is recommended that the subsequent task structure be revised to reflect a more decision and implementation-oriented approach. Subsequent tasks should be structured to reflect the outcome of our discussions regarding this issue paper.

The remainder of this issue paper includes a series of one-page proposals categorized into two major areas, research orientation and service orientation. The intent of this effort is to provide FDOT with options to review and ultimately select for inclusion in a revised task structure. It is clear that it is not within the scope or budget for CUTR to implement all ideas presented in this issue paper. FDOT and CUTR will jointly select a number of ideas that would be most useful for assisting Florida's transit industry in the area of transit privatization.

SUMMARY OF POTENTIAL TASKS FOR IMPLEMENTATION

A list of potential tasks for subsequent implementation is provided below. The tasks are distributed among two major categories, research orientation and service orientation. A one-page discussion of each of the proposals is provided following the list below.

Research Orientation

1. Research the implications of privatization on transit labor.
2. Prepare an application for a federal privatization demonstration grant.
3. Research the privatization issues identified as specific to Florida.
4. Prepare a short report recommending specific legislative initiatives that FDOT could undertake to encourage and facilitate transit privatization efforts.

Service Orientation

1. Develop sample requests for proposals (RFPs) and contracts.
2. Organize a statewide transit privatization conference.
3. Sponsor, coordinate, and teach workshops on selected privatization issues.
4. Prepare a directory of private firms willing to respond to RFPs for various transit services (statewide directory).
5. Prepare a transit privatization handbook.
6. Publish a Florida Department of Transportation transit privatization newsletter.
7. Create a clearinghouse for the dissemination of privatization information (similar to TMA Clearinghouse).
8. Develop a publicly sponsored/privately operated vanpool promotion program.

RESEARCH ORIENTATION

1. Research additional detail concerning the implications of privatization on transit labor.

The implications of privatization on transit labor is arguably the most important issue in the decision to contract transit operations. It is proposed that a detailed report be prepared that outlines and discusses these implications. In particular, Section 13(c) of the Urban Mass Transportation Act of 1964 would be thoroughly reviewed, along with existing literature concerning this issue. This would enhance the overall understanding of its role in the decision to contract transit services. In particular, the report will review case studies of how transit systems across the country have resolved this issue in the process of implementing privatization initiatives.

In summary, Section 13(c) mandates that "it shall be a condition of any assistance...of this Act that fair and equitable arrangements are made,..., to protect the interests of employees affected by such assistance." The terms and conditions related to compliance with this mandate must be included in the transit service contract. This includes provisions for:

- rights, privileges, and benefits under existing collective bargaining agreements;
- continuation of collective bargaining rights;
- protection of individual employees against worsening of their positions with respect to employment;
- assurances of employment to employees of acquired mass transportation systems and priority reemployment of employees terminated or laid off.
- paid training or retraining programs.

It is proposed that a report be prepared that presents and discusses the transit labor issues associated with privatization. The document would identify mechanisms for the contracting of transit services while still complying with Section 13(c). These mechanisms will be identified primarily through the use of case studies which describe how transit systems resolved this issue in the process of implementing privatization initiatives.

2. Prepare application for a federal privatization demonstration grant.

CUTR would investigate all privatization programs administered by the Federal Transit Administration, particularly those run by the Office of Private Sector Initiatives. Based on this investigation, CUTR would prepare a brief memorandum summarizing the programs and recommending whether FDOT should seek a grant award through any of the programs. If a demonstration grant application is recommended, the memorandum would also suggest a process for selecting the site for the demonstration.

If determined to be appropriate and feasible, the Florida Department of Transportation, with the assistance of CUTR, would submit a federal privatization demonstration grant application to the recommended program office. If the grant is awarded to FDOT, CUTR proposes to assist in the creation of a technical advisory committee to help administer and monitor the demonstration project.

Given that several transit privatization initiatives in Florida have been disappointing, it is apparent that a majority of existing transit system officials in Florida are hesitant to support further privatization efforts, particularly in the area of contracting fixed-route operations. A widely-publicized, successful demonstration project may significantly contribute to Florida's transit officials becoming more open-minded to privatization alternatives.

