Policy Study No. 163
July 1993

COMPARING PUBLIC AND PRIVATE BUS TRANSIT SERVICES: A Study of the Los Angeles Foothill Transit Zone

by
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EXECUTIVE SUMMARY

In theory, competitive contracting for bus service should lead to lower costs. But in practice, can privatization of mass transit actually save communities money?

This case study presents one example in which substantial cost savings were achieved. In the San Gabriel Valley of Los Angeles County, the use of competitively contracted bus service resulted in long-term savings of between 24 and 43 percent based on fully allocated cost comparisons, with no evidence of a deterioration of service. Ridership is 14 percent higher than had been projected for the public operator. Due to a combination of private-sector operating efficiencies and market-wage packages, Foothill Transit Zone provided an area formerly served by municipal operators with more cost-effective bus service.

This result is consistent with a growing body of evidence that competitively contracting for bus service is significantly less costly than monopolistic public provision. Experience in San Diego, Denver, and Los Angeles—among others—shows the potential of competitive contracting.

In light of the advantages of competitive contracting, it is surprising that more municipalities have not embraced privatization. This case study highlights the legal and political obstacles that impede public officials from making use of private contractors. Opposition by organized labor and federal legislation such as UMTA 13(c) can make privatization of transit difficult. Foothill Transit Zone endured extensive legal challenges brought by the unions of the public transit operator. But the ultimate success of the Foothill Transit Zone demonstrates that competitive contracting for mass transit services can be introduced and can result in savings to taxpayers.

TABLE OF CONTENTS

I. INTRODUCTIONI. INTRODUCTION

Beginning in 1988, bus service in the Foothill Transit Zone (FTZ) of Los Angeles was privatized, with service being provided by competitively contracted private providers rather than public employees. The experience of the Foothill Transit Zone highlights the potential of competitive contracting for transit in the United States. The success of the Foothill Transit Zone project demonstrates that contracting can hold down costs while providing quality service.

Public transit officials need to know the costs, benefits, and barriers associated with implementing a program of competitive contracting for transit. An examination of Foothill Transit contracted service illustrates how Los Angeles was able to maintain transit services by turning to private contractors, and the difficulties associated with making such a transition.

Crucial to the success of the Foothill Transit project was a legal and financial structuring that exempted it from the labor-protection clauses of federal regulations, specifically the labor-protection clauses of UMTA 13(c). Despite this, Foothill Transit experienced, and other efforts at transit privatization should anticipate, legal actions by organized labor to prevent competitive contracting.

The rising transit costs and tight fiscal constraints that confront policy makers across the United States are prompting an investigation of innovative approaches to meeting transportation demand. Mass transportation systems, especially bus systems, represent a significant component of urban transportation services. In 1980, about 9.5 percent of all urban-area work trips made use of mass transit, with bus trips accounting for around 76 percent of all urban transit use. In 1988, passenger fares covered less than 37 percent of all operating costs, and none of the capital costs of urban mass transit.[1]

The use of competitive contracting for private provision of public bus service in the United States is relatively rare (see Table 1). Nationwide, only about eight percent of conventional bus service is contracted, the rest being provided by noncompeting public providers. For certain specialized services, such as Dial-a-Ride or demand-responsive service, almost 70 percent is provided privately through contracting.[2]

The failure to make greater use of competitive contracting is difficult to explain, since competitive contracting for bus service can result in significant long-term savings, often between 20 and 50 percent.[3] Guidelines exist to assist public officials seeking to contract out, and there have been relatively few problems in most locations in which it has been attempted.[4] In addition to mass transit contracting, approximately 30 percent of all school bus service is contracted.[5]

Table 1

COMPETITIVE CONTRACTING OF TRANSIT SERVICE IN LARGE U.S. METROPOLITAN AREAS (Based on Number of Transit Buses)

Competitively Contracted[1]	1992
20% or more	Austin Dallas-Ft. Worth Denver-Boulder Las Vegas San Diego
15% to 19%	Houston-Galveston-Brazoria Minneapolis-St. Paul
10% to 14%	Atlanta Area Los Angeles-Anaheim-Riverside Kansas City Area San Francisco-Oakland-San Jose
5% to 9%	Baltimore Chicago-Gary-Lake County Miami-Ft. Lauderdale Phoenix Sacramento Seattle-Tacoma Area Washington Area

[1] Does not include demand-response services for the elderly and handicapped, management services, maintenance-only services, or noncompetitive contracting.

SOURCE: Jean Love and Wendell Cox, "How to Competitively Contract for Transit Services," *How-To Guide, No. 6,* Reason Foundation, March 1993.

