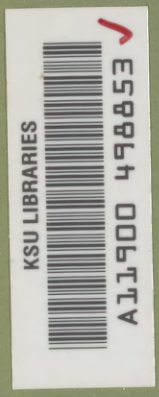
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AMENDING THE URBAN MASS TRANSPORTATION ACT



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HEARINGS

BEFORE THE

SUBCOMMITTEE ON HOUSING AND URBAN AFFAIRS

OF THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

UNITED STATES SENATE

NINETY-SIXTH CONGRESS

SECOND SESSION

ON

S. 2004, S. 2015, S. 2105, S. 2296, S. 2479

TO AMEND THE URBAN MASS TRANSPORTATION ACT

MARCH 6 AND 19, 1980

1080



Printed for the use of the
Committee on Banking, Housing, and Urban Affairs

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AMENDING THE URBAN MASS TRANSPORTATION ACT

THURSDAY, MARCH 6, 1980

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SUBCOMMITTEE ON HOUSING AND URBAN AFFAIRS,
Washington, D.C.

The subcommittee met at 9:30 a.m., in room 5302, Dirksen Senate Office Building, Senator Harrison A. Williams (chairman of the subcommittee) presiding.

Present: Senators Williams, Sarbanes, Tsongas, and Heinz.

OPENING STATEMENT OF SENATOR WILLIAMS

Senator WILLIAMS. Today the Subcommittee on Housing and Urban Affairs begins a series of hearings to examine the state of our public transportation programs and to help the Congress determine the shape of these programs over the next several years as a response to our growing energy crisis.

About a year ago this country finally began to wake up to the hard realization that our energy supplies in the future are vulnerable, limited, and expensive. We are faced with an end to the unlimited personal mobility that the automobile has represented to this society when fuel was cheap and readily available. As a nation we began to take a hard look at mass transit as an alternative.

We realized that our available transit resources simply could not handle a major new shift of people out of their cars and on to buses and into trains.

In the last 20 years the Federal Government has made a significant commitment to improve our transit systems and great progress has been made in many cities, but nothing had prepared us for the surge in demand that occurred. Last year's gasoline prices and the significant increases in ridership has lasted far beyond the initial worst weeks of the shortage.

The new awareness of transit found a powerful spokesman, the President of the United States. He announced an ambitious but necessary series of goals for our public transportation programs: To add 15 billion passengers a day to our systems, to double production of buses, to step up the modernization of our rail systems and to expand our fleets and extend our systems. In short, the President said we will reclaim and we will revitalize America's transit systems.

This hearing is the first major opportunity the administration, Congress and the transit community have had to spell out how we will achieve the President's goals.

Two major authorization bills are now before this committee. S. 2296, which I introduced recently, would increase transit funding over the next several years so we can begin to meet the President's goal. It also restructures the program to help assure that available funds go where they are needed and where they will be used most effectively.

The administration has just sent up its legislation. We haven't had a chance to review it. However, I understand that the 1981 funding levels are substantially as proposed in the Preident's budget. Nevertheless, I'm keenly aware that at the end of this reauthorization process there will be pressure from many quarters to reduce spending for transit as part of the fight against inflation. In my view, a program which is as vital as the transit program must not be crippled so as to negate its effectiveness as a long-term inflationary tool and its importance in achieving long-term energy goals.

Furthermore, the passage of the windfall profit tax allowing 15 percent for transit and energy initiatives makes at least an additional $34 billion available for these purposes over the next few years. My hope is that Secretary Goldschmidt's appearance here today, along with several key State and local officials, will help us establish the framework of continuing high level of Federal commitment to improve mass transit.

We will begin most appropriately with the Secretary of the Department of Transportation, Neil Goldschmidt. He is accompanied by Theodore C. Lutz, Urban Mass Transportation Administrator. We welcome you and look forward to what I know will be the statement that will get us winging our way with this year's reauthorization. Lillian Liburdi is beside the Secretary. We welcome you, too.

STATEMENT OF NEIL GOLDSCHMIDT, SECRETARY, DEPARTMENT OF TRANSPORTATION, ACCOMPANIED BY THEODORE C. LUTZ, URBAN MASS TRANSPORTATION ADMINISTRATOR; AND LILLIAN LIBURDI, DEPUTY ADMINISTRATOR, URBAN MASS TRANSPORTATION

Secretary GOLDSCHMIDT. Mr. Chairman, members of the subcommittee, I am pleased to come before you today to outline our proposals to recast a number of key elements of our public transportation program. The changes we are advancing are designed to bring this Nation's transit programs into conformance with the new realities of our time: To meet or exceed the President's goal of increasing transit ridership by 50 percent in this decade, to make transit equipment more readily available and to sustain its use, and above all else, to use transit as a major tool in our energy conservation effort to shape programs that spend our financial resources wisely.

I have provided to the committee, I realize now, a statement that runs 12 pages. I'm more astonished than anything that I found 12 pages worth of things that I could actually speak to. I promise not to read them all, but I would like to highlight some of the things that appear in the statement.

Since 1973, as the chairman well knows, the demands on transit have grown dramatically as Americans have come to recognize the

new realities of energy and economy in transportation. But while transit has changed significantly, the approach to Federal assistance has not kept pace. It has not changed to reflect the fundamental role of transit in the movement of people and the conservation of energy.

Today we are proposing that we update Federal transit legislation so it supports our vision of mass transit as a more productive, more conserving, more efficient and more effective force in this country's transportation system.

Mr. Chairman, our proposals would realine the Federal program to meet transit goals by significantly increasing Federal support for transit between 1980 and 1985. We would greatly increase the authorization levels for the UMTA section 3 discretionary capital program, section 5 formula capital and operating assistance program, and the section 18 program for capital and operating assistance to nonurbanized areas. We are offering an innovative approach to distribution of section 5 funds: Our proposal would utilize the disbursement of funds to support our national transit goals of increased service, increased attention to farebox effort, and increased efficiency in the operation of transit systems.

By increasing the availability of transit buses, our proposal to permit direct procurement of buses by the Federal Government should solve the current bus procurement hassle, deliver a positive message to the industry, simplify and boost production, reduce waiting time, stimulate competition and assure ready availability of vehicles to see us through any possible mobility crisis.

We would like to explain these in more detail, but we think the details will come out in the process of questions.

Let me say with regard to section 5 that we think it is vitally important that the distribution of those funds should reinforce our objectives for transit service around the country and send a clear message regarding the rules for support of that service in the decade ahead. Those objectives can be stated quite simply.

We seek first to get the greatest return on Federal operating assistance funds by relating those dollars to transit service levels; to provide incentives for good transit system management and increased fare box revenues by establishing limits for operating assistance in terms of operating costs rather than operating deficits; to provide incentives for transit to achieve key national goals in energy conservation and cost control by linking the operating assistance formula to improved efficiency and increased ridership and revenues; to increase the equity of the allocation in terms of the proportion of operating expenses covered by Federal Assistance.

As you examine our proposals for the allocation of section 5 funds, you will see the connection between these objectives and our proposed reshaping of the program.

We do want to encourage the expansion and improvement of transit services and we want to reward such changes through the section 5 program. Under the current formula for distribution of section 5 funds, most of the money is allocated on the basis of population and population density, which has little relationship to transit service in an area. This formula delivers an ambiguous signal about local responsibility and offers no reward where excep-

tional effort is made. We want to change this to provide a clear signal of what the Federal role is, so that local transit authorities can plan and develop their own level of financial assistance.

I would like, in closing, to talk a little bit about the procurement issue which is one you have spoken about, Mr. Chairman, and we are very pleased about your interest.

I want to say to you that there is considerable concern on our part that we need to be using the resources you have provided us in the past and you would propose to provide us now as a tool to encourage American industry to generate innovation, technology, and high levels of production of quality equipment for the transit user in the United States. As I have tried to say in very direct terms, we think the answer to the lagging status of American industry and the increasing appearance of the possibility that we may be buying foreign equipment, is not to throw up trade barriers, but rather to try to use this resource and this procurement tool as an instrument to encourage U. S. manufacturing and the jobs they provide. I am convinced that our economy is not well served by substituting the export of jobs and dollars to buy transit equipment as a replacement for our current export of dollars to buy oil. I expect that this procurement authority can be a tool to encourage foreign manufacturers to establish production facilities in the United States as well as to encourage new production by American manufacturers, whether it be an expansion of existing plant capability or the entering into business by new industries that make other kinds of buses.

Our bill would provide additional authorizations for the rural and small urban program and would also insure that each State would receive at least 1 percent of the section 18 apportionment. This minimum apportionment would enable every State to plan and implement a meaningful public transportation program for nonurbanized areas, whereas the present apportionment received by some States is so small that it is not practical for them to try and use it. I am determined to make this program a success, as are my colleagues, and I think these amendments are essential.

We thank you for the opportunity to discuss our legislation with you. There are provisions in the administration bill which we have not discussed but which are fully described in the section-by-section analysis we have provided. We hope and believe that the amendments we propose are an important way of assuring responsiveness and effectiveness of the transit program and deserve your careful consideration.

Finally, Mr. Chairman, more than almost anybody I can think of, you are the leader in all of these causes and it is a pleasure for us to be a partner with you in a dialog on how to make our program a better one in the years to come. We would be happy to answer questions.

