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Supreme Court No. 96694-0
Court of Appeals No. 49979-7-II

**IN THE SUPREME COURT
OF THE STATE OF WASHINGTON**

FIRST STUDENT, INC.,

Appellant/Petitioner,

v.

STATE OF WASHINGTON
DEPARTMENT OF REVENUE,

Respondent.

APPELLANT'S PETITION FOR REVIEW

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I. IDENTITY OF PETITIONER AND INTRODUCTION

This statutory interpretation case arises out of Washington State's tax laws and is likely to have wide-ranging effects. The Court of Appeals held that the transportation services provided by Petitioner First Student, Inc. ("First Student") are not provided "for hire," as that undefined term is used in RCW 82.16.010(6). In so ruling, the court committed fundamental error on a matter of substantial public interest. Under controlling Washington Supreme Court precedent, the meaning of a legal term that is undefined in a statute is determined by the familiar legal meaning the term has in the common law. Although the Court of Appeals acknowledged this principle, slip op. at 10,¹ it ignored the familiar usage of "for hire" in the common law in favor of the Department of Revenue's ("Department") proposed interpretation, which came from a strained reading of an archaic entry in *Black's Law Dictionary*. Relying on the facial dictionary definition without considering the case law underpinning the definition, and ignoring the clear common law meaning, the Court of Appeals adopted a reading of "for hire" that is contrary to the familiar legal meaning.

The Court of Appeals reached this conclusion even as it agreed that other uses of the term "for hire" *within the same statute* are not consistent with the definition it adopted. A-12. With its ruling, the Court of Appeals opened the door for future litigants to argue that the meaning of the term "for hire," which was previously well defined in the common

¹ Hereinafter referred to with pagination from Appendix A, *attached*.

law, is now mutable and must be determined on a case-by-case basis. Considering that 125 statutes and 84 administrative regulations in Washington use the term “for hire,” the Court of Appeals has opened a wide door. Moreover, the Court of Appeals’ improper statutory interpretation, in a published opinion, will cast general doubt and confusion as to whether a single dictionary definition, unsupported by the common law, may supplant the established common law usage of any familiar legal term that is undefined in a Washington statute.

This Court should accept review, and confirm the rule that until and unless the Washington Supreme Court overrules its own precedent, neither the Department nor the courts may adopt a reading of a familiar legal term that has no support in the common law.

II. COURT OF APPEALS DECISION

First Student seeks review of the published decision in *First Student, Inc. v. Dep’t of Revenue*, No. 49979-7-II, issued by the Court of Appeals, on November 27, 2018. The Opinion upheld the Department’s assessment of B&O tax on First Student’s transportation services. A copy of the Opinion and order on reconsideration is in Appendix A, pages A-1 through A-19. A copy of the order denying First Student’s motion for reconsideration is in Appendix B, page B-1.

III. ISSUES PRESENTED FOR REVIEW

1. When interpreting an undefined statutory term with a familiar legal meaning, may a court adopt a reading of a legal dictionary definition that conflicts with the meaning found in common law?

2. Must courts give deference to an agency's post hoc rationale, when the rationale is inconsistent with the agency's prior contemporaneous interpretation and administration of the statute?

IV. STATEMENT OF THE CASE

A. First Student's Business.

First Student is a transportation company that provides transportation services for compensation to organizations including school districts, youth groups, summer camps, and churches. CP 30 ¶ 3; CP 30-31 ¶ 6; CP 35; CP 50. Because First Student is in the business of operating vehicles to transport passengers for compensation, it is registered as a carrier with both the Washington Utilities and Transportation Commission and the U.S. Department of Transportation. CP 31 ¶¶ 10 & 12; CP 56-57. The Department admits that First Student was "in the business of operating vehicles that transported passengers" and received compensation for transporting students as passengers. CP 26-27 (Requests for Admission Nos. 3-5). Between 1990 and 2014, First Student paid B&O taxes on its transportation services. CP 110-11.

B. Department's Refund Denial and Trial Court Ruling.

First Student filed refund requests with the Department, seeking refunds of overpaid B&O taxes for the tax periods between December 1, 2008 and December 31, 2014. CP 21. First Student asserted that the Department should tax it under the Public Utility Tax ("PUT") classifications as opposed to the B&O tax classification, and that the Department's exclusion of school bus operators from the PUT classifications in WAC 458-20-180 ("Rule 180") is inconsistent with the

statute. CP at 128-29. In November 2015, the Department denied First Student's refund request, refusing to explain how Rule 180 is consistent with the statute. CP 22. The Department also, without explanation, denied First Student's petition for reconsideration. CP 11.

First Student then timely filed the current refund action challenging the Department's determination and filed a motion for summary judgment. CP 9; CP 58. In response, the Department asserted, for the first time, that Rule 180's school bus exclusion was consistent with the statute because the services First Student provided to school districts were not provided "for hire." CP 142-44.

The trial court granted summary judgment for the Department, concluding that the term "for hire" required compensation for the service to be provided on a per-passenger basis. CP 287. The trial court also denied First Student's motion for reconsideration. CP 311, 313.

C. The Court of Appeals' Decision.

The Court of Appeals affirmed the trial court's summary judgment order. First, it determined that the legal or technical meaning of the term "for hire" at the time the statute was drafted contemplated that the passengers must be directly responsible for any compensation paid and held that the term "for hire" is ambiguous. A-10, A-13. Second, because the court determined that the term is ambiguous, it held that the Department's interpretation of the term was entitled to deference and adopted the Department's position. A-17. Both First Student and the Department filed timely motions for reconsideration. The Court of

Appeals denied First Student’s motion and granted the Department’s motion, amending the Opinion to delete a footnote. First Student now seeks review by the Supreme Court.

V. ARGUMENT IN FAVOR OF REVIEW

The Court of Appeals erred by adopting a reading of a familiar legal term that is unsupported by the common law, contrary to controlling Washington case law. The Court of Appeals even acknowledged that the reading of “for hire” it adopted was inconsistent with the use of the term in other PUT classifications *within the same statute*. A-12, A-13. The fact that the term “for hire” is used in over 125 RCWs and 84 WACs across a wide variety of subject matters demonstrates that this error raises an issue of substantial public importance. For these reasons, the petition should be granted under RAP 13.4(b)(1), (2), and (4).

Anyone in the business of operating any vehicle in the conveyance of persons or property “for hire” either as a “motor transportation business”² or a “urban transportation business”³ falls under the PUT classifications and is exempt from B&O tax.⁴ RCW 82.16.010(6), (12); WAC 458-20-180(5).

² “Motor transportation business” is defined as “the business (except urban transportation business) of operating any motor propelled vehicle by which persons or property of others are conveyed *for hire*.” RCW 82.16.010(6) (emphasis added).

³ “Urban transportation business” is defined as “the business of operating any vehicle for public use in the conveyance of persons or property *for hire*, insofar as (a) operating entirely within the corporate limits of any city or town, or within five miles of the corporate limits thereof.... *Included herein, but without limiting the scope hereof, is the business of operating passenger vehicles of every type....*” RCW 82.16.010(12) (emphasis added).

⁴ See RCW 82.04.310(1) (B&O tax “does not apply to any person in respect to a business activity with respect to which tax liability is specifically imposed under the provisions of chapter 82.16 RCW”).

The Department contends that Rule 180 properly excludes school buses from the PUT. WAC 458-20-180(5). However, the express statutory exclusion on which the school bus provision in Rule 180 was originally based was superseded by statute many years ago.⁵ To salvage its position, the Department argued at summary judgment that Rule 180's school bus exclusion is consistent with the statute because school bus operators do not provide transportation "for hire," which is one of the elements of the statute. CP 142-44. Under the Department's theory, transportation services are not provided "for hire" unless the passengers themselves pay for the service. *Id.* Accordingly, because school children themselves do not pay for the transportation service, school bus services were not provided "for hire." CP 143-44. The sole authority cited to support the Department's position was the definition of "for hire" in the 1951 version of *Black's Law Dictionary*, which made an oblique reference to "a reward or stipend, to be paid by such passengers." CP 143.

The Court of Appeals should have rejected the Department's position. Instead, the Court of Appeals construed the legal term based solely on a strained reading of this definition, without any foundation in the common law, and concluded that the term was ambiguous. Further, the Court of Appeals' published opinion is internally inconsistent,

⁵ Rule 180 properly excluded school buses from the "highway transportation" classification under the pre-1955 versions of RCW 82.16.010. However, after the Legislature amended a definition used in RCW 82.16.010 in 1955 to broaden its scope to include anyone "operating *any motor propelled vehicle* by which persons or property of others are conveyed *for hire*" (Laws of 1955, ch. 389, § 28(9) (emphasis added)), the Department amended Rule 180 to recognize the change for taxicabs, but not school buses. See Washington State Tax Commission Rule 180 (1955) (stating that "highway transportation" and "urban transportation" include the business of operating taxicabs, but not school buses), CP 363.

determining, without explanation, that the Department’s definition of “for hire” applied only to the portion of the statute at issue in this case and not to the other uses of “for hire” in the same statute. A-13. The Court of Appeals thus opened the door for future litigants to argue that the term “for hire” is mutable, consequently presenting issues of substantial public interest that should be determined by this Court.

A. The Court of Appeals Improperly Adopted a Meaning of a Familiar Legal Term Without Any Foundation in the Common Law.

The Court of Appeals relied on the solitary *Black’s Law Dictionary* definition to determine that the term “for hire” at the time the statute was adopted “contemplated that the ‘passengers’ would be directly responsible for any compensation paid.” A-10. However, a strained reading of a single legal dictionary definition that is inconsistent with case law cannot dictate the meaning of a familiar legal term.

Under established Washington law, the meaning of well-known legal terms used in statutes is derived from the meaning that such terms have at common law. “[I]t is presumed that the legislature intended [the term] to mean what it was understood to mean at common law.” *Ralph v. State Dep’t of Nat. Res.*, 182 Wn.2d 242, 248, 343 P.3d 342 (2014) (citing *N.Y. Life Ins. Co. v. Jones*, 86 Wn.2d 44, 47, 541 P.2d 989 (1975)). This concept stretches back to 1916 where it was adopted from *Lewis’ Sutherland Statutory Construction* (2d ed.)⁶ and is closely followed by the

⁶ See *Irwin v. Rogers*, 91 Wash. 284, 287, 157 P. 690 (1916) (“Where a statute uses a word which is well known and has a definite sense at common law or in the written law, without defining it, it will be presumed to be used in that sense, and will be

courts.⁷ Common law is established by case holdings. *See, e.g., McGinn v. N. Coast Stevedoring Co.*, 149 Wash. 1, 12, 270 P. 113 (1928) (“[W]e are ourselves bound by our own precedents in administering the common law.”).⁸

The Court of Appeals, in prior published opinions, properly determined the common law meaning of legal terms by looking only to the holdings of cases. The Court of Appeals’ opinion in *McKenna v. Harrison Memorial Hospital* is instructive on this point. 92 Wn. App. 119, 960 P.2d 486 (1998). In *McKenna*, the Court of Appeals examined whether a hospital was a “provider of professional services.” 92 Wn. App. at 121. Because the statute did not define the term, the court looked to the common law to determine whether a hospital was a “provider of professional services.” *Id.* at 122.

The *McKenna* court examined holdings in two different cases addressing whether hospitals sell products or provide services. *Id.* at 124. In the previous cases, the hospitals were held to be providing services and not selling the blood products and supplies they provided to patients as

so construed unless it clearly appears that it was not so intended.’ 1 Lewis’ Sutherland Statutory Construction (2d Ed.) § 398.”).

⁷ *See N.Y. Life Ins. Co.*, 86 Wn.2d at 47 (“Words of a statute not particularly defined are to be given their ordinary, everyday meaning. If the legislature uses a term well known to the common law, it is presumed that the legislature intended it to mean what it was understood to mean at common law.”); *State v. Dixon*, 78 Wn.2d 796, 804, 479 P.2d 931 (1971) (same language); *Fransen v. State Bd. of Nat. Res.*, 66 Wn.2d 672, 674-75, 404 P.2d 432 (1965) (“[W]hen the legislature uses a term without defining it, such term being well known (sic) to the common law and there given definite meaning, it will be presumed that the legislature used the word in the sense in which it was understood at common law.”).

⁸ *See also* Michael Sean Quinn, *Argument and Authority in Common Law Advocacy and Adjudication: An Irreducible Pluralism of Principles*, 74 Chi.-Kent L. Rev. 655, 683 (1999) (“So far as common law causes of action are concerned, the foundation of legal rights and legal duties is precedent.”).

part of their medical treatment. *Id.* The case holdings turned on the fact that patients go to a hospital to obtain medical treatment (a service), not to purchase products, whether it be bandages, iodine, or blood. *Id.* Because the case holdings did not distinguish between the type of product being provided to the patient, the type of product was irrelevant to the *McKenna* court in determining the scope of the common law meaning of the term “provider of professional services.”

The Washington Supreme Court also determines the common law meaning of legal terms by looking only to the holdings of cases, ignoring any non-binding dicta. In *New York Life Insurance*, the question before the court was whether second-degree felony murder constitutes a “willful” killing of another person. *N.Y. Life Ins. Co.*, 86 Wn.2d at 46. The *New York Life Insurance* court looked to its own holding in *State v. Harris*, 69 Wn.2d 928, 421 P.2d 662 (1966), which held that second-degree felony murder did not require proof of an intent to kill. *N.Y. Life Ins. Co.*, 86 Wn.2d at 48. The case holding turned on willfulness or intent to kill—it was immaterial that *Harris* concerned the felony-murder rule whereas *New York Life Insurance* concerned a statutory ban on the payout of a life insurance policy under RCW 11.84.010. Because the case holding in *Harris* did not contain details of the particular facts of the case, such details were irrelevant to the *New York Life Insurance* court.

In the instant case, the Court of Appeals ignored the common law usage of the term. The Court of Appeals determined that a “fair reading” of “for hire” in *Black’s Law Dictionary* contained the limitation that the

“passengers’ would be directly responsible for any compensation paid.”

A-10. In doing so, the Court of Appeals completely ignored the fact that this limitation can be found nowhere in the common law.

The Court of Appeals based this “fair reading” solely on the 1951 *Black’s Law Dictionary* definition of “for hire.” *Id.* However, none of the case law supporting the *Black’s Law Dictionary* definition or cited by the Department in its briefs makes such a distinction. The *Black’s Law Dictionary* definition is copied from a section of *Michigan Consolidated Gas Co. v. Sohio Petroleum Co.*, 321 Mich. 102, 32 N.W.2d 353, 355 (1948), which quotes a passage from *City of Sioux Falls v. Collins*, 43 S.D. 311, 178 N.W. 950, 951 (1920). Neither case involved the transportation of passengers,⁹ and therefore, neither case could have held that the term “for hire or reward” turned on whether the passengers themselves paid for the transportation. Any statements in these cases regarding the term “for hire” in the context of transporting passengers were pure dicta. In fact, no case citing *City of Sioux Falls* has ever involved the transportation of passengers.¹⁰

⁹ *Michigan Consolidated Gas Co.* examined whether a company using its pipeline to transport its own natural gas was transporting the gas “for hire, compensation or otherwise.” 32 N.W.2d at 355. The court in *City of Sioux Falls* addressed whether a baker delivering his bakery products to customers was transporting property “for hire or reward.” 178 N.W. at 951.

¹⁰ *Nat’l Serv-All, Inc. v. Ind. Dep’t of State Rev.*, 644 N.E.2d 954 (Ind. T.C. 1994) (garbage hauling business); *Kroger Grocery & Baking Co. v. City of Cynthiana*, 240 Ky. 701, 42 S.W.2d 904 (Ct. App. 1931) (grocery truck used for owner’s individual business); *Rountree v. State Corp. Comm’n*, 1936-NMSC-019, 40 N.M. 152, 56 P.2d 1121, 1123 (person engaged in buying merchandise and transporting it for sale to customers at distant places); *Smith v. New Way Lumber Co.*, 84 S.W.2d 1104, 1108 (Tex. Civ. App. 1935) (lumber company), *writ granted* (Nov. 13, 1935), *aff’d*, 128 Tex. 173, 96 S.W.2d 282 (1936); *Consol. Rock Prods. Co. v. State*, 57 Cal. App. 2d 959, 135 P.2d 699, 700 (1943) (corporation engaged in the business of selling rock, sand, gravel, and ready-mixed concrete); *Brown v. Nat’l Motor Fleets, Inc.*, 276 Ala. 493, 164 So. 2d 489, 490

Moreover, in over 65 years, only one case in the United States even cited the definition of “for hire or reward” in *Black’s Law Dictionary*. This case is distinguishable because the court held that the clients were not paying a transportation fare, but instead were paying “for multiple services including transportation.” *Nebinger v. Md. Cas. Co.*, 312 N.J. Super. 400, 711 A.2d 985, 989 (App. Div. 1998). The transportation was incidental to the activities of the business.

If there were a case holding supporting the Department’s reading, the rationale for drawing such a distinction could be understood and applied to the statutory context to see if it makes sense. But here, there are no case holdings that draw this distinction and no basis for explaining why the “familiar legal meaning” of “for hire” excludes situations where the passengers themselves do not pay. Because the literal reading of *Black’s Law Dictionary* definition advanced by the Department is unsupported by the common law, the Court of Appeals erred in adopting it.

B. The Common Law Meaning of “For Hire” Is Not Ambiguous.

As noted above, the common law meaning of a term turns on the relevant holdings in cases. Therefore, the common law meaning of “for hire” cannot turn on whether the passengers themselves pay for the transportation, unless holdings in case law have made that distinction.

(1963) (truck leasing company); *Hughson Condensed Milk Co. v. State Bd. of Equalization*, 23 Cal. App. 2d 281, 73 P.2d 290, 291 (1937) (milk manufacturer); *Bd. of R.R. Comm’rs v. Gamble-Robinson Co.*, 111 Mont. 441, 111 P.2d 306 (1941) (wholesale grocery company); *Browning-Ferris, Inc. v. Com.*, 225 Va. 157, 300 S.E.2d 603, 604 (1983) (waste collection and disposal).

After finding that a “fair reading” of the term “for hire” included the limitation that passengers would be directly responsible for any compensation paid, the Court of Appeals held:

Review of the plain meaning and statutory context of former RCW 82.16.010 leads us to one conclusion: the statute remains susceptible of more than one reasonable meaning. Accordingly, we hold that the term “for hire” is ambiguous and turn to the resolution of that ambiguity.

A-13.

However, **no** holding in any case across the United States addressing the term “for hire” limits its scope based on whether the passengers themselves pay the compensation. On the other hand, there are a number of cases holding that carriers paid by third parties to transport passengers are operating “for hire.” The case most on-point is *Surface Transportation Corp. of New York v. Reservoir Bus Lines, Inc.* In *Surface Transportation*, the bus company argued that it was not operating “for hire” where it executed written contracts with landlords and was paid by the landlords to provided bus service to tenants of the apartment houses between their homes and the subway station. 271 A.D. 556, 67 N.Y.S.2d 135, 137 (1946).

In rejecting the bus company’s argument, the court stated:

Defendant’s contention that it is not carrying passengers for hire is baseless. Its omnibuses are carrying passengers under contract with the landlords. Each landlord pays to defendant a monthly lump sum to furnish the service. The compensation is paid to defendant for carrying passengers. Whether the cost of the service is borne by the landlords or by the tenants is immaterial. The fact remains that defendant is receiving pay to transport passengers and is accordingly carrying passengers for hire.

Id. at 139 (emphasis added).

This explicit and forceful rejection of the Department’s reading of “for hire” by the New York appellate court is in line with several other cases from this time period adopting similar holdings. *See, e.g., Burnett v. Allen*, 114 Fla. 489, 154 So. 515, 518 (1934) (“The bus driver who contracts to furnish transportation and to transport school children from places at or near their residences to public free school becomes a special contractor for hire....”); *Sheffield v. Lovering*, 51 Ga. App. 353, 180 S.E. 523, 524 (1935) (“[T]he operator for hire of a school motorbus who operates along a certain route every school day in taking all school children alike to and from a certain school is a carrier of passengers in so far as such school children are concerned....”); *Short Line, Inc. v. Quinn*, 298 Mass. 360, 10 N.E.2d 112, 113 (1937) (bus operator transporting employees under a contract with a shoe manufacturer held to be “transporting passengers for hire.... It is unimportant that the hire is paid by one not a passenger.” (internal quotation marks and citation omitted)); *Baltimore & A.R. Co. v. Lichtenberg*, 176 Md. 383, 4 A.2d 734, 737 (1939) (transporting laborers under contract with federal government was “a use of the roads of the State for hire, in carrying passengers”); *Maley v. Children’s Bus Serv., Inc.*, 203 Misc. 559, 117 N.Y.S.2d 888, 889 (Sup. Ct. 1952) (“The defendant had a written contract with the City of New York under and by the terms of which the defendant undertook and agreed to transport school children attending various schools within fixed termini.... [T]he defendant was a carrier for hire....”), *aff’d*, 282 A.D. 920,

125 N.Y.S.2d 643 (1953); *Brown v. Nat'l Motor Fleets, Inc.*, 276 Ala. 493, 164 So. 2d 489, 490 (1963) (term “operate for hire” “has a well-known and definite meaning in the jurisprudence of this country. The term means in law, in commercial usage, and in ordinary parlance, the transportation of persons or property for compensation.”); *Hunt ex rel. Gende v. Clarendon Nat'l Ins. Serv., Inc.*, 218 Wis. 2d 439, 691 N.W.2d 904, 909 (Ct. App. 2004) (“Johnson School Bus Service makes itself available to public school districts, offers to transport persons identified by the district to various locations at various times ... and receives payment from the district for those services. Clearly, the service is for hire.”).

This case law, combined with the complete lack of case law supporting the Department’s position, demonstrates that there is no way that the distinction read into the *Black’s Law Dictionary* definition by the Department is consistent with the common law understanding of the term “for hire.”¹¹ Because the common law meaning of the term “for hire” flatly contradicts the Department’s reading of the statute, and supports First Student’s, the Court of Appeals misapplied the case law in concluding that the term “for hire” in RCW 82.16.010 is ambiguous.

C. The Court of Appeals’ Reading of “For Hire” Will Spawn Future Litigation.

The Court of Appeals’ internally inconsistent opinion will open the door to unnecessary future litigation. The Court of Appeals adopted the

¹¹ Further, Washington statutes and regulations are unanimous: of the 84 WACs and 125 RCWs that use the term “for hire,” none draws the distinction that the Department asserts and that this Court erroneously adopted as the “familiar legal meaning” of the term.

Department's definition of "for hire," as applied to the PUT classifications at issue in this case, but recognized that the definition would not apply throughout RCW 82.16.010, which uses or references the term "for hire" multiple times.¹² The court recognized the "incongruous" result, but made no attempt to explain *why* RCW 82.16.010(6) and (12)'s use of "for hire" is different from the other uses in the statute. The Court of Appeals asked, but failed to answer, the key question: "whether the legislature intended the meaning of 'for hire' to be mutable depending on the specific business classification in question." A-11, A-12. Instead, the court summarily concluded that the term "for hire" is ambiguous, and resolved that ambiguity in favor of the Department. *Id.*

This internally inconsistent opinion creates a mutable definition of the term "for hire," opening the door for future litigants to argue over the definition of the term as used in any of the 84 WACs and 125 RCWs that use the term "for hire." For example, in *Courtney v. Washington Utilities and Transportation Commission*, the plaintiffs argued several proposed commercial ferry services would not be "for the public use for hire" as used in the applicable regulatory statute. 3 Wn. App. 2d 167, 174, 414 P.3d 598 (2018). One proposal was to ferry only passengers who had purchased a travel package from a travel agency that chartered the boat from the plaintiffs. *Id.* at 172-74. The plaintiffs argued that this was not providing service to the "public." *Id.* at 174. The Court of Appeals

¹² Aside from "motor transportation business" and "urban transportation business," former RCW 82.16.010 uses the term "for hire" in the following definitions: gas distribution business, light and power business, network telephone service, railroad business, telegraph business, tugboat business, and water distribution business.

declined to adopt the plaintiffs' view on the grounds that the plaintiffs still provided service to a sizable segment of the general public. *Id.* at 182-83. Now, however, similar parties could cite the Court of Appeals' Opinion in this case and successfully argue that their proposal was not "for the public use for hire," because the passengers would not be paying for the transport themselves.

Further, if the Court of Appeals' definition of "for hire" stands, all charter bus operators will be able to file a claim for a refund with the Department for overpaid PUT. The term "for hire" under RCW 82.16.010 is now limited to situations where passengers pay their own way, which directly excludes the services provided by charter bus operators that have historically been subject to PUT. *See* A-10; Det. No. 05-0288, 26 WTD 143 (2007), CP 96; CP 303. In addition to companies that operate charter buses, this ruling will impact the taxation of companies that operate under contracts with public agencies to provide transit services, and potentially even taxicab and limousine companies that transport passengers on corporate accounts.¹³

The Court of Appeals' Opinion could set a far-reaching precedent that opens the door for administrative refund actions and litigants in a wide variety of cases to argue that the once familiar legal meaning of "for hire" is actually a mutable term. But even further, the Court of Appeals'

¹³ *See, e.g.*, City of Selah, RFP for Transit Services (Sept. 29, 2017), <https://selahwa.gov/blog/2017/09/29/rfp-transit-services/> (requesting proposals for bus transit service to be provided without charging a fare) (*see* Appendix C); King County Auditor's Office, Access Paratransit: Action Needed to Address Cost, Quality, and Equity (June 13, 2017) (*see* Appendix D).

improper statutory interpretation, in a published opinion, will cast doubt and confusion as to whether a strained reading of a legal dictionary definition, may supplant the established common law definition of familiar legal terms in all statutes. These are issues of substantial public interest, justifying review by this Court.

D. The Court of Appeals Improperly Deferred to an Interpretation That Conflicted with the Department's Prior Administration of the Statute.

Even if the term “for hire” was ambiguous, the Court of Appeals’ unquestioning deference to the Department’s interpretation, without any analysis as to whether it provided a reasonable resolution of the ambiguity in the statute, conflicts with this Court’s decision in *Association of Washington Business v. Dep’t of Revenue*, 155 Wn.2d 430, 447, 120 P.3d 430 (2005), and presents an issue of substantial public importance regarding the proper deference given to interpretive rules.