3. *Research additional details on the privatization issues identified as specific to Florida.*

Numerous issues were identified in Technical Memorandum #2 that are specific to Florida's transit industry, such as the following:

- Could tourist markets be better served by mass transit services through the use of privatization?
- Does Florida's elderly population require different types of transit services that might be better provided by the private sector?
- Do the compensation differences between the public and private sectors for transit operations and maintenance in Florida impact the potential and motivation to privatize?
- Is the charter bus service industry in Florida capable of responding to requests for proposals for various transit services?
- Can private jitneys be strategically used to enhance the overall transportation system, particularly in Miami?
- Is the modest transit usage in Florida relative to other parts of the country an important factor in the decision to use privatization?

It is proposed that CUTR analyze these Florida-specific issues in detail in a separate report for FDOT. The operating environment for Florida's transit systems is unique when compared to conventional transit systems in other parts of the United States. As a result, the private sector may be able to assist the public sector in further developing some of the unique markets in Florida.

4. *Prepare a short report recommending specific legislative initiatives that FDOT could undertake to encourage and facilitate transit privatization efforts.*

Legislative initiatives have been important mechanisms for encouraging and mandating privatization in the United States. The structure and content of privatization legislative initiatives are key factors in discouraging or facilitating the implementation of these efforts. Initiatives range from privatization mandates to general enabling legislation.

An example of a mandate is observed in Colorado legislation, where the Regional Transportation District (RTD) is required to contract at least 20 percent of its bus service, as measured by the number of vehicle hours of service. An example of general enabling legislation is the Florida Transportation Corporation Act, which was passed to promote and develop transportation facilities and systems by new and alternative means.

It is proposed that a report be prepared that addresses the legislative issues identified in Technical Memorandum #2. Should legislative initiatives be considered for Florida to establish guidelines for the implementation of privatization? Could legislation help ease or eliminate some of the uncertainties associated with the implementation of privatization efforts? Should the Florida Department of Transportation take an active role in encouraging or discouraging the use of privatization in Florida's transit industry?

SERVICE ORIENTATION

1. Develop sample requests for proposals (RFP) and contracts.

In most of the interviews with transit officials, the design of the RFP and contract was identified as the key indicator in successfully contracting with a private sector entity. Unsuccessful privatization efforts at Florida's transit systems were generally blamed on problems and inconsistencies resulting from the structure of the RFP and/or contract.

It is proposed that a series of sample RFPs and contracts be prepared and distributed to Florida's transit systems. Samples may include those directed at the contracting of fixed-route operations, paratransit operations, vanpooling, maintenance activities, and administrative activities. The various samples would address the many contractual issues previously identified, including the structure and clarity of the contract, contract administration and enforcement, and the optimal size of the contract. In addition, the RFPs and contracts would be designed specifically for use in Florida. Legal assistance could be obtained to assist in the design process.

The structure and clarity of the contract is important from the start in order to minimize the probability of conflicting interpretations of contract language once the arrangement is signed and in place.

Contract administration and enforcement continue to be important issues, given the sensitivity involved with the quality and reliability of contracted services. A tradeoff inherently exists between the level of effort required for the administration of a contract and the extent of monitoring and enforcement. This tradeoff must be explicitly addressed prior to the preparation of an RFP and contract.

The optimal size of a contract clearly varies with the type of service being contracted and the number of qualified providers willing to respond to a given RFP. To the extent possible, sample contract scenarios would be presented and reviewed to present a range of optimal contracts given a set of criteria.

The series of sample contracts, along with a discussion of the major issues involved with the preparation of contracts, would be compiled in a document for distribution to Florida's transit systems and would be particularly useful to the small to medium size transit systems. The Massachusetts Institute of Technology (M.I.T.) is currently conducting a comprehensive study of transit service contracting, the results of which would be incorporated into this document as they become available.

2. *Organize a statewide conference.*

It is proposed that a statewide conference be organized and held at a central location in Florida (such as Orlando). Three conference formats are suggested below.