[The complete statement follows:]

STATEMENT OF SECRETARY OF TRANSPORTATION NEIL GOLDSCHMIDT

Mr. Chairman and Members of the Subcommittee, I am pleased to come before you today to outline our proposals to re-cast a number of key elements of our public transportation program. The changes we are advancing are designed to bring this nation's transit programs into conformance with the new realities of our time: to meet or exceed the President's goal of increasing transit ridership by 50 percent in

this decade, to make transit equipment more readily available and to sustain its use, and above all else, to use transit as a major tool in our energy conservation effort with programs that spend our financial resources wisely. Simply stated, we are seeking legislative changes to encourage transit systems to become energy conserving and cost effective; we are promoting efficiency in the use of scarce resources—whether energy or dollars.

We believe that the time for these initiatives is right. For 30 years, from the mid-1940's to the mid-1970's, transit was a second class citizen in a transportation system dominated by the auto. But now this has changed and changed for good. Thanks in large part to your leadership, Mr. Chairman, and that of this Subcommittee, transit is now recognized as a vital part of our national mobility and energy strategy.

Since 1973, 217 new public transit systems have been started around the country. Transit systems now carry about 25 million people every day, a 25 percent increase in ridership over the past seven years. And as gasoline becomes more expensive and more scarce, more and more people are looking to economical and reliable transit service to guarantee mobility.

Since 1973 the demands on transit have grown dramatically as Americans have come to recognize the new realities of energy and economy in transportation. But while transit has changed significantly, the approach to Federal assistance has not kept pace—it has not changed to reflect the fundamental role of transit in the movement of people and the conservation of energy. Today we are proposing that we up-date Federal transit legislation so that it supports our vision of mass transit as a more productive, more conserving, more efficient and more effective force in this country's transportation system.

Specifically, Mr. Chairman, our proposals would realign the Federal program to meet transit goals by:

Significantly increasing Federal support for transit between 1980–85; we would greatly increase the authorization levels for the UMTA section 3 discretionary capital program, section 5 formula capital and operating assistance program, and the section 18 program for capital and operating assistance to non-urbanized areas;

Offering an innovative approach to the distribution of section 5 funds; our proposal would utilize the disbursement of funds to support our national transit goals of increased service, increased attention to farebox effort, and increased efficiency in the operation of transit systems; and

Increasing the availability of transit buses; our proposal to permit direct procurement of buses by the Federal government should solve the current bus procurement hassle, deliver a positive message to the industry, simplify and boost production, reduce waiting time, stimulate competition and assure ready availability of vehicles to see us through any possible mobility crisis.

Mr. Chairman, let me explain in more detail what we are proposing in these areas and why we believe these changes are both significant and meritorious.

First, in line with the energy initiatives announced last summer by President Carter, we are proposing a major boost in the level of financial support for transit. This bill was developed within the context of a 10 year program that will provide a $53 billion Federal and local investment in transit capital projects. Our proposed funding levels incorporate funds expected from the Windfall Profits Tax revenues.

Our bill increases the authorization levels for the UMTA section 3 program by an average of more than $1 billion per year over currently authorized levels for fiscal years 1980 through 1983. In addition, it extends the authorizations into fiscal years 1984 and 1985 at approximately $3 billion per year. Our total increase would add $10 billion to the current authorization levels for a total program of over $16 billion through fiscal year 1985.

For the section 5 program, we would add approximately $6 billion in authorizations for a total program of over $11 billion through fiscal year 1985.

For the section 18 program, we would add authorizations for an additional $420 million extended through fiscal year 1985.

The significantly higher funding levels and extended time frame should mean increased service and improved reliability for our nation's transit systems—and their riders. But just as important as the increased funding and increased stability is our new approach to distributing the section 5 funds. Here, we believe it is vitally important that the distribution of those funds should reinforce and advance our objectives for transit service around the country, and send a clear message regarding the rules for support of that service in the decade ahead.

Those objectives can be stated quite simply. We seek:

To get the greatest return on Federal operating assistance funds by relating those dollars to transit service levels;

To provide incentives for good transit system management and increased fare box revenues by establishing limits for operating assistance in terms of operating costs rather than operating deficits;

To provide incentives for transit to achieve key national goals in energy conservation and cost control by linking the operating assistance formula to improved efficiency and increased ridership and revenues; and

To increase the equity of the allocation in terms of the proportion of operating expenses covered by Federal assistance.

As you examine our proposals for the allocation of section 5 funds, you will see the connection between these objectives and our proposed reshaping of the program.

We want to encourage the expansion and improvement of transit services and we want to reward such changes through the section 5 program. Under the current formula for distribution of section 5 funds, most of the money is allocated on the basis of population and population density, which has little relationship to transit service in an area. This formula delivers an ambiguous signal about local responsibility and offers no reward where exceptional effort is made. We want to change this to provide a clear signal of what the Federal role is, so that local transit authorities can plan and develop their own level of financial assistance.

Therefore, we would change the basic formula for apportioning operating and capital assistance to one based 50 percent on population and 50 percent on the number of revenue miles traveled by transit vehicles. With vehicle miles included, the formula reflects the level of transit service that is offered and provides incentives to expand that service. Similarly, our proposal would revise the formula for distributing funds reserved for bus capital purposes to base it on bus revenue vehicle miles. The current formula for allocating funds to commuter rail and other fixed guideway systems would not be changed since it already is based on factors which reflect service levels—train miles and other fixed guideway miles. Our proposal, which would take effect at the start of fiscal year 1982, includes a "hold harmless" provision for operating assistance for localities that may not initially benefit from the change.

A second major change we propose concerns the operating assistance aspect of the section 5 program. We are concerned that, under the current program, local areas have no incentive to devise and implement realistic fare policies and indeed have a disincentive to raise fares.

I do not believe that it is realistic to expect farebox revenues to cover all transit operating expenses. At the same time, we cannot expect that fare levels will stay low while operating costs go up and the cost of auto travel rises rapidly. We must encourage realistic fare policies; otherwise, with local and Federal subsidies constrained by fiscal realities, the only alternative would be to cut back on service.

Therefore, we propose to base Federal operating assistance on the total operating expenses of a transit system, rather than on operating deficit as under current law. With this change, areas can move forward in the development of their own fare policies to meet their own local situations without facing the prospect that increases in fares will lead to decreased Federal assistance.

In tandem with this proposal, we believe that the level of the Federal share for operating assistance needs to be adjusted. Under current law, Federal funds can provide up to 50 percent of the operating deficit. In a few areas, the available Federal funds do represent 50 percent of the deficit. In others, particularly the larger, more transit intensive areas, a much smaller percentage of the deficit is covered by the Federal assistance. We do not believe this is equitable.

Therefore, we are proposing that the limit on the Federal share be reduced gradually at a rate of 3 percent per year over the life of this bill, starting with a limit of 43 percent for fiscal year 1982. This phased reduction is designed to minimize dislocations in transit management decisions and operations, while increasing the equity of Federal participation in the operating expenses of various areas. This limit would not affect the total local apportionment, since funds that would not be used for operating expenses could be used for capital purposes.

Finally, Mr. Chairman, I believe that there should be incentives within the structure of the section 5 program, for transit systems to increase ridership and to improve the ratio of operating revenues to total operating costs. We need to have a direct link between this program and our national efforts to reduce energy use, achieve more cost efficient movement of people and increase transit ridership and revenues. Therefore, we propose to authorize separate incentive funds in section 5, which would be awarded to areas in which transit ridership increases by 5 percent or more over the previous year, or in which the ratio of operating revenues to total operating costs exceeds the national media. An area meeting one of these criteria would receive an amount equal to an additional 7.5 percent of its section 5 appor-

tionment—other than the bus capital tier. If the area met both of these criteria, its incentive grant would be 10 percent. This new part of the section 5 program would be separately authorized and begin in fiscal year 1983. It would, I believe, be a major impetus for developing a stronger revenue base for transit operations and for systematic local efforts to attract more people to transit systems.

With the changes that I have outlined, section 5 will become an even more important agent for improvement and expansion of transit operations. Mr. Chairman, the changes made in 1978 in the Surface Transportation Assistance Act, which you were so instrumental in enacting, do help to target the funds where they are needed. But we firmly believe that additional restructuring, as contained in our proposals, is now necessary and I look forward to working with this Subcommittee to accomplish these changes.

Mr. Chairman, the Administration does not propose any change to the discretionary nature of the section 3 program. We are opposed to unnecessary categorization of the program and believe that the program can be most responsive to national and local needs by retaining its flexible, discretionary character. Thus we cannot agree with the provision in your bill which would establish a system for allocating some section 3 funds for rail modernization purposes. I do agree with you completely on the need to provide funds for modernization activities. Our existing rail systems are extremely valuable assets and they must be preserved, enhanced and expanded, and a significant portion of the new section 3 authorizations contained in our bill is intended for this purpose.

I do not believe, however, that modernization needs will be efficiently met by limiting the discretion of the Secretary of Transportation, since the allocation plan proposed would tend to "trickle" funds to all rail cities, rather than targeting funds to areas most in need.

Local progress in planning, engineering and financial efforts all help determine when Federal capital assistance is needed. With a discretionary program, we can be sensitive to the timing of local needs. I am also concerned, Mr. Chairman, that if we start setting up suballocations for one sort of eligible section 3 project, they will soon proliferate and the discretionary nature of the program, which is essential to its effectiveness, will be lost.