Interpretive rules, such as Rule 180, are only entitled to deference to the extent they provide a persuasive explanation of the statute. *Ass’n of Wash. Bus.*, 155 Wn.2d at 447 (interpretive rules “are not binding on the courts and are afforded no deference other than the power of persuasion”). Accordingly, the court cannot automatically defer to an agency interpretation merely because the language of the statute is ambiguous. The court must determine if the agency’s position advances a persuasive resolution of that ambiguity. Otherwise, the court has not met its duty to ensure that the rule accurately reflects the underlying statute. *See id.* at 448

(interpretive rules only have effect on public to the extent they accurately reflect the statutory authority).

The Court of Appeals' decision talks a great deal about the history of Rule 180, but never discusses why the Department's interpretation of "for hire" is a persuasive reading of the current statutory language. A-13 - A-17. The lack of analysis is especially troubling in this case.

First, school buses were expressly excluded under the pre-1955 statutory framework. However, the Legislature dramatically expanded the "motor transportation" definition in 1955 by removing the express exclusions. While Rule 180 was amended to reflect this change for taxicabs, which were previously excluded for the same reason as school buses, there is no indication that the Department made a fresh evaluation of whether school buses were excluded under the new language. Thus, the Court of Appeals deferred to a bald assertion in the rule unsupported by a meaningful analysis or explanation of the statutory foundation.

Second, the Court of Appeals failed to address the language in the prior versions of Rule 180 that contradicts the Department's position in this case. The Court of Appeals noted the importance of this language:

The Tax Commission contemporaneously promulgated amended rules that included various revisions to reflect the legislative amendments. Wash. State Tax Comm'n Rules & Regulations (1943). Of import, Rule 180 included a "NOTE" that "[p]ersons operating school buses for hire are taxable under the classification of 'Service and Other Activities' of Title II (Business and Occupation Tax) at the rate of 1/2 of 1% of gross income." Id.

A-15 (emphasis added). This shows that the Department itself historically viewed school buses as being operated "for hire," directly contradicting

the Department's arguments in this case. Yet, the Court of Appeals failed to address how this contemporaneous interpretation of the statute can be squared with the Department's new interpretation.

Third, the Court of Appeals did not address First Student's arguments that the Department's reading of "for hire" was inconsistent with the Department's long-standing taxation of companies that provide transportation without direct payment from the passengers. A-13. In order to determine if the Department's interpretation is entitled to deference, the Court of Appeals' analysis must examine whether the current interpretation is consistent with prior administrative practices. *See Skamania Cty. v. Columbia River Gorge Comm'n*, 144 Wn.2d 30, 43, 26 P.3d 241 (2001) ("[a]n agency's interpretation of an ambiguous statute is not entitled to deference if the interpretation is entirely inconsistent with the agency's prior administrative practice.").

Fourth, the logic and consistency of the Department's position in this case are so tenuous that the Department could not explain how the school bus exclusion in Rule 180 was consistent with the statute during a multi-year administrative process. Agency interpretations of laws they administer are entitled to deference because the agency has "special knowledge and expertise." *Overlake Hosp. Ass' v. Dep't of Health of State of Wash.*, 170 Wn.2d 43, 50, 239 P.3d 1095 (2010). If the school bus exclusion really were an accurate and persuasive reading of the current language of the statute, and not a historical artifact, then the agency with "special knowledge and expertise" should be able to provide this

explanation during a multi-year administrative process and not have to wait until it is filing a response to a summary judgment motion years later.

As noted above, interpretive rules are not binding on the courts. Therefore, the court must analyze whether the rule is consistent with the statute. Here, the Court of Appeals strained to find an ambiguity in the statute and then mechanically applied the maxim that courts defer to agency interpretations of ambiguous statutes. There was no analysis of whether that deference was appropriate in this case, or even an acknowledgement that deference does not equate to unquestioning adoption of the agency's position.

The facts of this case demonstrate that there must be some limits to the deference given to an agency's interpretation of a statute, even if the statute is ambiguous. The Court should take review to clarify the duty of a court to determine the correct interpretation of an ambiguous statute and the proper scope of the deference given to an agency's interpretation of an ambiguous statute.

VI. CONCLUSION

This Court should accept review, reverse the Court of Appeals decision, and reverse the summary judgment granted to the Department.

DATED: December 27, 2018

STOEL RIVES LLP



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Attorneys for Petitioner

CERTIFICATE OF SERVICE

I certify that on December 27, 2018, I caused a copy of the foregoing **Appellant's Petition for Review** to be served by email and U.S. Mail upon following counsel of record:

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DATED: December 27, 2018, at Seattle, Washington.



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APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

November 27, 2018

FIRST STUDENT, INC.,

Appellant,

v.

STATE OF WASHINGTON, DEPARTMENT
OF REVENUE,

Respondent.

No. 49979-7-II

ORDER GRANTING MOTION FOR
RECONSIDERATION AND
AMENDING OPINION

The Respondent filed a motion for reconsideration of the opinion filed on August 14, 2018. After review, the court find it necessary to amend the opinion, therefore it is hereby

ORDERED that the Respondent's motion for reconsideration is granted; it is further

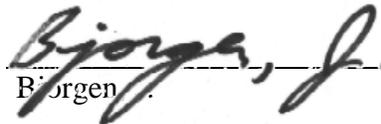
ORDERED that the opinion shall be amended as follows:

Page 1, footnote 1, shall be deleted.

IT IS SO ORDERED.

Jjs.: Bjorgen, Worswick, Sutton

FOR THE COURT:


Bjorgen

We concur:


Worswick, P.J.


Sutton, J.

August 14, 2018

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

FIRST STUDENT, INC.,

Appellant,

v.

STATE OF WASHINGTON, DEPARTMENT
OF REVENUE,

Respondent.

No. 49979-7-II

PUBLISHED OPINION

BJORGEN, J. — First Student Inc., a business providing transportation services, appeals from an order denying its motion for summary judgment, granting the Department of Revenue (Department) summary judgment, and dismissing its excise tax refund action. In its order, the superior court ruled that First Student’s income from transporting students under contracts with various school districts is properly taxed under the Business and Occupation (B&O) tax, but not the Public Utility Tax (PUT).

First Student claims that it provides transportation services to school districts on a “for hire” basis and, therefore, should be taxable under the motor and urban transportation business PUT classifications instead of the B&O tax classification.¹ First Student argues that the term “for hire” is plain on its face and unambiguously means “services provided for compensation,” bringing its services under the PUT. The Department interprets the term “for hire” by excise tax

¹ First Student would be taxed at a lower rate under the PUT.

rule to provide that school bus operators are taxable under the “other business or service activities” B&O tax classification. This appeal, therefore, revolves around the meaning of “for hire” contained in Title 82 RCW, a term not defined by the statute.

Concluding that the term “for hire” is ambiguous, and the Department’s interpretation is entitled to great weight, we affirm.

FACTS

First Student provides transportation services to organizations, including school districts, youth groups, summer camps, and churches, as well as other private parties.² Between 1990 and 2014, First Student regularly reported on the B&O tax form the income it received for providing transportation services to school districts under the “other business or service activities” tax classification. Clerk’s Papers (CP) at 110-11.

On September 6, 2013, however, First Student requested a letter ruling from the Department regarding the correct tax classification for the revenue it received from its contracts with school districts. First Student explained that it owns and operates school buses and that its customers are primarily various school districts in Washington, including the Seattle School District. First Student argued that the Department should tax it under the PUT classifications, not the B&O tax classification, because its “school buses are motor propelled vehicles that convey students” and “are passenger vehicles for public use that convey students.” CP at 128-

² In 2014, for example, First Student entered into a contract to provide school bus services for the Vashon Island School District. In that contract, First Student agreed to “operate [school] transportation services” and “furnish labor, school buses and bus maintenance, and materials and supplies as required to provide the District with transportation service.” Clerk’s Papers (CP) at 35. To receive compensation, First Student agreed to provide the Vashon Island School District with an invoice for the services rendered during the preceding month. The contract’s service requirements state that “[t]he District reserves the right to approve each route and route stop, and to determine which students are to be transported and the manner of transportation.” CP at 38.

29. The Department issued a letter ruling declining to change its longstanding interpretation that school bus operators are subject to the “other business or service activities” B&O tax classification. CP at 134-35.

First Student filed an appeal with the Department’s Appeals Division seeking reversal of the Department’s letter ruling. While the appeal was pending, First Student submitted three administrative refund requests to the Department and sought to reclassify its income reported under the “other business or service activities” B&O tax classification to the “motor transportation business” and “urban transportation business” PUT classifications. The refund request also sought the difference in taxes paid resulting from the Department’s alleged incorrect tax classification. The Department denied the administrative refund requests, and First Student submitted a supplemental petition to the Department’s Appeals Division appealing the refund request denials. The Appeals Division consolidated the refund requests into First Student’s appeal of the letter ruling. After review, the Appeals Division issued a determination that denied First Student’s consolidated appeal.

In accord with RCW 82.32.180, First Student then filed a notice of appeal and complaint for refund of excise taxes with the Thurston County Superior Court. First Student filed a motion for summary judgment, claiming its transportation services were taxable under the PUT classifications but exempt from B&O taxation under former RCW 82.04.310 (2010). First Student also requested a refund of the B&O taxes it paid between December 1, 2008 and December 31, 2014. In its response to First Student’s motion for summary judgment, the Department requested that the superior court grant it judgment as a matter of law, arguing that the B&O tax properly applies to revenues received by First Student for providing bus transportation services to school districts.

In response to First Student’s requests for admission, the Department admitted that “during the Refund Period the vehicles operated by First Student were used to transport people.” CP at 26. The Department also admitted that “First Student operates vehicles with passengers,” but did not “admit that the vehicles were ‘passenger vehicles’ because the term is not defined. Washington law distinguishes between buses and ‘passenger vehicles.’” CP at 26. The Department also admitted that “during the Refund Period First Student received compensation for transporting passengers” and that “during the Refund Period the students transported by First Student . . . were passengers.” CP at 27. The Department denied that “during the Refund Period First Student transported persons for hire.” CP at 27.

The superior court found that there were no genuine issues of material fact. The superior court concluded that the Department was entitled to judgment as a matter of law because First Student’s income from transporting students under its contracts with school districts was properly taxed under the B&O tax classification “other business or service activities,” former RCW 82.04.290 (2013), not under the PUT. Accordingly, the superior court denied First Student’s motion for summary judgment and granted summary judgment in the Department’s favor. The court dismissed First Student’s tax refund claim with prejudice.

First Student appeals.

ANALYSIS

I. SUMMARY JUDGMENT

First Student argues that the superior court erred when it denied First Student’s motion for summary judgment, granted summary judgment to the Department, and dismissed First Student’s excise tax refund action. We disagree.

A. Standard of Review

We review questions of law on appeal from summary judgment de novo. *Avnet, Inc. v. Dep’t of Revenue*, 187 Wn.2d 44, 49, 384 P.3d 571 (2016). Summary judgment is appropriate only if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c). Because there appear to be no genuine issues of material fact in this case, we review only whether the facts require upholding the summary judgment as a matter of law. *Fahn v. Cowlitz County*, 93 Wn.2d 368, 373, 610 P.2d 857 (1980).

“In a tax refund case, we review legal conclusions de novo.” *Tesoro Ref. & Mktg. Co. v. Dep’t of Revenue*, 164 Wn.2d 310, 316, 190 P.3d 28 (2008). We also review de novo matters of statutory interpretation and may substitute our interpretation of the law for that of the agency. *Port of Seattle v. Pollution Control Hr’gs Bd.*, 151 Wn.2d 568, 593, 90 P.3d 659 (2004).

B. Current Department of Revenue Tax Classification of Businesses Operating School Buses

The state of Washington imposes the B&O tax “for the act or privilege of engaging in business” within the state. Former RCW 82.04.220(1) (2011). Business activities other than those that are specifically taxable elsewhere in chapter 82.04 RCW are subject to the “other business or service activities” B&O tax classification. Former RCW 82.04.290(2).

Former RCW 82.04.310 provides that the B&O tax “does not apply to any person in respect to a business activity with respect to which tax liability is specifically imposed under the provisions of chapter 82.16 RCW.”

The PUT is imposed under chapter 82.16 RCW, and applies to motor transportation and urban transportation businesses, among others. Former RCW 82.16.020(1)(d), (f) (2013).

Therefore, if First Student’s business activity constitutes either motor transportation business or urban transportation business, then the B&O tax does not apply.

“Motor transportation business” is defined as:

[T]he business (except urban transportation business) of operating any motor propelled vehicle by which persons or property of others are conveyed *for hire*, and includes, but is not limited to, the operation of any motor propelled vehicle as an auto transportation company (except urban transportation business), common carrier, or contract carrier as defined by RCW 81.68.010 and 81.80.010.

Former RCW 82.16.010(6) (2010) (emphasis added).

“Urban transportation business” is defined as:

[T]he business of operating any vehicle for public use in the conveyance of persons or property *for hire*, insofar as (a) operating entirely within the corporate limits of any city or town, or within five miles of the corporate limits thereof, or (b) operating entirely within and between cities and towns whose corporate limits are not more than five miles apart or within five miles of the corporate limits of either thereof. Included herein, but without limiting the scope hereof, is the business of operating passenger vehicles of every type.

Former RCW 82.16.010(12) (emphasis added).

The Department adopted WAC Rule 180 to administer this statute. Rule 180 provides, in part:

(5) What does “motor transportation” and “urban transportation” include? Motor and urban transportation include the business of operating motor-driven vehicles, on public roads, used in transporting persons or property belonging to others, on a *for-hire* basis. These terms include the business of:

(a) Operating taxicabs, armored cars, and contract mail delivery vehicles, *but do not include* the businesses of operating auto wreckers or towing vehicles (taxable as sales at retail under RCW 82.04.050), *school buses*, ambulances, nor the collection and disposal of solid waste (taxable under the service and other activities B&O tax classification).

WAC 458-20-180 (emphasis added). Consequently, the Department’s current excise tax rules specifically exclude businesses operating school buses from the PUT classifications.

On the other hand, WAC Rule 224 specifically provides that income derived from operating school buses is subject to the “other business or service activities” B&O tax. WAC 458-20-224. Rule 224(2) provides, in part:

Persons engaged in any business activity, other than or in addition to those for which a specific rate is provided in the statute, are taxable under a classification known as *service and other business activities*, and so designated upon return forms. In general, it includes persons rendering professional or personal services to persons (as distinguished from services rendered to personal property of persons) such as . . . *school bus operators*.

(Emphasis added.)

Therefore, under the Department’s current excise tax rules, businesses operating school buses are taxable under the “other business or service activities” B&O tax classification. The question before us is whether these rules are consistent with the governing statutes.

C. Plain Meaning and Statutory Context

First Student argues that the plain meaning of the statutory term “for hire” is unambiguous. For the following reasons we conclude the term “for hire,” as used in former RCW 82.16.010, is ambiguous.

If possible, we derive legislative intent solely from the plain language enacted by the legislature, considering the text of the provision in question, the context of the statute in which the provision is found, related provisions, amendments to the provision, and the statutory scheme as a whole. *Cashmere Valley Bank v. Dep’t of Revenue*, 181 Wn.2d 622, 631, 334 P.3d 1100

(2014). Where statutory terms are undefined, we will commonly resort to dictionaries to ascertain the plain meaning of statutory language. *HomeStreet, Inc. v. Dep't of Revenue*, 166 Wn.2d 444, 451, 210 P.3d 297 (2009). When statutory language is clear, we assume that the legislature “meant exactly what it said” and apply the plain language of the statute. *Duke v. Boyd*, 133 Wn.2d 80, 87, 942 P.2d 351 (1997).

If, after consideration of all relevant statutory language, “the statute remains susceptible to more than one reasonable meaning,” “the statute is ambiguous and it is appropriate to resort to aids to construction, including legislative history.” *Campbell & Gwinn, LLC v. Dep't of Ecology*, 146 Wn.2d 1, 12, 43 P.3d 4 (2002). We neither construe statutory language to reach absurd or strained consequences nor question the wisdom of a statute, even where its results seem harsh. *Stroh Brewery Co. v. Dep't of Revenue*, 104 Wn. App. 235, 239, 15 P.3d 692 (2001). “In interpreting and construing a statute, we must give effect to all of the language, rendering no portion meaningless or superfluous.” *Id.* at 239-40.

This case hinges on the meaning of “for hire” as used in former RCW 82.16.010(6) and (12). In 1943, the legislature amended the PUT definition for “urban transportation business” and added the term “for hire.” LAWS OF 1943, ch. 156, § 10A(j)(2). In 1955, the legislature likewise amended the PUT definition for “highway [now ‘motor’] transportation business” and again added the term “for hire.” LAWS OF 1955, ch. 389, § 28. The legislature has never defined the term “for hire” used throughout former RCW 82.16.010.

When a term has a well-accepted, ordinary meaning, a general purpose dictionary may be consulted to establish the term’s definition. *City of Spokane ex rel. Wastewater Mgmt. Dep't v. Dep't of Revenue*, 145 Wn.2d 445, 454, 38 P.3d 1010 (2002). However, when a technical term is used in its technical field, the term should be given its technical meaning by using a technical

rather than a general purpose dictionary to determine the term's definition. *Id.* at 454. In this case, it is unclear whether the legislature intended the term "for hire" to be given its ordinary or technical, legal meaning.

First Student argues that the plain meaning of the term "'for hire'" is "'available for use or service in return for payment.'" Br. of Appellant at 10 (quoting WEBSTER'S THIRD NEW INT'L DICTIONARY 1072 (3d ed.) (2002)).³ We generally refrain, though, from applying modern definitions to time-worn statutes and will attempt to glean a definition from a dictionary in print at the time the legislature amended the statute. *See League of Educ. Voters v. State*, 176 Wn.2d 808, 821, 295 P.3d 743 (2013) ("The court gives the words 'their common and ordinary meaning, as determined at the time they were drafted.'") (quoting *Wash. Water Jet Workers Ass'n v. Yarbrough*, 151 Wn.2d 470, 477, 90 P.3d 42 (2004)). The general purpose dictionaries we reviewed from the time period do not have a plain language definition of the phrase "for hire"; instead, they contain separate definitions of the terms "for" and "hire."

There are numerous definitions of the word "for," each of which depends on context. *Webster's Third New International Dictionary* 984 (2d ed.) (1954), defined "for" in relevant part, as follows:

2. Indicating the end with reference to which anything acts[,] serves, or is done, as: . . . a preparation towards, against, or in view of; having as goal or object; in order to be, become, or act as; to serve as, or as part of; to supply the need of; in order to effect; as, one dresses *for* dinner; he has enlisted *for* a soldier; built *for* a church; only wild game *for* food; he labored *for* the good of humanity.

Webster's Third New International Dictionary 1182 (2d ed.) (1954) defined "hire" as follows:

³ First Student cites *Webster's Third New International Dictionary* from the year 2000 without providing the edition; however, we were only able to verify the definition provided by First Student in the edition we cited here.

1. To engage or purchase the labor or services of (anyone) for compensation or wages; as, to *hire* a servant, an agent, or an advocate. 2. To procure (any chattel or estate) from another person, for temporary use, for a compensation or equivalent, as, to *hire* a farm for a year; to *hire* money. 3. To grant the temporary use of, for compensation; to engage to give the service of, for a price; to let; lease.

Thus, the ordinary meaning of the term “for hire” at the time the statute was drafted could be understood as effecting the engagement or purchase of labor or services for compensation or wages.

The Department argues we should give the term “for hire” its familiar legal (or technical) meaning, citing *Cashmere*, 181 Wn.2d at 634. In 1951, *Black’s Law Dictionary* defined the term “for hire or reward” as follows:

[T]o transport passengers or property of other persons than owner or operator of the vehicle for a reward or stipend, to be paid by such passengers, or persons for whom such property is transported, to owner or operator. *Michigan Consol. Gas Co. v. Sohio Petroleum Co.*, 32 N.W.2d 353[,] 321 Mich. 102 [1948].

BLACK’S LAW DICTIONARY 773 (4th ed.) (1951); *see also* BLACK’S LAW DICTIONARY 773 (4th ed.) (1957) (definition unchanged); 17A THOMPSON-WEST, WORDS & PHRASES 37 (Permanent Ed.) (2004) (providing the same definition).

A fair reading of this particular definition makes one facet of the term “for hire” apparent: any compensation or remuneration (*i.e.*, “reward or stipend”) paid to “transport passengers or property” was “to be paid by such passengers.” In other words, the legal (or technical) meaning of the term “for hire” at the time the statute was drafted contemplated that the “passengers” would be directly responsible for any compensation paid.

In considering the plain language of former RCW 82.16.010, we must also evaluate the context of the statute in which the provision is found, related provisions, amendments to the provision, and the statutory scheme as a whole. *Cashmere*, 181 Wn.2d at 631.

First Student argues that the Department’s interpretation of the term “for hire” conflicts with the statutory context and its own administration of PUT. It maintains that “[w]hen the same words are used in different parts of the same statute, it is presumed that the Legislature intended that the words have the same meaning,” citing *Timberline Air Service, Inc. v. Bell Helicopter- Textron, Inc.*, 125 Wn.2d 305, 313, 884 P.2d 920 (1994). Br. of Appellant at 21. It highlights that the term “for hire” is used or referenced multiple times throughout former RCW 82.16.010 and the term should be read in a manner that consistently applies to each definition of businesses subject to the PUT. For example, First Student argues it would be absurd to apply the legal (or technical) definition of “for hire” urged by the Department to a “network telephone service.” Br. of Appellant at 22-23.

The PUT definitions comprise a variety of public utility businesses, most of which do not involve transport of persons or property.⁴ Network telephone service, for example, is defined by former RCW 82.16.010(7)(b)(ii) as

the providing by any person of access to a telephone network, telephone network switching service, toll service, or coin telephone services, or the providing of telephonic, video, data, or similar communication or transmission *for hire*, via a telephone network, toll line or channel, cable, microwave, or similar communication or transmission system.

(Emphasis added.) If we accept the Department’s view of the definition of the term “for hire” in the context of transportation services, then network telephone service would be subject to the PUT as a “for hire” service only if each user paid for each use of the service when it occurred.

⁴ Aside from “motor transportation business” and “urban transportation business,” former RCW 82.16.010 uses the term “for hire” in the following definitions: gas distribution business; light and power business; network telephone service; railroad business; telegraph business; tugboat business; and water distribution business.

This is incongruous with customary notions of “network telephone service,” thus supporting First Student’s position.

The Department urges that its interpretation that transportation provided by school bus operators is not provided on a “for hire” basis can be harmonized with the other related definitions in former RCW 82.16.010. The Department cites *American Legion Post #149 v. Dep’t of Health*, 164 Wn.2d 570, 585, 192 P.3d 306 (2008), for the proposition that statutes are to be read together, whenever possible, to achieve a harmonious statutory scheme and to avoid an interpretation that creates conflicts between different *related* provisions. The Department argues its interpretation does not create conflict between different related provisions because the legislature’s other uses of the term “for hire” involve public utilities unrelated to the transport of persons or property. The Department asserts that the only other definition in former RCW 82.16.010 that involves the transport of persons or property is “railroad business.” “Railroad business” means the business of operating any railroad, by whatever power operated, for public use in the conveyance of persons or property for hire. Former RCW 82.16.010(8). The Department claims there is no inconsistency in applying the interpretation that “for hire” requires the payment “to be paid by such passengers.” Br. of Resp’t at 29. The Department concludes its interpretation of the term “for hire” as applied to the transport of person or property is wholly consistent with related provisions in former RCW 82.16.010.

The Department is correct that the term “for hire” is applied to a miscellany of enterprises in former RCW 82.16.010. By their nature, these enterprises are not all equally amenable to requiring payment for each use. Thus, reading “for hire” in the context of telephone service not to require payment for each separate use is not necessarily inconsistent with reading “for hire” to require payment for each use from bus passengers. Still, a statute must be read in light of its

various provisions, rather than in a piecemeal fashion, *American Legion*, 164 Wn.2d at 585, and First Student is correct that varying interpretations of the same term, “for hire,” in the same statute, arguably do not result in harmonious construction.

Ultimately, the question is whether the legislature intended to draw distinctions in the use of the term “for hire” among the various definitions contained in former RCW 82.16.010; that is, whether the legislature intended the meaning of “for hire” to be mutable depending on the specific business classification in question. Review of the plain meaning and statutory context of former RCW 82.16.010 leads us to one conclusion: the statute remains susceptible of more than one reasonable meaning. Accordingly, we hold that the term “for hire” is ambiguous and turn to the resolution of that ambiguity.^{5, 6, 7}

D. Agency Deference, Contemporaneous Construction, and Legislative Acquiescence

Simply put, First Student argues we should not accord deference to the Department’s exclusion of school buses under WAC Rule 180. We disagree.

Where a statute is ambiguous, but within the realm of agency expertise, we will accord the agency’s interpretation great weight. *Port of Seattle*, 151 Wn.2d at 593. Deference to an

⁵ The Department argues that the legislature distinguishes the term “for hire” and “for compensation” and points us to Title 46 RCW. Br. of Resp’t. at 34-35. First Student argues Title 46 RCW is irrelevant to this case but, in any event, consistent with its construction of the term “for hire.” Because this statute is unrelated to the statutory scheme at issue in this case, we do not address these arguments.

⁶ First Student argues that the Department’s construction of the term “for hire” would exclude virtually all charter bus operators from the motor and urban transportation business definitions. The Department argues its interpretation is consistent with the statutory context as applied to charter bus transportation. These arguments do not affect our conclusion that the term “for hire” is ambiguous.

⁷ The Department points us to out-of-state authority to support its construction that school bus transportation is not provided “for hire.” We need not turn to non-binding, out-of-state authority to resolve the matter before us.

agency's interpretation of its own regulations is appropriate. *Id.* More specifically, because the Department is the agency designated by the legislature to “[a]ssess and collect all taxes and administer all programs relating to taxes,” former RCW 82.01.060 (2011), our Supreme Court has held that the Department's interpretation of relevant statutes and regulations is entitled to great weight. *See id.*; *see also Pringle v. State*, 77 Wn.2d 569, 573, 464 P.2d 425 (1970). *Pringle* held that “interpretive rules and regulations promulgated by the Tax Commission are entitled to great weight in resolving doubtful meanings of taxing laws.” 77 Wn.2d at 573.