Bus transportation is a service well suited for competitive contracting. Under most competitive contracting arrangements, the public authority retains full policy control and is responsible for setting the routes, fares, and service schedule. A public authority subsidizes and monitors the private company in their service provision, and public control is maintained. Why, then, is bus service so often provided through noncompeting public providers?

Some observers have attributed the reluctance to privatize to a lack of incentives for transportation officials. The absence of competition reduces the motivation for public officials to seek alternative means of service delivery. Additionally, there are political and legal impediments to privatization, as will be observed in the case of the Foothill Transit Zone. The political influence of public-employee unions on elected officials in opposing privatization can be substantial. Additionally, the labor protection clauses of Section 13(c) of the Urban Mass Transportation Act of 1964 can constrain officials and reduce the potential cost savings from privatization.

Despite the barriers, the Foothill Transit Zone demonstrates that competitive contracting for bus service can stretch scarce public dollars and deliver threatened services to citizens with a decreased burden on taxpayers.

II. WHAT IS THE FOOTHILL TRANSIT ZONE?II. WHAT IS THE FOOTHILL TRANSIT ZONE?

A. Structure of Foothill TransitA. Structure of Foothill Transit

Foothill Transit Zone is a Transportation Zone—a public entity created through a Joint Powers Agreement to provide local bus service, established through and in accordance with the authority of the Los Angeles County Transportation Commission (LACTC). It provides transit service in an area encompassing 20 communities northeast of downtown Los Angeles, an area previously served by the Southern California Rapid Transit District (SCRTD).

In June of 1985, funding for the SCRTD mandated by Proposition A was ended, and money that had subsidized the $0.50 fares was shifted to rail construction and debt service. The SCRTD, which wished to see this funding extended, indicated that due to funding reductions it would have to increase fares, and there was the potential that significant reductions in service would be needed. The San Gabriel Valley was targeted to absorb a large portion of this service reduction. Concerned that the SCRTD would be withdrawing service to his constituents, the county supervisor from the San Gabriel Valley took action to assure that the service continued. Officials decided this could best be accomplished by establishing a separate authority to provide transit in that area—in essence, by seceding from the SCRTD.

The Los Angeles County Transportation Commission initiated the process by which the Foothill Transit Zone was established by issuing “Transportation Zone Guidelines” on February 26, 1986. These guidelines provided a mechanism for establishing and operating a Transportation Zone in Los Angeles County as provided for under Section 130259 of the California Public Utilities Code, as dictated by the enabling legislation of the LACTC.

The enabling legislation of the LACTC (AB 1246, 1976) directs the commission to maximize the effectiveness of existing resources by giving priority to low-cost transit. It urges that local communities be given responsibility for designing and providing local transit service and specifically empowers the LACTC to create local Transportation Zones in cases where the commission determines by a super majority vote that the existing operator “cannot otherwise provide adequate and responsive local transportation services...in a cost-effective manner.”[6]

In accordance with the LACTC guidelines, a study was conducted involving a number of cities in the San Gabriel Valley. The San Gabriel Valley Transportation Zone Study investigated how to structure a new service for that region. The project's steering committee submitted an application, and the entity eventually created through this process was the Foothill Transit Zone. The Zone was established to replace bus service then provided by the SCRTD with competitively procured services, and at the same time maintain threatened service, reduce cost, promote local responsiveness, and expand mobility.

Before Foothill Transit was actually established, the SCRTD announced that it would be discontinuing bus service on four lines in the Pomona/Claremont area, saying that service in that area no longer fit the service criteria of the SCRTD. The four lines had been included in the original application of the Foothill Transit Zone, but SCRTD intended to discontinue them prior to the establishment of Foothill Transit. In order to maintain service on these lines, the County of Los Angeles agreed to operate the lines in the interim as part of its Bus Service Continuation Project (BSCP), intending to turn the operation of these lines over to Foothill Transit in accordance with their application (see Section V on the cost savings of the BSCP).

On December 2, 1987, the LACTC approved the Foothill Transit Zone application, which included 20 communities in the San Gabriel Valley, with service scheduled to begin in July of 1988.

Before Foothill Transit could actually come into existence, the 20 cities and the County of Los Angeles had to write a Joint Powers Agreement and approve by resolution the agreement that would establish a Joint Powers Authority to assume responsibility for transit services in that zone.

The Joint Powers Authority, the governing body of the Foothill Transit Zone, is a nonprofit public agency responsible for providing transit service. It accomplishes this by procuring all operation and management services through contract. A general membership board, on which each of the 20 cities party to the JPA receives one vote and the County of Los Angeles receives three, is the ultimate governing body of the authority. The general membership board has reserved for itself three basic prerogatives: 1) the power to adopt the annual budget; 2) the power to set fares; and 3) the right to approve major service changes. All other governance issues, including authorization for contracts, basic policy issues, etc., have been delegated to an executive board.