On the other hand, Mr. Chairman, I am most pleased that your bill, like the Administration bill contains a provision which would allow the Secretary to use the section 3 discretion in a new and very important way. Both bills would authorize the Federal Government to buy transit equipment directly from the manufacturers, for subsequent transfer to localities and states for use in local transit systems.

We believe that the advantages of this approach for the bus industry are substantial and compelling: it would deliver a message to the market about the true national demand for transit equipment; increase competition in the industry and perhaps stimulate new entries into the business; reduce the excessive delay in obtaining equipment which plagues systems today; and create a strategic bus reserve capable of protecting us from any possible mobility crisis that could result from an interruption in oil supplies.

This innovative direct purchase authority offers the bus manufacturers the assurance of a reliable and steady flow of orders, rather than being subject to the start-again, stop-again pattern of orders from individual areas. This pattern has been a serious detriment to the continued economic health of our domestic bus industry. With the proposed authority, the manufacturers will be able to plan and use their facilities more productively. Moreover, we anticipate greater opportunity for standardization through the Federal purchase mechanism. In addition to improving the financial health and stability of the manufacturers, we would hope that this would lead to a lower per unit cost for the buses then would otherwise be the case.

Local areas now face a 12 to 18 month lag time between deciding to order a bus and actually taking delivery of the equipment. We expect that this proposal will cut that time by one third, possibly even one half. Those areas which choose to make use of this new program and have had their applications approved by UMTA will enjoy the prospect of immediate delivery of their bused rather than the continuing process of bid, award, manufacture and then final delivery. Smaller areas will particularly benefit from this program, since they will not need to develop or contract for the special technical and financial expertise that is needed for the actual procurement process.

This new authority thus offers a regular market to bus manufacturers, more employment opportunities, an efficient delivery system to local areas, a strategic bus reserve in the case of a serious energy emergency, the economies of scale and standardization, and—in the last analysis—more transit provided more quickly to the American people. It is one element of our efforts to increase the amount of

equipment available to transit systems. We are concentrating, as well, on efforts to enhance vehicle maintenance for greater use of equipment once purchased and the creation of a stockpile of used buses as a further reserve. I believe, Mr. Chairman, that this will be money well spent.

Further, I would welcome your assignment to use this resource as an instrument to encourage U.S. manufacturing and the jobs provided thereby. I am convinced that our economy is not well-served by the substituting the export of jobs and dollars to buy transit equipment as a replacement for our current export of dollars to buy oil. I expect that this procurement authority can be a tool to encourage foreign manufacturers to establish production facilities in the United States.

Before closing, I would like to mention the section 18 small urban and rural assistance program. I believe firmly in this program. It is an essential part of the President's small community and rural development policy. While my own background is as a mayor of a metropolitan area, I am well aware of and excited by the prospects and potential of public transportation service in non-urbanized areas. I would be less than candid not to acknowledge that the section 18 program has had start up problems. I hope and believe that many of those problems are now behind us. The question of the impact of the section 131(c) labor protection requirement is something that we need to examine carefully, in cooperation with the Labor Department and the affected State and local government officials, but we do not propose any statutory change at this time.

Our bill would provide additional authorizations for the rural and small urban program, and would also ensure that each state would receive at least one percent of the section 18 apportionment. This minimum apportionment would enable every state to plan and implement a meaningful public transportation program for non-urbanized areas, whereas the present apportionment received by some states is so small that it is not practical for them to try to make use of it. I am determined to make this program a success, and I think these amendments are essential.

I appreciate the opportunity to discuss our legislation with you this morning. There are other provisions in the Administration bill which I won't take time to describe in detail, but which are fully described in the section-by-section analysis we have provided. All of the amendments we propose are important in assuring the responsiveness and effectiveness of the UMTA program and I commend them to you for careful consideration.

Thank you, Mr. Chairman. That concludes my prepared statement. I would be pleased to answer any questions you or other members of the Subcommittee may have.

Senator WILLIAMS. Senator Tsongas, did you have any opening statement that you wanted to make?

Senator TSONGAS. Why don't you go ahead and I will put it in later.

Senator WILLIAMS. All right.

Now, first of all, could you tell us where we stand with respect to the legislation that the administration will be sending us?

Secretary GOLDSCHMIDT. We have it here. We transmitted it today.

Senator WILLIAMS. And in the world of OMB signoffs, everything is all right?

Secretary GOLDSCHMIDT. I think it's a blessed child at this point, Mr. Chairman.

Senator WILLIAMS. I feel compelled to ask—I hesitate as you can see—is this subject to any further revisions?

Secretary GOLDSCHMIDT. By us? We suspect it may be subject for further revision by you, but——

Senator WILLIAMS. From the administration, this is your hard and fast proposal?

Secretary GOLDSCHMIDT. Let me back up a moment. We did not have an enormous amount of time to consult with parties that we think are affected by this legislation and I think you will hear some comments on the proposals and may very well find some ways to improve the matters that we have proposed today. Obvious-

ly, if significant changes occurred in the legislation, we would need to go back and consult with the clearance process we came through to get here. We do not come here assuming that we will be making substantial changes in the proposals, but we will try to accommodate changes that the committee judges are reasonable and we conclude are proper.

Senator WILLIAMS. We, of course, always have an anxiety about OMB, whether they will be again in this act; but it's your position that you will, with the exception of any revision that might come out of the hearings here, for example, stay with what you have in the bill?

Secretary GOLDSCHMIDT. Yes, Mr. Chairman. I should make one additional comment for the record. I felt very strongly at the time when we made the announcement about the substantial capital needs in the United States, which the President proposed be funded largely from windfall profits that once that discussion had been completed by Congress and the funds approved, we would need to consider additional transit operating assistance funds. The major debate that occurred internally—and there is no reason why this should not be a matter of public record—related to our desire, and I think it is shared by all three of us at the table and many others, to try to make sure the message that is sent to every local community in the United States as to what the rules will be in the next decade about buying equipment are well understood. In order to make sure nobody that is currently getting assistance is hurt, frankly we had to make it clear that more money was needed. I must say, as a compliment to OMB, they believe the signal as to how we are going to proceed in the next decade is important so that local communities will be clear about the operating rules. And, second, they were responsive to our request for additional funds which will enable us to make sure that the people who now get funds will not be hurt and over the next decade those who operate the most effective transit service will see some correspondence in the way we provide operating assistance. There was considerable discussion about this, and I say that because we have had some people say the following to me: "We could do as well under the old formula with all that old money," I would like to say that in terms of the response we got from the administration's budget people, I'm dubious we would have gotten get additional funds if we hadn't provided some of the funds in the formula on a service basis rather than just on a population basis.

Senator WILLIAMS. Within this year's budget, 1980, we both have addressed this—I have a bill in that would increase 1980 authorizations about a billion dollars and we know that there is part of the windfall profit tax that is assigned to this task for this year. Could you give me, compared to the revenues to be raised—the bills that have been introduced for about a billion dollars—what would be the impact?

Secretary GOLDSCHMIDT. I am going to have Mr. Lutz respond to that. I assume you mean what in fact the offset would be against revenues that would be received from the windfall tax.

Senator WILLIAMS. Yes.

Mr. LUTZ. Yes, Mr. Chairman. As you know, the President's budget anticipates the submission of a supplemental budget request

of approximately $1 billion for public transit and several hundred million for auto use management. Looking at the public transit section, the outlay impact in fiscal year 1980 of the billion dollars that we are both talking about will probably be in the range of $50, $60, $70 million in 1980. We would expect the money to be appropriated in the last quarter of fiscal year 1980, I have a feeling, given the tremendous interest and demand out there from both the bus and the rail cities, as well as those cities with new transit facilities, that the funds would be obligated rather promptly. Still the outlay effect would come late in the fiscal year and the effect on the 1980 deficit would be somewhere in the range of only $50 or $75 million, using the normal spending curves.

As I understand it from the material I have been able to review, the windfall revenue impact in 1980 that is being shown and is being proposed for your review as a Member of the Senate is somewhere in the range of $3.1 billion extra revenue. So the outlay impact from the transit initiative would be, as I say, less than $100 million in 1980 against a revenue impact of $3.1 billion.

In 1981, which of course is of great concern to both the President and the Congress in trying to look at a more balanced budget, I understand the revenues from windfall are in the range of an extra $13 billion. Again, the source of that is the information being prepared by the congressional budget staffs. So the outlay impact of the President's initiatives along the lines that you have also incorporated would be somewhere in the range of $250 to $300 million in outlays against $13 billion in extra income.

Secretary GOLDSCHMIDT. We ought to say—and I haven't done the percentages—that the way the conference committee finished on the windfall tax, the multiyear totals, as I recall, were in the range of $220 to $230 billion and of that total, the energy package that would be outlay-related for us—that is, synthetic fuels and so on—was only $37. So we are proportional to the total or less but I think it is fair to conclude that the leadtime to actually put out cash on the table for transit equipment is substantial.

It is going to take us time to get this machinery cranked up, and there would not be much of an impact from the supplemental in 1980 and the activities in 1981. We have not been over this with OMB, and they might disagree with the numbers, but not on the principle. They have a fair amount of experience in watching outlays of the programs.

Senator WILLIAMS. Now let me just understand the programing of this 1980 supplemental, $1 billion, if we get that into the authorization. Could your record reflect that, Mr. Secretary?

Secretary GOLDSCHMIDT. How it would be used?

Senator WILLIAMS. Yes.

Mr. LUTZ. Yes. The billion dollars would go through the appropritions process and we would justify use of the billion dollars along the same basic categories as the current categories used in the appropriations process.