In interpreting a statute, we also accord great weight to the contemporaneous construction placed on it by officials charged with its enforcement, particularly where the legislature has silently acquiesced in that construction over a long period of time. *In re Sehome Park Care Ctr., Inc.*, 127 Wn.2d 774, 780, 903 P.2d 443 (1995). The repeated reenactment of a statute, without repudiating a prior administrative interpretation of it, provides some evidence of legislative acquiescence, but it is not wholly conclusive. *Pringle*, 77 Wn.2d at 573. In such cases, legislative silence is only a factor to be considered. *Id.*

Through multiple amendments to the excise tax statutes over many decades, the Department has consistently interpreted the law to subject contracted school bus operations to the B&O tax. The legislature has never overruled that interpretation. The Revenue Act of 1935, Laws of 1935, chapter 180 (Act) provides the foundation of our contemporary tax code.⁸ The

⁸ Tax Commission implementing regulations related to school bus operations can be traced as far back as 1934. For example, one Tax Commission regulation classified “[t]he business of transporting school children under contract with school districts” as “service or other business.” CP at 330 (WASH. STATE TAX COMM’N, Business Tax Regs., art. 294.12 (1934)). The classification included persons operating school buses in situations where the school district became the lessee of the vehicle under an agreement and where the owner of the vehicle entered into a contract with a school district to provide services. It similarly applied to “certified or other licensed motor vehicle carriers operating, under contract, buses, carrying school children exclusively.” *Id.*

Act provided for the levy and collection of a tax and excise upon the act or privilege of engaging in business activities in the state of Washington, and included a title called “Business and Occupation Tax.” LAWS OF 1935, ch. 180, §§ 4-15. The Act also included a title called “Public Utility Tax.” LAWS OF 1935, ch. 180, §§ 36-37.

In 1936, the Tax Commission promulgated contemporaneous rules implementing the Act. WASH. STATE TAX COMM’N RULES & REGULATIONS (1936). As relevant, WAC Rule 180 governed highway transportation companies and described the applicable tax classifications for various business activities. *Id.* at 106. The PUT classification applied to “all revenue derived from the carriage of passengers or freight, including baggage, and the revenue derived from pick-up and delivery services rendered.” *Id.* The B&O “business and other service activities” tax classification applied to “contracts with schools districts to transport school children,” among other matters. *Id.*

In 1943, the legislature amended the PUT “urban transportation business” and “highway transportation business” definitions. LAWS OF 1943, ch. 156, § 10A(j)(2), (i). The Tax Commission contemporaneously promulgated amended rules that included various revisions to reflect the legislative amendments. WASH. STATE TAX COMM’N RULES & REGULATIONS (1943). Of import, Rule 180 included a “NOTE” that “[p]ersons operating school buses for hire are taxable under the classification of ‘Service and Other Activities’ of Title II (Business and Occupation Tax) at the rate of 1/2 of 1% of gross income.” *Id.*

In 1949, the legislature again amended the PUT “urban transportation business” and “highway transportation business” definitions. LAWS OF 1949, ch. 228, § 10(i), (j). The Tax Commission did not revise Rule 180 until 1954, when it deleted the “NOTE” contained in the 1943 rule above and replaced it with the following language:

The terms “highway transportation” and “urban transportation” *do not include the business of operating school buses* or ambulances, the collection and disposal of refuse and garbage, or hauling for hire exclusively over public roads. Gross income from *these business must be reported under the “Service and Other Activities” classifications of the Business and Occupation Tax.*

WASH. STATE TAX COMM’N RULES & REGULATIONS, Rule 180 (1954) (emphasis added).

In 1955, the legislature again amended the PUT “highway transportation business” definition. LAWS OF 1955, ch. 389, § 28(9). Instead of including only motor propelled vehicles operating as an “auto transportation company, common carrier or contract carrier,” the term as amended included motor propelled vehicles “by which persons or property are conveyed for hire.” *Id.* The statute continued to reference “the operation of any motor propelled vehicle [operated] as an auto transportation company, . . . common carrier or contract carrier” as illustrative examples. *Id.* The legislature made no substantive changes to the definition of “urban transportation business.”

Once again, the Tax Commission contemporaneously promulgated amended rules that included various revisions to reflect the legislative amendments. WASH. STATE TAX COMM’N RULES & REGULATIONS, Rule 180 (1956). Rule 180 provided, in pertinent part, as follows:

The terms [highway transportation and urban transportation] do not include the business of operating auto wreckers or towing vehicles, *school buses*, ambulances, nor the collection and disposal of refuse and garbage. Gross income from these business must be reported under the “Service and Other Activities” classifications of the Business and Occupation Tax.

WASH. STATE TAX COMM’N RULES & REGULATIONS, Rule 180 (1956) (emphasis added). In addition, the Tax Commission revised Rule 224 to include “school bus operators” in its list of “persons rendering professional or personal services to persons” that are taxable under the “other business or service activities” B&O tax classification. *Id.* Since 1956, Rule 180 (WAC 458-220-180(5)) and Rule 224 (WAC 458-20-224(2)) remain largely unchanged.

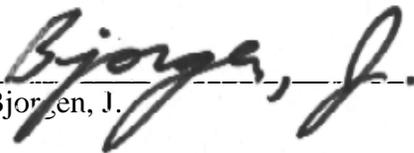
Between 1956 and 2015, the legislature amended the PUT definitions' section 18 times, but none of the amendments materially altered the definitions in this case. Two of the amendments resulted in minor substantive alterations to the definition of "highway transportation business." In 1961, the legislature replaced the term "highway transportation business" with "motor transportation business" and excluded from its application the transportation of logs or other forest products exclusively upon private roads or private highways. LAWS OF 1961, ch. 293, § 12. In 2015, the legislature amended the term "motor transportation" to exclude the business of "log transportation," regardless of whether on private roads or highways. LAWS OF 2015, 3d Spec. Sess., ch. 6, § 702. Although the legislature enacted various changes to the relevant section of the statute, it has never disturbed the agency's interpretation that school bus operators are taxable under the "other business or service activities" B&O tax classification.

Interpretive rules and regulations promulgated by the Department are entitled to great weight in resolving doubtful meanings of taxing laws, *Pringle*, 77 Wn.2d at 573, especially where the legislature has silently acquiesced in that construction over a long period of time. *In re Sehome Park*, 127 Wn.2d at 778-81. By 2013, the legislature, the Department, and taxpayers had nearly 80 years of experience with the statute in general and nearly 60 years of experience with the specific words at issue in this case. During that period of time, the Department and its predecessor commission interpreted the statutory words by rule to provide that school bus operators are taxable under the "other business or service activities" B&O tax classification. Also during that time, the legislature did nothing to upset the agency's approach. We decline to disturb that interpretation.

With that, we hold that the superior court did not err when it denied First Student's motion for summary judgment, granted summary judgment to the Department, and dismissed First Student's excise tax refund action.

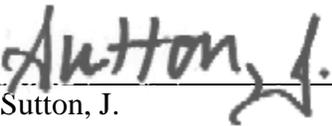
CONCLUSION

We affirm the superior court's order denying First Student's motion for summary judgment, granting summary judgment to the Department, and dismissing First Student's excise tax refund action.


Bjorgen, J.

We concur:


Worswick, P.J.


Sutton, J.

APPENDIX B

October 5, 2018

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

FIRST STUDENT, INC.,

Appellant,

v.

STATE OF WASHINGTON, DEPARTMENT
OF REVENUE,

Respondent.

No. 49979-7-II

ORDER DENYING FIRST STUDENT'S
MOTION FOR RECONSIDERATION

The appellant has filed a motion for reconsideration of the opinion filed on August 14, 2018. After review, it is hereby

ORDERED that First Student's motion for reconsideration is denied.

Jjs.: Bjorgen, Worswick, Sutton

FOR THE COURT:


Bjorgen

APPENDIX C



RFP for Transit Services

September 29, 2017

By apotter (<https://selahwa.gov/blog/author/apotter/>)

REQUEST FOR PROPOSALS FOR TRANSIT SERVICES

The City of Selah is soliciting Requests for Qualifications and Proposals for bus transit service as now established. Proposals must include fixed routes, fixed schedules, and dial-a-ride services comparable to the service that the City currently receives. Informational materials regarding the current level of service can be obtained from the City of Selah by calling Director of Public Works Joe Henne at (509) 698-7365.

Proposals must be based on the provision of transit services within the City of Selah without any provision for charging a fare. The City of Selah believes that smaller buses better meet the city's ridership needs, but buses must be able to accommodate at least 14 passengers and be fully ADA compliant. Seatbelts and three-point belts are required for dial-a-ride services. All new vehicle equipment purchases on fixed-route buses must have seatbelts for all seats not just the wheel chair location. Dial-a-Ride service shall be provided for all transit service hours plus a five-hour period on Sundays. Proposals should include an explanation of how the level of service needed by the ridership will be maintained. Proposers will be responsible for providing all equipment, vehicles with the City of Selah Transit System logo and wording, manpower, and administration including keeping and providing accurate records, reports, and invoicing the City on a monthly basis. The City retains the right to inspect all system records at any time. The City requires the contractor to provide insurance coverage, The Contractor shall purchase and maintain a certificate of insurance; the contract requires \$5,000,000 CGL and \$5,000,000 CAL. Proposers will be responsible for providing printed schedules updated at least annually, maps, and timetables for the ridership. A separate optional proposal shall provide the cost of outfitting fixed-route buses with GIS to allow web-based tracking of actual bus location. In addition, proposers will be required to periodically analyze their level of service and meet with the City to review service levels and any modifications that might be appropriate for efficiency and quality. Proposers will be responsible for ensuring compliance with all applicable federal and state regulations and reporting requirements such as but not limited to quarterly and annual reports, transit development plan, operator training, and rider safety requirements associated with the provision of transit services within the City. The successful proposer will also be required to provide a representative for the Yakima COG transit coordinating committee.

The City of Selah assumes no obligation of any kind for expenses incurred by any respondent to this solicitation. The City reserves the right to reject any and all submittals. The State of Washington fair labor practices and non-discrimination policies shall apply. All State and Federal regulations regarding transit service shall apply. Please submit eight (8) bound proposals to: Dale Novobielski, Clerk/Treasurer, 115 W Naches, Selah, Washington 98942. Submittals should be clearly marked "Request for Proposals for Transit Services" and submitted no later than 3:00 p.m. October 31, 2017.

News

Air Quality Alert (<https://selahwa.gov/blog/2018/09/07/air-quality-alert/>)

September 7, 2018

Be advised that air quality around Yakima is currently listed ...[Read More »](#)

(<https://selahwa.gov/blog/2018/09/07/air-quality-alert/>)

Burn Ban removed (<https://selahwa.gov/blog/2018/08/27/burn-ban-removed-2/>)

August 27, 2018

The Stage 1 burn ban for Yakima County has been ...[Read More »](#) (<https://selahwa.gov/blog/2018/08/27/burn-ban-removed-2/>)

Public Hearing on Selah Transit Development Plan

(<https://selahwa.gov/blog/2018/08/21/public-hearing-on-selah-transit-development-plam/>)

August 21, 2018

Notice IS HEREBY GIVEN that the Selah City Council will ...[Read More »](#)

(<https://selahwa.gov/blog/2018/08/21/public-hearing-on-selah-transit-development-plam/>)

Current Air Quality Alert (<https://selahwa.gov/blog/2018/08/21/current-air-quality-alert/>)

August 21, 2018

Please be aware that air quality in Yakima is listed ...[Read More »](#) (<https://selahwa.gov/blog/2018/08/21/current-air-quality-alert/>)

Air Quality downgraded to Moderate (<https://selahwa.gov/blog/2018/08/17/air-quality-downgraded-to-moderate/>)

August 17, 2018

Air quality in Yakima has been downgraded to Moderate. Current ...[Read More »](#)

(<https://selahwa.gov/blog/2018/08/17/air-quality-downgraded-to-moderate/>)


(<https://www.facebook.com/City-of-Selah-725670994248956/>)

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509.698.7328 • f: 509.698.7338 • [Contact Us \(/contact/\)](#)

APPENDIX D



KING COUNTY AUDITOR'S OFFICE

Access Paratransit: Action Needed to Address Cost, Quality, and Equity



King County

LARRY BRUBAKER
SEAN DEBLIECK
MEGAN KO
BEN THOMPSON

JUNE 13, 2017

EXECUTIVE SUMMARY:

Access paratransit is a federally mandated program that costs \$61 million per year and provides vital mobility services for about 8,000 people. Over the past decade Transit has worked to control the costs of the program. Nevertheless, expenditures have increased while ridership and on-time performance have declined. At the same time, Transit has done little to promote the program to ensure it is reaching historically underserved populations, like people with limited English proficiency. A new contract with its service providers, starting in 2018, provides a unique opportunity for Transit to make changes to paratransit service. We recommend ways to address inefficient practices, improve service, and ensure equitable access to the program.



Access Paratransit: Action Needed to Address Cost, Quality, and Equity

REPORT HIGHLIGHTS

What We Found

Transit has implemented several efforts to control costs of paratransit services, like expanding the Community Access Transportation (CAT) program, and training people with disabilities to use the fixed-route system. But certain legacy practices, such as a reliance on large vans running routes with few or no passengers, contribute to inefficiencies. Transit lags behind other transit agencies in improving the flexibility of paratransit service by providing more rides on more efficient alternatives, such as taxis.

We also found areas of concern related to customer service, especially trip length, early drop-offs, and a lack of payment options. About half of all respondents to Transit's recent customer survey said they were dissatisfied with the amount of time it takes to travel on Access. We found that some trips are longer on paratransit than they would have been on the fixed-route system, contrary to Federal Transit Administration guidelines. In addition, paratransit users lack some of the options for paying for services that are available to fixed-route passengers.

Information from several sources indicate that substantial barriers to using Access exist for certain populations, such as those with limited English proficiency. However, Transit has not availed itself of King County's equity and social justice tools and does not engage in proactive outreach with historically underserved communities about this program.

What We Recommend

We recommend changes intended to improve the flexibility and cost of the service. We also recommend Transit take steps to improve the monitoring of travel time and to provide additional payment options to customers. Transit should take steps to ensure the service is equitable by applying the county's Equity Impact Review tool to identify gaps and work to increase access to historically underserved populations.

Why This Audit Is Important

Access provided nearly 900,000 rides to over 8,000 residents in 2016. These rides let individuals who are unable to use fixed-route buses lead more independent lives, taking them to work, run errands, meet friends, and get medical care. The Americans with Disabilities Act mandates this service in order to ensure that people with disabilities have comparable transportation choices.

Transit spends \$61 million, or 9 percent of its budget, on Access paratransit services. Given the high cost of this service, and the important role it plays in the lives of its customers, it is important that Transit makes sure that the service is provided as efficiently and effectively as possible.

King County is home to 196,000 people with disabilities, a third of whom are people of color, and many of whom have limited English proficiency. Government policies and programs have historically underserved these groups. King County's Equity and Social Justice Strategic Plan recognizes that not all people are on equal footing and advocates for a proactive service focused on people and places where needs are greatest.



Access Paratransit: Action Needed to Address Cost, Quality, and Equity

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- 6** Opportunities to Reduce the Cost of Access Service
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Paratransit Trends

SECTION SUMMARY

Transit's Access Paratransit Program has experienced declining ridership, increasing costs, and decreasing quality. King County Metro Transit's Access Paratransit Program is a federally mandated transportation service for people with disabilities who are unable to use fixed-route transit service. Paratransit programs are inherently more expensive than fixed-route transportation due to the level of service they offer and present some operational challenges to transit agencies across the country, including King County. Since 2008, the number of rides Transit gives have gone down, trips have become longer, and costs have increased.

What is paratransit?

Paratransit is a federally mandated transportation service for people with disabilities who cannot take fixed-route buses. The Americans with Disabilities Act (ADA) requires that fixed-route transit systems be accessible to people with disabilities—for example, by having lift and ramp equipped vehicles and announcing transit stops—but acknowledges that some people with disabilities are not able to use fixed-route services even with accessibility features. To make sure that these individuals have access to public transportation, the ADA has a requirement that all public entities operating a fixed-route transit system must offer a comparable transportation service known as paratransit. Transit meets this federal mandate with its Access Transportation service while providing travel training for individuals that are determined to be able to use the fixed-route system and investing in the CAT program which provides an alternative service for customers that would otherwise be using Access.

How is paratransit different from fixed-route buses?

There are significant differences between paratransit and fixed-route service.

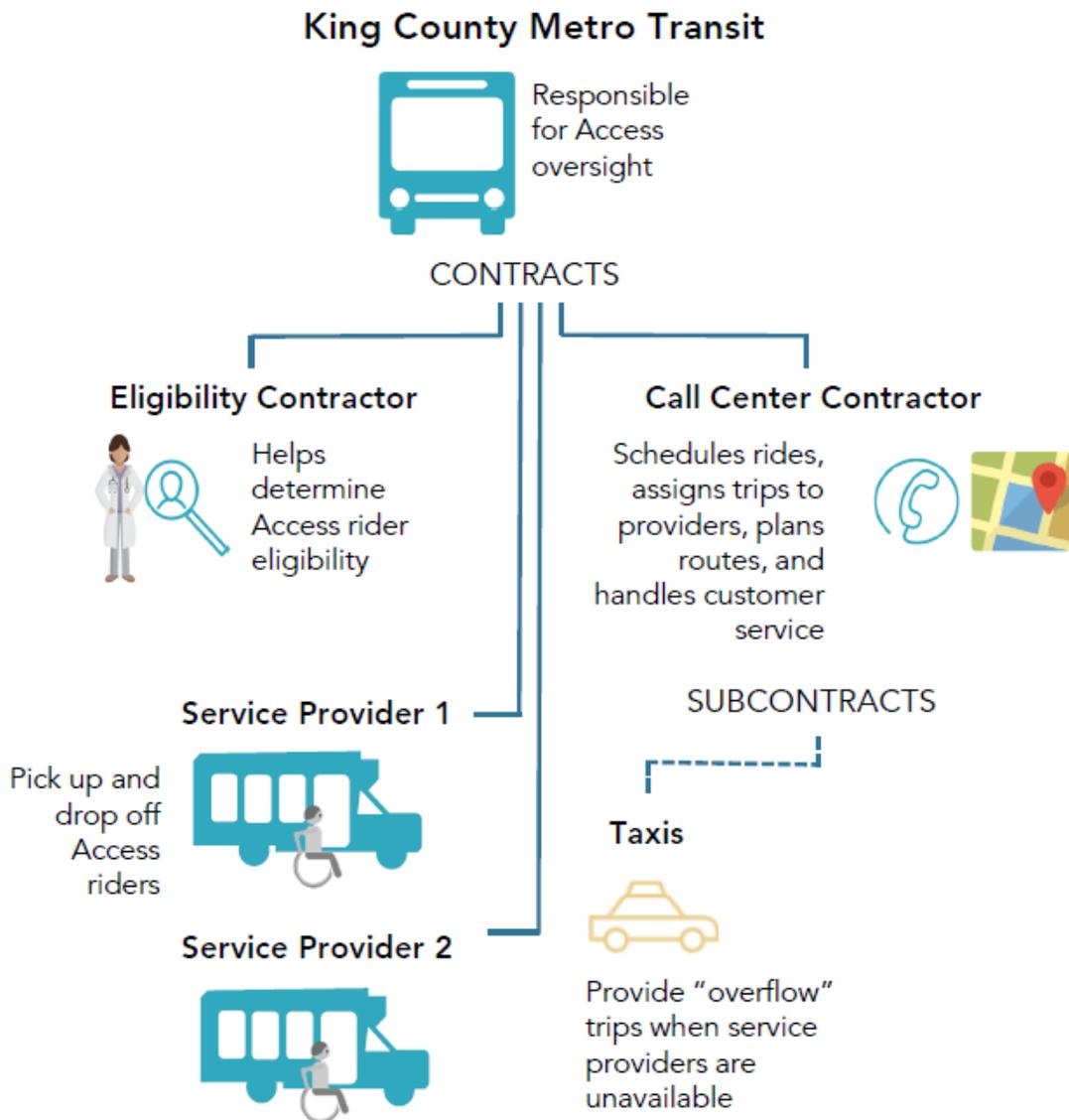
Access is:

- Origin-to-destination: Customers are picked up at their point of origin (e.g., home) and dropped off at their destination (e.g., place of employment), not at fixed points along an established route.
- Eligibility-based: Transit determines who can ride paratransit based on an application, phone interview, and physical exam.
- Demand responsive: Customers reserve rides by calling one to three days in advance.
- Outsourced: Transit's Access staff execute and oversee contracts with private sector companies that provide the service directly.
- Zero denials: All requests for service must be met.

Due to the nature of the service, Access is far more costly than fixed-route service. According to Transit, in 2015, the cost per trip for Access paratransit was \$52.88, compared with \$4.28 per trip on fixed-route service. Total expenditures for the Access program were about \$61 million in 2016.

Most components of Access are contractor-operated. Of the 40 largest paratransit agencies in the United States, 31 agencies (or 78 percent) contract out for paratransit service. Exhibit A illustrates the current organization of Access paratransit services showing the roles of Transit and contractors. The future organization will likely change based on the service model described in Transit’s request for proposals for the next round of contracts.

EXHIBIT A: Access has four major contracts and multiple service providers.

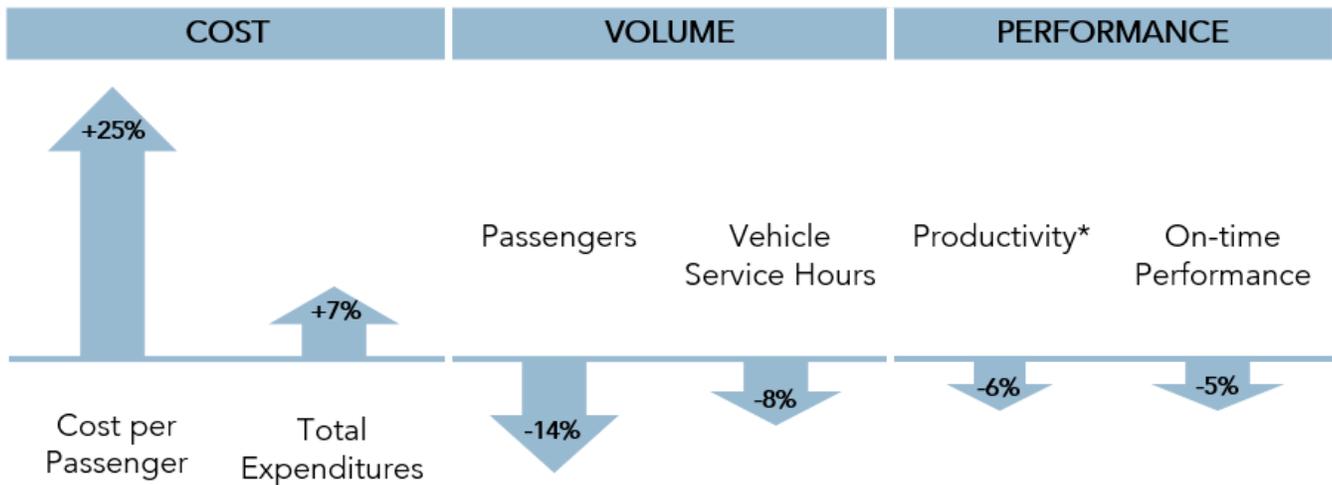


Source: King County Auditor’s Office

What are general trends in Access services?

Increasing costs, declining ridership, and decreasing performance. Exhibit B illustrates trends of the paratransit program since 2008, including increasing costs, declining ridership, and decreasing performance. We discuss reasons for these trends immediately following Exhibit B.

EXHIBIT B: Since 2008, Access service costs have increased while volume and performance have declined.



*Productivity is passengers per service hour.

Source: King County Auditor’s Office analysis of Transit performance data.

What is causing these trends?

Many factors contribute to declining service and performance. There are several explanations for the service trends described above. For example:

Cost: Access costs increased because Transit contracts used annual payment adjustments that substantially exceeded inflation. We review these adjustments in detail later in this report. Higher payments to contractors, combined with declining ridership, resulted in a large increase in cost per trip. Because the number and overall length of trips fell, total program expenditures did not go up as much as cost per trip.

Ridership: Transit staff attributed the decrease in the number of passengers and hours that paratransit vehicles were in service (e.g., vehicle service hours) to different factors. These include:

- Increased investment in the Community Access Transportation (CAT): Under this program, Transit donates vans to community-based organizations, which use the vans to offer transportation services to their clients. Many of the clients of these organizations would otherwise rely on the Access program for transportation. The 2009 Transit audit found that the CAT program is less costly for Transit than providing rides on Access, and recommended Transit expand the CAT program. CAT program ridership has grown significantly, and this may explain some of the

decline in Access ridership. By increasing its investment in the less costly CAT program, Transit is attempting to limit the overall growth in Access program expenditures. This may be an explanation for some of the decrease in Access ridership, which in turn, has limited cost growth.

- Changes in eligibility processes which make it more difficult to become eligible for Access services.
- Training provided by Access to teach people with disabilities how to use fixed-route service.
- Increasingly accessible vehicles in the fixed-route system (e.g., low-floor buses and light rail cars).

Performance: Access measures on-time performance by the percentage of passenger pick-ups that occur no more than 15 minutes before or 15 minutes after the scheduled pick-up time. Transit attributes declining on-time performance to increased traffic congestion, which delays actual pick-up times, a higher proportion of clients who require wheelchair lifts, and operational changes to the service.

Productivity: Transit's productivity measure is the number of passengers per service hour. Transit attributes falling productivity to the increasing amount of Access passengers diverted to CAT service, and a decentralization of employment opportunities for people with disabilities. These factors have the impact of reducing the number of trips from common locations to common destinations, which are the most productive trips for the Access system.

Shared rides increasingly difficult

Changing nature of paratransit service requires new approaches. The service trends illustrated in Exhibit B, along with the explanations for those trends discussed above, suggest that the nature of paratransit service is changing from a greater proportion of shared rides toward more riders traveling from unique origins to unique destinations. These trends negatively affect the performance of the system, which works most efficiently when transporting multiple riders at a time. This suggests a need for a more flexible and cost-effective system, as many other transit systems are moving toward, and which we discuss in further detail in the next section of this report.

**New contracts
scheduled to
begin in mid-
2018**

End of current contract provides an opportunity for change. This audit makes several recommendations for improving Access. Some of our recommendations involve significant changes in how contractors provide service, and how Transit pays for and monitors the contracts. Transit's contracts with the service providers are on a 10-year cycle (5 years, plus a potential renewal for another 5 years), with the current contracts expiring midway through 2018. The beginning of a new contracting period provides an opportunity for changing the system.

As we began the audit, Transit was in the process of developing a request for proposal (RFP) for the next round of contracts. Due to the timing of the RFP and the schedule for this audit, we accelerated our work on topics related to the RFP and provided a letter to Transit management in December 2016 (see Appendix 1). The letter included nine recommendations for Transit as it drafted the RFP. We have now reviewed the final draft of the RFP. In addition to new material, this report includes unresolved recommendations we made in the December 16, 2016 letter to management, and our comments on Transit's response to them.