The Joint Powers Authority was approved by all the involved parties in April of 1988. Foothill Transit application initially scheduled the transfer of service in four phases over a two-year period, in order to accommodate the SCRTD's normal rate of employee turnover to accommodate the private contractors workers through attrition rather than layoffs. The actual transfer of service, however, was delayed by legal challenges.

B. Implementation and Operation of Foothill TransitB. Implementation and Operation of Foothill Transit

The Foothill Transit Zone was established as a pilot program, and Foothill Transit was initially structured as a temporary entity, a change to permanent status dependent on whether it met the criteria for success outlined in the zone guidelines. In order to qualify for permanent status and regional funding, the LACTC zone application guidelines stipulated that at the end of three years of operation the zone would be evaluated according to four criteria:

1) operating cost savings of 15–25 percent or more;
2) demonstrated public support;
3) no negative overall system impacts, (e.g., ability to maintain regional coordination); and
4) likelihood of continued successful operation under LACTC rules governing transit operators.[7]

In addition, the implementation plan was structured to avoid layoffs of SCRTD drivers. At six-month intervals over a two-year period, it was intended that Foothill Transit would gradually take over a total of 14 lines, structured so that the reduction in force for the SCRTD would be well within the rate of attrition. At the end of the two years, Foothill Transit would have reduced the SCRTD's peak-hour service fleet of 2,000 busses by a total of 111 busses. Relative to the SCRTD, Foothill Transit would be quite small and, by growing gradually, would avoid the need for layoffs within SCRTD. (Legal delays resulted in the service being introduced abruptly rather than being phased-in, and to avoid layoffs this meant that the SCRTD carried a number of idle workers on the payroll.)

Legal disputes have delayed—though not prevented—the transfer of SCRTD lines to Foothill Transit. Foothill Transit took over additional service routes in August and September of 1989, June of 1991, and June of 1992. In July of 1991, the LACTC voted to make Foothill Transit a permanent entity with a guarantee for future funding. This decision was based on performance audits that showed that Foothill Transit was meeting the success criteria.

Organizationally, Foothill Transit contracts out for all aspects of its transit operation, including management. Foothill Transit currently contracts with Forsythe and Associates for management services, which in turn contracts with several transportation providers, such as ATE (a division of Ryder), Transportation Management Corp., and Laidlaw. Presently, all drivers working for these companies are unionized, the majority being members of the Teamsters Union.

III. SUCCESS OF THE FOOTHILL TRANSIT ZONEIII. SUCCESS OF THE FOOTHILL TRANSIT ZONE

The first of the four criteria requirements, the demonstration of cost savings, generated significant controversy after the first-year performance review. Conflicting contentions of Foothill Transit Zone and the SCRTD stem from differing methodologies.

A. Which Costing Approach is Appropriate?A. Which Costing Approach is Appropriate?

In accordance with zone guidelines, the LACTC commissioned Ernst & Young to conduct an analysis of Foothill Transit's first-year performance, including cost savings. In July of 1991, Ernst & Young submitted "An Evaluation of the Foothill Transit Zone," which found "Foothill Transit was able to achieve an overall 43 percent reduction in cost when compared with SCRTD's estimated costs."[8]

Also in July of 1991, the SCRTD hired Coopers & Lybrand to review the SCRTD cost analysis of Foothill Transit. They produced a document entitled "RTD/Foothill Transit Zone: Review of Marginal Cost Analysis Approach," which found a difference of approximately 0.8 percent in marginal operating costs."[9] In other words, they found virtually no cost difference between SCRTD and Foothill operations.

The discrepancy is substantial—the LACTC claims a 43 percent reduction in costs, while the SCRTD claims that costs are virtually the same. Which of these analysis was accurate?

To find out, Supervisor Michael Antonovich, the Chair of the LACTC, commissioned Jonathan Richmond of the MIT Center for Transportation Studies to conduct an independent analysis. Richmond's report, "The Costs of Contracted Service: An Assessment of Assessments," was submitted in July of 1992, and was intended to clear up any confusion. In considering the Coopers & Lybrand report, Richmond found that "its conclusion that the marginal costs of providing service by either Foothill or SCRTD in Fiscal Year 1990 were about the same is reasonable." Richmond also concluded that "Foothill Transit might be expected to achieve long-term savings of 38 percent of the costs which would have been incurred by SCRTD."[10] In short, Richmond supported the findings of both reports.

Because two different approaches to cost analysis were used—"fully allocated costs" and "marginal costs"—two different pictures of operating cost emerge. Fully allocated costing considers all of the costs associated with operating the buses, and allocates a proportional amount of overhead to a particular line. Marginal cost analysis looks only at those costs directly expended in running a line, ignoring overhead costs. Which of the two approaches gives the "real" picture? That depends on what information is sought.

