CHAPTER 89
FERRY CAPITAL IMPROVEMENT PROGRAM

Authority

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SUBCHAPTER 1. GENERAL PROVISIONS

16:89-1.1 Purpose

(a) NJ TRANSIT was established by the New Jersey Public Transportation Act of 1979, N.J.S.A. 27:25-1 et seq., as the instrumentality of the State government to establish and provide for the operation and improvement of a coherent public transportation system in the most efficient and effective manner. While pursuant to N.J.S.A. 27:25-5.h, NJ TRANSIT is authorized to operate ferry passenger service, it recognizes the important contribution of private ferry systems in the State’s transportation network. As NJ TRANSIT receives the benefit of increased Federal funding by including private ferry mileage statistics in its annual submission to the National Transit Database of the Federal Transit Administration, NJ TRANSIT believes it is prudent public policy to establish a program to invest State of New Jersey funds for capital acquisitions and infrastructure improvements for ferry operators.

(b) This chapter is designed to provide procedures pursuant to which NJ TRANSIT will allocate funding for capital improvements to operators under a Ferry Capital Improvement Program.

16:89-1.2 Definitions

The following words and terms, as used in this chapter, shall have the following meanings:

“Affiliate” means any individual, company, proprietorship, corporation, agency, trust, or partnership where, by reason of the relationship of such entity with the operator (whether by reason of the method of, or circumstances surrounding, organization or operation, or whether established through common directors, officers, stockholders, a voting trust or trusts, a holding or investment company or companies, family relationships, or any other direct or indirect means), there is a reason to believe that the affairs of the operator may be managed in the interest of such individual, company, proprietorship, corporation, agency, trust, or partnership.

“Capital improvements” shall mean, in connection with ferry passenger service, ferries and their constituent mechanical systems (including, without limitation, engines, propulsion systems, structures, HVAC systems, and seat/cover replacements) and necessary land-side improvements (including, without limitation, ferry terminals, approach roadways, pedestrian accommodations, parking, docks, ramps). In addition, capital improvements include: electronic farebox or other revenue collection equipment, radios and related equipment, revenue equipment (including, without limitation, buses providing connections to ferry passenger service), and non-revenue equipment, (including, without limitation, maintenance facilities and equipment).

“Capital maintenance” shall mean in relation to public transportation projects, the direct cost of any work necessary for preserving or maintaining the useful life of public transportation projects, provided the work is associated with the acquisition, installation, and/or rehabilitation of components, which are not included in the normal operating maintenance of equipment and facilities or replaced on a scheduled basis. The work shall ensure the useful life of the project for not less than five years.

“Charter service” shall mean transportation provided at a request of a third party for exclusive use for a negotiated price. Service is not part of the regularly scheduled service and the third party determines the origin and destination of the trip as well as scheduling.
“Executive Director” means the Executive Director of NJ TRANSIT.

“FCIP” shall mean the Ferry Capital Improvement Program.

“Ferry passenger service” shall mean any regular service which involves the carriage of persons for compensation or hire by waterborne craft in this State or between points in this State and points in other states. Ferry passenger service that, due to geographic locations or routing, operate in a state other than New Jersey in providing services to passengers that have origins or destinations in New Jersey, are included within this definition, provided that the primary reason for operating outside of New Jersey is to transport New Jersey citizens to and from their New Jersey origins and destinations, and to transport others to and from New Jersey where such transportation services aid in the growth and development of the economy of the State of New Jersey. Charter service is not included in this definition.

“FGDRM” means Fixed Guideway Directional Route Miles as defined by FTA under 49 U.S.C. § 5337, that is, the mileage in each direction over which public transportation vehicles travel while in revenue service over a fixed guideway (exclusive or controlled access right-of-way).

“FTA” means the Federal Transit Administration.

“NTD” means the National Transit Database of the Federal Transit Administration.

“NTD funding” means the Federally generated funds under FTA § 5307 Urbanized Area Formula Program and § 5337 State of Good Repair Grants Program or successor programs.

“Operator” means any person, firm, corporation of any type, or other entity operating ferry passenger service.