Opportunities to Reduce the Cost of Access Service

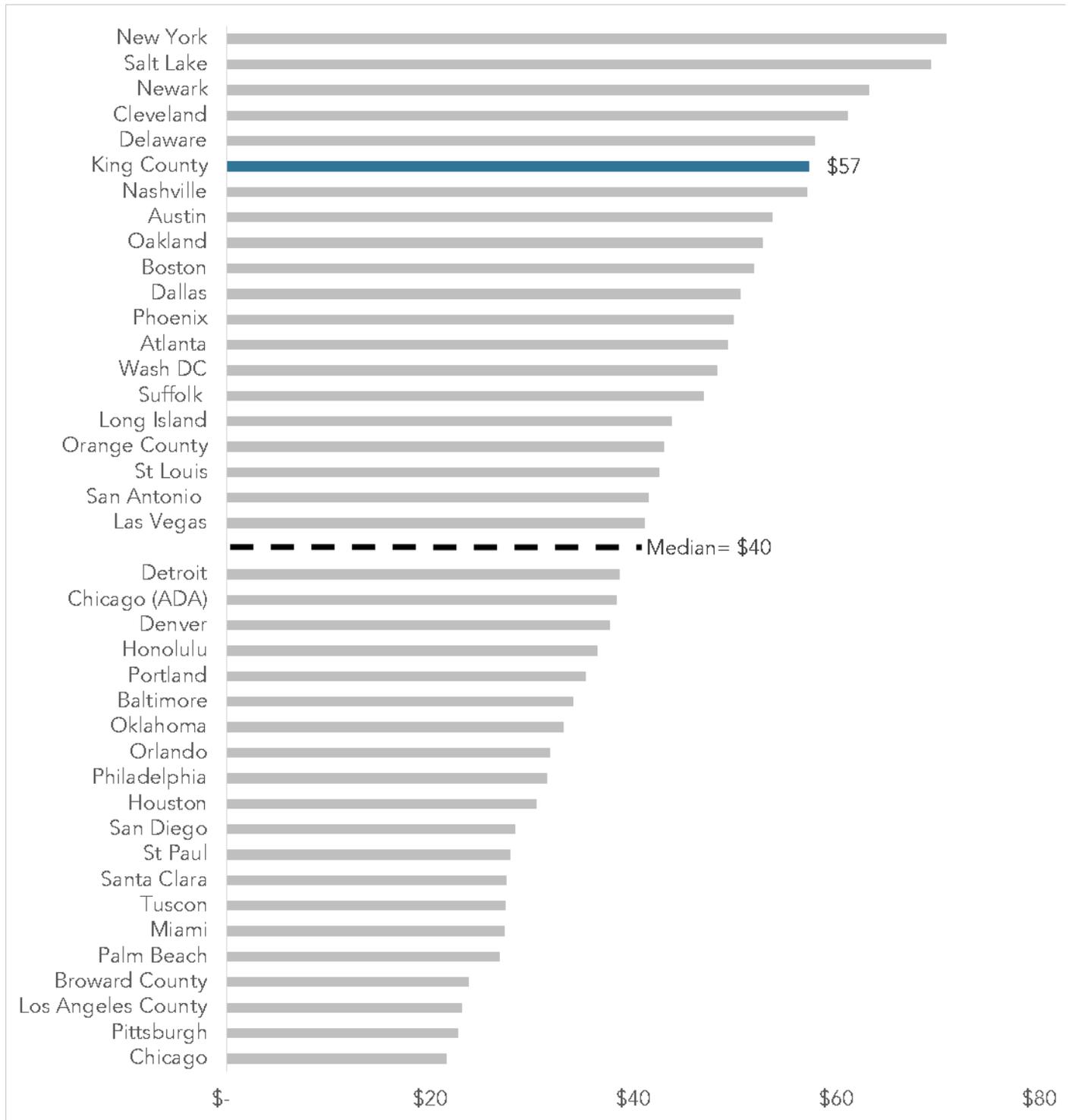
SECTION SUMMARY

Transit's Access Paratransit Program is one of the most expensive paratransit services in the nation. Transit's program costs \$57 per trip, compared to a median of \$40 among the nation's largest paratransit agencies. Compared to peer agencies, Transit pays its contractors significantly more per hour of service, and annual contract payment increases substantially exceed inflation. Additionally, Transit's method for paying contractors creates an incentive for inefficient service. Finally, Access service generally uses large vans even though most trips have fewer than two people onboard. Changes to how service is provided and paid for has the potential to both control costs and improve customer service.

Access is the sixth most expensive U.S. paratransit service

Transit has one of the most expensive paratransit programs in the country. Access is the sixth most expensive of the 40 largest paratransit programs in the country. According to the most recent data available, Transit's cost per Access paratransit trip was \$57, significantly higher than the median cost per trip among the 40 largest paratransit programs in the country (\$40). As shown in Exhibit C, only New York, Salt Lake City, Newark, Cleveland, and Delaware exceeded Transit's per trip cost. (Note: We last audited Access in 2009, noted cost growth and recommended continued cost containment efforts at that time.)

EXHIBIT C: King County's paratransit program has one of the highest costs per trip in the country.



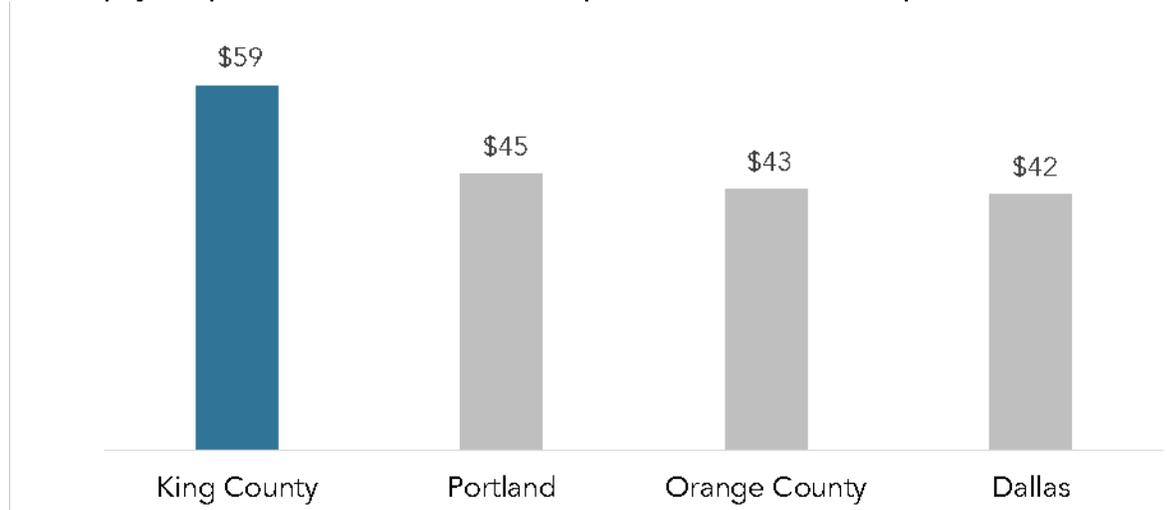
Source: King County Auditor's Office analysis of Federal Transit Administration, National Transit Database, 2014.

Transit pays its paratransit contractors significantly more than peer agencies do.

We reviewed paratransit financial information from three peer agencies¹ and calculated the payments made by vehicle service hour. As illustrated in Exhibit C, Transit pays its contractors much more per hour than these peer agencies. Transit said that it pays more because of the high cost of living in King County, and the \$15 per hour minimum wage in Seattle. While this argument has some merit, two of the three peer agencies are also located in high-cost, West Coast markets, and it is unlikely that differences in regional costs would be enough to explain the size of differences in service provider payment rates illustrated below.

EXHIBIT D:

Transit pays its paratransit contractors more per service hour than its peers.



Source: Auditor's Office analysis of Transit and peer agencies' financial data, 2015.

Problems in the current contract led to higher costs and inefficient service

Transit's payment escalation rates in the current Access contracts exceeded inflation by a substantial amount. Transit included escalation rates for the first five years of the contract (2008-2013) which were much higher than inflation. For example, at a time when inflation averaged about 1.5 percent, annual escalation of provider payment rates in the contract was as high as 5.9 percent. When Transit extended the provider contracts for the second five-year period (2014-2018), it reduced the payment escalation rates, but these rates have still slightly exceeded inflation. For example, current escalation rates are as high as 2.5 percent, while inflation has averaged about 1.7 percent.²

¹ The three peer agencies are Dallas, Texas; Orange County, California; and Portland, Oregon.

² During our audit, we reviewed an issue raised by a member of a paratransit advocacy group questioning why an amendment to the contract with one of the providers resulted in cost increases to Transit. Based on our review of the contract amendments with this provider, we determined that the amendments in question had little impact on the cost of the contract. Further, the amendment which established the escalation rates for the second phase of the contract actually saved money for Transit relative to the escalation rates in place for the first five-year period of the contract.

Transit's contracts offer a disincentive for efficient service. Transit pays both the control center and the vehicle service providers by vehicle service hour. This creates a disincentive for the contractors to schedule and run efficient service since both types of contractors are paid more if vehicle service hours are higher. As we discuss later in the report, some riders experience this inefficiency as excessively long trips. Additionally, the control center is not paid for scheduling trips on taxis, which are sometimes less expensive to use than paratransit vans. This creates a disincentive for the control center to optimize the mix of service between the paratransit van service and alternative services, such as taxis.

But new contracts may help address issues

Transit is taking steps to control costs and implement auditor recommendations.

Before we began working on this audit, Transit had already recognized the need to control costs. It hired a consultant to review service structure and payment methods and to conduct a peer review. The consultant's analysis reviewed many of the same issues as this report. Our December 2016 letter to Transit management provided our recommendations to Transit on how we thought these issues should be addressed as Transit was developing its RFP for the next round of provider contracts.

The letter to Transit management included recommendations to solicit competition for the next contracts, carefully evaluate the costs of the proposals, and negotiate favorable rates with the selected contractor using a Best and Final Offer approach. We also recommended that the next contract include a robust incentive for cost-effective service (see Recommendations 1 and 3 of the letter attached as Appendix 1). Based on our review of the final RFP for the next round of contracts, Transit has largely implemented these recommendations. For example, the RFP includes the Best and Final Offer process and a robust incentive for cost-effective service.

Big vans often empty

Transit uses large vans even though few trips carry more than one passenger.

Transit uses taxis for about 10 percent of Access trips, a much lower rate than some peer agencies, which use alternatives to large vans for as much as 62 percent of service.³ Transit's large paratransit vans can carry up to 13 passengers depending on the number of people using wheelchairs, but the vans only carry more than one person about one-quarter of the time and were empty or carrying one passenger almost three-quarters of the time. See Exhibit E, below.

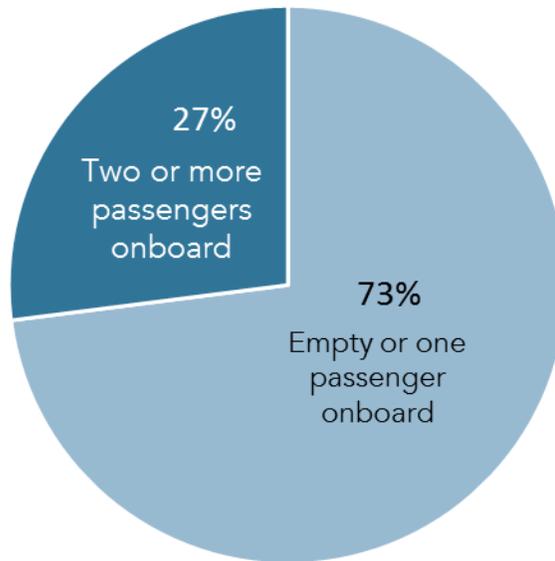
We also found that an additional 12 percent of Access van trips could be provided for less on taxis, saving \$805,000 per year.⁴ In addition to reducing costs, optimizing the mix of service between large vans and smaller vehicles can also improve service performance. Transit tries to maximize efficiency by increasing the number of passengers on the large vans. This can lead to excessive onboard time for passengers, as they may be taken on circuitous routes while the large van picks up or drops off other passengers.

³ For example, taxis and other smaller vehicles account for 62 percent of paratransit trips in Dallas, Texas; 11 percent of trips in Portland, Oregon; and 24 percent of trips in Orange County, California.

⁴ This analysis compared the cost of van trips to the cost of taxi trips using the most costly taxi provider. Actual savings from optimizing the mix of service could be more or less than the \$780,000 we calculated.

EXHIBIT E:

Passenger vans are usually empty or carrying one passenger.



Source: King County Auditor's Office analysis.

Transit has made progress on recommendations we made in our December 2016 letter related to optimizing the size of vehicles used to transport passengers. Based on our recommendation,⁵ Transit notified potential respondents to the RFP that it intends to optimize the mix of service between paratransit vans and alternatives, such as taxis. Transit's RFP includes a provision for a range of service to be provided by the paratransit vans and alternatives. We made an additional recommendation⁶ that Transit conduct an analysis of the optimal mix of service on an ongoing basis. Transit has not yet put this analysis into place, so we reiterate this as Recommendation 1 of this report.

Recommendation 1

Transit should, on an ongoing basis, conduct an analysis aimed at optimizing the mix of service between the paratransit van service and alternatives, such as taxis.

⁵ Recommendation 2b contained in Appendix 1

⁶ Recommendation 2a contained in Appendix 1

Transit is also spending money on information technology products that are not being used. Between 2010 and 2016, Transit spent \$331,575 on the maintenance and upkeep of software applications that it either could not use or had not used. These applications include Web booking software, which has the potential to reduce call volumes and increase customer satisfaction, and an itinerary planning tool which tracks compliance with ADA requirements for onboard ride times relative to fixed-route service. While these applications could be useful to Transit, spending money on them without actually using them is a waste of scarce resources.

Recommendation 2

Transit should thoroughly review compatibility and utility before purchasing information technology products and, after purchasing, work to use them.



Contract Monitoring

SECTION SUMMARY

Transit plans to improve contract performance monitoring, but inadequate oversight in the past contributed to cost increases and low service quality. Transit is making changes to future contracts and has plans to improve its oversight of contractor performance. However, Transit does not have a strong record of enforcing performance provisions, especially incentives and disincentives, which has likely contributed to higher costs and low service quality. Adding an incentive for the contractor to reduce the cost of each trip may help address the risk of inefficient and lengthy onboard times, and including a plan that assigns responsibility for these elements of contract oversight is a positive first step. However, Transit has not updated some elements of performance monitoring in the new contract and can do more to ensure that these tools improve productivity and performance.

Enforcing contract provisions can lower costs and improve service

Until a contract management plan is in place, Transit risks paying higher costs for lower quality service. According to the Federal Transit Administration (FTA), transit agencies that pay contractors by vehicle service hours should closely monitor productivity to ensure that costs are reasonable and service is of an acceptable quality. In December 2016, we recommended that Transit make changes to address these risks, and Transit included a new incentive that, if enforced, may lower costs and improve service. Under the new contract, if the contractor reduces the cost per boarding then Transit will award the contractor a percentage of the savings. Conversely, if the cost per boarding increases, then the contractor will be required to pay Transit for part of those costs. If this provision existed in 2016, contractors would have been obligated to pay Transit over \$500,000, because the cost per boarding substantially increased over the course of the year (from \$54 per boarding in January to \$60 per boarding in December).

Transit has not conducted adequate contract oversight in the past. We made two recommendations in 2009 to improve Transit's oversight of contractors and use of performance metrics, including the development of a plan to address productivity goals.⁷ Although Transit implemented our recommendations, we found that Transit has not provided better oversight of performance provisions, or used them effectively to change contractor behavior. We found that over the past eight years, Transit only billed contractors for one half of all missed trips, collecting \$97,000 instead of over \$250,000. Transit also awarded less than \$24,000 in incentives and much of these awards were paid

⁷ Recommendation D1: Transit should adopt a comprehensive, fully documented strategic plan and approach to address how productivity goals are to be met and should regularly reassess its paratransit productivity goal based on historical trends and the anticipated future service environment. <http://www.kingcounty.gov/~media/depts/auditor/new-web-docs/2009/transit-2009/d-tech-report.ashx?la=en>

in error. Nearly half of the 29 performance-based payments were paid even though the contractors did not meet the performance standards. See Exhibit F, below.

EXHIBIT F:

Infrequent and inconsistent use of incentives, January 2009 to June 2016.

Monthly Performance Incentive	Number of Incentives Paid	Amount Paid	Number of Payments in Error	Percent Paid in Error	Acceptability of Error Rate
Productivity	1*	\$10,000	0	0	✓
Zero Preventable	5	5,000	3	60%	✗
Zero Road Calls	12	3,900	9	75%	✗
Zero Missed Trips	5	3,000	2	40%	✗
Less than 2 Road Calls	6	1,800	2	33%	✗
Total	29	\$23,700	16	55%	✗

*This is one award divided among three contractors.

Source: Auditor's Office analysis of Access paratransit performance reports, 2009-2016.

While the annual dollar amounts in overpayments and underpayments are small compared to the \$61 million program, it is important to have controls in place to ensure that incentives and penalties are applied correctly. To do so, the FTA recommends that transit agencies develop a contract management plan, specifying how compliance is verified, when, and by whom. Based on recommendations we gave to Transit in 2016, Transit told us that it is developing a plan, but it has not been finalized.

Recommendation 3

Transit should complete and execute a contract management plan for monitoring the new contracts. For each contract requirement, the plan should specify: a) the method for verifying compliance; b) frequency of review; and c) staff member responsible.

Penalty amounts are lower than the cost to collect them

Some performance payments may not be beneficial for Transit or Access riders. In 2016, we recommended that Transit update the amounts it uses for incentives and disincentives in the contract, because they may be too low to influence contractor behavior. As a result of being too low, the current provisions would be ineffective and burdensome to administer, leading to unnecessary costs to King County. For example, the cost of a missed trip has been \$50 since 2008. This means that with inflation, a contractor today is paying much less than what it paid in the past. In addition, this rate is lower than what is charged in other jurisdictions. In San Francisco, for example, the penalty for a missed trip is \$200. Despite our recommendation, Transit did not update the cost of missed trips in its recent contract, even though it also told us that it probably costs more than \$50 in administrative costs to collect \$50 from the contractors. Transit did, however, add a new disincentive for late trips, and told us that it expect this to have a large impact on performance. To ensure that performance payments are effective, valuable, and enforceable, it is a best practice to assess their utility and adjust them as needed. Since the RFP has already been issued, our new recommendation is almost identical to what we recommended nearly a decade ago.⁸

Recommendation 4

Transit should monitor and enforce contract incentives and disincentives for a period of one year, and based on this work: a) assess how they can more effectively improve productivity and performance; b) establish future dates to review them later in the five-year contract; and c) update the contract management plan to reflect these changes.

⁸ In our 2009 performance audit of Transit, we recommended that “Transit/Access should monitor and enforce its contract incentives and penalties for a period of one year, and then re-evaluate their usefulness as a tool for improving productivity and performance.” Full report at: <http://www.kingcounty.gov/~media/depts/auditor/new-web-docs/2009/transit-2009/d-tech-report.ashx?la=en>



Service Quality

SECTION SUMMARY

Access riders are concerned about lengthy trips, limited payment options, and inconvenient arrival times. About half of all riders who responded to Transit's 2016 customer survey said they were dissatisfied with how long it takes to travel on Access. We found that some Access paratransit trips were longer than comparable trips on the fixed-route system, and that Transit is missing opportunities to make sure trips are not excessively long. Survey respondents also criticized payment options, which are fewer on Access as compared to the fixed-route system. Provisions in the new contract may address issues survey respondents reported with early drop offs.

Riders burdened by long trips

About half of respondents to Transit's 2016 Access customer survey said they were dissatisfied with how long it takes to travel on paratransit.⁹ This creates a burden for Access riders. Some survey respondents noted that being onboard too long can lead to physical discomfort in addition to frustration and tardiness. Nearly 50 percent of the survey respondents said they often or sometimes avoid riding Access due to service quality issues including travel time. One respondent said, "there are some places I could go by Access but I doubt I have the endurance to make the trip."¹⁰ An example of a trip an Access rider felt was too long is shown in Exhibit G, below.

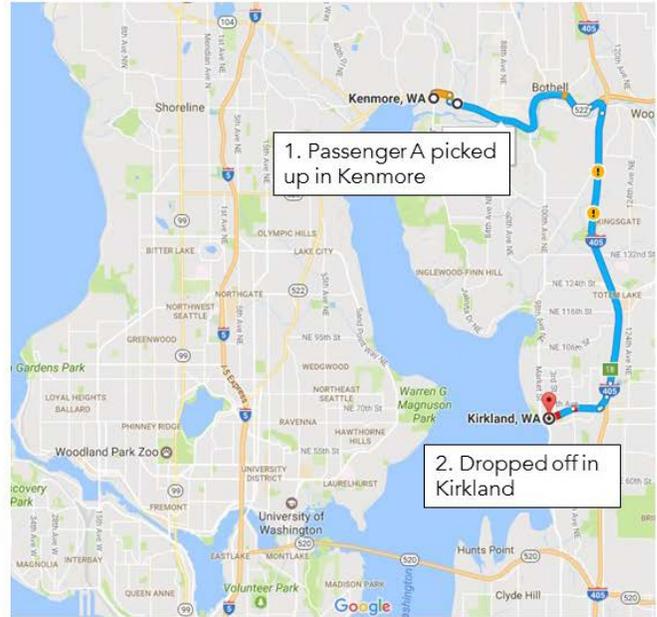
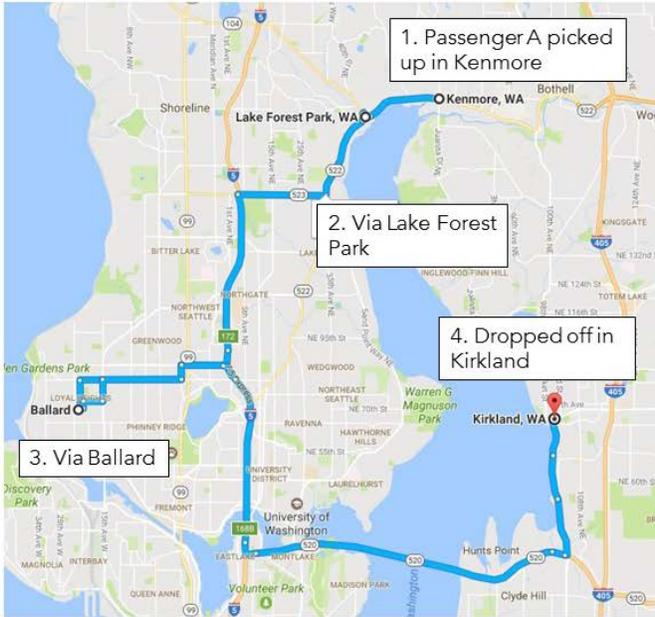
⁹ In a survey Transit conducted in the summer of 2016, 50 percent of riders, 54 percent of people who cared for an Access customer, and 57 percent of organizations that served Access customers said they were somewhat or very dissatisfied with "how long it takes to travel," also known as travel time or onboard time.

¹⁰ In write-in parts of the survey, some respondents provided examples of lengthy trips. In Exhibit G, we depict one example using car trips with single or multiple stops. This example is for illustration only. Paratransit is a shared ride service that is not meant to be akin to a taxi or single passenger car trip.

EXHIBIT G:

Rider experience says Access route could be three times longer than direct path.

 <p>Rider-reported Access Route Estimated time: 61 minutes Length: 30 miles</p>	 <p>Direct Route Estimated time: 19 minutes Length: 10 miles</p>
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Note: These examples are for illustration only. Paratransit is a shared ride service that is not meant to be akin to a taxi or single passenger car trip.

Source: King County Auditor’s Office analysis.

Transit does not report trip length among its key performance indicators and may not sufficiently follow FTA-suggested methods for monitoring it. The FTA suggests setting performance targets for the proportion of paratransit trips with “travel times that are equal to or less than comparable fixed-route travel times” and sampling longer trips weekly or monthly. This standard is important because ADA requirements prohibit paratransit agencies from having a pattern of providing too many excessively long trips as compared to fixed-route service.¹¹ To keep long trips to a minimum, the FTA suggests that paratransit agencies establish standards for travel time and routinely check performance. Using the FTA-recommended method, we sampled Access trips that took 45 minutes or longer.¹² We found that most Access trips were shorter than or as long as comparable trips on the fixed-route system, while

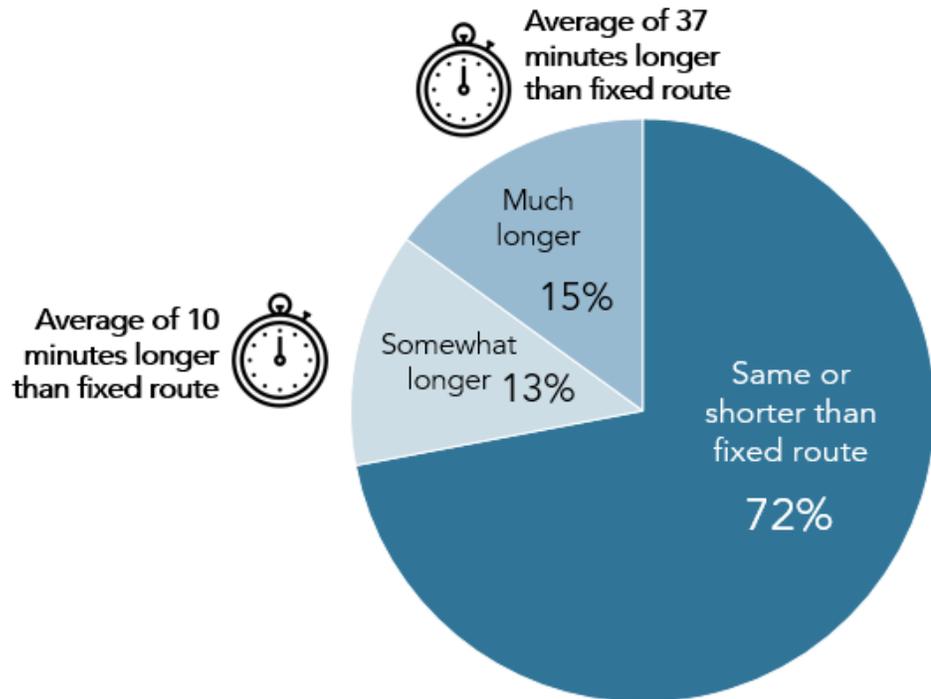
¹¹ The requirement does not quantify how many trips is too many or how long is excessive. Comparable fixed route trips include both time spent onboard the bus, waiting for the bus, and time spent walking to and from a stop.