Marginal costing gives the best short-term picture of the difference in total public expenditures, but it gives no indication of relative operating efficiencies and is grossly misleading when estimating long-term savings. The best indicator for judging the relative *cost of service provision* is attributable, fully allocated costs. Fully allocated costing will, however, tend to overstate *cost savings* in the short term since an organization may not be able to reduce its overhead immediately.

The LACTC, in the Zone guidelines, requires that the "cost comparison shall be based upon total operating costs," including "administrative, planning, and indirect costs" (exclusive of capital costs, which are listed separately)[11] when evaluating the efficiency of public and private service provision. The Federal Transit Administration (FTA, formerly UMTA) requires public operators to use attributable, fully allocated costs when bidding, and then-Transportation Secretary Samuel Skinner noted that "the disclosure of fully allocated costs by public transit authorities merely ensures that their transit policy decision makers are aware of all costs associated with the public provision of service."[12] Transportation experts Wendell Cox and Jean Love write that "Marginal costing is not a proper method for monopolies, like public transit, which are characterized by excessive and unproductive use of capital and labor."[13]

The SCRTD's Coopers & Lybrand report disputes the use of fully allocated costing, contending that "an entity that is required to maintain retained functions and significant fixed overhead can be more fairly compared against a privatized operation through the marginal cost basis," since "many of SCRTD's fixed and administrative costs are more influenced by governing boards and federal policy, organizational structure and fixed capital than by service levels."[14] In other words, SCRTD describes itself as an organization in which a sizable portion of costs are not related to service provision, and because of this prefers to ignore administrative costs when comparing cost efficiencies.

While in the short-term a reduction in service may result in a provider carrying excess labor and/or capital, over time any operator should reallocate resources down to an efficient level. Yet SCRTD argues against the use of fully allocated costing, claiming that such an approach "assume[s] that the RTD has the ability to *quickly* modify the structure that was assembled to operate the pre-privatized service." [emphasis added] Yet as a KPMG Peat Marwick Denver transit privatization study points out, the use of fully allocated costing is "based on the assumption that *in the long-term* management can proportionately adjust its investment in labor and fixed asset overhead to the quantity of services provided." [emphasis added][15] This is a reasonable assumption. Even the SCRTD report admits that "after several years, the fully allocated cost basis becomes a better basis for measuring the impact of changes in operations and service levels."[16] Since these transit lines are likely to operate for a good deal longer than several years, the long-term, fully allocated cost model is a superior approach for comparing private and public operations. As Jonathan Richmond put it, "Because the Foothill Transit Zone experiment is designed to test the potential long-term savings of a new type of operation, it is appropriate to use fully allocated costs for comparison," adding that "if a saving can be projected into the long-term, then continued service can be justified even if marginal costs have initially been high."[17]

It should be stressed, however, that attributable, fully allocated costs are *not* the best way to estimate cost savings in the *short term*; they will tend to overestimate savings until the public operator reallocates resources to their efficient level. Fully allocated costing *is* the best indicator of relative operating efficiency between public and private operators.

As mentioned above, the fully allocated costing described by the LACTC ignores capital costs, which would normally be included in a fully allocated costing analysis (such as is outlined by the FTA). Since there is no reason to expect the Foothill Transit Zone's capital costs to be any less than the SCRTD's on a per unit basis (and some have argued that they are in fact *greater*[18]), this methodology tends to overstate the difference in operating efficiency *when given as a percentage of total costs*. The LACTC guidelines must be faulted with specifying a cost-comparison methodology that directs auditors to ignore capital costs. If it is assumed that capital costs are roughly the same for Foothill Transit and SCRTD, the difference in cost when stated in total dollars will be largely unaffected by the inclusion or exclusion of capital costs.

In evaluating the various economic analyses, one conclusion becomes clear: in terms of operating efficiency and expected long-term cost savings, Foothill Transit Zone significantly outperforms the SCRTD.

B. Audit Estimates of Long-Term Cost SavingsB. Audit Estimates of Long-Term Cost Savings

According to two separate estimates, the Foothill Transit's long-term costs are somewhere between 24 percent and 43 percent less than the those of the SCRTD. Discounting the SCRTD's first year appraisal (which is based on the marginal cost approach), there are two existing analyses of Foothill's relative operating efficiency in its first year: the Ernst & Young analysis for the LACTC and Jonathan Richmond's review for the LACTC. In addition to his current-performance analysis, Richmond develops an estimate for future performance of the Foothill Transit Zone that accounts for expected operational improvements (see Table 2).

Was Richmond correct to anticipate performance improvement for the Foothill Transit Zone? Based on the three-year economic analysis released by the LACTC late in 1992, the answer is “Yes.” Ernst & Young's third-year evaluation on the Foothill Transit Zone shows a trend toward improving operating efficiency for the Foothill Transit[19] (see Table 3).