“RVM” means Revenue Vehicle Miles as defined by the FTA under 49 U.S.C. § 5307, that is, the miles that vehicles travel while in revenue service. Vehicle revenue miles exclude deadhead, training operators prior to revenue service, vehicle maintenance test, and school charter services.

SUBCHAPTER 2. ELIGIBILITY AND INELIGIBILITY

16:89-2.1 Eligibility criteria

(a) The Executive Director shall determine whether an operator is eligible to participate in the FCIP. To be eligible, operators shall:

1. Have all necessary governmental approvals to run ferry passenger service;

2. Provide NJ TRANSIT with statistics and annual required certifications for the NTD Report (see 49 U.S.C. § 5335(a)). The FTA has found such submission acceptable and funds from FTA’s 49 U.S.C. § 5307 and 49 U.S.C. § 5337 programs (or successor programs) were allocated to NJ TRANSIT;

3. Be current in its accounts with NJ TRANSIT and the State of New Jersey. When there are affiliates, then both the operator and each affiliate must be current in its accounts with NJ TRANSIT and the State of New Jersey;

4. Have performed satisfactorily in past contractual arrangements with NJ TRANSIT;

5. Have the ability to maintain equipment of advanced design and technological complexity;

6. Agree to utilize the purchased FCIP capital improvement for the primary purpose of operating ferry passenger service in accordance with its routes and service requirements; and

7. Agree to make purchased FCIP capital improvements available as soon as practicable for the needs of NJ TRANSIT upon written request by NJ TRANSIT in the event of any emergencies, such as riots, floods, calamities, strikes, etc., as determined by NJ TRANSIT. Details of these requirements and the compensation therefor shall be set forth in an emergency services agreement between NJ TRANSIT and the operator.

16:89-2.2 Notice of ineligibility

(a) If NJ TRANSIT concludes that an operator is not eligible to participate in the FCIP, a designee of the Executive Director shall notify the operator in writing explaining the reasons for the decision. The operator may appeal this decision but only on the facts NJ TRANSIT used in its determination. The operator must submit its written response within 15 business days of receiving NJ TRANSIT’s decision. In its response, the operator shall respond with particularity and detail to each and every assertion made in the initial communication. The operator may submit only relevant documents with its response.

(b) The Executive Director’s designee shall consider the operator’s response on the papers submitted by the operator and all other relevant material, including the applicable provisions of N.J.S.A. 27:25-1 et seq., and shall render a decision. A decision by the Executive Director’s designee shall be rendered within 30 calendar days of receipt of the operator’s written response. Where the Executive Director’s designee requests additional information from the operator, the operator shall respond accordingly. The Executive Director’s designee shall render a decision based on such facts, the law, and any relevant considerations of public policy. If the operator is dissatisfied by this decision, the operator may seek review of the decision in accordance with the procedures set forth in the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. An operator may seek judicial review of NJ TRANSIT’s final decision by filing the appropriate appeal.
with the Appellate Division of the Superior Court of New Jersey as provided by applicable law.

SUBCHAPTER 3. FERRY CAPITAL IMPROVEMENT PROGRAM FUNDING

16:89-3.1 Source of funds

(a) Funding for the FCIP program will be provided from the NJ TRANSIT capital budget.

(b) NJ TRANSIT will allocate FCIP participants at least 75 percent of the funding generated as a result of their RVM reported to the NTD and allocated to NJ TRANSIT under the FTA’s 49 U.S.C. §§ 5307 and 5337 programs or their successors. The remaining balance will be retained by NJ TRANSIT to cover internal administration cost and support ferry operations.

(c) NJ TRANSIT will allocate FCIP participants at least 75 percent of the funding generated as a result of their FGDRM reported to the NTD and allocated to NJ TRANSIT under the FTA’s 5307 and 5337 programs or their successors. The remaining balance will be retained by NJ TRANSIT to cover internal administration cost and support ferry operations.

(d) NJ TRANSIT will establish the annual RVM and FGDRM funding amount consistent with Federal appropriations and national NTD reporting.

(e) FCIP funding will be disbursed for FCIP projects consistent with an agreement as described in N.J.A.C. 16:89-4.1. NJ TRANSIT will maintain a record of the amount allocated to each FCIP participant, amount disbursed or committed, and the program balance.