Let me be a little more specific so the committee understands roughly what we are talking about.

First, we have a bus category. Currently that discretionary bus category in section 3 is $255 million in 1980. Our proposal is to more than double that, because there is a tremendous increase in

bus purchases as part of the growing recognition that transit vehicle capacity is being strained to the limit, and we have discussed in this committee before the need for maintenance facilities to properly maintain those buses. So you would be roughly looking at a $300 or $350 million increase in the discretionary bus and bus facilities program.

For rail modernization, I know the great interest the chairman has in his bill for this as his introductory comments indicated. The current program with no supplemental is $850 million for rail modernization and extension activities. The proposed supplemental would increase those activities in the range, again, of $330 to $350 million, to raise it up to approximately a billion dollar rail effort in rail modernization and extension.

The "new starts category," which also includes the people mover program as well as funding for cities that have already begun rail systems—Miami, Buffalo, Baltimore, would be in the range of several hundred million dollars, including the people mover effort which has been in a separate category. The urban initiative program, is gaining a great deal of strong support throughout the country because of its relationship to the private sector, its relationship to other community development objectives. Currently $80 million has been appropriated for this program; $200 million has been authorized by the Congress in the 1978 act that flowed from this committee and your colleagues in the House and we would propose to raise appropriation to the full $200 million because of the high importance of this program to communities of all sizes. There may be a slight increase of $10 million in the planning activities to make sure that we are doing this properly. If I have done my arithmetic right, that adds up.

Senator WILLIAMS. That figures up. We don't have the lights on here, but my 10 minutes have been used, so I will come back to you after yielding to Senator Sarbanes and Senator Tsongas.

Senator SARBANES. Mr. Chairman, I will defer to Senator Tsongas. I just arrived.

Senator WILLIAMS. We regret this, but Senator Garn did want to be here very much and has great interest in this, but he's in an appropriations subcommittee and he has been occupied and he's a ranking member there too, so we understand that conflict.

Senator TSONGAS. Thank you, Mr. Chairman. I'm not a member of your subcommittee, but I appreciate your allowing me to participate today.

Senator WILLIAMS. Massachusetts has some kind of standing on this subcommittee, Paul, established some time ago and you continue the priority position on matters that affect Massachusetts. We need you.

Senator TSONGAS. Having put a burden on me, I will not proceed further. This is a new issue for me and obviously it will take some time to come up to speed, but I think the Secretary was correct in saying you are "Mr. Mass Transit."

Senator WILLIAMS. We want you to bring us up to time on how that red line is doing up there.

Senator TSONGAS. There are a lot of lines.

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Mr. Chairman, I have a statement I would like to put in the record and I'm not going to take the Secretary's time, but let me perhaps highlight just a few points.

One, obviously, as you know, the major city in my State is undergoing a kind of renaissance. The mass transit system is perhaps the least productive part of that renaissance and there are certain characteristics of Boston because it goes way back that make it unlike some other cities, but certainly dissimilar to your major Midwestern, Western, and Southern communities that are very spread out. I think it's fair to say that our State has made a major commitment to the mass transit concept and we'd like to continue that, but I'd just like to point out the particular needs of that kind of geographic layout.

I'd also, if I might submit for the record, Mr. Chairman, a list that was drawn up as I understand it by Governor Byrne on the per capita motor gasoline consumption per State that indicates how much conservation is really taking place in the Northeast sector. My State of Massachusetts ranks fifth in the States, that is fifth from the bottom in terms of consumption. New Jersey I would note is seventh, and Maryland eighth, so I think there has been a serious attempt to conserve.

The other point I would like to make is that I think when you talk about conservation that mass transit fits into it not only in the obvious sense of gasoline that's not consumed but what we are pushing in Massachusetts is the notion of developing along mass transit lines, and I don't know how you fit that into a formula, but I think that probably in the long term would be the most important conservation that's going to take place. People simply don't need automobiles and we are pushing for that.

One of the problems we have is that if you push a bus development program, developers will be much less confident in a bus route which can be moved than in a fixed rail system. I think that should be kept in mind.

Second, as we talk about some of the formulae that we are referring to, I think there's a certain weakness in buses that is not apparent in the space and I think that issue of development is one of the perhaps less visible, less obvious characteristics, but one which I think over the long term will be the most important.

If the balance of this could be inserted in the record, Mr. Chairman, it will save time.

Senator WILLIAMS. It certainly will be, as though read.

[Complete statement of Senator Tsongas and the additional material referred to follows:]

STATEMENT BY SENATOR PAUL E. TSONGAS

Mr. TSONGAS. Mr. Chairman and members of the committee, first let me welcome Secretary Goldschmidt, Administrator Lutz, and our other witnesses and thank them for joining us today.

While this is my first chance to participate as a member of the Banking Committee in authorizing funds for the Urban Mass Transportation Act, I want to point out how pleased I am to participate as a representative of the oldest mass transit system in the Nation. Boston's commitment to rail transit began over a century ago and continues strong today. Those of you who know

Boston know that our system was designed to help overcome the crowding on our narrow streets. There were no urban planners involved in designing Boston's traffic patterns in the early 1700's: our streets originally were cow paths. Today the cows are gone but the paths have been paved over and any of you who are familiar with the layout of Boston know why Boston made an early commitment to mass transit and why our drivers are notorious.

Boston has been transit dependent for the last century not because it was in vogue or because energy costs were high but because it was the most efficient way to travel given the unfortunate design of our streets and the density of population within the core of the city. And Boston's longstanding commitment to mass transit reflects the situation of the older Northeastern cities in the States of New Jersey, New York, and Pennsylvania. With our urban traffic patterns and our sustained commitment to transit come some unique problems for the Northeast transit systems. They are old and expensive to run and heavily dependent on rail as a means to remove transit from the mainstream traffic flow to ease crowding. For a city like Boston, adding more buses to the streets during rush hour or even midday, only further congests the streets and slows everyone down. But as we all know rail systems are expensive to build, maintain, and operate. It's much easier and less expensive to pave a road on which both buses and cars travel than it is to lay and maintain rail systems. However, given our urban situation, the current transit policy of increasing bus usage is not efficient. Further, while rail systems are being viewed as the old, outmoded means of transit in the newer cities which can accommodate bus systems, I think time will prove that rail systems will be more effective in helping us meet our broad goals of energy conservation and cleaner urban environments.

I want to quickly make reference to our energy situation and express my feeling that while there has been an ongoing dispute about the energy efficiency of transit, I believe that a strong commitment to transit, especially rail systems, is energy efficient. My colleagues here on the Banking Committee have joined me in supporting the need for energy conservation and alternative energy forms as together we passed the Solar and Conservation Bank Acts. To quell the dispute over the question of energy efficiency, I wish to point out to my colleagues and to Secretary Goldschmidt the fact that our Northeastern transit dependent States have the lowest per capita gasoline consumption in the country. I submit for the record a list done for the Conference of Norteastern Governors for which I thank Governor Byrne, which points out that in the transit dependent northeast, per capita consumption ranges from 164 gallons per person in New York to the rural nontransit State consumption of Wyoming of 441 gallons per person. Clearly this exemplifies strong conservation patterns.

You can contest that those using transit systems also use fuel. However, it would be hard to deny that there is net conservation due to mass transit and further, that electric powered rail transit provides a means of controlling the source of that energy. Rather than buying foreign oil which aside from being expensive, threatens our national security, we can run the electric transit system based on whatever domestic source is available be it coal, nuclear

or solar. Also, electric powered vehicles are cleaner for our environment than cars or diesel buses so the social costs must be factored in to our long range policy goals of conservation and defending our national interest.

Let me point out one more energy fact about transit energy efficiency. There is a clear correlation between population density and energy conservation and efficiency. The closer people live to one another, the less energy they consume traveling to visit one another. Current energy economics point to the revitalization of our inner cities for this very reason. Businesses and people are returning to cities because urban living is more energy efficient. Mass transit systems are key to this development, especially rail systems. Because bus routes can change, they are less dependable but businesses or housing developers looking for development sites seek access to rail systems as strong incentives for locating in an area. Mass transit systems can focus our urban development on energy efficient patterns. The energy efficiency of rail or bus systems can not merely be judged on energy efficiency of the automobile, full or empty, versus the transit vehicle.

To meet our energy and national security goals, we need an even stronger commitment to mass transit than we have seen in the past and even recently, though I do appreciate Secretary Goldschmidt's efforts to fight with OMB. The question we are faced with now is: Given our budget constraints and the attitudes of Congress, what part of transit do we fund? I would argue that while we need new systems to increase ridership and conservation and thus section 3 funds are important, we also need to increase the Federal share of operating costs. Providing mass transit has become increasingly more expensive: energy costs have skyrocketed as have the cost of vehicles and vehicle maintenance. New systems are important but we cannot let our old systems deteriorate for lack of adequate funding. We need a stronger commitment to operating assistance not only for the old systems of today, but for the new systems developing which will also need operating assistance. We cannot afford the sort of mistake we have made with our highway system: we spend millions of Federal dollars building an expensive, elaborate system and then turn it over to the States which cannot afford to maintain it. If we are to commit ourselves to mass transit as a policy decision in our national interest, as we must, we should not go shortsightedly into that commitment. We should know that it is in the entire country's interest to develop, operate, and maintain our mass transit systems and financially make that commitment. Those who would argue that transit funding is only regional are wrong both because the rest of the country is beginning to invest in a good thing and more importantly, every gallon of gasoline saved in Massachusetts is one less gallon we must buy from OPEC. Each gallon not consumed in densely populated areas makes the supply pressures that much lighter in rural areas. A commitment to mass transit is in our national interest and it is in everybody's own self-interest.