¹² We sampled seven days between December 2015 and November 2016, to compare travel times for scheduled paratransit trips to comparable fixed-route options. Fixed-route travel times were generated by an application in Transit’s scheduling and dispatch software and included walking time to the station. Of the sample of 15,599 trips, 20 percent (3,192) of trips were 45 minutes or longer and had fixed-route data for comparison. Our sample results cannot be projected to the population (see Scope and Methodology section for more information).

some trips were longer. We found that 15 percent of trips had passengers onboard an average of 37 minutes longer than what they would have experienced on the fixed-route system. See Exhibit H, below.

EXHIBIT H:

Most Access trips are as long as or shorter than fixed-route trips, some are much longer.



Source: King County Auditor's Office analysis.

Recommendation 5

Transit should define excessively long trips in reference to fixed-route standards, regularly sample longer trips to count how many are excessively long, and take steps to make sure there is not a pattern of significant numbers of excessively long trips.

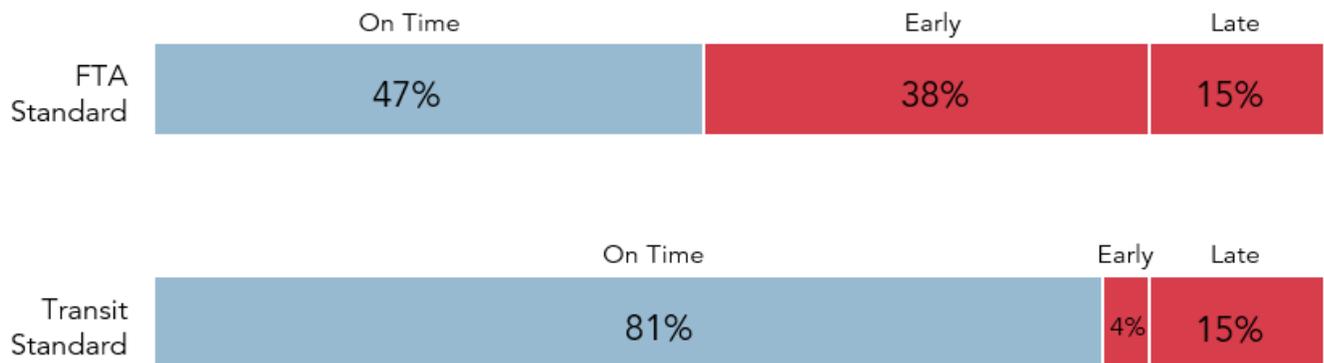
Many riders arrive too early for their appointments

Transit sometimes drops passengers off at their destinations too early, unduly burdening Access riders.¹³ We sampled Access trips in September 2016 and found that Access dropped off 34 percent of riders traveling to appointments between 30 and 60 minutes early, which is beyond the FTA standard. In Transit's 2016 Access customer survey, respondents said that Transit was dropping riders off too early. This can have adverse consequences, such as leaving people stranded in bad weather or compromising the safety of individuals who are not well equipped to be left alone.

¹³ Access riders have two choices when scheduling a trip: schedule based on the time they want to be picked up, or the time they want to arrive at their destination.

Transit revised its 2017 RFP to define “on-time” drop-offs as no more than 30 minutes before an appointment, in line with FTA guidance. In its contract ending in 2018, Transit currently categorizes a trip as early if a person is dropped off more than 60 minutes before an appointment. As shown in Exhibit I below, Transit’s on-time metric indicates that performance is much better than it is using the FTA standard. Transit’s ability to meet this new benchmark depends on the extent to which it is monitored and enforced.

EXHIBIT I: Only half of Access riders were on time for appointments in September 2016 using the FTA standard.



Source: King County Auditor’s Office analysis of 32,712 Access paratransit trips taken in September 2016.

Recommendation 6

Transit should put in place monitoring and enforcement procedures to make sure paratransit riders are not dropped off more than 30 minutes before their appointments.

Payment options are limited and inaccessible

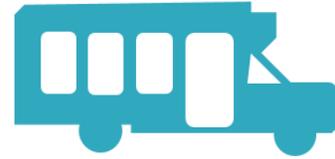
Payment options are limited for people who use Access, creating barriers to service. Access paratransit riders have two payment options: either pay \$1.75 in cash when boarding, or buy a \$63 monthly pass.¹⁴ In contrast, fixed-route riders have five payment options including e-purse, which allows riders to use a pass without committing to a fixed monthly fee.

¹⁴ The monthly pass is provided on an ORCA card. ORCA stipulates pass pricing at 36 trips at a regional level. Although the pass is an ORCA card, because paratransit vehicles are not equipped with ORCA card readers, e-purse payment is not available to Access paratransit riders.

EXHIBIT J: Transit provides more payment options to fixed-route passengers than Access passengers.



FIXED-ROUTE



ACCESS PARATRANSIT

<p>Cash/transfers ORCA: Monthly pass ORCA: E-purse Tickets/transfers Mobile tickets</p>	<p>Cash ORCA: Monthly pass</p>
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Source: King County Metro Transit

Transit has considered expanding paratransit payment options by allowing riders to pay at the time of booking or putting ORCA card readers on paratransit vehicles. The former has the potential to reduce onboard payment and associated delays and driver responsibilities. The latter would have similar benefits but could not be implemented before 2020 and has significant cost constraints.

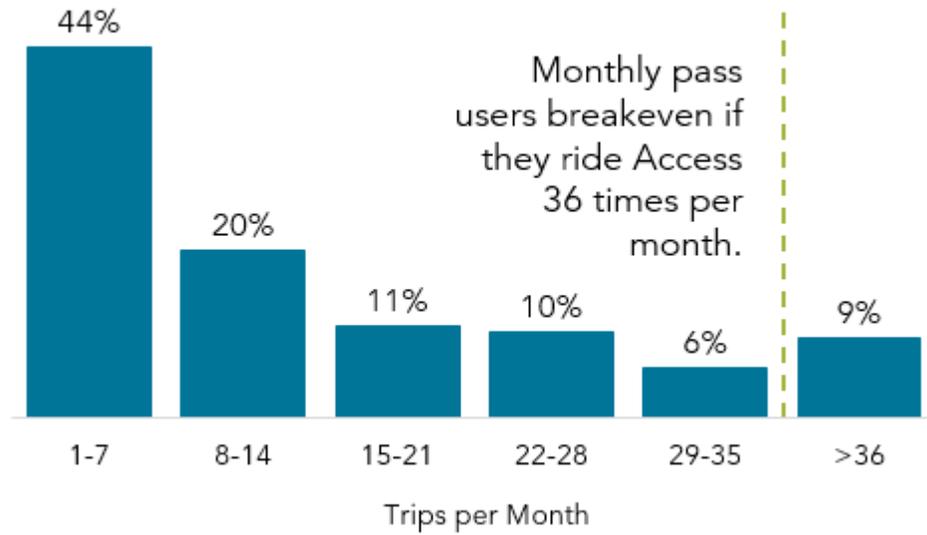
More than two thirds (71 percent) of respondents to Transit’s 2016 Access customer survey said that they usually pay in cash, while 16 percent said they use a pass. On the fixed-route system, 27 percent of riders pay with cash, while 68 percent pay with ORCA cards, according to Transit’s most recent rider, non-rider survey.

Most paratransit customers do not ride Access often enough for a monthly pass to be cost effective. To break even, a person purchasing a pass would have to ride Access 36 times a month. Only 9 percent of riders took 36 trips per month or more in 2016.¹⁵ An additional 6 percent rode 29 to 35 times per month. Of survey respondents, 45 percent said they did not ride often enough to use a pass.

¹⁵ This figure is based on monthly trip counts for people who rode Access at least once a month in 2016.

EXHIBIT K:

Most riders would lose money using a monthly pass, the only non-cash option.



Source: Auditor’s Office analysis.

While cash was the most cost-effective way to pay for the vast majority of Access riders, it may not be the most appropriate. Cash presents barriers to Access riders who have functional challenges handling money due to cognitive impairments, quadriplegia, or other conditions since paying the exact fare (\$1.75) requires using loose change.

Difficulty paying in cash can contribute to non-payment. Riders that often do not pay Access fares can be sanctioned with a suspension. One parent told the Auditor’s Office that her son did not pay for several weeks because, as a nonverbal person, he could not communicate with his family or drivers about the fare requirement. The parent said her son eventually received a suspension letter. On the operator’s side, cash handling increases the risk of fraud and abuse, which Transit has controls in place to mitigate.¹⁶

Recommendation 7

Transit should provide additional fare payment methods that take into account riders’ needs and trip frequency.

¹⁶ Data on each passenger’s fare type is included on mobile data computers and on driver manifests. Drivers reconcile cash with administrative staff when they return from a route. Service providers are required under contract to conduct weekly and monthly fare reporting with reference to the bank deposit for the fares. Service providers are also required to do random spot audits of driver receipts.



Equity

SECTION SUMMARY

Transit could do more to make sure that Access is equitably serving current and potential riders. Several sources of data suggest that certain populations—particularly people with limited English proficiency—are not being adequately served. Transit asserts that it is providing equitable services, because it assists people with disabilities and mirrors the fixed-route service area. These reasons do not offer evidence of fair service provision. By using tools provided by King County’s Office of Equity and Social Justice, regularly collecting and analyzing riders’ demographic data, and using community impact performance indicators, Transit can make Access more inclusive.

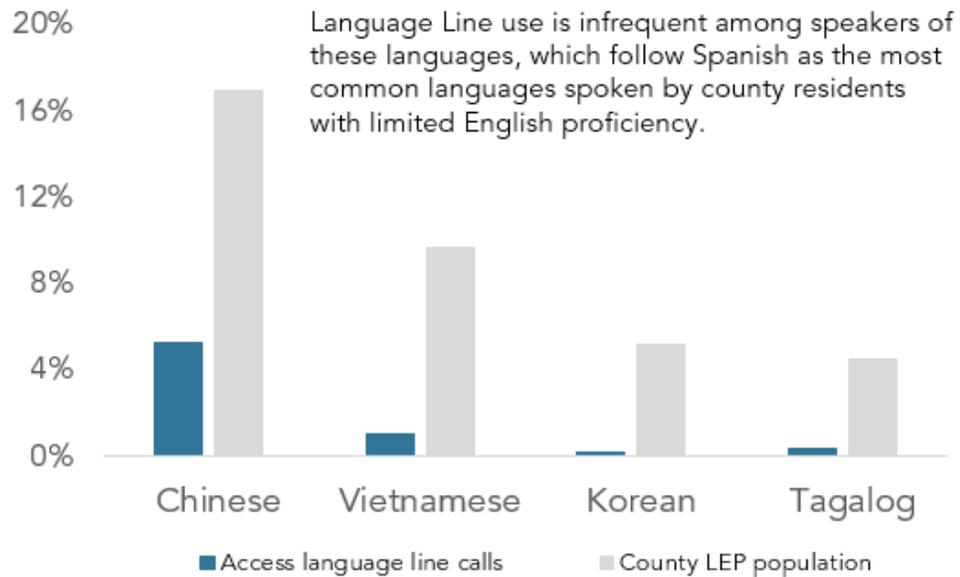
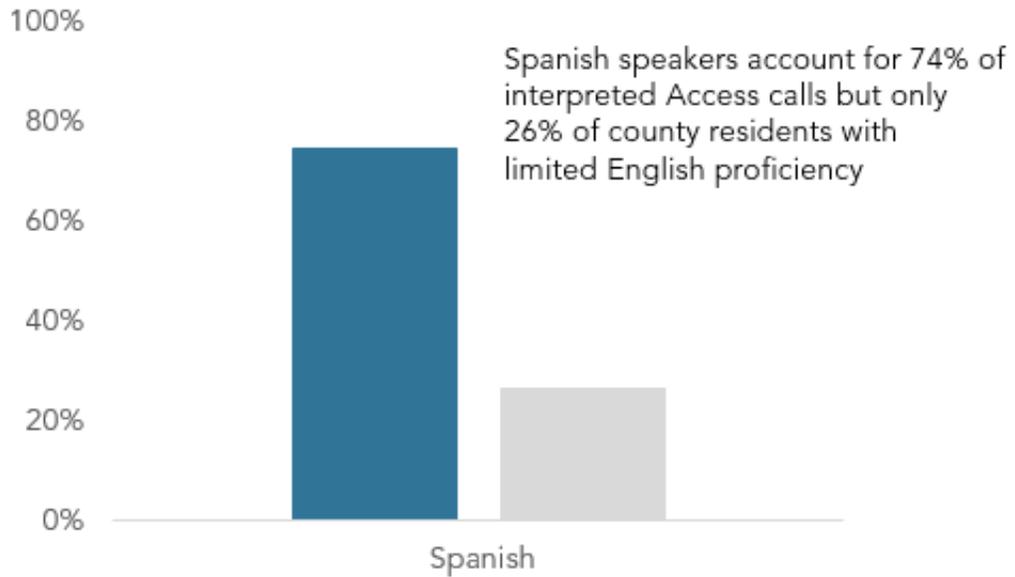
Access riders do not reflect county diversity

Data suggest that Access serves only a small number of people with limited English proficiency and is likely underserving certain populations. Invoices from the Language Line—a private interpretation service used by the program—suggests that Access is not proportionately serving certain linguistic groups. Four of the five largest non-English languages spoken in King County were underrepresented in Language Line calls, while one language was overrepresented. Spanish speakers account for about 26 percent of people with limited English proficiency in King County, but 74 percent of Language Line calls from the Access call center. Other languages accounted for smaller percentages of language-assisted calls than is expected given their relative share of the population. Usage by speakers of the next most frequently spoken language groups—Chinese, Vietnamese, Tagalog, and Korean—were underrepresented in these calls. Together, these speakers represent 36 percent of people with limited English proficiency in King County, but only 7 percent of Language Line calls are from the Access call center. See Exhibit L, below

If these language-speaking populations were equally represented in the program, we could expect to see a more evenly distributed use of this service. Although the data do not tell us why this particular disparity exists, Transit told us that it does not have proactive outreach efforts with community groups. As a result, some limited English population groups may not know that this service exists, and thus missing a critical access point to the program.

EXHIBIT L:

King County’s largest non-English linguistic groups not using a proportionate share of language services.



Notes: Chinese includes Mandarin, Cantonese and “Chinese” from U.S. Census Bureau American Community Survey, and Mandarin, Cantonese, and Toishanese from the Language Line.

Source: King County Auditor’s Office analysis based on 2015 American Community Survey (ACS), Language Line invoices.

People with limited English proficiency face multiple barriers to receiving paratransit services, limiting their use of this essential service. Qualitative data collected during our audit show that there are barriers for those who are not native English speakers. We held a focus group with 27 caregivers and advocate Access riders with limited English proficiency. Participants cited multiple barriers to Access paratransit services because of language. They reported that their challenges include:

- learning about and applying for the program
- relying on their own English-speaking contacts to fill out the self-assessment and application necessary to make it to the phone-interview stage¹⁷
- making reservations
- reading communication from Transit such as service suspension notices.

These barriers likely result in underuse of the Access program by people that would otherwise qualify for and benefit from the service. With barriers like these, people with limited English language proficiency are less likely to know about the program to begin with. Even if they overcome the first hurdle of knowing about the program, getting through the assessment and registration for the program would be more of a burden than for people with higher English proficiency.

While Transit has some resources for people with limited English proficiency, it has not formally reviewed the barriers to this population, nor has it developed strategies to address them.¹⁸ This means that if the status quo continues, limited English speakers will continue to face barriers and be underserved by this program. According to King County policy,¹⁹ at a minimum, agencies are required to translate communication materials and vital documents into at least Spanish and other target languages based on where languages are spoken, and consider the goals of the project and interests of the community.

Recommendation 8

Transit should work directly with King County communities to develop activities that will address barriers to the Access paratransit program for people with limited English proficiency.

¹⁷ Prospective Access riders are offered interpretation assistance during the phone interview and functional assessment.

¹⁸ In 2013, Transit worked with the Office of Performance, Strategy and Budget (PSB) to develop options for reducing service and increasing fares for the Access paratransit program. During that time, PSB examined U.S. census data regarding the disabled population in King County. It did not review information about the population being served by the Access program.

¹⁹ King County Executive Order INF 14-2 (AEO), October 13, 2010.

<http://www.kingcounty.gov/~media/operations/policies/documents/inf142aeo.ashx?la=en>

Transit collects information about language needs but does not use it to improve service quality or program accessibility. Transit routinely collects information on riders' language preference on its application form. It asks customers whether they speak English, and if not, what language they speak.

While an average of five percent of service applicants required language interpretation service to conduct a phone interview to apply for paratransit eligibility,²⁰ only 0.4 percent of active users (36 of 8,007) had a preferred language listed in Transit's paratransit user database.²¹ This is because call center staff do not routinely input information on language preference into the call center database. Since the call center needs the caller to state (or spell) the rider's name or user ID number to open their rider profile, where language preference would appear, Transit said that riders generally ask for interpretation services by saying the word "interpreter" or the language they speak. During a focus group we conducted with 25 parents of Access riders with limited English proficiency, 19 participants said that they could not use the interpretation service at the call center and instead relied on bilingual staff at community-based organizations to book rides on their behalf. Having language preference more readily available could reduce the perceived need for registrants to have an English speaker call for them and reduce the likelihood of miscommunication or abandoned calls. The information could also be used to assess the extent to which the program is being provided equitably and find gaps in service.

Recommendation 9

Transit should use language data collected during eligibility determination to provide linguistically appropriate customer service to paratransit riders and routinely collect and update information on language preference.

²⁰ According to analysis of Language Line invoices between September 2015 and July 2016. Transit said invoices were not available for May, June, and August 2016.

²¹ Active users are people who were registered for and used Access at least once between September 1, 2015, and August 31, 2016.

Transit is not using tools for ensuring equity even though they are readily available

Although tools for assessing equity are readily available, Transit has not used them to assess the Access program and is likely underserving certain groups. Transit is not using tools, such as King County’s Equity Impact Review, for identifying, evaluating, and addressing equity issues in the Access paratransit program. The Equity Impact Review is a tool developed by King County to help departments and agencies increase equity and social justice work in King County services.²² The first step of the review is to show how the program will serve low-income populations, communities of color, and people with limited English proficiency. Transit told us that it does not need to use these tools for the Access program, because the program, by definition, serves a vulnerable population—e.g., people that cannot access the fixed-route service because of a disability. Transit also told us that by mirroring the fixed-route system, which serves diverse areas of King County, Access offers equitable service. Both statements assume that the target population is homogenous and does not have members who face barriers to service based on factors like income, race, or English proficiency. As a result, it is likely that Access is underserving populations that could benefit from it. If these gaps in equity are substantial, then addressing them could increase costs to the program.

Transit does not conduct proactive outreach about the Access program and is not collecting information for an Equity Impact Review. Transit told us that it does not conduct proactive outreach for the Access program unless it receives a request from residents or a community-based organization. This reactive approach makes it difficult for underserved communities to learn about the program and leads to gaps in service. Transit explained that unlike the fixed-route service, the goal of Access paratransit is not to increase ridership, and doing outreach could increase ridership in this program. When asked why it does not collect basic demographic information necessary for an Equity Impact Review, Transit told us that collecting this information might be prohibited under the ADA. However, we found that such a prohibition does not exist

Recommendation 10

Transit should immediately take steps to implement an Equity Impact Review of the Access paratransit program.

Recommendation 11

Transit should use the results of the Equity Impact Review to find and engage with historically underserved populations.

²² Information about King County’s Equity Impact Review, including examples of its use are available online at: <http://www.kingcounty.gov/elected/executive/equity-social-justice/tools-resources.aspx>

King County's Equity Impact Review is not only a tool for achieving King County's Strategic Plan for Equity and Social Justice but also a best practice. According to recent research, community impact is one of the six key measures of transit performance.²³ Examples of community impact measures that Transit could use to address potential equity issues with Access paratransit include:

- proportion of potential beneficiaries with knowledge of the service
- amount of program information provided for non-English speakers
- analysis of program beneficiaries compared to potential beneficiaries.

When developing community impact measures, the FTA recommends that transit agencies evaluate its measures annually.

Recommendation 12

Based on the Equity Impact Review and best practices, Transit should: a) develop community impact measures for the Access paratransit program; b) include the metrics in its Access paratransit performance monitoring plan; and c) annually report on equitable access to the program.

²³ The six key transit performance measures cited by the Mineta Transportation Institute (MTI) in a 2016 report are service availability, service delivery, community impact, maintenance, financial performance, and agency administration. MTI was established by Congress in 1991, and is funded through the U.S. Department of Transportation, the California Department of Transportation (Caltrans), and others.



Customer Service and Surveys

SECTION SUMMARY

Transit's understanding of the experience of Access riders is limited by infrequent customer contact, outreach, and observation. Transit's customer service work will be contracted out until its control center contract expires in 2018. This contracting arrangement creates a risk that customer feedback is not fully and accurately conveyed to Transit. The agency conducted formal outreach to paratransit customers in 2016 for the first time in more than a decade. Transit is not using FTA-recommended "mystery rider" programs that allow staff to observe the rider experience first-hand.

Transit plans to bring customer service in-house

Customer service will be contracted out until 2018. Transit contracts out its customer service work (e.g., handling customer comments and complaints) to its control center contractor. This is atypical of agencies like Transit that have a separate control center and service provider contracts. For transit agencies with single contractors, the model Transit is moving toward with its 2017 RFP, is a best practice for the agency to bring customer service in-house. This is because a contractor would have a conflict of interest in reporting complaints directed at them to the transit agency. In its scope of work for the 2017 RFP, Transit said that it would be responsible for customer service. Thus, we expect that customer service work will move in-house when the new contract begins.

Recommendation 13

Transit should follow through with its commitment to establish a customer service function that is independent of control center, service provider, or turnkey contractors.

Recent survey promising for future outreach

Transit is considering regular paratransit rider surveys but must do more to make sure efforts to understand customer experience and improve service takes place. In 2016, Transit conducted formal outreach efforts for the Access paratransit program for the first time since 2004. This included an online customer survey and convening of a community advisory group made up of paratransit riders.²⁴

Transit told us it is considering the development of an annual Access customer survey. Transit has allocated \$150,000 for this purpose in its 2017-2018 budget, and it began collecting data through a follow-up survey in the spring of 2017. However, Transit has canceled past planned efforts to collect information from Access riders. Transit told us

²⁴ The survey took place in the summer of 2016. It had approximately 600 respondents representing Access riders, caregivers of Access riders, and organizations that serve Access riders. The community advisory group met several times between July 2016 and February 2017, to discuss findings from the customer survey and make recommendations for service improvement.

that it considered a phone survey of Access paratransit customers about three years ago, but Transit canceled the survey because of budget issues.

Regular outreach matches industry best practices and the King County Equity and Social Justice Strategic Plan, which says that efforts to get information from service recipients should be regular and ongoing. Getting ongoing information helps assure that programs are providing high-quality services, and that these services are provided equitably. According to Transit, it has never conducted an equity analysis of Access.

Recommendation 14

Transit should gather feedback from active Access riders and prospective users on an annual basis and use this information to improve service quality.

Racial and ethnic diversity missing from recent customer survey

People of color were underrepresented among Access survey respondents. Although the majority of active Access paratransit customers live in the most diverse parts of King County, this diversity was not represented in the 2016 customer survey. Of the nearly 400 people who answered questions about language, race, and ethnicity, the vast majority were white and from primarily English-speaking households. This means that Transit missed the opportunity to gain the perspective of key populations and may lack information necessary for adjusting services to meet their needs.

Comparing data from Transit's 2016 customer survey to U.S. census data show a significant underrepresentation of residents of color, at least in survey respondents. In King County, Asian Americans and Pacific Islanders account for about 16 percent of the county's population but only 7 percent of Transit survey respondents. See Exhibit M, below.

EXHIBIT M: **2016 customer survey respondents did not reflect the county’s racial and ethnic diversity.**

Race/Ethnicity ¹	Percent of Access Paratransit Survey Respondents ²	Percent of King County Population
White	78.2%	62.8% ³
Asian-American/Pacific Islander ³	7.3%	16.3%
Hispanic or Latino ⁴	1.1%	9.3%
Black or African-American	4.7%	6.0%
American Indian and Alaska Native	0.3%	0.6%
Multiple ethnicities ⁵	5.0%	N/A
Two or more races ⁶	N/A	4.9%
Other	3.4%	0.2%

Notes:

¹ The race ethnicity categories used in the 2016 Access paratransit survey do not match the current categories used by the U.S. Census Bureau. The U.S. Census Bureau adheres to federal standards on race and ethnicity. Major differences are noted below.

² Of the approximately 600 survey respondents, 358 provided information about race and/or ethnicity.

³ Asian American/Pacific Islander is in aggregate in the 2016 Transit survey, but it is two separate categories in the U.S. census data: (1) Asian and (2) Native Hawaiian and Other Pacific Islander. For the U.S. census data shown in this row, we aggregated these two groups for comparability.

⁴ In the U.S. census data, Hispanic or Latino is an ethnicity, not a race. The U.S. census data shown in this row includes people who identify as Hispanic or Latino of any race.

⁵ Hispanic or Latino is the only ethnicity in the U.S. census data; there is no ‘multiple ethnicities’ field.

⁶ The U.S. census data has a “two or more races” category. The two or more races category here does not include those who identify as multiple races and Hispanic or Latino.

Source: King County Metro Transit Access Program Customer Survey (2016), U.S. Census Bureau data (2011-2015).

Data also show underrepresentation of people whose primary language is not English. U.S. census data show that about one quarter of King County residents speak a language other than English at home, while only seven percent of survey respondents who provided language information were in this category. Transit also produced a Spanish language version of the survey and received two responses in Spanish.

Transit did not review the causes for disparate response rates, increasing the risk of continued inequity in services. Transit did not conduct a nonresponse analysis to examine the causes for underrepresentation in its 2016 survey by people of color or those with limited English proficiency. According to the Government Accountability Office and best practices, a nonresponse analysis shows why people did not respond to a survey, and it is critical for correctly interpreting results and improving future surveys. A basic nonresponse analysis considers why people did not respond—either not contacted, not interested, or not able to respond. Another key element of a nonresponse analysis is to consider what impact, if any, nonresponse had on the results. Without the knowledge from such an analysis, any inherent bias of the sampling methodology gets carried over into the results, and biases are perpetuated in future surveys. For the Access paratransit program, the absence of a nonresponse analysis means that any inherent bias in the survey will continue, and Transit will continue to miss the perspective of historically underserved communities, as well as continue to limit its chances to influence the program.

