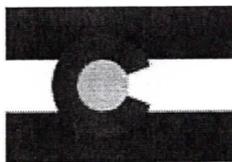


STATE CAPITOL BUILDING
200 E. Colfax Ave
Denver, CO 80203



COLORADO GENERAL ASSEMBLY

Attachment 6

Ms. Angie Rivera-Malpiede
Chair, Board of Directors
Regional Transportation District (RTD)
1600 Blake Street
Denver, CO 80202

RE: RTD's Staff Comments to 1/21/2020 Draft Version of Senate Bill 20-151

Dear Chair Rivera-Malpiede and members of the Board of Directors:

Thank you for your organization's written feedback regarding Senate Bill 151, the **Accountability, Democracy, and Accessibility in Public Transit (ADAPT) Act**. We are glad that the Regional Transportation District is in agreement with our efforts to repeal the farebox recovery ratio and remove some of the barriers that might be keeping RTD from providing the best possible service at the lowest possible fares.

The ADAPT Act will:

1. increase state and public oversight of the Regional Transportation District;
2. identify measures to ensure its long-term fiscal health;
3. permit the district to significantly reduce its fares at its discretion;
4. ensure the district is spending tax dollars responsibly and fairly;
5. increase meaningful engagement between key constituent groups, the executive, the legislature, and the Regional Transportation District;
6. Improve the quality of service for all riders; and
7. increase compliance with federal and state antidiscrimination laws.

We understand that your organization currently opposes certain significant parts of the bill, and we would like to respond to the main points of your response memo. We start with the objection to using Colorado courts to enforce federal antidiscrimination laws as they relate to the provision of public transportation services provided by the Regional Transportation District:

- "RTD wants to find a solution that encourages RTD's continued compliance with ADA and civil rights laws but that does not unduly burden its ability to provide transit service to transit-dependent riders."

We are concerned with the claim that compliance with federal antidiscrimination laws would result in a *reduction* of services for riders with disabilities and/or riders of color.

In your January 28th press release, you also stated the provisions in Section 2 would "...divert crucial resources from transit improvements." Unless the RTD is currently out of compliance

with federal law as a matter of policy, we cannot comprehend how this could be the case. To help us understand this position, we would like specific examples to better explain what fiscal constraints RTD might run into if it were to change any of its current ADA or Title VI policies.

- “FTA regularly (and thoroughly) audits RTD to ensure compliance on both statutes and has determined that RTD is in compliance.”

Last week, we requested a copy of the RTD’s Title VI and ADA procedures and policies, including its most recent ADA Sec. II Self-Evaluation and its Title VI LEP (Limited English Proficiency) plans. Providing us with these and the audits you referenced in a timely manner to avoid a CORA request would be appreciated.

- “Prohibiting discrimination on the basis of disability, race, color and national origin in connection with the provision of transportation service is redundant of existing state law, CRS § 24-34-601, 24-34-802. These existing CO statutes already specifically incorporate federal ADA law. CRS § 24-34-601(4). Colorado Department of Regulatory Agencies, Civil Rights Division already receives and investigates complaints of discrimination based on public accommodations including transportation services provided by RTD.”

First, the Colorado Anti-Discrimination Act (CADA) does *not* incorporate the Americans with Disabilities Act, except that the same intent standard for the defense applies. “A court that hears civil suits pursuant to this section shall apply the same standards and defenses that are available under the federal "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12101 et seq., and its related amendments and implementing regulations.” CRS § 24-34-601

The CCRD might investigate claims, but it is still limited to the scope of CRS § 24-34-601, protections that still fall demonstrably short of the Americans with Disabilities Act. This is just one reason why Senate Bill 151 is needed - it specifically incorporates the ADA into the RTD Act.

“In addition to any other requirements, a failure to comply with the federal Americans With Disabilities Act of 1990 42 U.S.C. Sec. 12101 et seq. and its related amendments and implementing regulations constitutes a violation of this subsection (2).” Colorado Senate Bill 151 (2020)

Second, state statute prohibits the Colorado Civil Rights Division of the Department of Regulatory Agencies from enforcing federal law. “Nothing in parts 3 to 8 of this article shall be construed to authorize the commission, the director, or the division to enforce any provision of federal law.” C.R.S. § 24-34-308. (To compare to another agency, the Colorado Department of Labor and Employment has administrative authority to investigate violations of the Fair Labor Standards Act and enforce penalties.)