- Transit Privatization in Florida - The purpose of this conference would be to discuss general privatization issues over the course of two days. The primary target audience would be decisionmakers (transit system Board members, politicians, etc.) in the state of Florida; however, representation would also be sought from each Florida transit system as well as from other transit systems throughout the country. Additional interest would be sought from FDOT district offices, metropolitan planning organizations, regional planning councils, private sector firms and organizations, and others. The intent would be to invite nationally recognized experts to the conference to discuss various transit privatization issues, such as service contracting, cost allocation, case studies, transit labor implications, and others. The format could include roundtable discussions along with the expert speaker presentations. The primary objective of this format would be to educate the decisionmakers regarding the use of privatization as an implementation alternative. It is anticipated that conference proceedings could also be published following the conference.
- Specific Transit Privatization Issue - The purpose of this conference would be to discuss a selected important issue facing Florida's transit systems in their decision to implement privatization initiatives. For example, the interviews of transit system officials revealed that one of the most important issues involved in implementing a privatization initiative is the structure of the RFP/contract. Envisioned as one full day, the conference agenda would include a series of sessions focusing on the design of the RFP/contract. Sessions could be held on incentive/penalty clauses, contract requirements, contract administration, division of responsibility, and others. Expert speakers would also be invited to a conference in this format to discuss the specific issue selected. A conference report would be prepared following the conference.
- Transit Privatization Brain-Storming Session - The purpose of this type of conference would be to hold a brain-storming session to discuss the direction that Florida should take (if any) with respect to transit privatization. CUTR and FDOT would jointly prepare an invitation list to the major leaders and decisionmakers within Florida's transit industry. A skeleton agenda would be prepared identifying major issues for the invited attendees to discuss. FDOT could then use this input to develop a statewide policy concerning transit privatization.

3. Sponsor, coordinate, and teach workshops on selected privatization issues.

It is proposed that a series of workshops be sponsored by FDOT and CUTR, with CUTR coordinating and making arrangements for the workshops. Unlike the conference format where privatization issues would be discussed in more general terms, the workshop format would be designed to target a more technical audience to discuss the issues in much more detail. The workshops are envisioned as being one full day and perhaps offering continuing units of education. A workbook would be prepared for each sponsored workshop.

Some examples of workshops that could be held include contract design, contract administration, procurement procedures, maintenance contracting, and numerous others. The focus of each workshop would be on the "hands-on" implementation aspects of each issue.

4. *Prepare a directory of private firms willing to respond to RFP's for various transit services (statewide directory).*

It is proposed that CUTR compile a directory of private sector organizations that are willing to contract to perform various services for transit systems in Florida. This directory would include private sector organizations, including those willing to operate transit services, to perform various maintenance activities, and to perform various administrative activities. The directory would include firm names, addresses, phone numbers, contact names, and types of services willing to provide under contract. Distribution of the directory would include transit systems, transportation disadvantaged providers, and other public agencies interested in contracting maintenance and administrative activities.

These directories would be extremely useful when a transit system is preparing to request proposals or bids for specific services. A transit system could refer to the directory to determine which private sector organizations indicated a willingness to respond to proposals or bids for the specific service they are proposing to contract.

The directory is not intended to be a mechanism for screening or pre-qualifying private sector organizations to perform specific contractual services. The purpose is to provide a list that is as extensive as possible to maximize the number of responses and encourage a competitive contracting process. To maintain its usefulness over time, the directory would need to be updated annually and redistributed to transit systems throughout the state of Florida.

5. Prepare a transit privatization handbook.

It is proposed that a transit privatization handbook be prepared which summarizes all of the major issues associated with the process of implementing various privatization initiatives, including the contracting of operations, maintenance, and administration, as well as other forms of public/private partnerships, such as joint development, cross border leasing, and others.

The handbook would serve as a reference manual for those transit systems seeking a straightforward approach to the basics of implementing various privatization initiatives. This "how to" handbook would review privatization implementation processes from start to finish. For example, a transit system that wants to contract its paratransit service would be provided with some basic guidelines for the preparation of requests for proposals, the structure of contracts, the administration, monitoring, and enforcement of contracts, and other issues associated with the implementation of initiatives.

It is proposed that this handbook be very general in nature since the environment for implementing privatization initiatives is different in each situation. As a result, each initiative should be structured and implemented with these differences in mind. However, a general handbook would provide a good overview and starting point for each transit system. The guidelines could then be customized by each transit system in light of the specific characteristics surrounding the proposed privatization initiative.

6. *Publish a Florida Department of Transportation transit privatization newsletter.*

It is proposed that CUTR publish a Florida Department of Transportation transit privatization newsletter (quarterly) for national distribution. The initial mailing list would include every fixed-route transit system in the United States, with this list expanding over time to include other interested parties throughout the state and country.