Recommendation 15

Transit should use information from its 2016 Access paratransit survey to identify methods to increase the participation of historically underserved populations in future surveys, and implement them.

Recommendation 16

Transit should conduct nonresponse analysis following its 2017 and future surveys, and use this information to improve response rates and participation of historically underserved populations.

Transit can expand the use of customer perspectives through a mystery rider program. One option that the FTA recommends for expanding customer feedback is to use a mystery rider program. In this program, observers would schedule and take trips on the paratransit system and report their findings back to Transit. According to Transit, it has never had a mystery rider program. Information from a mystery rider can increase the quality of a performance measurement system by identifying issues that may otherwise go undetected, and may help reduce the chance of the agency making decisions based on cost alone.

Recommendation 17

Transit should supplement customer feedback and data reporting with direct observation such as a “mystery rider program” to ensure service quality.



Appendix 1

Preliminary Audit Findings Provided to Transit in December 2016

On December 16, 2016, the King County Auditor's provided Transit a letter summarizing our preliminary findings about the Access Paratransit Program. Transit was in the in process of drafting a request for proposal for new paratransit contracts, and we wanted to provide our preliminary audit findings in time so that Transit could integrate our recommendations into its request for proposal. The letter starts on the following page.

King County Auditor's Office

KyMBER WALTMUNSON, King County Auditor



King County

DATE: December 16, 2016

TO: Rob Gannon, General Manager, King County Metro Transit (KCMT)

FROM: KyMBER WALTMUNSON, King County Auditor 

SUBJECT: Preliminary audit findings related to the Access paratransit program

King County's Access paratransit program provides essential transportation service to some of King County's most vulnerable residents and costs about \$60 million annually. We are in the process of conducting a performance audit of the program. Given the timing of the development of the RFP for new paratransit contracts, we wanted to share our findings with you at this time, so that they can be adequately considered as the RFP is being drafted.

We appreciate the dedication of KCMT paratransit staff, and the assistance they are providing us as we conduct this audit. We understand that increasing traffic congestion as well as changes to the transportation needs of the population using the service has added to the challenges of managing the service. *The process of issuing new contracts for paratransit services provides an opportunity to address the issues we identify in this letter.*

Summary of Findings to Date

KCMT paratransit service is the fifth most expensive of the 40 largest paratransit programs in the country in a comparison of cost per trip, and these costs are significantly higher than many other agencies. At the same time, measures of service quality (e.g., on-time performance) are deteriorating and some do not meet Federal Transit Administration (FTA) standards. Many other transit agencies have addressed similar challenges by creating a more flexible operation, for example, by supporting alternatives to the dedicated van service, such as taxis. Improving service flexibility has the potential to both reduce costs and improve service quality. While KCMT has increased use of taxis in recent years, it has not created incentives that encourage contractors to use non-dedicated vehicles in a cost-effective way.

The table below summarizes our findings to date, and provides suggestions for how KCMT can address these findings in the new RFP or while implementing the new contract. Following the table, we provide additional detail about these findings.

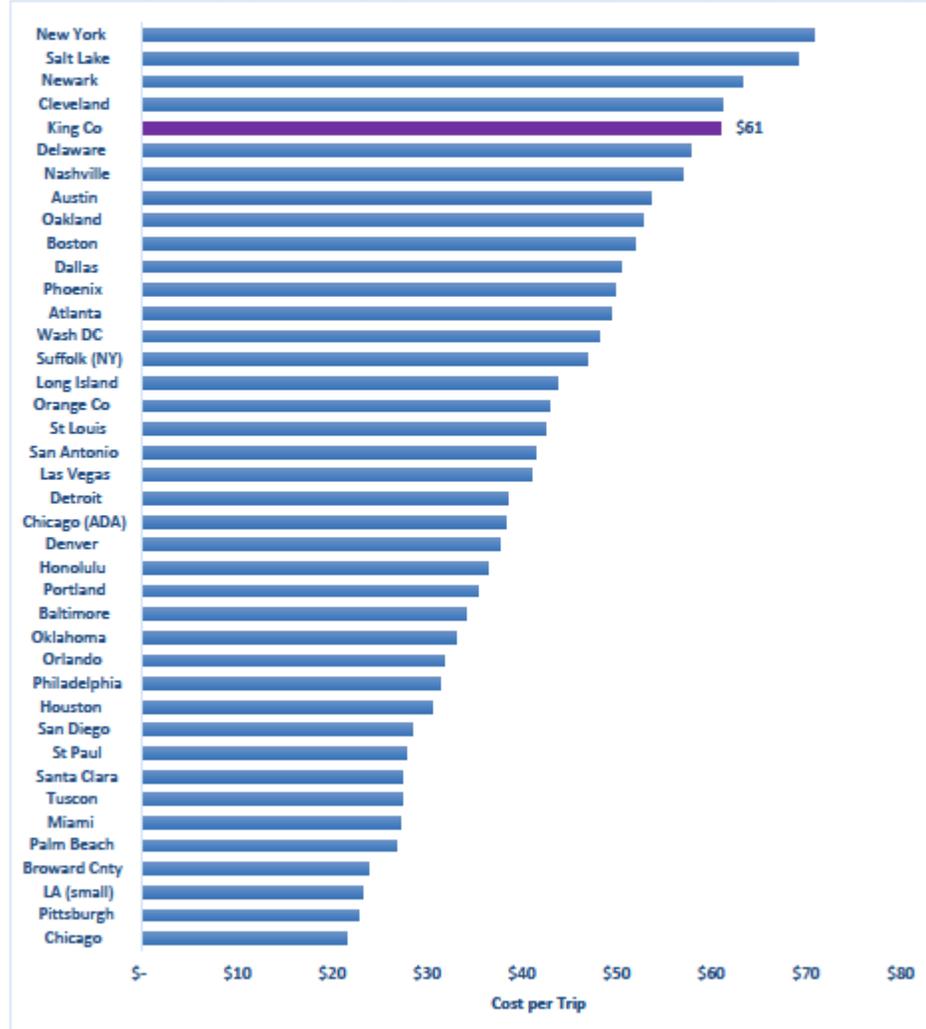
#	What We found	What Transit Should Do
Cost of Service		
1	The amount KCMT pays its providers for an hour of dedicated paratransit bus service is higher than peer agencies, in some cases, substantially higher.	KCMT should reach out to potential bidders to encourage a larger, more competitive pool of contractors; thoroughly scrutinize provider bids in the RFP process; compare bids to peer agency payment rates; and negotiate with bidders to improve bid prices using a “Best and Final Offer” process.
2	In comparison to peer agencies, KCMT allocates a smaller, and in some cases a substantially smaller, proportion of trips to alternatives to dedicated van service. Optimizing the mix of dedicated and non-dedicated vehicles has the potential to reduce cost and improve service performance.	<p>a. KCMT should, on an ongoing basis, conduct an analysis aimed at optimizing the mix of service between dedicated van service and non-dedicated services, such as taxis.</p> <p>b. KCMT should notify prospective bidders to the RFP that it intends to optimize the mix of dedicated and non-dedicated vehicles consistent with the analysis recommended above.</p>
3	KCMT’s current contractual payment structure creates a disincentive for the control center contractor to schedule trips efficiently or allocate rides to lower-cost, non-dedicated service providers. While KCMT has indicated it intends to change its payment structure in a manner that would remove this disincentive, the suggested new payment structure would not provide an incentive for scheduling trips efficiently or allocating rides in the most cost-effective manner.	<p>a. KCMT should provide a robust contractual incentive for the control center provider to schedule trips efficiently and allocate rides between dedicated vans and nondedicated services in a cost-effective manner.</p> <p>b. KCMT should ensure that its next contract provides sufficient flexibility that allows for changes in the mix of service between dedicated vans and nondedicated services.</p>
Contract Monitoring		
4	FTA guidance recommends that contract monitoring be designed to address the potential unintended consequences of how contractors are paid. KCMT’s current contract monitoring activities are not aligned in such a manner.	Depending on the contractor payment structure used in the next contract, KCMT should select the appropriate performance standards and link those standards to incentives or liquidated damages.
5	KCMT’s current contract monitoring activities are infrequently applied, potential penalties are insufficient to change contractor behavior, and the penalty amounts have declined over time because of inflation.	KCMT should set incentive and liquidated damage amounts at levels that can change contractor behavior and adjust these amounts for inflation during the life of the contract.

#	What We found	What Transit Should Do
6	<p>KCMT does not have a contract management plan and relies on contractor self-reporting data on its performance. Developing and using a contract management plan is a best practice in contract oversight.</p>	<p>KCMT should begin developing a contract management plan for monitoring the new contract. For each contract requirement, the plan should specify: 1) the method for verifying compliance; 2) frequency of review; and 3) the staff member responsible for monitoring that element of the contract.</p>
Service Quality		
7	<p>KCMT's headline performance target for on-time performance focuses on timely pickups to the exclusion of timely drop-offs, which is inconsistent with FTA guidance. This has led to an imbalanced emphasis on timely pickups over timely drop-offs, which can lead to circuitous routing and increased onboard time, late drop-offs, or excessively early drop-offs.</p>	<p>KCMT should establish an additional on-time performance target for drop-offs defining timely drop-offs as those that occur 30 minutes before the appointment time to the appointment time. Associated incentives or liquidated damages should aim to adequately balance the emphasis on both pickups and drop-offs.</p>
8	<p>Between 2010 and 2016, KCMT had planned maintenance expenditures of \$331,575 associated with software applications that it has not completely rolled out. These applications include web booking software, which has the potential to reduce call volumes and increase customer satisfaction, and PASS-IPA, which tracks compliance with ADA requirements for onboard ride times relative to fixed route service.</p>	<p>KCMT should thoroughly review compatibility and utility before purchasing IT products and, after purchasing, work to use them.</p>
9	<p>KCMT currently contracts out its customer service (e.g., handling customer comments and complaints) function. This is atypical of transit agencies that have separate control center and service provider contracts. For transit agencies with single or multiple turnkey contractors, it is a good practice to keep the customer service function in-house since a contractor would have a conflict of interest in reporting complaints directed at them to the transit agency.</p>	<p>KCMT should establish a customer service function that is independent of control center, service provider, or turnkey contractors.</p>

Cost of Service

According to data from the National Transit Database for 2014, KCMT had the fifth highest cost per trip provided among the 40 largest paratransit agencies in the country.

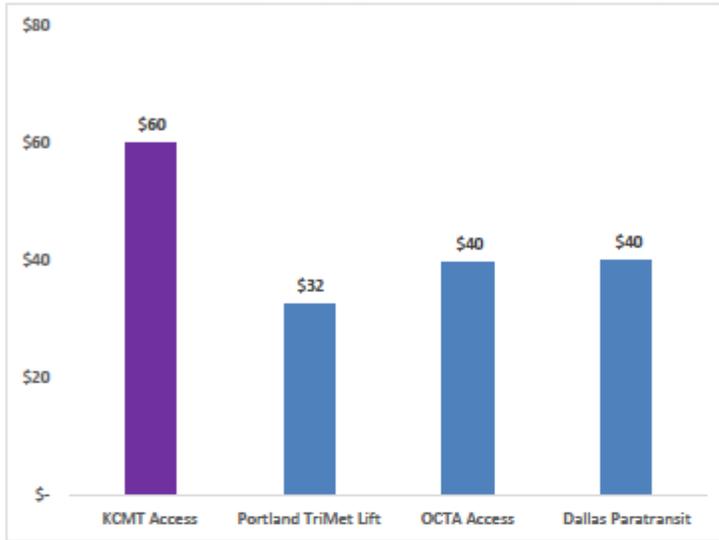
Exhibit 1: King County's paratransit program has one of the highest costs per trip in the country.



Source: Federal Transit Administration, National Transit Database, 2014

Our review of detailed financial data provided by peer agencies confirmed KCMT's relatively high costs continued in 2015.

Exhibit 2: The cost of King County's paratransit is much higher than peer agencies.

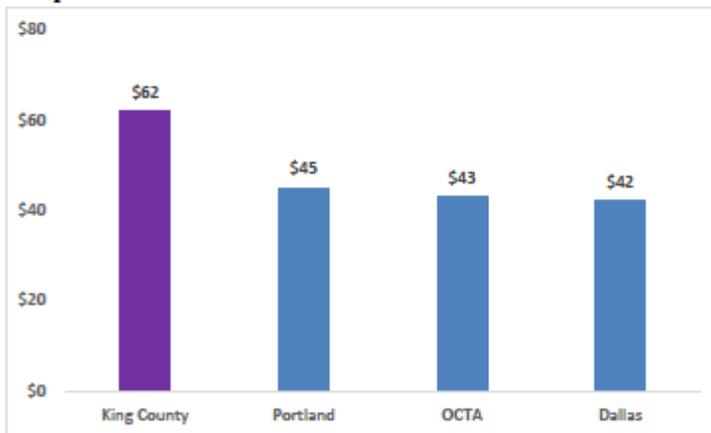


Source: KCMT financial information and data provided by peer agencies 2015

In our review of the peer agency data, three potential explanations for KCMT's high costs became apparent.

First, the rates King County pays to service providers is higher than those paid by the peer agencies.

Exhibit 3: King County's vehicle operations provider payment rate per service hour is much higher than peers.

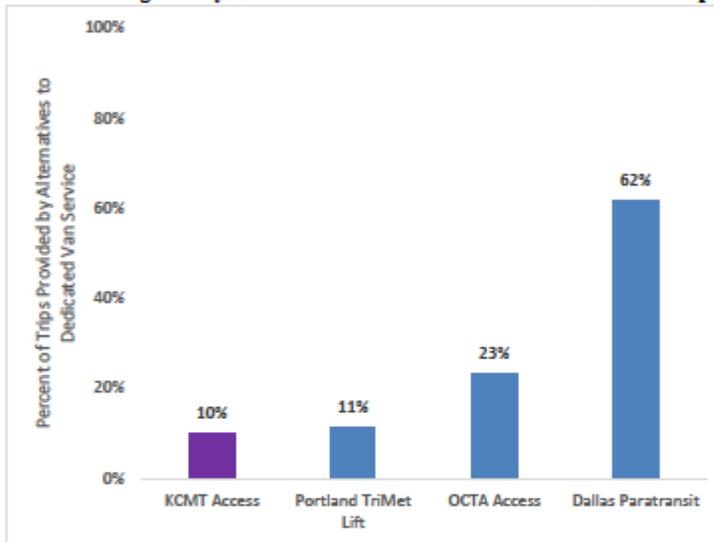


Source: KCMT financial information and data provided by peer agencies 2015

Note: We adjusted for differences between contractual scopes of work and payment structures. For example, Portland has a separate contract for vehicle maintenance, while KCMT includes vehicle maintenance in its contract with its vehicle service provider. OCTA pays for both scheduling/dispatch and vehicle services in a single contract, while KCMT uses separate contracts for these functions. Dallas pays per trip rather than per vehicle service hour. Our adjustments took those factors into account in making this comparison. We did not adjust for differences in cost of living among the peer jurisdictions.

Second, KCMT makes less use of non-dedicated vehicles such as taxis than the peer agencies we reviewed.

Exhibit 4: King County's use of non-dedicated vehicles is lower than most peers.



Source: KCMT performance information and data provided by peer agencies 2015

Non-dedicated services can improve the cost-effectiveness of service in situations of low service density. For example, the goals of non-dedicated service include:

- to lower costs in low-density parts of the service area
- to lower costs during low-density periods of demand.

Our analysis of KCMT data indicates that on 78 percent of trip legs (e.g., a movement of the van from one location to another to pick up or drop off a passenger) there were either 0 or 1 passengers in the van, which suggests there is a significant amount of low-density service being provided by the dedicated vans.

Third, KCMT's contractual payment structure creates a disincentive for the control center provider to schedule trips efficiently, or allocate trips among the dedicated vans and taxis in a cost-effective manner. There is also a disincentive for the vehicle service providers to operate their runs in an efficient manner. This is because both the control center provider and the vehicle

service providers are paid based on the number of service hours that are provided. The more service hours it takes to provide the required service, the more the contractors are paid.

KCMT paratransit staff has indicated that in the next contract, it intends to pay for control center services based on the cost of service, rather than service hours, while continuing to pay for dedicated van service based on service hours. This plan would eliminate the disincentive for the control center provider to schedule trips efficiently or allocate trips among the dedicated van service and alternatives in a cost-effective manner. However, it would not create an incentive for the control center provider to schedule trips efficiently, nor would it create an incentive for the vehicle service providers to operate efficiently.

Contract Monitoring

Contractual tools for enforcing performance standards should be aligned with the contract, and incentivized.

KCMT has some incentives and disincentives in its current contract, but its contract monitoring activities are not effectively addressing the risks created by the contractual payment method. For example, the FTA recommends that for contracts that pay per vehicle service hour, the agency should closely monitor run structure, productivity, and scheduling. Most of the current incentives and penalties are related to service quality, and none of the incentives can be paid unless a service quality standard is met. While KCMT has one incentivized performance metric related to productivity, it has only been awarded once in the past eight years, and KCMT has reduced contractor performance targets as productivity has declined. The table below illustrates the current performance standards that are linked to incentives and penalties in the current contracts.

Exhibit 5: Performance standards with incentives or disincentives in current contracts.

	Performance Metric	What This Measures
-	Dropped route	Service quality
+/-	Number of missed trips	Service quality
+/-	Percentage of on-time pickups*	Service quality
+	Number of preventable accidents	Safety
+	Number of road calls	Maintenance
+	Meeting scheduled pull-out times	Scheduling
+	Average number of rides per vehicle service hour	Productivity

Key: - Linked to potential disincentive (liquidated damages) in current contract
+/- Linked to both a potential disincentive and an incentive in current contract
+ Linked to potential incentive payment in current contract.

Source: KCAO analysis of Access Paratransit program contracts

*According to the contract, none of the other incentives can be paid out if the on-time pickup rate is less than 90 percent.

King County Metro Transit faces challenges overseeing the current contract.

KCMT's current contracts contain provisions for monthly incentives and liquidated damages, but the amounts are very small in comparison to the amount paid in the contract. The incentives have been awarded infrequently and half of them appear to have been awarded in error. Transit started

assessing liquidated damages for missed trips in 2010, but only collects fees for about 40 percent of them. Over the past eight years, Transit has paid contractors over \$300 million for services, and awarded less than \$24,000 in incentives and assessed about \$100,000 in liquidated damages.

While Transit reviews performance data submitted by contractors, the infrequent and inconsistent usage of incentives and penalties indicates that Transit must do more to develop a logical set of performance standards and oversee future contracts. For future contracts, incentives and liquidated damages should be developed to address risks inherent in the payment type, be substantial enough to encourage better performance, and be properly monitored by the agency.

Exhibit 6: Infrequent and inconsistent use of incentives, January 2009 - June 2016.

Monthly Performance Incentive	Number of Times Incentive Paid To Contractors	Number of Times On-time payment was made in error*	Amount paid in incentives, 2009-2016
Productivity	1*	0	\$10,000
Zero Preventable Accidents	5	3	5,000
Zero Road Calls	12	9	3,900
Zero Missed Trips	5	2	3,000
Less than 2 Road Calls	6	2	1,800
Total	29	16	\$23,700

Source: KCAO analysis of Access paratransit performance reports, 2009-2016.

*This is one award divided among three contractors.

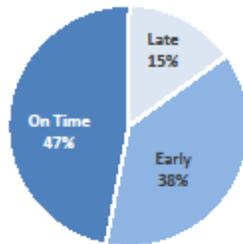
Service Quality

Paratransit services are not providing an optimum customer experience and in some cases are not aligned with best practices related to the Americans with Disabilities Act (ADA). For example:

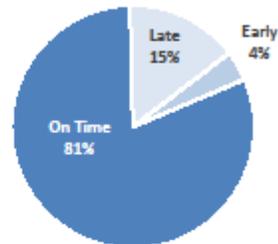
- FTA guidance suggests that on-time performance goals should be 100 percent, but that a minimum required level of performance of 92 to 95 percent is acceptable. As with onboard time, riders and their advocates have expressed dissatisfaction with on-time performance, and the quantitative data supports their claims. Access paratransit program's on-time performance has been well below these acceptable levels, and appears to be dropping. On-time performance has been about 90 percent since 2012, and averaged 86 percent in the first half of 2016.
- The FTA encourages transit agencies to establish policies for on-time drop-offs so that passengers are dropped off no more than 30 minutes before a scheduled appointment. Based on an analysis of appointment times and actual drop off times for 32,712 trips KCMT provided between September 1 and 30, 2016, we found that 38 percent of passengers were dropped off too early under the FTA standard, while only 4 percent of passengers were dropped off too early under the KCMT standard. This distinction is useful in explaining why customers appear dissatisfied with these trips, even though the KCMT standard shows that most trips are on-time.

Exhibit 7: FTA's performance standards suggest that only about half of appointment-based trips are on time, but KCMT standards suggest most are on time.

On-time performance for appointment-based trips using FTA standards



On-time performance for appointment-based trips using current KCMT standards



Source: KCAO analysis of 32,712 Access paratransit trips with a requested drop-off or appointment time in September 2016.
Note: FTA standards categorize a trip as early if a person is dropped off more than 30 minutes earlier than their scheduled appointment time. King County categorizes a trip as early if a person is dropped off more than 60 minutes earlier than their scheduled appointment time.

Next Steps

We offer these suggestions to you at this time because we consider the issues covered in this letter as topics that could be potentially addressed in the new RFP. We plan to wait until the RFP is finalized before issuing the full audit report, and to the extent that the issues raised in this letter are addressed in the RFP, the audit report will reflect that. In the meantime, the audit will continue to explore other topics we are currently reviewing.

King County Auditor's Office

The King County Auditor's Office performs its work in accordance with Government Auditing Standards. The Auditor's Office is providing this management letter to Metro Transit in preparation of its issuance of a request for proposals to provide paratransit services in 2018. This is an interim reporting product as outlined in Government Auditing Standards A7.02g. The overall audit product is being done under the Auditor's Office standards for independence, objectivity, and quality.



Executive Response

Providing convenient fare payment options for customers is something we take seriously and Metro is currently exploring a number of options not noted in the audit report. Specifically, Metro's mobile ticketing pilot project will be tested for use on Access service in the next few months. Additionally, providing fare collection devices on Access vehicles is being examined and a request is currently pending with the One Regional Card for All (ORCA) system vendor to develop a portable device that could provide a viable, cost-effective option for Access vehicles. Such an option would enable Access customers to use the e-purse functionality of ORCA for their Access trips. With respect to monthly pass pricing, Access customers are able to use their Access pass on the fixed route system at the Access fare rather than the bus fare. Metro also provides Regional Reduced Fare Permits for our Access customers which allow them to ride the fixed route system at an even lower fare.

The 2014 peer review, provided the suggestion that Access eligible riders be able to access the fixed route system at no cost. This suggestion was evaluated during the 2015/2016 budget development process. At that time King County elected to move forward with a low-income fare product (ORCA LIFT) and needs to gauge the financial impacts of that program before looking at additional changes.

Equity and Social Justice is a priority of my administration, and I appreciate the work done by the audit team to identify potential opportunities to use the Equity Impact Review tool. Metro does a lot of good work for the fixed route system, including the identification of routes serving minority and low income populations as noted in the Service Evaluation Report. Expanding the fixed route system will provide additional mobility to all residents of King County, including those that use Access. As we look at the Access program, we need to continue to be clear that the ADA mandates that disability rather than any other characteristic determines eligibility for service. FTA guidance states that service providers may not unreasonably burden applicants during the ADA certification process by requesting information that has no bearing on eligibility determinations. In this instance, that would include demographic information. That said, I have asked staff to look at ways to collect demographic information outside of the certification process so that we can evaluate the impacts of the program. Providing this information will be totally voluntary for customers. Collecting and collating this information in order to report and act upon results will take time.

Finally, as noted in the audit report, we have already initiated the process of soliciting proposals for the service provider contracts associated with the program. This solicitation incorporated many of the recommendations from the draft audit report issued by your office in December.

These new contracts represent a significant opportunity to improve the operation of the system and we look forward to reviewing the proposal responses. Proposal responses are now scheduled to be submitted by June 22, 2017, as we issued an extension so that the proposal pool could be as comprehensive as possible. Given the proposal timelines, I appreciate the collaboration from your staff to provide interim recommendations that could be used to form the Scope of Work and Request for Proposals.

KyMBER Waltmunson
June 7, 2017
Page 4

Attached is our response to the audit recommendations. Our timelines for implementation revolve around the new contracting model. Some recommendations require the new model to be in place and therefore won't be implemented until summer 2018. Others are not as dependent upon the new contract and implementation will begin this year.

Thank you again for collaborating on this work. If you have any questions regarding our audit response, please contact Christina O'Claire, Assistant General Manager – Planning and Customer Service, Metro Transit, at 206-477-5801.

Sincerely,



Dow Constantine
King County Executive

Enclosure

cc: Fred Jarrett, Senior Deputy Executive, King County Executive Office (KCEO)
Rhonda Berry, Deputy Executive for Operations, KCEO
Harold S. Taniguchi, Director, Department of Transportation (DOT)
Rob Gannon, General Manager, King County Metro, DOT
Christina O'Claire, Assistant General Manager – Planning and Customer Service,
King County Metro, DOT
Priscilla Vargas, Managing Director, Paratransit and Rideshare Operations, King
County Metro, DOT

Recommendation 1

Transit should, on an ongoing basis, conduct an analysis aimed at optimizing the mix of service between the paratransit van service and alternatives, such as taxis.

Agency Response

Concurrence	Concur
Implementation date	Q3 2018
Responsible agency	Transit
Comment	The new contracting model includes a requirement for a monthly review with the contractor of the mix of services. Metro staff will be conducting these reviews as a way to optimize service options.

Recommendation 2

Transit should thoroughly review compatibility and utility before purchasing information technology products and, after purchasing, work to use them.

Agency Response

Concurrence	Concur
Implementation date	Q4 2017
Responsible agency	Transit
Comment	The software purchase discussed by the auditor will be put into use later this year. The delay in implementing the software was the result of new requirements coming from the Community Access Transportation program. Future purchases of software in support of Access will be the sole responsibility of the Contractor.

Recommendation 3

Transit should complete and execute a contract management plan for monitoring the new contracts. For each contract requirement, the plan should specify: a) the method for verifying compliance; b) frequency of review; and c) staff member responsible.