If the RTD has ever been subject to court proceedings under the Colorado Anti-Discrimination Act, we ask that you provide us with more information in advance of our next meeting. We also ask the RTD to disclose the number of antidiscrimination complaints it received under any state or federal antidiscrimination statute for the preceding seven years.

- “Presumably the intent is to create an incentive for plaintiffs’ attorneys who take cases on a contingency fee to represent individuals to remove a barrier of representation.”

Unlike other legal systems found in the western world, the enforcement of our country’s civil rights laws rest largely on the public body. Even when the defendant is a unit of government, most antidiscrimination laws expressly permit a private right of action.

Nonetheless, filing a civil rights case in federal court is costly, requires specific legal expertise, and is subject to long delays. Particularly for marginalized and traditionally low-income communities, this system poses a barrier to the private enforcement of civil rights laws.

For this reason, the ADAPT Act stipulates that a violation of 42 U.S.C. Sec. 12101 et. seq. or 42 U.S.C. Sec. 2000a et. seq. is a violation of state law. This would permit a plaintiff to file, with limitations, an ADA or Title VI claim in state court.

- “However, the unintended consequence is that it exposes RTD to open-ended liability and may force RTD to settle meritless claims because of the potential risk of such damages and the costs of litigation; the result is not resolution of the substantive issues that could improve transit service. It diverts public funds to plaintiffs’ attorneys who profit from bringing questionable claims in order to obtain a quick settlement.”

We do not believe it is in the interest of the General Assembly to encourage meritless claims against any of its political subdivisions, but we are also aware that such behavior can have severe repercussions. Rule 11 of the Colorado Rules of Civil Procedure states:

The signature of an attorney constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

An attorney who violates Colo. R. Civ. P. 11(a) can be sanctioned and their case dismissed. In addition, C.R.S. § 13-17-101 permits the awarding of attorneys fees and costs to the defense counsel for meritless claims. A law practice built on questionable civil rights claims would be a very risky business model for an attorney who takes on clients that cannot afford to hire an attorney.

We are not aware of any problem the RTD has with attorneys bringing “questionable [ADA or Title VI] claims in order to obtain a quick settlement,” and we kindly request that you provide us with more information so that we can investigate those matters.

- “RTD would like to propose an alternative Section 2. This section does not serve the intent to provide better service for transit-dependent riders.”

We have not yet received a proposed alternative to Section 2. While the core principles of equal access are not subject to negotiation, we have repeatedly expressed a willingness to discuss the damages provision. If and when RTD comes to the table to discuss Section 2, we will welcome

you.

We would also like to address RTD's concern regarding transparency and the temporary additional reporting requirements to the Transportation Legislative Review Committee. In your recent press release, the RTD also asserted that "requiring additional audits would present budget- and time-consuming hurdles."

It might be meaningful for the RTD to understand that as members of the General Assembly, we sit on committees that provide oversight to several state agencies and departments. For example, the The State Measurement for Accountable, Responsive, and Transparent Government (SMART) Act requires that budget requests correlate with strategic planning and performance measurement tracking. (We are aware that RTD has its own key performance indicators, some of which are reported to the Transportation Legislation Review Committee every interim.) The State Audit Committee also has oversight of the Regional Transportation District and members do make additional requests outside of the mandated five-year schedule.

It should be noted that the only mandated reporting requirement RTD is subject to is the farebox recovery ratio in C.R.S. § 32-9-119.7, which we seek to repeal with the passage of this bill. Because RTD is a transit agency created by the legislature and is subject to its purview, we do not feel that requiring increased transparency, compliance with ethics laws, or state-funded performance audits is outside of the General Assembly's norm or the scope of the public interest.

Despite our differences on this bill, we do want to stress that the RTD did give some helpful feedback regarding clarity of intent on its governance. We will work with you to address any real or perceived ambiguity related to § CRS 32-9-107, § CRS 32-9-114, 32-9-116, and CRS 32-9-117.

We would like to again thank the Regional Transportation District for providing feedback on SB-151 and we look forward to meeting with you in advance of the February 11th, 2020 Senate Transportation Committee hearing.

Thank you for your attention to these matters.

Sincerely,

Robert Rodriguez
State Senator

Jack Tate
State Senator

Dominique Jackson
State Representative

Colin Larson
State Representative