I look forward to working with Secretary Goldschmidt, Administrator Lutz and the members of the Banking Committee to solidify our commitment to mass transit.

[The list on gasoline consumption received from Senator Tsongas follows:]

Per capita motor gasoline consumption per State, January to June, 1979

States:	*Gallons*
Wyoming	441
Nevada	389
Texas	332
New Mexico	331
Oklahoma	331
Kansas	329
South Dakota	326
Arizona	320
North Dakota	318
Colorado	312
Iowa	308
Florida	302
Georgia	300
Montana	300
Idaho	293
Arkansas	291
Tennessee	291
South Carolina	290
Alabama	286
Missouri	286
Indiana	284
Utah	284
Nebraska	283
North Carolina	283
Oregon	279
Louisiana	274
Minnesota	273
Washington	268
Kentucky	266
Mississippi	266
California	265
Virginia	265
Alaska	262
Michigan	261
Delaware	258
Vermont	253
Illinois	252
New Hampshire	251
Ohio	248
Wisconsin	247
Maine	240
West Virginia	237
Maryland	233
New Jersey	231
Connecticut	221
Massachusetts	208
Pennsylvania	207
Rhode Island	206
Hawaii	189
New York	164
District of Columbia	163

Sources: "Monthly Motor Gasoline Reported by States," August 1979, USDOT, FHWA "Population Estimates and Projections," September 1979, USDOC, B. Census.

Senator TSONGAS. Let me raise a couple issues with you. One, before I start, I should say that I am familiar with your travails within your own system and I commend you for sticking to your guns. Congress is engaged now over a balanced budget. We are in the throes of that ritual today and yesterday and I would hope that as people who advocate balanced budgets for the farmers or for

their pet projects you are supported in your efforts, that you ought to be farmer-equivalent, if you will, for the Northeast.

Now section 5, the formula that you are proposing would change the operating assistance formula from a 50-percent population density approach to a population and revenue vehicle miles approach. As I understand it, the rationale for that is you try to reflect ridership and since ridership is a very difficult figure to get a handle on, that the revenue vehicle miles approach is what was decided upon.

The problem with that is that my figures—and I understand yours are different—the figures I have suggest that those areas that have very dense populations and very congested streets end up losing under that formula, which I'm sure wasn't the intent, but that is the practical impact.

Would you like to comment on that?

Secretary GOLDSCHMIDT. Let me begin by saying that I think the fixed guideway and development relationship you discussed is one that needs to be kept in front of us continually. The current statute gives us land acquisition authority which I think we may be talking to this committee about over time as to the way to use that to allow people to plan fixed guideways so the ridership will be high, the efficiencies you described will be achieved and the subsidy low.

With regard to section 5, it is a very old debate. We are not interested in trying to bring a service guidepost or a yardstick to the delivery of money. I come from a part of the country in which transit has not been a fixture since World War II. Literally, good systems were ripped out. We have communities coming in for the first time that were not big enough to have a transit system then and they are coming in under rules in which they're getting 15, 20, 25 and sometimes even 50 percent Federal support for the operation of their transit system because of population, not because of service, Senator. We are willing to raise this issue again and again to try to keep coming back with better and more equitable ways to attack the problem. I just want you to understand the point from which I begin and I think Ted and Lillian share this. We've got to find a way to begin moving resources to communities that are providing enormous amounts of transit services and getting 8 percent of their operating subsidies from the Federal subsidy while somebody else is providing very little service and getting half or 30 percent or whatever. Let me underscore this. I am concerned that as you are expanding the opportunity in the United States for transit, and I think there's real demand for it, that the rule for the next decades needs to be clear and the message needs to be clear to everybody starting up for the first time or thinking about expanding in the face of the energy crisis. It isn't fair to have 30 percent of your system subsidized when you are charging 10 cents or 20 cents while other people are charging 50 cents. Tradeoffs can be looked at, but that is the argument that we really want to try to focus on.

Mr. LUTZ. I don't think much needs to be added. One of the key issues always is what can you measure. We did come to this debate with a view that a service factor of some description needed to be included and we started down that road as this committee has and as APTA has. We wound up with having to go back to something

we thought we had reasonable data on. We are only now getting the kind of data through the section 15 study requirement that we really need.

As the Secretary said, we came in and we felt we had, in order to fight for some money for this program, to make a change, that the status quo was not good enough and that we should focus on service. We are the first to recognize that as we refine the data base and as we work with this committee, there may be a more effective way of attaining the same goal of getting a more carefully calculated service factor into the formula.

The Secretary has indicated we expect to work with this committee to do that. We did feel that, within the time necessary to spur some action this year, we had to make a directional change in this bill to raise this debate, and I'm glad to see we have started it. But we intend to work very carefully with you to get the best outcome.

Senator TSONGAS. Are you in the process of establishing a data base on ridership that you can then shift to?

Mr. LUTZ. Under the section 15 requirement, data is now coming in. I know as a transit operator we put a considerable amount of emphasis on section 15. It has a whole range of data elements in it and we are moving toward refining ridership data. In fact, you will notice in the incentive tier that we have proposed we do make comparative ridership gains one of the bases for allocation of bonuses; again, to have an incentive to increase ridership.

The data is at the point where I think it does enable us to make a global judgment as to whether you went up or went down. It is not so refined yet, in our judgment, that it could be used as a basis for precise allocation between cities. It is moving in that direction over the next few years.

Senator TSONGAS. The next few years. Does that mean 1½ years, 3 years?

Mr. LUTZ. The next several years, because we have recommended, as you will note, a reauthorization process geared to March 1982 and March 1984. The idea is within the next several years to have better information which could serve as a basis for reauthorization.

Senator TSONGAS. Let me ask one more question before I yield. Under the section 5 laws, you have an approach that I would think somewhat mutual. You give people a certain amount of time. Have you considered the process of reallocation as HUD does to reward those systems that are going ahead and punish those that are not—or discouragement?

Mr. LUTZ. When we get to reallocation, one of the things you must remember about section 5 is that it can be used for both capital and operating. There are cities—some of the smaller communities particularly, who do use it for capital, unlike Boston and Washington, D.C., who use every penny for operating costs. Given the fact that it is a flexible program, there is an element of trying to build up a critical mass for a capital purchase. Formula shares may have to be built up over time and given that city. It may not use its section 5 funds in year one because it is trying to mass years one, two and three in order to buy a new series of buses or something. So that does make it a little more difficult. You get into penalizing because of the nature of the formula. To us, that is quite

frankly another argument to reallocate some of the money on the basis of transit service to produce more and, for example, Senator Williams' bill takes that step in terms of interjecting a service factor in the allocation of bus capital funds. That factor complicates and may make it a little more difficult to have a reallocation. I am familiar with what you're doing.

Secretary GOLDSCHMIDT. Senator, one other point. The State legislatures are very much involved in this process. Your description of the effort in your State in terms of commitment for transit is not necessarily typical all over the country. A number of legislatures don't meet every year and the method by which matches are delivered and the varying fiscal years really leave some of these smaller communities almost sort of at a whim. I don't mean to make it look like the legislatures are handling it whimsically, but they really don't have the ability to use the resources in the way we are organized to do it. At the end of the third year it is possible for this Congress to take on the reallocation issue.

Senator TSONGAS. Thank you.

Senator WILLIAMS. Senator Sarbanes.

Senator SARBANES. Thank you, Mr. Chairman.

I'm not clear on your proposed formula changes in the operating and capital assistance under section 5. I assume that's going to be developed in much greater detail so we will have a chance to look at a number of tables and charts. You intend to bring down the 50 percent limit; is that right?

Mr. LUTZ. Yes, and that should be discussed, Senator. In Baltimore's case, for example, I doubt if the city is getting anywhere near 50 percent of its operating costs from UMTA funds.

We are shifting the basis of Federal participation to operating costs first of all because we don't like a matching ratio geared to deficits or tied to deficits. We think since the deficit is a product of decisions on fares and on service levels where Baltimore's decision may be different than Washington's, tying to deficits is inappropriate.

We are finding that we have a tremendous range in the country where probably in a Boston or a New York situation the Federal formula allocation available for operating costs may cover 10 percent of costs, where there are cities in this country where due to the population formula, 45 percent of the cost is paid for by the Federal formula allocation. When coupled with State and local required matching this may mean that you wind up with a forced situation of only 5 or 10 cents in the fare box.

The philosophy of our proposal is that there are two ways to make sure that Federal funds are not really being used to promote higher costs than necessary. One of those is a rather extensive Federal regulatory involvement. Another is to have financial incentives in the program such that we can rely on State and local people to do their own disciplining.

The course we have chosen is clearly related to the second of these approaches. We would gradually phase down, wean people gradually away from the too heavy reliance on the Federal operating cost support. And I would point out that, unlike past proposals, this is a gradual phasedown in recognition of where we are.