16:89-3.2 Eligible and ineligible uses of allocated FCIP funds

(a) FCIP expenditures made shall apply only to ferry passenger service capital improvements and/or capital maintenance.

(b) Allocated FCIP funds may be used for the following types of expenditures with the approval of NJ TRANSIT supporting ferry passenger service:

1. Purchase of waterborne craft and buses used for revenue service, which must be maintained in revenue service for their prescribed useful lives;

2. Rehabilitation of NJ TRANSIT purchased waterborne craft and buses, including, but not limited to, the complete overhaul of boat engines and propulsion systems, purchase of complete ferry engines or propulsion system, bus engines, and/or transmissions, structural rehabilitation, HVAC rehabilitation, and seat/cover replacements. The purchase or repair of component parts that are included in the normal operating maintenance of equipment or facilities or are being replaced on a regularly scheduled basis is not permitted;

3. Rehabilitation of operator owned/leased waterborne craft and buses, as described in (b)2 above, used in ferry passenger service;

4. Improvements to facilities used principally to support the operation of ferry passenger service;

5. Capital equipment purchases, including, but not limited to, electronic fare equipment, radios, and maintenance equipment; and

6. Purchase of non-revenue vehicles used to support revenue operations.

(c) Allocated FCIP funds may not be used for the following types of expenditures:

1. Operating or routine maintenance expenses;

2. Compensation of any owner, officer, employee, or general administrative expenses;

3. The purchase of component parts;

4. Fuel storage facilities and related equipment;

5. Office furniture; or

6. Interest on debt service.

SUBCHAPTER 4. OTHER REQUIREMENTS

16:89-4.1 Agreement governing capital improvements

(a) An operator shall enter into an appropriate written agreement ensuring NJ TRANSIT’s satisfactory continuing control for every item of capital improvement funded by NJ TRANSIT through the FCIP. This agreement will also ensure that the operator’s use and disposition of the capital improvements are in accordance with the FCIP and shall contain such provisions that include, but are limited to, requirements for capital improvement maintenance, indemnification, and insurance, and requirements for default, audits, and recordkeeping as NJ TRANSIT shall deem reasonably necessary to ensure that the capital improvement shall remain in ferry passenger service for the length of its useful life.

(b) Satisfactory continuing control shall take the form of a lien agreement as follows:

1. NJ TRANSIT will be named as the senior (first) lienholder on capital improvements funded through FCIP. If a senior lien is not available, NJ TRANSIT shall maintain its financial interest over each capital improvement through its useful life by means of a lien agreement identifying the cost, date of purchase, and useful life of each capital improvement and stipulating that any early
disposition of the capital improvement will require the operator to reimburse NJ TRANSIT the original cost of the capital improvement less depreciation (assuming straight line depreciation).

2. If the operator does not have the resources to reimburse NJ TRANSIT in accordance with (b)1 above, NJ TRANSIT shall reduce the operator’s next year’s FCIP funds by an amount equivalent to the original cost less depreciation of the capital improvement.

(c) Where an operator may be in breach of its obligations under any agreement with NJ TRANSIT under (a) or (b) above, any recourse or remedy for such breach shall be resolved and determined under the agreement terms and conditions. The remedy for breach may include, but not be limited to, repossessing the capital improvement(s).

16:89-4.2 Compliance requirements

(a) As a precondition to accepting funding for capital improvements from NJ TRANSIT, an operator shall agree to abide by all regulatory requirements of NJ TRANSIT in force at the time the written agreement in N.J.A.C. 16:89-4.1(a) is executed and all requirements of any third party owner of the equipment.

(b) Operators shall agree to provide any records or documentation that NJ TRANSIT may require for any audit conducted in relation to FCIP funding from the NJ TRANSIT capital budget or the FTA.

(c) Operators shall annually certify to NJ TRANSIT that all capital improvements are being satisfactorily maintained according to accepted standards throughout their useful life. Operators shall agree to develop and submit to NJ TRANSIT a maintenance plan if so required.

SUBCHAPTER 5. RETIREMENT OF CAPITAL IMPROVEMENT

16:89-5.1 General

In each instance where an operator proposes to dispose of capital improvements acquired with FCIP funds the operator shall submit a written plan for disposition to NJ TRANSIT for its approval.