Table 2

TOTAL COST PER REVENUE SERVICE HOUR

	FTZ	SCRTD	% Difference
E&Y	$51	$91	43%
Richmond (current)	$73/83	$109/110	24/34%
Richmond (projected)	$67	$107	38%

Note: All values are rounded. Recall that Richmond's values include estimated capital costs, whereas Ernst & Young's, per the LACTC guidelines, do not.

SOURCE: Ernst & Young, *Evaluation of the Foothill Transit Zone,* September 1992.

In the original zone guidelines, the Foothill Transit Zone was required to demonstrate a minimum of 15 to 25 percent increase in operating efficiency (excluding capital costs) when compared to SCRTD according to *at least one* of four cost measures:

- Total Cost
- Cost/Vehicle Service Hour
- Cost/Passenger
- Commission Subsidy/Passenger

Table 3

TOTAL COST				
	Estimated SCRTD	Actual Foothill	Difference	Percent Difference
FY 90	$5,971,025	$3,374,054	$2,596,972	43%
FY 91	$7,420,159	$4,178,821	$3,241,338	44%
FY 92	$19,656,014	$10,230,041	$9,425,972	48%

SOURCE: Ernst & Young, *Evaluation of the Foothill Transit Zone*, September 1992.

Figure 1
Summary of Cost Comparison for Each Test
Fiscal Year 1992

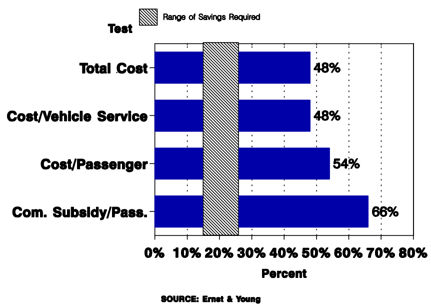


Figure 1 shows that Foothill Transit Zone easily surpassed the required operational savings according to each of these criteria.

C. Foothill Quality PerformanceC. Foothill Quality Performance

There is more to a transit operator's performance than simply cost: ridership levels, customer satisfaction, on-time performance, and safety are also important considerations. However, the LACTC zone guidelines did not require a comprehensive evaluation of these factors. Available data, however, indicate that Foothill Transit Zone has performed as well or better than SCRTD in satisfying customers.

The Ernst & Young Phase III evaluation included data that compare actual Foothill Transit ridership against a projection of ridership if the SCRTD had operated the same lines over the same time period. (Table 4 on the next page presents this data.)

Table 4

RTD/FOOTHILL RIDERSHIP PROJECTIONS
Fiscal Year 1992

Transit System	Local	Express	Totals
SCRTD	2,705,516	2,512,579	5,218,095
Foothill	2,986,506	2,948,788	5,935,294
% Increase	10	17	14

Comparison of actual Foothill ridership versus projected ridership had SCRTD provided the service.

SOURCE: Ernst & Young, *Evaluation of the Foothill Transit Zone*, September 1992.

Public satisfaction with the performance of the privately operated zone is evidenced by community input presented at public hearings. According to the Ernst & Young report, customer correspondence was seven to one in favor of the Foothill Transit Zone.[20]

IV. LEGAL OBSTACLESIV. LEGAL OBSTACLES

A. Legal ChallengesA. Legal Challenges

From its inception, Foothill Transit has undergone a series of legal challenges. The details of the legal challenges are quite complicated and raise general issues involved in public transit privatization.

Established in April 1988, the Foothill Transit Zone was scheduled to begin service in July 1988. In June of that year, the Amalgamated Transit Union (ATU) and the United Transportation Union (UTU) filed suit against the SCRTD and the LACTC, contending that in establishing the zone the LACTC had exceeded its statutory authority, thus challenging the legality of the zone. The two unions, along with one of their members as a taxpayer, sought to prevent the zone from starting service. The Foothill Transit was eventually brought into the suit as an interested party.

Though named as a co-defendant, the SCRTD's interest was clearly with their unions, since SCRTD did not favor the establishment of the zone either. In June 1988, the Superior Court issued an injunction to delay zone operations pending SCRTD consent to Foothill Transit.

Starting in July 1988, the LACTC began withholding approximately $9 million per month in funding from the SCRTD. They did so under previously agreed upon LACTC guidelines, which stipulated that if the SCRTD did not retain as part of their collective-bargaining agreement certain management rights—such as the right to use part-time labor, the ability to contract out for transit services, etc.—they would not be eligible for certain funds provided by LACTC. The LACTC asserted that part of the SCRTD's collective-bargaining agreement with its unions (Article 51, section 2) prevented the SCRTD from leasing or disposing of any assets unless the receiving entity accepted the existing union agreement. Thus, LACTC claimed that the SCRTD effectively prevented contracting out for driving services and was therefore ineligible for LACTC funding. The SCRTD maintained that it was not in violation of any agreements, but LACTC withheld funding nonetheless.

