



**STATEMENT ON SB 18-204
by Rolf G. Asphaug
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Colorado Senate Finance Committee
March 20, 2018 – 2:00 p.m. – Room 357**

I'm Rolf Asphaug, RTD's General Counsel, and I'm here today on behalf of RTD's staff, including our General Manager and Chief Executive Officer Dave Genova, to speak briefly on Senate Bill 18-204. Mr. Genova wishes he could have attended but he's in Washington, D.C. today.

RTD's Board of Directors has not had the opportunity to take a formal position on this bill, so I want to make clear that I'm not speaking for the Board in providing these comments.

I want first to provide a very brief overview of RTD, its governing structure, and its mission, because these are relevant to the bill before you. I then want to provide a few brief observations about the bill itself.

The General Assembly has entrusted RTD with the duty and powers to develop, operate, and maintain a mass transportation system. Our system of 1,000 buses, 400 demand-responsive vehicles, and 240 rail vehicles serves all or part of eight counties in the Denver metro region.

RTD's governing body is a 15-member Board of Directors. Each director is elected by a specific district of about 180,000 residents for a four-year term. RTD is one of only a few transit agencies in the country with a Board of Directors elected by the people.

RTD's mission statement includes commitments to "Meet our constituents' present and future public transit needs by providing safe, clean, reliable, courteous, accessible, and cost-effective service throughout the district," and "to providing an affordable service to our customers."

For decades now, RTD has had various discounted fare programs: for seniors, Medicare patients, students, businesses, and, most importantly, low-income residents through discounted fare media provided to nonprofits and social service agencies.

With that overview in mind, I offer these comments on the bill before us, which would amend RTD's enabling act and which states, in its entirety: "NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE DISTRICT SHALL NOT CREATE NEW DISCOUNT FARE OR INCENTIVE PROGRAMS WITHOUT PRIOR LEGISLATIVE APPROVAL."

RTD's enabling act grants RTD's elected Board of Directors broad powers to establish, maintain and operate a mass transportation system, including all powers necessary and incidental to the specific powers granted in the act. The General Assembly has previously put a few specific limits on that authority, such as limits on parking fees, but by and large the General Assembly has entrusted RTD, through its directly elected Board, to be responsible for its own affairs.

This proposed bill would run contrary to that local-government philosophy, and would deprive RTD's elected Board of the ability to take certain actions to support RTD's mission – even if all 15 of RTD's Board members unanimously supported such actions. Instead, RTD would have to find sponsors and run a bill through the General Assembly to make any changes to its existing discount fares and incentive programs.

The bill would effectively freeze RTD's existing discount fare and incentive programs in place: RTD could not expand, contract, or restructure any such programs without prior legislation. Unlike, say, parking fees, where the legislature has told RTD what it can and can't do in advance, this bill would force RTD to go to the legislature to ask, "Is it OK to tweak this discount? Can we run this promotional incentive?" Even minor, temporary campaigns might need a state law. For example, take our new and wildly successful mobile phone ticketing option. If we wanted to run a promo campaign to get people to download an updated app, we'd need to pass a state law first.

RTD is also required to provide certain discounted fares – paratransit fares, or fares for disabled customers – as a condition for receiving federal grants. This isn't a federal pre-emption issue; rather, RTD's ability to meet those requirements is a condition for federal funding. However, the bill before you doesn't contain an exception for such programs.

I can't find any similar legislation in which the Colorado General Assembly constrains any other local entity in this manner. No Colorado statute has a requirement for, quote, prior legislative approval, unquote, for ANY type of action by a local public entity, period. And I haven't been able to find a statute anywhere else in the country that requires prior legislative approval for a transit agency to change its discount or incentive programs.

Sometimes in budget bills – "Long Bills" – the Colorado General Assembly has imposed restrictions on the executive branch on using appropriated state funds, but this isn't that type of case. Similarly, while a few other states have required prior legislative approval for certain agency actions, those statutes are focused on stopping state agencies from creating new parks, taking on new Medicaid eligibility, and other broad – and new – measures: not freezing existing programs in place.

In conclusion, I thank the bill sponsors for seeking to provide guidance to RTD, but I respectfully ask on behalf of RTD's staff that the General Assembly not enact this measure, and continue to entrust such decisions to RTD's locally-elected Board of Directors.

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