Senator SARBANES. Let me ask the question this way. If you're going to consider changing the factors upon which you base your support, which are the items set out I take it on page 5 of the Secretary's statement, why, then, is it necessary to set up as well an arbitrary approach that says: Now we have a 50-percent limit and we're going to start knocking that down 3 percent a year. You don't say how far down. Why are you going to alter that if in any event you're going to change the underlying component which you think will result in a more equitable allocation? Suppose you have the equitable allocations. Does that mean that you should not continue to adhere to the 50 percent ceiling?

Mr. LUTZ. The 50 percent is on deficits now and we are proposing to shift to costs. 50 percent of deficits may be only 25 percent of costs in many cases, so the change may not be that dramatic. But certainly an argument could be made if the formula is completely finely tuned you may not need the extra discipline of the declining cap. That's one of the things we will consider with you. We did feel, as the Secretary said—that we must consider what kind of signal we are giving to people as they shape their transit efforts for the 1980's. It was a conscious effort to try and indicate that we did not believe that we should continue to have the Federal Government being the source of such a high degree of costs because we felt that that would not be a sufficient incentive to good State and local management.

Senator SARBANES. Is that your view if the formula on which you're sharing the cost is adjudged by everybody to be one that is really based on proper factors? We need to have a direct link between this program and our national efforts to reduce energy use, and to achieve more cost efficient movement of people and increase transit ridership and revenues, to quote from the statement. Now if the formula reflects all those factors, is it still your position that the cap ought to be at some significantly lower level than the current cap? If that is the message, it seems to me that it could also be interpreted as a diminishing commitment to mass transit.

Secretary GOLDSCHMIDT. Senator, let me say it to you this way.

Senator SARBANES. I'm not arguing about the cap and the existing factors. I'm arguing that with appropriate factors, and I think some of your points appear to have merit, I would lift the cap.

Secretary GOLDSCHMIDT. I have not been through the formula run for us, Senator, enough times to know how many ways you can run somebody's transit support up to 50 percent, the transit agencies in the United States that are providing most of the service and most of the ridership under the current formula will never get within a mile of that in their lifetimes.

As new transit service is going to come on in the United States, local governments are going to be looking at current support levels, say 43 percent or 28 percent of their costs, and assuming as they add service that they can continue to expect that level of support. We think frankly for people who don't have large transit staffs and in some cases who don't really have any staff, that are just trying to start it up, there needs to be some very clear message sent about what percentage of their local responsibilities will be assumed.

Senator SARBANES. What is that percentage?

Secretary GOLDSCHMIDT. Well, it's less than 50 percent.

Senator SARBANES. What are you proposing?

Secretary GOLDSCHMIDT. I suspect we're coming down closer to a quarter, although the formula——

Senator SARBANES. You say you're going to reduce it 3 percent a year. For how many years?

Secretary GOLDSCHMIDT. By 1985 we get to 34 percent, but the question underlying that is where you want to end up. I'm not sure I know the answer. We haven't tried to determine the final answer at this point. We are saying the additional resources in this country have got to be redirected and a message sent before you put a bus on the street in Salem, Oreg.—which is a community in my State which has no regional transit system—as to what level of support they can expect to get that from the Federal Government all along the way.

Senator SARBANES. What is that level? What is the message being sent?

Secretary GOLDSCHMIDT. Don't expect you will get 45 percent.

Senator SARBANES. What can be expected? In other words, what we can expect is this kind of movement for how long?

Secretary GOLDSCHMIDT. The point is, when you add equipment, essentially the per capita support in your community will be less. They have to make up some of that at the fare box or by some other method. The option is to let them continue to add service at their current level of support and then also try to figure out a way to provide additional assistance to communities with very intensive transit service but very low levels of support per rider.

Senator SARBANES. Well, I don't think we're going to get the answer this morning. Let me just lay out what I'm concerned about. Are we trying to move to a formula that takes into account factors that we ought to be considering in order to arrive at something that's rational and fair, and that will be maintained, and will represent a steady Federal commitment? Or is it to some extent a shell game to decrease the Federal commitment and support? Obviously, those are two very different propositions.

Secretary GOLDSCHMIDT. We think it is not a shell game and it is certainly not a decrease in support, either under the chairman's bill or ours, over the next few years. Nobody claims it will be less.

Senator SARBANES. Less in dollar terms or less in real support?

Mr. LUTZ. Less in dollar terms.

Secretary GOLDSCHMIDT. There are going to be some communities who, in order to substantially increase their transit service, will begin to look at their fare box decisions or ridership decisions on their lines.

Senator SARBANES. I think that's a reasonable point. It is a reasonable question whether one community should have a 20-cent fare made possible by a significant Federal subsidy, while another community has a 50-cent fare. You have to take into account the distinctions in their support efforts. What I get this morning, however, is that if a community asked what percent it might expect, there would be no answer to that question except the declining percent over time—with the prospect, I assume, of further declines in the future.

What is the rationale for the point at which it would stop? Is that a rationale that has an independent validity from, say, a budgetary perspective or as part of your effort to decrease it as much as you can so a community doesn't conclude that the policy is designed to discourage it from participating in the program at all?

Mr. LUTZ. The issue that you have raised about what is the rationale for the long-term role is a fair one. I guess the philosophical underpinning of it is that the Federal role should be important but not so large. We are going to have to discuss how big this is, but not so large as to be having the Federal Government driving local fare and service decisions or any other decisions based strictly on local reliance on the Federal dollar. I mean, is it 15 percent, 20 percent, 30 percent? When do we feel confident that the Federal share is meaningful but yet not so significant that we have decisions made by State and local officials not to look hard at productivity improvements, not to look so hard as they otherwise would at other measures to control costs. We have not made a precise judgment at present just where that point is.

Senator SARBANES. It seems to me important in approaching this formula that you to try to develop a rationale that has some independent basis, is related to other national objectives, and really gives some sense of confidence that it will be maintained over time.

Mr. Chairman, I just want to make one other comment. I would urge the Department—I think it's important and I know you're doing this to some extent—to take a very high-profile approach on this support, to survey the country and to identify those mass transit projects that have a very high benefit-cost ratio, which can be implemented in a short period of time. I tend to like the chairman's earmarking of modernization for rail approach which you questioned, Mr. Secretary, as diminishing the flexibility. But it seems to me very important to look at the existing network of availability and make judgments as to what can be upgraded or where a small addition of rail or capital can give us a significant increase in ridership. In that way you get clear payoffs very quickly that indicate there is in fact a significant return from investment in this area. This probably doesn't apply as much to the newer developed parts of the country, but in the older parts there are systems that have fallen into disuse, some can be brought back and put in operation quite quickly with significant results.

Secretary GOLDSCHMIDT. You may recall that the President and Vice President, in talking about the windfall profits tax, rated new bus acquisition and rail modernization as the two priorities with the greatest opportunity for a quick payoff and additional ridership and reliability of the service. I don't think we disagree with that. It is obviously not so easy to start a new system.

Senator SARBANES. Thank you.

Senator WILLIAMS. Senator Heinz.

Senator HEINZ. Mr. Secretary, the President set a rather ambitious goal for mass transit a while back. He contemplated that there would be an increase of 50 percent in mass transit utilization and ridership.

My question to you is, Does the program which you have presented to us today meet the President's goal and, if not, to what extent?

Secretary GOLDSCHMIDT. The program—I assume by that you mean our budget and the way it is organized—does meet the goal. We may not be able to factor in the question of inflation and its impact on purchasing for a full 10-year period, which is the period over which the President's program made its estimates and set its targets, but I think for the first 5-year period in which we are operating, particularly if we are fortunate enough to get a supplemental, so we are not losing a year here and so we start sending a message right away, we can do it.

Senator HEINZ. I'm told the President has assigned every Secretary and every administrator budget cut figures. What are your figures?

Secretary GOLDSCHMIDT. I apologize. I should have brought those up today. I can't give you the exact totals, but I think we can tell you that we have used two yardsticks to measure how we ought to go about examining our cuts. The first is we should stay away from those places which are critical to the energy or energy conservation program. That is in railroads where we are doing coal work as well as on the other side talking about oil conservation. The second is that we continue to the safety responsibilities such as the Coast Guard. I want you to understand we have submitted a list of proposals and I'm not suggesting to you that they will conclude that they are either worth as much money as we assume in savings or that they will agree with our conclusion, but our proposals essentially attempt to protect the transit program in order to fulfill the President's commitment and to assure that the barrel savings numbers that were in the original energy package would be maintained.

Senator HEINZ. Let me get this straight. The President has asked your Department to cut the budget by some amount which you don't recollect.

Secretary GOLDSCHMIDT. Well, I do not recollect the number.

Senator HEINZ. You have no present recollection of it?

Secretary GOLDSCHMIDT. Pardon me?

Senator HEINZ. That's a phrase that a lot of people use in court. Yet there's a supplemental that the administration has asked for. Now just so everybody knows what money is involved, what so far has been appropriated by the Congress for this year?

Secretary GOLDSCHMIDT. For transit?

Senator HEINZ. Yes.

Mr. LUTZ. The current appropriations for the major transit programs is $6.3 million. For the capital program, Congress has appropriated $1,390 million.

Senator HEINZ. All right. And section 5?

Mr. LUTZ. Section 5, the Congress appropriated $850 million in tier 1, $165 million in tier 2, and $90 million in tier 3. That is a total of somewhere in the——

Senator HEINZ. How about $1.405?

Mr. LUTZ. That also includes the bus capital tier. $1.405 billion is correct.

Senator HEINZ. Right. Now the administration is seeking a supplemental to increase those numbers to what?