Agency Response

Concurrence	Concur
Implementation date	Q3 2018
Responsible agency	Transit
Comment	The new contracting model includes a comprehensive Contract Management Plan that addresses the concerns raised by the auditor.

Recommendation 4

Transit should monitor and enforce contract incentives and disincentives for a period of one year, and based on this work: a) assess how they can more effectively improve productivity and performance; b) establish future dates to review them later in the five-year contract; and c) update the contract management plan to reflect these changes.

Agency Response

Concurrence	Concur
Implementation date	Q3 2018
Responsible agency	Transit
Comment	Based in part on the auditor's recommendations, the new contract for Access service will include a range of performance standards that are linked to a new and expanded set of financial incentives and disincentives. These standards are identified in the RFP. The standards will be reviewed after one year and periodically during the period of the contact.

Recommendation 5

Transit should define excessively long trips in reference to fixed-route standards, regularly sample longer trips to count how many are excessively long, and take steps to make sure there is not a pattern of significant numbers of excessively long trips.

Agency Response

Concurrence	Concur
Implementation date	Q1 2018
Responsible agency	Transit
Comment	The scheduling system has a series of parameters that ensure that trips are scheduled consistent with comparable fixed route trips; however, actual on street conditions can result in longer than anticipated trips. The on street conditions can be more than expected due to traffic congestion or unexpected changes to the travel pattern (for example, a delay in a customer being ready for pick-up). Longer than anticipated trip times are also experienced by users of the fixed route system when the on-street conditions result in the actual trip taking longer than the scheduled trip. Metro staff currently monitor the trip lengths which are also subject to review by the Federal Transit Administration (FTA). The FTA has not identified issues with the Metro Access system and efforts will continue to ensure that the scheduling system is accurately portraying trip lengths.

Recommendation 6

Transit should put in place monitoring and enforcement procedures to make sure paratransit riders are not dropped off more than 30 minutes before their appointments.

Agency Response

Concurrence	Concur
Implementation date	Q4 2017
Responsible agency	Transit
Comment	Metro is changing the scheduling procedures to put in place a 30-minute drop-off threshold. This work will be completed by Q4 2017 and will be monitored and enforced as part of the current and future contracts.

Recommendation 7

Transit should provide additional fare payment methods that take into account riders' needs and trip frequency.

Agency Response

Concurrence	Concur
Implementation date	Q2 2018
Responsible agency	Transit
Comment	A number of efforts are currently underway to provide more fare payment options to Access riders. The mobile ticketing pilot is being expanded to the Access system by the end of summer. Equipping Access vehicles with devices to read ORCA cards is also being explored with the system vendor. If a cost effective device can be identified, Access riders will be able to use the e-purse functionality of the ORCA system. Additional outreach is also being provided to make the Regional Reduced Fare Permit more accessible.

Recommendation 8

Transit should work directly with King County communities to develop activities that will address barriers to the Access paratransit program for people with limited English proficiency.

Agency Response

Concurrence	Concur
Implementation date	Q2 2018
Responsible agency	Transit
Comment	Metro currently partners and coordinates with Hopelink who has a program that reaches out to individuals of limited English proficiency to educate them about Access services and other transportation alternatives. Metro is expanding its outreach efforts to reach more people with limited English proficiency through a variety of monthly community meetings, community events and multicultural events throughout the county.

Recommendation 9

Transit should use language data collected during eligibility determination to provide linguistically appropriate customer service to paratransit riders and routinely collect and update information on language preference.

Agency Response

Concurrence	Concur
Implementation date	Q3 2017
Responsible agency	Transit
Comment	Metro currently collects this data through its application process. In turn, applicants and eligible riders are matched with customer service representatives who provide translation through a language line service. This is routinely done over the phone and in person, as necessary. This information is collected and updated every three years through the Access recertification process.

Recommendation 10

Transit should immediately take steps to implement an Equity Impact Review of the Access paratransit program.

Agency Response

Concurrence	Concur
Implementation date	Q4 2017
Responsible agency	Transit
Comment	Metro will work with the Executive's Office and DOT Director's Office to begin the Equity Impact Review process. This process will include review of the Equity Impact Analysis tool as well as tools currently used by Metro to conduct equity analysis for the fixed route system. Paratransit riders use the fixed route system as well as the Access system and an equity review must comprehensively evaluate how this population is best served.

Recommendation 11

Transit should use the results of the Equity Impact Review to find and engage with historically underserved populations.

Agency Response

Concurrence	Concur
Implementation date	Q2 2018
Responsible agency	Transit
Comment	Based on the results of the equity review, Metro will develop appropriate customer outreach and engagement approaches to address the needs of the community. This could include outreach and engagement on fixed route as well as Access services. Outreach is anticipated to begin in mid-2018 as data from the equity review becomes available.

Recommendation 12

Based on the Equity Impact Review and best practices, Transit should: a) develop community impact measures for the Access paratransit program; b) include the metrics in its Access paratransit performance monitoring plan; and c) annually report on equitable access to the program.

Agency Response

Concurrence	Concur
Implementation date	Q4 2018
Responsible agency	Transit
Comment	Based on the results of the equity review, Metro will develop impact measures and report on progress as part of ongoing reports on system performance. The first report will likely be published in 2019 following completion of the equity review and development of measures.

Recommendation 13

Transit should follow through with its commitment to establish a customer service function that is independent of control center, service provider, or turnkey contractors.

Agency Response

Concurrence	Concur
Implementation date	Q3 2018
Responsible agency	Transit
Comment	The new contract model includes a requirement for the vendor to forward customers to Metro's Customer Service office to address customer complaints and commendations. The vendor will take reservations and provide customer service to the riders. Metro's Customer Service will be available to Access customers in the same manner that it is available to bus riders today. Metro staff will collect, record and respond to customer questions, complaints and commendations.

Recommendation 14

Transit should gather feedback from active Access riders and prospective users on an annual basis and use this information to improve service quality.

Agency Response

Concurrence	Concur
Implementation date	Q3 2018
Responsible agency	Transit
Comment	Metro is taking a number of steps to collect and use customer feedback. While Metro will conduct customer surveys as part of a broader, more timely customer service initiative, the vendor will be contractually required to randomly survey active riders weekly to collect feedback. Results of the surveys will be used to identify areas of improvement and to track the results of those improvements.

Recommendation 15

Transit should use information from its 2016 Access paratransit survey to identify methods to increase the participation of historically underserved populations in future surveys, and implement them.

Agency Response

Concurrence	Concur
Implementation date	Q1 2018
Responsible agency	Transit
Comment	Metro staff will be evaluating how to more fully incorporate Access riders with ongoing customer surveys conducted with bus riders and non-riders. Survey methodology will include techniques to ensure that the population is fairly represented in the survey sampling.

Recommendation 16

Transit should conduct nonresponse analysis following its 2017 and future surveys, and use this information to improve response rates and participation of historically underserved populations.

Agency Response

Concurrence	Concur
Implementation date	Q4 2018
Responsible agency	Transit
Comment	Metro staff will develop a nonresponsive methodology to better target the root cause of nonresponsiveness in its surveys of historically underserved populations. Ongoing community feedback will be sought to develop more inclusive surveys.

Recommendation 17

Transit should supplement customer feedback and data reporting with direct observation such as a “mystery rider program” to ensure service quality.

Agency Response

Concurrence	Concur
Implementation date	Q4 2018
Responsible agency	Transit
Comment	Metro will develop a pilot ‘mystery rider program’ using current agency staff. The pilot will include evaluation of methods for monitoring and assessing performance as well as identifying areas for improvements. The pilot will run through the end of 2018. As part of developing the 2019/2020 budget, the results of the pilot program will be evaluated to determine the resources needed to sustain the effort on a permanent basis.



Statement of Compliance, Scope, Objective & Methodology

Statement of Compliance with Government Auditing Standards

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Scope of Work on Internal Controls

We assessed internal controls relevant to the audit objectives. This included review of selected policies, plans, processes, and reports, as well as interviews with King County Metro Transit and contractor staff.

Scope

This audit examined paratransit services provided by King County Metro Transit from 2008 to the present.

Objectives

- Assess the adequacy of Access paratransit contracts to ensure compliance, value, and customer service.
- Determine whether Transit is adequately monitoring contractor performance.
- Assess the extent to which the Access paratransit program is contributing to King County strategic, equity, and social justice goals.

Methodology

Our methodology involved interviewing a wide range of paratransit stakeholders including: King County Metro Transit Accessible Services staff and Office of Equity and Social Justice staff; King County paratransit contractors Harborview Medical Center (eligibility), First Transit (control center), Transdev (vehicle service), Solid Ground (vehicle service), and Lighthouse for the Blind (quality control); community members affiliated with Access paratransit's Community Advisory Group and Stop Veolia; and representatives of Local 587, Puget Sound Regional Council, and King County Mobility Coalition. Interviews with paratransit contractors, excluding Lighthouse for the Blind, involved site visits to the eligibility determination center, control center, and two vehicle bases in South Park and Kent.

We also conducted a literature review regarding ADA paratransit services and a document review of Access paratransit contracts and requests for proposals. The literature review included the 2015 ADA Circular from the Federal Transit Administration, ADA transportation guidelines from the Disability Rights Education & Defense Fund, and white papers from the Transit Cooperative Research Program. The latter were mostly used to understand what payment rates, contract monitoring procedures, performance measures, and incentives King County Metro Transit had in place.

We used operational and financial data from a number of sources. For example, we used King County Metro Transit data to analyze performance trends from 2008 to 2016, we used data from the National Transit Database to place Transit's cost per trip in a national context (the most recent data was for 2014), and we solicited data from three peer jurisdictions for 2015 (Orange County Transportation Authority, Dallas Area Rapid Transit, and Portland Tri-Met) to compare usage of alternatives to dedicated van

service. Looking at performance trends, we sampled data for on-time performance and travel time. For on-time performance, we sampled trips from September 2016 where passengers were being taken to an appointment. Our sample included 32,712 trips. We wanted to use a full month of recent data to understand how closely people were being dropped off relative to their appointment times. Our results cannot be projected to the population. To compare fixed-route and paratransit travel times, we sampled data from one of each of the seven days of the week for the period between December 2015 and November 2016. Data availability was limited because Transit unloads routing data from the fixed-route travel tool every three days due to limited server capacity. The sample included all seven days of the week because demand for trips and traffic flows vary significantly between weekdays and weekends. We selected three of the days, because they were the most recent data in the tool at the time of the analysis. To expand our analysis to other months, we used data Transit had previously exported from the tool for our analysis. Of the 15,599 trips that took place on those days, 20 percent (3,192) were 45 minutes or longer and had fixed-route data. We chose trips that were 45 minutes or longer because the FTA recommends sampling longer trips and gives 45 minutes as an example of a longer trip. Our sample results cannot be projected to the population.

To understand riders' experiences, we held a focus group, attended a community meeting, and reviewed customer survey results. We held a focus group with Open Doors for Multicultural Families to gather perspectives from individuals with limited English proficiency who use Access to meet their family's transportation needs. Twenty-five parents of Access riders attended the focus group, which involved interpretation in Somali, Vietnamese, Spanish, Khmer (Cambodian), Korean, Chinese, and Farsi (Persian). We attended a community meeting, called "Let's Improve Access Paratransit," organized by the Transit Riders Union with 20 attendees, including 11 past or present Access riders. Finally, we reviewed the results of the online survey Transit sent out to Access paratransit riders in the summer of 2016. The survey had approximately 600 respondents, including riders, their caregivers, and organizations that serve them.

To gain technical expertise, we hired a researcher from the University of Washington (UW) to analyze vehicle occupancy, deadhead, and cost per trip. The UW researcher previously worked with Transit to analyze paratransit data related to demand projections, emergent incidents, and cost effectiveness in the summer of 2015.

We used U.S. Census Bureau data from the 2009-2013 American Community Survey and Language Line invoices from Transit and First Transit for September 2015 through August 2016,²⁵ to compare the most common languages spoken by individuals with limited English proficiency in King County to the languages spoken by those who used language assistance to ride Access.²⁶ We also looked at census data to understand the racial proportionality of customer survey respondents as compared to the county as a whole.

²⁵ Transit provided invoices for September 2015 through July 2016 but did not have invoices for May, June, and August 2016. First Transit provided invoices for December 2015 through August 2016.

²⁶ The Language Line is a contracted, fee-based service that connects with a bilingual operator to provide interpretation into English.



List of Recommendations & Implementation Schedule

Recommendation 1

Transit should, on an ongoing basis, conduct an analysis aimed at optimizing the mix of service between the paratransit van service and alternatives, such as taxis.

IMPLEMENTATION DATE: Q3 2018

ESTIMATE OF IMPACT: Optimizing the mix of service will reduce cost per trip and the number of circuitous routes by allowing smaller vehicles to more efficiently accommodate fewer riders to more far-flung destinations.

Recommendation 2

Transit should thoroughly review compatibility and utility before purchasing information technology products and, after purchasing, work to use them.

IMPLEMENTATION DATE: Q4 2017

ESTIMATE OF IMPACT: These reviews will reduce the likelihood that Transit purchases IT products that add little or no value to the program.

Recommendation 3

Transit should complete and execute a contract management plan for monitoring the new contracts. For each contract requirement, the plan should specify: a) the method for verifying compliance; b) frequency of review; and c) staff member responsible.

IMPLEMENTATION DATE: Q3 2018

ESTIMATE OF IMPACT: A contract management plan will help make sure that Transit staff regularly monitor and verify contractor-reported performance metrics, thus helping to ensure that service and other goals are met.

Recommendation 4

Transit should monitor and enforce contract incentives and disincentives for a period of one year, and based on this work: a) assess how they can more effectively improve productivity and performance; b) establish future dates to review them later in the five-year contract; and c) update the contract management plan to reflect these changes.

IMPLEMENTATION DATE: Q3 2018

ESTIMATE OF IMPACT: Reviewing contract incentives to make sure that they change contractor behavior in positive and predictable ways will help improve productivity and performance and inform the contract management plan.

Recommendation 5

Transit should define excessively long trips in reference to fixed-route standards, regularly sample longer trips to count how many are excessively long, and take steps to make sure there is not a pattern of significant numbers of excessively long trips.

IMPLEMENTATION DATE: Q1 2018

ESTIMATE OF IMPACT: This definition and process will add transparency to trip length standards and performance and help ensure that riders are not onboard for too long, addressing one of the primary concerns expressed by riders in the 2016 rider survey.

Recommendation 6

Transit should put in place monitoring and enforcement procedures to make sure paratransit riders are not dropped off more than 30 minutes before their appointments.

IMPLEMENTATION DATE: Q4 2017

ESTIMATE OF IMPACT: Implementing these monitoring and enforcement procedures will improve service quality by allowing riders to be picked up later from their trip origin and spend less time waiting at their appointment destination.

Recommendation 7

Transit should provide additional fare payment methods that take into account riders' needs and trip frequency.

IMPLEMENTATION DATE: Q2 2018

ESTIMATE OF IMPACT: New payment methods will improve service quality by increasing customer choice and convenience. More suitable payment methods may also result in higher fare recovery.

Recommendation 8

Transit should work directly with King County communities to develop activities that will address barriers to the Access paratransit program for people with limited English proficiency.

IMPLEMENTATION DATE: Q2 2018

ESTIMATE OF IMPACT: Addressing barriers to the program will help make sure that people with limited English proficiency are aware of Access paratransit and have appropriate supports to smoothly apply for and use the service, making Access more inclusive.

Recommendation 9

Transit should use language data collected during eligibility determination to provide linguistically appropriate customer service to paratransit riders and routinely collect and update information on language preference.

IMPLEMENTATION DATE: Q3 2017

ESTIMATE OF IMPACT: Data collection and sharing will help Transit to provide better customer service and to conduct an Equity Impact Review. If Transit knows their language preference, Access riders with limited English proficiency can be more independent, relying less on their community network to communicate with Access staff.

Recommendation 10

Transit should immediately take steps to implement an Equity Impact Review of the Access paratransit program.

IMPLEMENTATION DATE: Q4 2017

ESTIMATE OF IMPACT: King County's Office of Equity and Social Justice created the Equity Impact Review to help agencies determine the extent to which their service is provided equitably. This assessment will allow Transit to find gaps in service and ways to address them.

Recommendation 11

Transit should use the results of the Equity Impact Review to find and engage with historically underserved populations.

IMPLEMENTATION DATE: Q2 2018

ESTIMATE OF IMPACT: Using the findings of the Equity Impact Review can help Access make its service more accessible to underserved populations.

Recommendation 12

Based on the Equity Impact Review and best practices, Transit should: a) develop community impact measures for the Access paratransit program; b) include the metrics in its Access paratransit performance monitoring plan; and c) annually report on equitable access to the program.

IMPLEMENTATION DATE: Q4 2018

ESTIMATE OF IMPACT: Developing, monitoring, and reporting community impact measures will increase transparency about service equity and inform efforts to improve service equity.

Recommendation 13

Transit should follow through with its commitment to establish a customer service function that is independent of control center, service provider, or turnkey contractors.

IMPLEMENTATION DATE: Q3 2018

ESTIMATE OF IMPACT: When the customer service function is not independent, it can reduce transparency, because contractors do not have an incentive to alert the agency of their own poor performance. Bringing customer service in house will help make sure that Transit receives all customer feedback and has a clearer picture of service issues.

Recommendation 14

Transit should gather feedback from active Access riders and prospective users on an annual basis and use this information to improve service quality.

IMPLEMENTATION DATE: Q3 2018

ESTIMATE OF IMPACT: Gathering feedback on a regular basis will help Transit improve service quality by putting performance metrics in context and understanding the rider experience.

Recommendation 15

Transit should use information from its 2016 Access paratransit survey to identify methods to increase the participation of historically underserved populations in future surveys, and implement them.

IMPLEMENTATION DATE: Q1 2018

ESTIMATE OF IMPACT: Identifying and implementing these methods will provide Transit with a strategy for increasing the response rates of underserved populations to help make sure that the needs of all riders are taken into account in service changes.

Recommendation 16

Transit should conduct nonresponse analysis following its 2017 and future surveys, and use this information to improve response rates and participation of historically underserved populations.

IMPLEMENTATION DATE: Q4 2018

ESTIMATE OF IMPACT: Increasing the response rates of underserved populations will help make sure that the needs of all riders are taken into account when evaluating service.

Recommendation 17

Transit should supplement customer feedback and data reporting with direct observation such as a “mystery rider program” to ensure service quality.

IMPLEMENTATION DATE: Q4 2018

ESTIMATE OF IMPACT: A mystery rider program will help Transit get a more complete picture of the rider experience, which can inform service policies and priorities. This information will supplement data provided via service providers, customer service, and outreach efforts.



KING COUNTY AUDITOR'S OFFICE

Advancing performance and accountability

KYMBER WALTMUNSON, KING COUNTY AUDITOR

MISSION Promote improved performance, accountability, and transparency in King County government through objective and independent audits and studies.

VALUES INDEPENDENCE - CREDIBILITY - IMPACT

ABOUT US The King County Auditor's Office was created by charter in 1969 as an independent agency within the legislative branch of county government. The office conducts oversight of county government through independent audits, capital projects oversight, and other studies. The results of this work are presented to the Metropolitan King County Council and are communicated to the King County Executive and the public. The King County Auditor's Office performs its work in accordance with Government Auditing Standards.



This audit product conforms to the GAGAS standards for independence, objectivity, and quality.

Chapter 82.16 RCW
PUBLIC UTILITY TAX

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Commute trip reduction incentives: Chapter 82.70 RCW.

Public utility districts, privilege tax: Chapter 54.28 RCW.

82.16.010 Definitions. For the purposes of this chapter, unless otherwise required by the context:

(1) "Express business" means the business of carrying property for public hire on the line of any common carrier operated in this state, when such common carrier is not owned or leased by the person engaging in such business.

(2) "Gas distribution business" means the business of operating a plant or system for the production or distribution for hire or sale of gas, whether manufactured or natural.

(3) "Gross income" means the value proceeding or accruing from the performance of the particular public service or transportation business involved, including operations incidental thereto, but without any deduction on account of the cost of the commodity furnished or sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

(4) "Light and power business" means the business of operating a plant or system for the generation, production or distribution of electrical energy for hire or sale and/or for the wheeling of electricity for others.

(5) "Log transportation business" means the business of transporting logs by truck, except when such transportation meets the definition of urban transportation business or occurs exclusively upon private roads.

(6) "Motor transportation business" means the business (except urban transportation business) of operating any motor propelled vehicle by which persons or property of others are conveyed for hire, and includes, but is not limited to, the operation of any motor propelled vehicle as an auto transportation company (except urban transportation business), common carrier, or contract carrier as defined by RCW 81.68.010 and 81.80.010. However, "motor transportation business" does not mean or include: (a) A log transportation business; or (b) the transportation of logs or other forest products exclusively upon private roads or private highways.

(7)(a) "Public service business" means any of the businesses defined in subsections (1), (2), (4), (6), (8), (9), (10), (12), and (13) of this section or any business subject to control by the state, or having the powers of eminent domain and the duties incident thereto, or any business hereafter declared by the legislature to be of a public service nature, except telephone business and low-level radioactive waste site operating companies as redefined in RCW 81.04.010. It includes, among others, without limiting the scope hereof: Airplane transportation, boom, dock, ferry, pipe line, toll bridge, toll logging road, water transportation and wharf businesses.

(b) The definitions in this subsection (7)(b) apply throughout this subsection (7).

(i) "Competitive telephone service" has the same meaning as in RCW 82.04.065.

(ii) "Network telephone service" means the providing by any person of access to a telephone network, telephone network switching service, toll service, or coin telephone services, or the providing of telephonic, video, data, or similar communication or transmission for hire, via a telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. "Network telephone service" includes the provision of transmission to and from the site of an internet provider via a telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. "Network telephone service" does not include the providing of competitive telephone service, the providing of cable television service, the providing of broadcast services by radio or television stations, nor the provision of internet access as defined in RCW 82.04.297, including the reception of dial-in connection, provided at the site of the internet service provider.

(iii) "Telephone business" means the business of providing network telephone service. It includes cooperative or farmer line telephone companies or associations operating an exchange.

(iv) "Telephone service" means competitive telephone service or network telephone service, or both, as defined in (b)(i) and (ii) of this subsection.

(8) "Railroad business" means the business of operating any railroad, by whatever power operated, for public use in the conveyance of persons or property for hire. It shall not, however, include any business herein defined as an urban transportation business.

(9) "Railroad car business" means the business of operating stock cars, furniture cars, refrigerator cars, fruit cars,

poultry cars, tank cars, sleeping cars, parlor cars, buffet cars, tourist cars, or any other kinds of cars used for transportation of property or persons upon the line of any railroad operated in this state when such railroad is not owned or leased by the person engaging in such business.

(10) "Telegraph business" means the business of affording telegraphic communication for hire.

(11) "Tugboat business" means the business of operating tugboats, towboats, wharf boats or similar vessels in the towing or pushing of vessels, barges or rafts for hire.

(12) "Urban transportation business" means the business of operating any vehicle for public use in the conveyance of persons or property for hire, insofar as (a) operating entirely within the corporate limits of any city or town, or within five miles of the corporate limits thereof, or (b) operating entirely within and between cities and towns whose corporate limits are not more than five miles apart or within five miles of the corporate limits of either thereof. Included herein, but without limiting the scope hereof, is the business of operating passenger vehicles of every type and also the business of operating cartage, pickup, or delivery services, including in such services the collection and distribution of property arriving from or destined to a point within or without the state, whether or not such collection or distribution be made by the person performing a local or interstate line-haul of such property.

(13) "Water distribution business" means the business of operating a plant or system for the distribution of water for hire or sale.

(14) The meaning attributed, in chapter 82.04 RCW, to the term "tax year," "person," "value proceeding or accruing," "business," "engaging in business," "in this state," "within this state," "cash discount" and "successor" shall apply equally in the provisions of this chapter. [2015 3rd sp.s. c 6 § 702. Prior: (2010 c 106 § 224 expired June 30, 2013); 2009 c 535 § 1110; (2009 c 469 § 701 expired June 30, 2013); 2007 c 6 § 1023; 1996 c 150 § 1; 1994 c 163 § 4; 1991 c 272 § 14; 1989 c 302 § 203; prior: 1989 c 302 § 102; 1986 c 226 § 1; 1983 2nd ex.s. c 3 § 32; 1982 2nd ex.s. c 9 § 1; 1981 c 144 § 2; 1965 ex.s. c 173 § 20; 1961 c 293 § 12; 1961 c 15 § 82.16.010; prior: 1959 ex.s. c 3 § 15; 1955 c 389 § 28; 1949 c 228 § 10; 1943 c 156 § 10; 1941 c 178 § 12; 1939 c 225 § 20; 1937 c 227 § 11; 1935 c 180 § 37; Rem. Supp. 1949 § 8370-37.]

Tax preference performance statement—2015 3rd sp.s. c 6 §§ 702 and 703: "This section is the tax preference performance statement for the tax preference contained in sections 702 and 703 of this act. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(1) The legislature categorizes this tax preference as one intended to provide tax relief for certain businesses or individuals, as indicated in RCW 82.32.808(2)(e).

(2) It is the legislature's specific public policy objective to support the forest products industry due in part to the industry's efforts to support the local economy by focusing on Washington state based resources thereby reducing global environmental impacts through the manufacturing and use of wood. It is the legislature's intent to provide the forest products industry permanent tax relief by lowering the public utility tax rate attributable to log transportation businesses. Because this reduced public utility rate is intended to be permanent, the reduced rate established in this Part VII is not subject to the ten-year expiration provision in RCW 82.32.805(1)(a)." [2015 3rd sp.s. c 6 § 701.]

(2018 Ed.)

Effective date—2015 3rd sp.s. c 6 §§ 702 and 703: "Part VII of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect August 1, 2015." [2015 3rd sp.s. c 6 § 2302.]

Expiration date—2010 c 106 § 224: "Section 224 of this act expires June 30, 2013." [2010 c 106 § 410.]

Effective date—2010 c 106: See note following RCW 35.102.145.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Expiration date—2009 c 469 §§ 701 and 702: "Sections 701 and 702 of this act expire June 30, 2013." [2009 c 469 § 905.]

Effective date—2009 c 469: See note following RCW 82.08.962.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Finding, purpose—1989 c 302: See note following RCW 82.04.120.