The newsletter would include the latest information on transit privatization efforts throughout the country. Examples of articles that could be presented in the newsletter include case studies of recent privatization efforts, review of recent privatization legislation, presentation of results of studies on privatization efforts, a directory of privatization organizations and conferences in the United States, and a discussion of other important issues related to transit privatization.

It is anticipated that a kickoff newsletter could be prepared and distributed within the existing privatization project; however, additional funding would be required to continue the newsletter in the future.

7. *Create a clearinghouse for the dissemination of privatization information (similar to TMA Clearinghouse).*

It is proposed that a Transit Privatization Clearinghouse be established to disseminate information on privatization issues in the transit industry. Modelled after the TMA Clearinghouse, the privatization clearinghouse would serve as a source of privatization information primarily for Florida's transit systems; however, requests for assistance outside of Florida may also be included in the project.

The intent of the clearinghouse would not be to compete with the services offered by the Public/Private Transportation Network (PPTN), but to provide technical assistance at a more intensive level in Florida. The Privatization Clearinghouse would assist the Florida Department of Transportation in educating Florida's transit systems about the various areas of transit privatization.

Many examples of specific services that could be provided under the Privatization Clearinghouse were proposed previously in this issue paper. These and other services are provided below.

- continue to develop a comprehensive bibliography of transit privatization information (an extensive information center has already been created as a result of the existing privatization project).
- develop sample requests for proposals (RFP) and contracts based on types of services and size of contracts.
- prepare a directory of private firms willing to respond to RFP's for various transit services (statewide directory).
- prepare a transit privatization handbook.
- publish a quarterly transit privatization newsletter.
- respond to inquiries and requests for transit privatization information.
- monitor and evaluate the performance of privatization initiatives implemented in Florida.

The initial establishment of the Privatization Clearinghouse could be funded with the existing privatization project; however, additional funding would be required to continue offering these services on an annual basis.

8. *Develop a publicly sponsored/privately operated vanpool promotion program.*

Publicly sponsored vanpool programs, which are managed by private vanpool service companies, are easy-to-implement public-private partnerships. This project would use publicly sponsored vanpool programs as a model of how public-private partnerships could work as a part of the transit system within each urbanized area of Florida. Unlike more internal operations-oriented privatization efforts, vanpool programs can also contribute almost immediately to the reduction of peak hour congestion.

Publicly sponsored vanpool programs can begin within a matter of months of conceptual approval. Vanpools are fully eligible for federal capital assistance under either Section 3 or 9 of the Federal Transit Act, as amended. Vanpool programs do not impact transit labor, since the operation of vanpools is handled by participants who volunteer to drive. In addition, vanpools result in completely new service and do not affect any existing transit services.

Publicly sponsored vanpool programs have been implemented at Brevard County's Space Coast Area Transit, Tri County Transit in Orlando, and the Lakeland Area Mass Transit District. Also, Tri-County Commuter Rail Authority is currently seeking proposals for a private vanpool services company. The Pinellas Suncoast Transit Authority has indicated plans for the establishment of a publicly sponsored vanpool program in its five year transit development program.

This project would provide direct technical assistance to every transit agency in Florida to help establish publicly sponsored vanpool programs. The objective would be to establish a vanpool program within every public transit system in Florida within two years. Technical assistance would begin at the program concept level and continue through the procurement process for both vans and a vanpool services company to operate the program.

FDOT Response

Following the review of the issue paper, the Florida Department of Transportation directed CUTR to prepare a transit privatization handbook that would be available to the public transit systems in Florida and would contain the following elements at a minimum:

1. Develop sample requests for proposals (RFP) and contracts.
2. Summarize the major issues associated with the process of implementing privatization initiatives.
3. Explore the best method for attracting companies to respond to RFP's on privatization.
4. Explain the requirements of Section 13(c) concerning privatization.
5. Describe how a public transit agency in Florida can establish a publicly sponsored vanpool program.
6. Sponsor, coordinate, and teach a workshop on how to use this handbook.

As a result of this directive, the remaining tasks in the contract are in the process of being revised to reflect the preparation of a handbook. CUTR will prepare a revised scope of services and budget for FDOT review.