The withholding of $50 million in funding prompted negotiations between the SCRTD and the LACTC. In December 1988, LACTC and the SCRTD negotiated an Eight-Point Agreement under which the LACTC restored funding to SCRTD and the SCRTD consented to the formation of Foothill Transit Zone. Within 15 minutes of this agreement, the Foothill Transit was operating busses on two lines.

The unions then sought and obtained a temporary restraining order preventing the Foothill Transit from taking over the additional lines designated in the application plan pending the outcome of the lawsuit. In July 1989, the Superior Court ruled in favor of the zone and the LACTC, finding that the zone had been legally established. The Court of Appeals denied a request by the unions for a stay of the Superior Court decision. The California Supreme Court did invoke a stay barring implementation of all but the local lines already transferred, pending the final decision of the appeals court. In April 1991 the Court of Appeals issued a 3-0 decision in favor of Foothill Transit, rejecting the union's claim.

Concurrently, the unions increased their efforts in opposition to the zone in August 1990 by submitting a contractual arbitration grievance against SCRTD to a labor arbitrator. The union sought relief from the establishment of the zone, alleging that SCRTD's consent to the zone's existence and its Eight-Point Agreement violated its collective bargaining agreement. In November 1990, an arbitrator found for the union, rejecting the SCRTD's claim that Article 51 was illegal and that the UTU had waived its right to arbitration. In April 1991, the Superior Court upheld the arbitrator's decision, and the SCRTD appealed the finding.

The union claimed that the arbitrator's finding nullified the Eight-Point Agreement between the SCRTD and LACTC. In June 1991, the Supreme Court denied a union petition for a hearing, allowing the Foothill Transit to become fully operational. But the union, arguing that the arbitrator's finding was new evidence, pressed on in a renewed attempt to have the formation of the zone declared illegal. In August 1991, the UTU filed a complaint for injunctive relief, declaratory relief, and damages against the LACTC, Foothill Transit, and SCRTD in Los Angeles Superior Court and requested a temporary restraining order prohibiting Foothill Transit from implementing additional bus routes. The suit argues that the arbitrator's finding showed that the SCRTD illegally consented to the formation of the Foothill Transit and that Foothill Transit lines should revert back to the SCRTD.

While this suit was pending, in May 1992 the California Court of Appeals upheld the Superior Court decision confirming the arbitration finding for the UTU against the SCRTD, ruling that the SCRTD's consent to the zone violated the existing collective-bargaining agreement.

This finding triggered a flurry of activity with respect to service implementation that Foothill Transit was scheduled to take over on June 21, 1992. Foothill Transit believed it had the legal right to begin service as scheduled, and the SCRTD believed that discontinuing service would violate its agreement with their union. In consequence, the SCRTD and Foothill Transit duplicated service on the 486 and 488 lines at an extra cost of about $7,900 per day to taxpayers.

Armed with the arbitrator's ruling, the UTU reintroduced their claim, which had previously been rejected, that Foothill Transit had been established illegally and asked the courts for redress. On February 1, 1993 county Superior Court Judge Bruce Geernaert found for the Foothill Transit, ruling that the SCRTD's collective-bargaining agreement with its unions did not extend to the Foothill Transit or the LACTC. After a five-year struggle, the February 1993 decision finally settled the question of the Foothill Transit's legitimacy.

The LACTC bore the cost of the legal challenges to the establishment of the Foothill Transit. The cost of defending the legal challenges is not included in the costs for the Foothill Transit, though the approximately $5 million in legal costs spent by the SCRTD, a very small part of its overall spending, was included as part of its general administration costs.

B. The Question of UMTA 13(c)B. The Question of UMTA 13(c)

Part of the consideration in structuring the Foothill Transit Zone was a desire to avoid the burdensome restrictions of UMTA 13(c). Many public officials do not believe that they can privatize transit services because of this law. Yet Foothill Transit has shown that this provision need not preclude all possibility of competitive contracting for transit.

The Urban Mass Transportation Act of 1964, as amended, introduced large-scale federal funding for transit systems. The bill empowered the Secretary of Transportation to make grants for transit operating costs or capital improvements related to the "development of comprehensive and coordinated mass transportation systems, both public and private, in metropolitan and other urban areas."

Section 13(c) of this bill included language protecting affected workers. The section states that "protective arrangements shall include, without being limited to, such provisions as may be necessary for" the "continuation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective-bargaining agreements." Section 13(c) further calls for "provisions protecting individual employees against a worsening of their position with respect to their employment...." In other words, any transit operator receiving federal funds could not employ those funds if current workers would be negatively impacted.