Intent—1981 c 144: "The legislature recognizes that there have been significant changes in the nature of the telephone business in recent years. Once solely the domain of regulated monopolies, the telephone business has now been opened up to competition with respect to most of its services and equipment. As a result of this competition, the state and local excise tax structure in the state of Washington has become discriminatory when applied to regulated telephone company transactions that are similar in nature to those consummated by nonregulated competitors. Telephone companies are forced to operate at a significant state and local tax disadvantage when compared to these nonregulated competitors.

To remedy this situation, it is the intent of the legislature to place telephone companies and nonregulated competitors of telephone companies on an equal excise tax basis with regard to the providing of similar goods and services. Therefore competitive telephone services shall for excise tax purposes only, unless otherwise provided, be treated as retail sales under the applicable state and local business and occupation and sales and use taxes. This shall not affect any requirement that regulated telephone companies have under Title 80 RCW, unless otherwise provided.

Nothing in this act affects the authority and responsibility of the Washington utilities and transportation commission to set fair, just, reasonable, and sufficient rates for telephone service." [1981 c 144 § 1.]

Additional notes found at www.leg.wa.gov

82.16.020 Public utility tax imposed—Additional tax imposed—Deposit of moneys. (1) There is levied and collected from every person a tax for the act or privilege of engaging within this state in any one or more of the businesses herein mentioned. The tax is equal to the gross income of the business, multiplied by the rate set out after the business, as follows:

(a) Express, sewerage collection, and telegraph businesses: Three and six-tenths percent;

(b) Light and power business: Three and sixty-two one-hundredths percent;

(c) Gas distribution business: Three and six-tenths percent;

(d) Urban transportation business: Six-tenths of one percent;

(e) Vessels under sixty-five feet in length, except tugboats, operating upon the waters within the state: Six-tenths of one percent;

(f) Motor transportation, railroad, railroad car, and tugboat businesses, and all public service businesses other than ones mentioned above: One and eight-tenths of one percent;

(g) Water distribution business: Four and seven-tenths percent;

(h) Log transportation business: One and twenty-eight one-hundredths percent. The reduced rate established in this subsection (1)(h) is not subject to the ten-year expiration provision in RCW 82.32.805(1)(a).

(ii) The above factual situation applies except that the natural gas is delivered directly by the interstate pipeline to the university. The university pays the supplier for the gas and the pipeline for the transportation charge. As the transportation charge is not subject to the public utility tax, it will be included in the measure of the tax. The value of the gas consumed or used is the purchase price plus the transportation charge paid to the pipeline.

(7) Credits against the taxes.

(a) A credit is allowed against the use taxes described in this rule for any use tax paid by the consumer to another state which is similar to this use tax and is applicable to the gas subject to this tax. Any other state's use tax allowed as a credit will be prorated to the state's and cities' portion of the tax based on the relative rates of the two taxes.

(b) A credit is also allowed against the use tax imposed by the state for any gross receipts tax similar that imposed pursuant to RCW 82.16.020 (1)(c) by another state on the seller of the gas with respect to the gas consumed or used.

(c) A credit is allowed against the use tax imposed by the cities for any gross receipts tax similar to that imposed pursuant to RCW 35.21.870 by another state or political subdivision of the state on the seller of the gas with respect to the gas consumed or used.

(8) Compressed natural gas and liquefied natural gas sold or used as transportation fuel.

(a) For the purposes of this subsection, "transportation fuel" means fuel for the generation of power to propel a motor vehicle as defined in RCW 46.04.320, a vessel as defined in RCW 88.02.310, or a locomotive or railroad car.

(b) Effective July 1, 2015, RCW 82.12.022 and 82.14.-230 exempt from state and local use taxes:

(i) Compressed natural gas or liquefied natural gas to be sold or used as transportation fuel; or

(ii) Natural gas used to manufacture compressed natural gas or liquefied natural gas to be sold or used as transportation fuel.

(c) The buyer must provide and the seller must retain an exemption certificate. See the department's web site dor.wa.gov for the appropriate form. Although the sale and use of natural gas, compressed natural gas, and liquefied natural gas may be exempt from PUT under RCW 82.16.310 and state and local use taxes under RCW 82.12.022 and 82.14.230, other taxes may apply.

(9) Reporting requirements. The person who delivers the gas to the consumer must make and submit a report to the local sales and use tax unit of the department's taxpayer account administration division by the fifteenth day of the month following a calendar quarter. The report must contain the following information:

(a) The name and address of the consumer to whom gas was delivered;

(b) The volume of gas delivered to each consumer during the calendar quarter; and

(c) Service address of consumer if different from mailing address.

(10) Collection and administration. Use tax on brokered natural gas must be filed and paid electronically either monthly or quarterly by consumers to the department. The department's authority to collect this tax is found in RCW 82.12.020 and 82.14.050.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), 82.12.022, and 82.14.230. WSR 15-04-001, § 458-20-17902, filed 1/21/15, effective 2/21/15; WSR 07-24-055, § 458-20-17902, filed 12/3/07, effective 1/3/08. Statutory Authority: RCW 82.32.300. WSR 90-17-068, § 458-20-17902, filed 8/16/90, effective 9/16/90.]

WAC 458-20-180 Motor carriers. (1) Introduction.

This rule explains the tax reporting responsibilities of persons engaged in the business of transporting by motor vehicle persons or property for hire. It explains transportation business and the application of public utility tax (PUT), business and occupation (B&O), and retail sales taxes to persons engaged in the business.

(a) **Examples.** This rule contains examples that identify a number of facts and then state a conclusion. The examples should be used only as a general guide. The tax results of other situations must be determined after a review of all the facts and circumstances.

(b) **References to related rules.** The department of revenue (department) has adopted other rules that relate to the application of the PUT. Readers may want to refer to the rules in the following list:

(i) WAC 458-20-104 Small business tax relief based on income of business;

(ii) WAC 458-20-13501 Timber harvest operations;

(iii) WAC 458-20-171 Building, repairing or improving streets, roads, etc., which are owned by a municipal corporation or political subdivision of the state or by the United States and which are used primarily for foot or vehicular traffic;

(iv) WAC 458-20-174 Sales of motor vehicles, trailers, and parts to motor carriers operating in interstate or foreign commerce;

(v) WAC 458-20-175 Persons engaged in the business of operating as a private or common carrier by air, rail or water in interstate or foreign commerce;

(vi) WAC 458-20-178 Use tax and the use of tangible personal property;

(vii) WAC 458-20-179 Public utility tax; and

(viii) WAC 458-20-193D Transportation, communication, public utility activities, or other services in interstate or foreign commerce.

(2) What is a motor transportation business? A "motor transportation business" is a business operating any motor propelled vehicle transporting persons or property of others for hire and includes, but is not limited to, the operation of any motor propelled vehicle as an auto transportation company, common carrier, or contract carrier as defined by RCW 81.68.010 and 81.80.010. See RCW 82.16.010. The term "motor transportation business" does not include any "urban transportation business" as described in subsection (4) of this rule.

(a) It includes hauling for hire any extracted or manufactured material, over the state's highways and over private roads but does not include:

(i) The transportation of logs or other forest products exclusively on private roads or private highways (which is subject to the service B&O tax, e.g., see WAC 458-20-13501 Timber harvest operations); and

(ii) A log transportation business as described in subsection (3) of this rule.

(b) It does not include the hauling of any earth or other substance excavated or extracted from or taken to the right of way of a publicly owned street, place, road, or highway, by a person taxable under the public road construction B&O tax classification, regardless of whether or not the earth moving portion is separately stated. See WAC 458-20-171 for more information.

(3) **What is a log transportation business?** A "log transportation business" means the business of transporting logs by truck, except when such transportation meets the definition of urban transportation business or occurs exclusively on private roads. See RCW 82.16.010. Effective August 1, 2015, RCW 82.16.020 provides a preferential public utility tax rate for log transportation businesses.

(4) **What is an urban transportation business?** An "urban transportation business" is a business operating any vehicle for public use in the transportation of persons or property for hire, when:

- Operating entirely within the corporate limits of any city or town, or within five miles of the corporate limits thereof; or
- Operating entirely within and between cities and towns whose corporate limits are not more than five miles apart or within five miles of the corporate limits of either thereof.

(a) **The five mile standard.** "Operating entirely within five miles of the corporate limits thereof" means the five-mile standard is applied on a straight line from the corporate limits and not based on road mileage. It is immaterial how many miles the carrier travels from the origin to the termination of the haul as long as the origin and the termination of the haul are within five miles of the corporate limits. See RCW 82.16.010.

(b) **What is included in urban transportation?** Urban transportation includes, but is not limited to, the business of operating passenger vehicles of every type and also the business of operating cartage, pickup or delivery services, including the collection and distribution of property arriving from or destined to a point within or without the state, whether or not such collection or distribution be made by the person performing a local or interstate line-haul of such property. See subsection (7)(d) of this rule for deduction information for interstate transportation of persons or property.

(c) **What is not urban transportation?** Urban transportation does not include the business of operating any vehicle for transporting persons or property for hire when the origin or termination is more than five miles beyond the corporate limits of any city (or contiguous cities) through which it passes. Thus an operation extending from a city to a point which is more than five miles beyond its corporate limits does not constitute urban transportation. This is true even if the route is through intermediate cities that enable the vehicle to always be within five miles of a city's corporate limits. See subsection (2) of this rule for "What is a motor transportation business?"

(5) **What does "motor transportation" and "urban transportation" include?** Motor and urban transportation include the business of operating motor-driven vehicles, on public roads, used in transporting persons or property belonging to others, on a for-hire basis. These terms include the business of:

(a) Operating taxicabs, armored cars, and contract mail delivery vehicles, but do not include the businesses of operating auto wreckers or towing vehicles (taxable as sales at retail under RCW 82.04.050), school buses, ambulances, nor the collection and disposal of solid waste (taxable under the service and other activities B&O tax classification); and

(b) Renting or leasing trucks, trailers, buses, automobiles, and similar motor vehicles to others for use in the conveyance of persons or property when as an incident of the rental contract such motor vehicles are operated by the lessor or by an employee of the lessor.

(6) **Why is the distinction between the motor and urban transportation classifications important?** These tax classifications have different tax rates and it is important to segregate the gross income of each activity. The gross income of persons engaged in the business of motor transportation is taxed under the motor transportation PUT classification. The gross income of persons engaged in the business of urban transportation is taxed under the urban transportation PUT classification. The gross income of persons engaged in both urban and motor transportation is taxed under the motor transportation classification, unless the revenue is segregated as shown by their records.

(7) **Are deductions available?** Income, as described below, may be deducted from the taxable amounts reported, provided the amounts were originally included in the gross income. See WAC 458-20-179 for generally applicable deductions for PUT, such as bad debt and cash discount.

(a) **Fees and charges for public transportation services.** RCW 82.16.050 provides a deduction for amounts derived from fees or charges imposed on persons for transit services provided by a public transportation agency. Public transportation agencies must spend an amount equal to the tax reduction provided by this deduction solely to:

- Adjust routes to improve access for citizens using food banks and senior citizen services; or
- To extend or add new routes to assist low-income citizens and seniors.

(b) **Services furnished jointly.** In general, costs of doing business are not deductible under the public utility tax (PUT). However, RCW 82.16.050 does allow a deduction for amounts actually paid by a taxpayer to another person taxable under the PUT as the latter's portion of the consideration due for services furnished jointly by both, provided the full amount paid by the customer for the service is received by the taxpayer and reported as gross income subject to the PUT.

This includes the amount paid to a ferry company for the transportation of a vehicle and its contents (but not amounts paid to state owned or operated ferries) when the vehicle is carrying freight or passengers for hire and is being operated by a person engaged in the business of motor or urban transportation. This does not include amounts paid for transporting such vehicles over toll bridges.

Example 1. A customer hires ABC Transport (ABC) to haul goods from Tacoma to a manufacturing facility in Bellingham. ABC subcontracts part of the haul to XYZ Freight (XYZ) and has XYZ haul the goods from Tacoma to Everett where the goods are loaded into ABC's truck and transported to Bellingham. Assuming all other requirements of the deduction are met, ABC may deduct the payments it makes to XYZ from its gross income as XYZ's portion of the consider-

ation paid by the customer for transportation services furnished jointly by ABC and XYZ.

(c) **Transportation of commodities to export facilities.** Income received from transporting commodities from points of origin in this state to an export elevator, wharf, dock, or ship side on tidewater or its navigable tributaries is deductible under RCW 82.16.050. The deduction is only available when the commodities are forwarded, without intervening transportation, by vessel, in their original form, to interstate or foreign destinations. However, this deduction is not available when the point of origin and the point of delivery to the export elevator, wharf, dock, or ship side are located within the corporate limits of the same city or town.

(i) **Example 2.** AB Transport moves freight by tug and barge from points in Washington to terminal facilities at tidewater ports in Washington. The freight is subsequently shipped from the ports by vessel to interstate and foreign destinations. AB Transport may deduct the gross income from these shipments under RCW 82.16.050.

(ii) **Example 3.** ABC Trucking hauls widgets from the manufacturing plant to a storage area that is adjacent to the dock. The storage area is quite large and the widgets are moved from the storage area to alongside the ship in time for loading. The widgets are loaded on the ship and then transported to a foreign country. ABC Trucking may take a deduction for the amounts received for transporting the widgets from the manufacturer to the storage area. The movement of the widgets within the storage area is not considered "intervening transportation," but is part of the stevedoring activity.

(iii) **Example 4.** ABC Trucking hauls several types of widgets from the manufacturing plant to a "staging area" where the widgets are sorted. After sorting, XY Hauling transports some of the widgets from the staging area to local buyers and other widgets to the dock that is located approximately five miles from the staging area where the widgets are immediately loaded on a vessel for shipment to Japan. The dock and staging area are not within the corporate city limits of the same city. ABC Trucking may not take a deduction for amounts received for hauling widgets to the staging area. Even though some of the widgets ultimately were exported, ABC Trucking did not deliver the widgets to the dock where the widgets were loaded on a vessel.

However, XY Hauling may take a deduction for the gross income for hauls from the staging area to the dock. The widgets were loaded on the vessel in their original form with no additional processing. The haul also did not originate or terminate within the corporate city limits of the same city or town. All the conditions were met for XY Hauling to claim the deduction.

(d) **Interstate transportation of persons or property.** Income received from transporting persons or property by motor transportation equipment where either the origin or destination of the haul is outside the state of Washington is deductible. The interstate movement originates or terminates at the point where the transport obligation of the interstate carrier begins or ends. See WAC 458-20-193D for additional information on interstate activities. Transportation provided within the state prior to the point of origin of the interstate movement or subsequent to the point of destination within this state is wholly intrastate and not deductible.

Example 5. Airport B Shuttle provides transportation to and from the airport for persons departing or arriving from destinations that may or may not be out of state. This service is not incidental to any interstate movement and thus gross income is taxable under either motor or urban transportation.

(e) **Interstate transportation of commodities.** Income received from the transportation of commodities from points of origin in this state to final destination outside this state, or from points of origin outside this state to final destination in this state are deductible under RCW 82.16.050 where the carrier grants to the shipper the privilege of stopping the shipment in transit at some point in this state for the purpose of storing, manufacturing, milling, or other processing, and thereafter forwards the same commodity, or its equivalent, in the same or converted form, under a through freight rate from point of origin to final destination.

(f) **Transportation of agricultural commodities.** Certain income received from the transportation of agricultural commodities can be deducted when the commodities do not include manufactured substances or articles. For the income to be deducted, the commodities must be transported from points of origin in the state to interim storage facilities in this state for transshipment, without intervening transportation, to an export elevator, wharf, dock, or ship side on tidewater or its navigable tributaries to be forwarded, without intervening transportation, by vessel, in their original form, to interstate or foreign destinations. If agricultural commodities are transshipped from interim storage facilities in this state to storage facilities at a port on tidewater or its navigable tributaries, the same agricultural commodity dealer must operate both the interim storage facilities and the storage facilities at the port. RCW 82.16.050.

(i) The deduction under this subsection is available only when the person claiming the deduction obtains a completed "Certificate of Agricultural Commodity Shipped to Interstate and Foreign Destinations" from the agricultural commodity dealer operating the interim storage facilities.

(ii) A blank certificate can be found on the department's web site at dor.wa.gov. The form may also be obtained by contacting the department's telephone information center at 1-800-647-7706, or by writing the department at:

Taxpayer Information and Education
Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478

(8) **Exemption for income from persons with special transportation needs.** RCW 82.16.047 provides an exemption from PUT for amounts received for providing commuter share riding or ride sharing for persons with special transportation needs in accordance with RCW 46.74.010. Transportation must be provided by a public social service agency or a private, nonprofit transportation provider as defined in RCW 81.66.010.

(9) **Business activities other than hauling.** Persons engaged in the business of motor or urban transportation may also receive income from other business activities. The tax consequences of this income is generally based on whether or not these services are performed as a part of or are incidental to the hauling activity, or are services where the taxpayer does not haul the shipment.

(a) **Handling and other services that are a part of or incidental to the hauling activity.** When a person performs activities such as packing, crating, loading or unloading of goods that the person is hauling for the customer, those services are considered to be performed as a part of the hauling activity, or are services incidental to the haul itself. The gross income from those services is taxed in the same manner as the hauling activity, e.g., motor or urban transportation.

Example 6. Mary hires Luke's Packing & Hauling Co. (Luke's) to load, haul, and unload her belongings at a local storage facility just a couple of miles down the street from the city apartment she is vacating. Luke's will report the gross income from Mary under the urban transportation PUT classification.

(b) **Handling and other services that are not a part of or incidental to the hauling activity.**

(i) If a person engaged in hauling activities packs, crates, loads, or unloads goods that the person is not also hauling for the customer, the gross income from these activities will generally be subject to service and other activities B&O tax.

Example 7. James hires Luke's Packing & Hauling (Luke's) to wrap, pack, and crate his belongings in preparation for long-term storage. Luke's will not be hauling James' belongings as Haul and Storage Inc. has been hired to pick up the belongings and put them in their storage facility. Luke's will report the gross income for wrapping, packing, and crating James' belongings under the service and other activities B&O tax classification.

(ii) A person engaged in hauling activities may also perform services that are not a part of or are separate from the hauling activity. The gross income from these activities is not subject to the motor or urban transportation PUT, but is instead subject to tax based on the nature of the activity and other provisions of the law.

Example 8. Affordable Hauling and Storage (Affordable) hauls products for hire and also operates a warehouse. Big Manufacturing Company (Big) hires Affordable to pick-up and deliver products to and from Affordable's warehouse for long-term storage. Affordable charges Big for the hauling services as they occur and also separately invoices Big a monthly fee for storing the products. The income from the hauling services is subject to the motor transportation or urban transportation PUT classification, as the case may be. The monthly storage charges are subject to the warehousing B&O tax classification. See WAC 458-20-182 for an explanation of the tax-reporting responsibilities of warehouse businesses.

(c) **Sales, leases, or rentals of tangible personal property by motor carriers.** Persons engaged in either motor or urban transportation may also sell, lease, or rent tangible personal property, such as forklifts or trailers. Gross income from the sale, lease, or rental of tangible personal property without an operator to a consumer, is subject to retailing B&O and retail sales taxes, unless a specific exemption applies. If the sale is a sale for resale, the sale is subject to the wholesaling B&O tax classification. For information regarding the tax reporting responsibilities of persons that lease or rent tangible personal property see WAC 458-20-211.

If the sale, lease, or rental of the property qualifies for one of the retail sales tax exemptions for equipment used in interstate commerce provided by RCW 82.08.0262 or

82.08.0263 (e.g., as may be the case with a trailer used in interstate commerce), the retailing of interstate transportation equipment B&O tax classification applies. Refer to WAC 458-20-174 for information on limited exemptions that may apply to motor carriers operating in interstate or foreign commerce.

(10) **Purchases of tangible personal property.** Persons engaged in the business of motor or urban transportation must pay retail sales tax to their vendors when purchasing motor vehicles, trailers, parts, equipment, tools, supplies, and other tangible personal property for use in conducting their business. Refer to WAC 458-20-174 for limited exemptions that may apply to motor carriers operating in interstate or foreign commerce.

(11) **Purchases made for rental or lease to others.** Persons buying motor vehicles, trailers and similar equipment solely for the purpose of renting or leasing the same without an operator are making purchases for resale. The seller must obtain a copy of the buyer's reseller permit from the buyer to document the wholesale nature of any sale as provided in WAC 458-20-102 Reseller permits.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 16-01-037, § 458-20-180, filed 12/9/15, effective 1/9/16. Statutory Authority: RCW 82.32.300, 82.01.060(2), and chapter 82.16 RCW. WSR 13-14-121, § 458-20-180, filed 7/3/13, effective 8/3/13. Statutory Authority: RCW 82.32.300. WSR 83-07-033 (Order ET 83-16), § 458-20-180, filed 3/15/83; Order ET 70-3, § 458-20-180 (Rule 180), filed 5/29/70, effective 7/1/70.]

WAC 458-20-181 Vessels, including log patrols, tugs and barges, operating upon waters in the state of Washington.

Business and Occupation Tax

Retailing. Persons engaged in the business of operating such vessels and tugs are taxable under the retailing classification upon the gross sales of meals (including meals to employees) and other tangible personal property taxable under the retail sales tax.

Service and other business activities. The business of operating lighters is a service business taxable under the service and other business activities classification upon the gross income from such service. Also taxable under this classification is gross income from operation of vessels to provide scenic cruises.

Retail Sales Tax

Sales of meals and other tangible personal property by persons operating such vessels and tugs are sales at retail and the retail sales tax must be collected thereon. For applicability of retail sales tax where meals are furnished to members of the crew or to other employees as a part of their compensation for services rendered, see WAC 458-20-119.

Sales of foodstuff and other articles to such operators for resale aboard ship are not subject to retail sales tax.

Sales to all such operators of fuel, lubricants, machinery, equipment and supplies which are not resold are sales at retail and the retail sales tax must be paid thereon, unless exempt by law.

Charges made by others for the repair of any boat or barge are also sales at retail and the retail sales tax must be paid upon the total charge made for both labor and materials.

thereafter forwarded by water carrier, in their original form, to interstate or foreign destinations: *Provided*, That no deduction will be allowed when the point of origin and the point of delivery to such export elevator, wharf, dock, or ship side are located within the corporate limits of the same city or town.

When revenue derived from any of the foregoing sources is included within the reported "gross operating revenue," the amount thereof may be deducted in computing tax liability.

In addition to the foregoing deductions there also may be deducted from the reported "gross operating revenue" (if included therein), the following:

- (a) The amount of cash discount actually taken by the purchaser or customer.
- (b) The amount of credit losses actually sustained.
- (c) Amounts received from insurance companies in payment of losses.
- (d) Amounts received from individuals and others in payment of damages caused by them to the utility's plant or equipment.
- (e) Amounts received from individuals and others in payment for moving or altering the utility's plant or equipment when done for the benefit or convenience of such individuals or others. This does not include amounts received for extension of service lines.

(For specific rule pertaining to the classifications of "urban transportation" and "highway transportation," see Rule 180.)

Effective May 1, 1949.

HIGHWAY TRANSPORTATION—URBAN TRANSPORTATION

Rule 180.

The term "highway transportation business" means the business of operating any motor propelled vehicle, as an auto transportation company (except urban transportation business), common carrier or contract carrier as defined in chapter III, Laws of 1921, page 338, section 1, and chapter 184, Laws of 1935, page 884, section 2 and amendments thereto and includes the business of so operating within and between incorporated cities and towns whose corporate limits are more than five miles apart.

It includes the business of hauling for hire upon the highways any merchantable extracted material, such as logs, poles, sand, gravel, coal, etc. Such persons will be deemed to be engaged in the business of highway transportation when the Public Service Commission requires them to obtain a common carrier or contract carrier permit with respect thereto.

It does not include the hauling upon streets or highways of any earth or other substance excavated or extracted from or taken to the right of way of a publicly owned street, place, road or highway, by a person taxable under the classification of "public road construction" of Title II (Business and Occupation Tax). (See Rule 171.)

NOTE: **Persons operating school buses for hire** are taxable under the classification of "Service and Other Activities" of Title II (Business and Occupation Tax) at the rate of $\frac{1}{2}$ of 1% of gross income.

The term "urban transportation business" means the business of operating any vehicle for public use in the conveyance of persons or property for hire, in so far as (A) operating entirely within the corporate limits of any city or

town, or within five miles of the corporate limits thereof, or (B) operating entirely within and between cities and towns whose corporate limits are not more than five miles apart or within five miles of the corporate limits of either thereof. Included herein, but without limiting the scope thereof, is the business of operating passenger vehicles of every type and also the business of operating cartage, pick-up or delivery services, including in such services the collection and distribution of property arriving from or destined to a point within or without the state, whether or not such collection or distribution be made by the person performing a local or interstate line-haul of such property;

It does not include the business of operating any vehicle for the conveyance of persons or property for hire when such operation extends more than five miles beyond the corporate limits of any city (or contiguous cities) through which it passes. Thus an operation extending from a city to a point which is more than five miles beyond its corporate limits does not constitute urban transportation, even though the route be through intermediate cities which enables the vehicle, at all times, to be within five miles of the corporate limits of some city.

Business and Occupation Tax (Title II)

Retailing—Persons engaged in either of said businesses are taxable under the "Retailing" classification at the rate of $\frac{1}{4}$ of 1% of gross retail sales of tangible personal property sold by them.

Service and Other Business Activities—Persons engaged in either of said businesses are taxable under the "Service and Other Activities" classification at the rate of $\frac{1}{2}$ of 1% of gross income received from checking service, packing and crating, commissions on sales of tickets for other lines, travelers' checks and insurance, and from rental of equipment, etc.

Persons hauling in their own equipment and for their own account, property owned or sold by them, are not taxable with respect to such operation under either Title II or Title V.

Public Utility Tax (Title V)

Persons engaged in the business of urban transportation are taxable at the rate of $\frac{1}{2}$ of 1% of the gross operating revenue of such business.

Persons engaged in the business of highway transportation are taxable at the rate of $1\frac{1}{2}$ % of the gross operating revenue of such business.

Persons engaged in the business of both urban and highway transportation are taxable at the rate of $1\frac{1}{2}$ % of gross operating revenue, unless a proper segregation of such revenue is shown by the books of account of such persons.

Effective May 1, 1949.

VESSELS INCLUDING TUGS AND BARGES, OPERATING UPON WATERS WHOLLY WITHIN THE STATE OF WASHINGTON

Rule 181.

Business and Occupation Tax (Title II)

Retailing—Persons engaged in the business of operating such vessels and tugs are taxable under the "Retailing" classification at the rate of one-fourth

STOEL RIVES LLP

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