Secretary GOLDSCHMIDT. I should be careful. We had originally assumed that on the signing of the windfall profits tax bill, the

supplemental would be sent up for an additional billion dollars for the capital program. At this point, frankly, I wish I knew what the answer to that is. It is being discussed with the Senate Budget Committee and others that are involved, by the Office of Management and Budget and the President's economic advisers. I do not know today whether they still intend to send that up or intend to have that discussed as part of a broader——

Senator HEINZ. Maybe I misunderstood you. I thought you said we should pass your supplemental.

Secretary GOLDSCHMIDT. I'd love to have it here and I'd love to have it passed. The revenues are available. In fact, the cash outlays are very small in 1980 and 1981. The Chairman asked us about this earlier and you asked me whether or not the program we are going to propose is able to meet the 10-year goal in terms of a ridership of 50 percent increase and also the barrel savings that are assigned as part of the energy conservation program, to which I said I cannot project the inflation impacts out beyond, say, year 5, but on the basis of what we know today, particularly if we can start immediately with the supplemental, my answer would be "Yes."

Senator HEINZ. I'm trying to figure out what the status of the supplemental is.

Secretary GOLDSCHMIDT. We hope to know in the next few days.

Senator HEINZ. Just so we're clear on this, has the administration at any point in the past actually sent up a request for a supplemental to the Appropriations Committee?

Secretary GOLDSCHMIDT. No. The supplemental was being held until the conference committee signed its report and the two Houses sent the President something to sign.

Senator HEINZ. All right. Now to what extent do you feel that the budget cut requested or mandated, however you look at it, by the administration is going to impact on mass transit?

Secretary GOLDSCHMIDT. Well, maybe I should let Mr. Lutz talk about it because he made the submission, but my impression would be mild or maybe even better; first, because I think they have asked us for more than they are going to take. They wanted to see a broad range of choices. If they reduce the take from our Department, we would go be back with a recommendation to the President that the transit related amounts we did submit be reinstated.

Senator HEINZ. Before we go to the mass transportation administration, I'm told that what the President has requested works out to be about a 13 percent cut in all the controllables. Now a 13 percent cut would heavily impact the mass transit budget. That's where most of your money is, is it not?

Secretary GOLDSCHMIDT. In the controllables?

Senator HEINZ. No. Isn't most of your money in the mass transportation budget?

Secretary GOLDSCHMIDT. Of the ones that are controllable?

Senator HEINZ. In your Department?

Secretary GOLDSCHMIDT. No. The biggest users of funds in our Department by far are the Federal Aviation Administration, Coast Guard and the Highway Administration. I don't want to belittle the transit budget, but I think we have about $8 billion plus in highways this year and we will hit that ceiling. It will all be spent.

Senator HEINZ. Are those funds controllables?

Secretary GOLDSCHMIDT. Well, they would be controllable in the sense that OMB is talking about. We would have to come to Congress in order to manage any reduction, but they are not beyond reach. It is not like social security.

Senator HEINZ. So if I understand you correctly, you would see most of the budget cut emphasis falling on the highway programs, not on mass transit?

Secretary GOLDSCHMIDT. They are really in three places: nonsafety-related airport expansion activities; I'm talking about somebody who wants to build a new airport. This is a question of the management of the ADAP fund and some involvement with Congress is required. Coast Guard capital, which is in this case really a firm large investment. And the highways. And then there is a smaller amount that involves everybody to provide some wage savings from actual vacancies.

Senator HEINZ. Just tactically, if the administration sends Congress a request to cut budgets $15 billion—or based on the latest CBO numbers, if you want to balance the budget I gather it's closer to $24 or $25 billion—what realistically is going to happen to your supplemental?

Secretary GOLDSCHMIDT. Well, we don't know. I think the points the Chairman was driving at—he didn't exactly say it—and the points we are trying to make internally are, first, there was a commitment involved in the windfall profits tax proposal. Second, the way the windfall would operate, the revenues will come to the Government and the outlays, which is literally the issue that they are worrying about in the remainder of 1980 and all of fiscal year 1981, are very low. So what we are doing with the supplemental is sending a signal that takes a long time to wend its way back to local government transit agencies, and not very much of that money would actually have to be expended in the short term. Whether that is really going to be the case is the argument at hand and the approach the OMB has taken I think is the right one. Instead of making a proposal first and coming up with the outlay, lay all of these issues on the table. I would like to believe that the good faith effort by a lot of folks to see this got into the legislation, and who believed there would be a supplemental to follow, will be rewarded. But I don't know at this moment what the final outcome will be.

Senator HEINZ. I don't want to beat a dead horse, but the CBO indicated that the budget deficit for fiscal 1980 is going to be in the neighborhood not of $30 billion but $43 or $45 billion. But you think, nonetheless, the administration will persevere in that supplemental.

Let me ask you a few questions on some of the details of your proposal. I arrived late for your testimony. My understanding from reading it last night was that you plan to change some of the formulas in the tiers section, in section 5, and that one of the things you wish to change is to use, in effect, a ridership-based or a——

Secretary GOLDSCHMIDT. Service-based.

Senator HEINZ. Beg pardon?

Secretary GOLDSCHMIDT. A service base.

Senator HEINZ. Which is revenue miles. Is that what you mean?

Mr. LUTZ. Revenue vehicle miles.

Senator HEINZ. So it is not a question of how many people are on the vehicle. It is a question of the number of miles the vehicle travels whether it's empty or full. Is that right?

Secretary GOLDSCHMIDT. I think if it were taken by itself, it is. Now we are distributing funds on the basis of population and all the vehicles could be empty. Nobody is doing that, but——

Senator HEINZ. I'm not trying to make a case for the President. I'm just trying to find out what your formula is based on.

Mr. LUTZ. Of course, we do feel that the Federal share is not high enough that the transit operators are going to be running empty vehicles around in order to get their 15 percent from Uncle Sam. We looked at ridership as a potential service factor, Senator, and our concern was, as we discussed a little with Senator Tsongas, that we wanted to introduce a service element into this straight population formula, but that does not get you into the battle of computer runs and all this, and we felt we had to have decent data to start this process. Ridership, as I know from my experience as a transit operator, is a source of great debate, especially if you get down to allocating strictly on the basis of ridership. We are trying to get a data system and trying to enhance it. On the bus side particularly, for which vehicle mile data was compiled very recently by notice in the Federal Register in order to produce the bus capital formula change, which is also revenue vehicle miles as you will note, we felt we had better data with which to go forward. We still have some gaps that would have to be filled in. That is why we are not proposing to make the new formula effective until fiscal year 1982. This will give us more time to sharpen up the data.

Senator HEINZ. When does the administration plan to start their incentive tier proposal?

Mr. LUTZ. Fiscal year 1983.

Senator HEINZ. That, as I understand it, is based on a ridership formula?

Mr. LUTZ. As I was saying to Senator Tsongas, we felt we have enough confidence in ridership data to make a fair judgment as to whether people were going up or down because we at least had a common base for each property. We were not sure and did not have enough confidence that they will be able to compare a Philadelphia to a Cleveland satisfactorily. We could compare Philadelphia in year one with Philadelphia in year two, but not necessarily compare between the cities with the degree of confidence necessary to allocate funds.

Senator HEINZ. I have a little difficulty understanding that. Let's assume somebody is off a lot in their count, which is I gather——

Mr. LUTZ. Or they count on a different basis. That's really the problem. Cleveland counts its riders differently from the way Philadelphia counts its riders.

Senator HEINZ. But versus standard "X", the count is above or below a standardized count. In other words, the base can be low or high relative to some imaginary norm and if somebody's base is low and they experience an increase it will show up as a higher percentage. If somebody's base is overstated and they increase by exactly the same amount as the person below base, it will show up as a small percent. How do you resolve that problem?

Mr. LUTZ. Not easily. I mean, that's true. Your mathematics are impeccable. We chose what we did because from our point of view, with a objective of a 50-percent ridership increase in 10 years, we ought to be starting with a 5-percent increment per year. If we are to maintain that kind of ridership growth we are going to have to have people make real increases, the basis notwithstanding.

Senator HEINZ. Although won't that reward people who have a statistical itch?

Mr. LUTZ. The other concern about the issue of the base, the cities with the big base, is the more difficult part of that, but we also expect and we think some of the cities with improved service, refurbished facilities, which we are all trying to obtain, and the energy situation should be able to start turning some of this around and have real increases in ridership. We think certainly that ought to be an objective.

Senator HEINZ. I think you yourself put your finger on the problem, which is in terms of any area that already has any kind of base, any kind of base, they are going to get practically nothing out of that program, and people who have a zero base, which is a lot of places, are going to do quite well; and that's in spite of the fact that we enacted section 18 the last time around which was an attempt to deal with a lot of places that have a base of absolutely zero. Section 18 is the rural or nonmetropolitan program.

Mr. Chairman, I don't want to take more time. There would be one other question I would like to ask. That brings me to section 18.

What is the status, if I may ask Mr. Lutz or Mr. Secretary, of that program?

Secretary GOLDSCHMIDT. The program, Senator, has started from my perspective discouragingly slowly. It has some time for the States to get cranked up, but I think it is happening. We were visiting about it on the way over here. We have fought very hard, and I think Ted and Lillian should get a lot of credit for this, to increase the section 18 program on the basis of what we perceive is going to happen and against what we see happening. Lillian would like to talk about that, but I think the news is now good. I think people are starting to come in and take advantage of that opportunity.