Since virtually all urban transit systems depend to some extent on federal grants, UMTA 13(c) protection in essence extends a protective advantage to those groups currently supplying labor—typically public employee unions. Transit service is highly labor-intensive, with a high portion of operating costs spent on labor. In 1985, of $12 billion in transit operating costs, approximately 72 percent was spent toward salaries, wages, and fringe benefits. This protection has resulted in monopoly bargaining power for transit workers and associated high (above market) wages. Average compensation for all transit employees exceeds that of U.S. employees with college degrees by more than 30 percent.[21] "Monopoly on the selling side of the urban mass transit labor market is entrenched and reinforced by section 13(c)" notes Simon Rottenberg, Professor of Economics at the University of Massachusetts: "It seems to be clear on its face that the money cost of operating the transit system is much enlarged because its employees are paid rents."[22] Though many public-sector unionized workers enjoy above-market wages, in transit the public-sector wage premium can be especially high.

The labor-related protection of UMTA 13(c) represents a substantial barrier to introducing privatization and competitive contracting and can greatly reduce the cost savings that can be realized. Any operating efficiencies that reduce the need for labor must bear the cost of those affected by relocating, retraining, carrying idle workers on the payroll, or otherwise compensating affected workers. This protection for public workers is gained at the expense of citizens and taxpayers, and the elimination of UMTA 13(c), which insulates public-transit workers from market forces, would be a step in the right direction to assuring fairness.

The Foothill Transit Zone was structured to avoid the requirements of 13(c). Since Foothill Transit received its operating subsidies from the LACTC, and not from the federal government, UMTA 13(c) was not applicable. The zone guidelines dictated that Foothill Transit was not eligible for capital and equipment funds. Foothill Transit was given a per hour/per route operating subsidy of the same size from LACTC that the LACTC gives to the SCRTD on similar routes.

The UTU and ATU had argued in their original lawsuit that UMTA 13(c) should apply. Since the LACTC receives federal dollars and distributes them to various operators within its jurisdiction, Foothill Transit was in effect receiving federal funding, and any impact to labor resulting from this funding would be covered by UMTA 13(c). The judge ruled that UMTA 13 (c) is project-specific, and that this particular project received no federal funding. Failing to demonstrate a causal link between the receipt of federal subsidies and harm to workers, the court ruled the protection of UMTA 13(c) to be moot.

In July 1991, because it had successfully met the criteria outlined in the guidelines, Foothill Transit was made permanent and is now eligible for federal capital subsidies. When and if Foothill Transit begins receiving federal subsidies, which it is now seeking, its drivers will be protected from negative impacts resulting from the receipt of federal funds in accord with UMTA 13(c).

V. HISTORICAL EVIDENCE OF COST SAVINGSV. HISTORICAL EVIDENCE OF COST SAVINGS

The savings realized by the competitively contracted Foothill Transit Zone service are consistent with a large body of evidence on the fiscal impact of competitive contracting for transit service. In 1986, the Urban Mass Transit Administration (now the Federal Transit Administration) commissioned a study on "Public Transit Service Contracting." This study surveyed nearly 1,000 public transit agencies and analyzed in-depth the results of seventeen instances of competitive contracting for bus service. The report found that "the estimates of cost savings from contracting ranged up to 50 percent, with a mean savings of 29 percent." For fixed-route services and contracts involving 25 or more vehicles, "privately contracted services enjoy a 42 percent cost advantage compared to the larger public operators."[23] Additional evidence of cost savings comes from competitive contracting experience in Denver, San Diego, and Los Angeles (prior to and independent of Foothill Transit).

Denver, Colorado - In 1988, the Colorado legislature enacted legislation (SB 164) requiring the Denver Regional Transportation District (RTD) to contract out 20 percent of their bus routes. The legislation also called for an independent assessment of the impact of privatization on costs and quality of service.

The results of the performance audit prepared by KPMG Peat Marwick showed significant cost savings due to privatization:

> On a short-term, incremental basis derived from actual cost, privatization resulted in a savings of $2.5 million, or 12.5 percent. On a long-term, fully allocated basis, privatization was estimated to result in a savings of 25.8 percent, without depreciation and underutilized fixed assets, or 31.0 percent, with depreciation and underutilized fixed assets.[24]

The sizable difference between the short-term savings and the expected long-term savings can be attributed to one-time transitional costs and the labor-protecting provisions of SB 164. SB 164 mandated that no layoffs were to occur due to the privatization, which resulted in idle RTD employees continuing on the payroll, reducing overall savings.[25]

In terms of safety and quality of service, the audit found the privatized operators generally met or exceeded the Denver RTD: "In most measures, the contractors performed as well or better than RTD." One exception was maintenance reliability, which the report attributed to the "leaner mechanical staffing levels" of the private operators. With respect to on-time performance, "RTD and contractor service was similar on all types of service."[26]

Colorado state Senator Terry Considine described the Denver contracting-out program as a "stunning success," noting that "having successfully implemented the mandatory competitive contracting program, RTD of its own volition expanded the program earlier this year [1992]."[27]

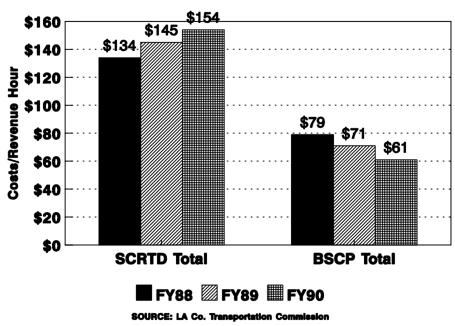
San Diego - Following an expensive labor settlement in 1979, San Diego began gradually increasing contracting out. By proceeding with privatization gradually, San Diego has avoided layoffs, depending rather on the attrition of public employees.[28] San Diego currently engages in more competitive contracting for bus service than any city in the country of comparable size; and 60 percent of all bus routes are contracted to six private providers, with 22 percent of all passengers carried by the private sector.[29] The providers operate under the unifying banner of the Metropolitan Transit System and maintain a common fare and transfer policy. In order to assure an open and fair bidding process, in April of 1987 San Diego adopted a policy titled "Providing Transit Services," which established formal procedures for competitive award of transit services.

The results have been impressive, and the MTDB has indicated it has achieved "substantial cost savings" through competitive contracting.[30] According to a study by transportation expert Wendell Cox, competitive contracting in San Diego meant that "cost per mile increased only 49 percent from 1979 to 1989" and actually decreased when adjusted for inflation. By comparison, over the same period national public transit costs increased by 94 percent.[31] The cost per revenue mile for private fixed-route transit service in San Diego has been estimated to be $2.22, compared with $4.03 for public providers.[32] It is believed that the presence of competition has helped limit public-sector transit costs as well. There is no indication that service quality or safety have been negatively impacted.

Los Angeles BSCP - Initiated in 1987 by the LACTC, the Bus Service Continuation Project (BSCP) was launched in order to continue service on sixteen routes canceled by the SCRTD as an economy measure in response to low ridership. The City of Los Angeles and Los Angeles County took over operation from the SCRTD in October and November of 1987, respectively, and contracted out the actual operation of all BSCP services to private providers including Embree, Mark IV, and Laidlaw Transit.

The Federal Transit Administration reports that the competitive contracting of the BSCP "resulted in cost savings of 60 percent over a three year period, improved quality of service, and increased ridership," with ridership increasing 150 percent.[33] The LACTC commissioned Price Waterhouse to conduct a cost and performance evaluation. The study found that the fully allocated cost of BSCP routes was 60 percent less than the cost estimated for SCRTD operation of these routes.[34] Comparison of the overall cost of service provision is shown in Figure 2.

Figure 2
Three-Year Comparison: Overall Costs
Bus Service Continuation Project



The Price Waterhouse study, which ran from October 1987 through June 1990, revealed that "service quality was found to be better, or at least equal, to that of RTD-provided services."[35] The study also found that under competitive conditions the public provider's quality performance also improved during the course of the evaluation. The program's success has resulted in additional service being provided on all ten commuter lines. These routes are being transferred to the Foothill

Transit Zone.

VI. CONCLUSIONVI. CONCLUSION

The experience of the Foothill Transit Zone is instructive for communities considering competitive contracting for transit. As has been the experience in several communities, competitive contracting in bus service was able to provide more cost-effective and responsive service than public monopolies.

Introducing competitive contracting for transit service in the San Gabriel Valley was a long and arduous process. According to *Footnotes*, a publication of Foothill Transit, “The road to the creation of the Foothill Transit was not always smooth. However, the long process of public hearings, recruiting cities to join and weathering the litigation ultimately proved successful.”

Political and legal obstacles presented far more difficulty than any technical problems associated with service implementation. Only the threatened loss of transit service throughout the region galvanized the communities and generated the political impetus to continue service under the auspices of a newly created transportation zone.

From the very beginning, the existence of the zone was legally challenged by the unions of the SCRTD. The Joint Powers Agreement through which the zone was established, coupled with a unique funding structure that allowed the Foothill Transit to operate using only local subsidies, enabled the zone to avoid the restrictions of UMTA 13(c). The support of the LACTC was crucial throughout this process. Without their commitment to establishing Foothill Transit, and their ability to fund it through local money, it is unlikely that Foothill Transit could have withstood the political resistance.

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