Ms. LIBURDI. I don't have the statistics available right now, but we certainly could supply them to you. Last year I think we and the Federal Highway Administration, who jointly administer the program, committed approximately $12 million or a little more in project funds. The first quarter of this year we made commitments of about $8 to $9 million and the second quarter looks like it is going to be that amount or better. States have now gone through their planning activity, projects have been submitted, and we are beginning to fund those project activities. So we are seeing a very positive sign.

Secretary GOLDSCHMIDT. We were rightfully criticized at one point for trying to force a trade between section 18 and the regular capital program. We have tried to make it clear that is not the intent of Congress and it is not our intent to administer it that way. This has reopened opportunities for people to start thinking

more broadly about the commitment they need, and I think their planning is taking that into account.

Senator HEINZ. Thank you, Mr. Chairman.

Senator WILLIAMS. Thank you.

Are there any problems you haven't mentioned in connection with the implementation of that section?

Ms. LIBURDI. Well, there have been comments raised by communities and organizations representing those nonurbanized areas about the possible impact of 13(c). We are looking forward to testifying before you about the very specific experiences that have been occurring. We also are interested in working with the Department of Labor in an evaluation of the section 18 program to see if there are impacts of the 13(c) requirement that were unexpected at the time the program was initiated, but we are not seeing that this is the case at this point.

Senator WILLIAMS. The most unwelcome impact of 13(c) is when there is reduction of employment. This would be an increase of employment.

Ms. LIBURDI. We expect that is what will happen, an increase in employment.

Senator WILLIAMS. 13(c) it would seem to me should not be a stumbling block in the communities.

Ms. LIBURDI. I don't think we are necessarily saying that except in perceptions that communities may be bringing to the program at this time that they have some concern or fear because they don't understand the 13(c) program. But we don't know that and that is what we will be looking at when we go forward with the evaluation that we are undertaking.

Mr. LUTZ. You're dealing with a new set of components with the State being the allocator of section 18. Many of the States have not been traditionally dealing with 13(c). This is a new thing and they are having to get down and grapple with it. That has been one of the concerns raised, that States are new participants in transit programs, and I think it is part of a very commendable fact we are seeing in State government, where they are taking a more active role in public transit generally.

Senator WILLIAMS. Well, you have it ahead of us, where labor relations are concerned, Mr. Lutz. How many unions did you deal with when you were running the District transit system?

Mr. LUTZ. We had four or five separate units of organizated labor to deal with.

Secretary GOLDSCHMIDT. I always thought he was overpaid compared to the guys in Boston.

Mr. LUTZ. Certainly I was much more overpaid compared to the Federal job that I now have. [Laughter.]

It was a good example of where we had developed over time a relationship with our unions on 13(c) matters. This did not jeopardize our grant process at all. We have a familiarity with the issues. I think part of this is familiarity in developing the proper style of the operation that allows projects to move forward. We didn't have any problem.

Senator WILLIAMS. I don't have to tell you gentlemen that this program was concluded and has been looked to as the great hope for the—in our processes, Members of Congress. We started all this

20 years ago. It was labeled a big city bill. We have had to overcome this, in the sense that we were serving limited metropolitan areas. This is again to make sure that opportunities are available, where they are greatly needed out there in the smaller communities.

I hope that there can be a view, that you with the wisdom and known ability, can work through the fact that this is a program you can use.

I am glad you raised that, John. It was not on my list. I am glad you did.

I would now like to come back again, if we could, briefly to section 5 and the administration's strong intent to change the formula now, notwithstanding that its effectiveness comes down the road a couple of years, maybe 3 years in one respect; am I right?

Mr. LUTZ. That's correct.

Senator WILLIAMS. There are a couple of—there are many reasons why you can see there is a hesitation here to go with you at this point with enthusiasm.

One of them hasn't been mentioned. Population comes into all matters.

The population figures we are working with now are 1970; am I right?

Mr. LUTZ. That is correct.

Senator WILLIAMS. This is a census year. Things have changed dramatically in many areas of the country.

I would think that we are going through changes—it hasn't been demonstrated that the formula, as is, has major adverse results. It would seem to me that one of the problems we have seen under the formula has been the high density, high transit areas, have been low in their percentage return.

Secretary GOLDSCHMIDT. That's right.

Senator WILLIAMS. This was in a period when all parts of the formula were underfunded in terms of their authorization; am I right on that?

Secretary GOLDSCHMIDT. I am sorry?

Senator WILLIAMS. We never had full funding of any parts of section 5?

Mr. LUTZ. That is accurate, since we changed to the several tiers.

Senator WILLIAMS. With increased funding and with full funding of these tiers, would we not be working toward the objectives that you have stated as the reasons for change of formula?

Secretary GOLDSCHMIDT. Senator, I look at it this way, taking exactly the sort of framework you lay out. Assume everybody keeps buying on their current set of assumptions and receiving operating subsidy and capital funds, and they take their capital with the assumption that the operating side is going to continue to support the decisions they are making as they are going along, and there is a shift in population. My conclusion is—just as a reviewer from out in Portland, Oreg., not so much here—that what you will end up with is a set of dependent communities for whom the buy-out on a hold harmless will begin to get larger and larger and larger over time.

So, you end up with a population formula which begins to further deprive the transit intense communities. I see that as a large possibility in talking about demographics in the United States. The population shifts do not reward transit service in the 1980 census.

Furthermore, the influx of capital we propose to provide to get 15 million additional riders is being decided upon by hundreds of transit properties who are doing it while looking at the current operating formula. The farther down the road we go on a population change in 1980 and the further down the road we go on purchases on existing assumptions, any tilt-back in the direction of really rewarding the people you described in your last group, which is those that are really providing the service and that ought to get some additional support, will be fiscally—I am only talking about dollar totals now—harder and harder.

I don't know of a magic formula to resolve this. You have worked with this longer than I have. You are identifying some of the complexities of trying to solve it. The more I looked at this problem with Ted and Lillian and talked internally about it, I concluded in spite of all of the problems of doing it now, the problems get more severe and not easier as time goes on.

I don't know if that is responsive to your point. If we haven't achieved our own objective in our formula either because the numbers were not reliable, they can be disagreed with or because the way we set the formula up people don't benefit as much as they ought to, I go back to the point where it was considered a big win if you could get the Federal Government to agree to a 7-percent increase in the operating subsidy, for example, a recognition it was inflation that was chewing up purchasing power.

We realized that was not recognizing the longer-term problem. That problem was the question of how do you say to New York City—our biggest transit agency—that you are being treated fairly?

Senator WILLIAMS. We come to—when it comes to distribution of money, the easy thing to do is to look at population, population density. That's done in so many other areas. It was applied here.

Maybe that doesn't make all of the sense that we would superficially think it makes. Certainly we know the New York metropolitan area, high population, high density, and very heavy transit capability.

Los Angeles, quite a different thing; isn't it?

Secretary GOLDSCHMIDT. Well——

Senator WILLIAMS. High population, relatively high density, of course; but there that does not reflect, at this time, high transit vehicle miles and ridership. Am I right or not on that?

Secretary GOLDSCHMIDT. I think that it is accurate to say that the factual descriptions—I think we are now looking at something like New York City MTA at 8 percent of their costs from us; and Los Angeles, 20, 25, 26? I don't know what the number is.

I was in the Conference of Mayors in 1973 and 1974 and served with Mayor Daley and others as that transit formula debate was going on. I think it was a great effort.

As we have come forward, I think it has continued to be a good program. I am beginning to be worried that we have got communities like New York at 8 percent and other communities making very little fare box effort, relatively less intense in service commit-

ment, and getting much higher percentages of costs out of the program.

As I said to you, it is very hard to go to the Boston area, New York, Philadelphia, Pittsburgh, Baltimore—pick the towns that are close by here—and say to them the current formula really rewards local effort and service.

It does some things, but it just doesn't do it all. Our hope was that as we began to supply new service and new equipment in the country, we would do it under a set of rules that really recognize the kind of effort they have been making.

This goes back to Senator Heinz' comment about 5 percent increases. When you are already providing 40 percent of the transit ridership in the country, why give money to somebody supplying one-tenth of 1 percent which went up 10 riders. We are trying to balance those factors. The folks who are providing service today don't do very well under the current formula.

Senator WILLIAMS. Senator Heinz?

Senator HEINZ. I wanted to say one thing. Thank you, Mr. Chairman, for yielding.

As I mentioned a moment ago, I have to go to a meeting on coal conversion of the oil and gas backup legislation at 11 o'clock. I am particular regretful about that.

My mayor, Mayor Caliguiri of the city of Pittsburgh is here to testify. I regret I won't be able to welcome you. You deserve a very good welcome for the job you are doing with our city. We are proud to have you as our mayor. We are delighted that you are going to be testifying later today on the mass transit matter.

I just want, Mr. Chairman, to take leave of the committee and explain to my good friends and constituent from Pittsburgh while I will not be here for the mayor's testimony. I only ask unanimous consent on one other item. That is to submit some additional questions on Buy America, the Budd Co., and Youth for Steel, American Steel, for the record.

Senator WILLIAMS. For the record, fine (see p. 37).

Senator TSONGAS. On the point you were just making, Mr. Chairman, although I agree with the answer, there must be something wrong with my printout here. According to the figures I have, you change the formula, 22 of the top 30 transit systems end up losing money which are your in-place systems. I will read you a list of the cities that you lose money: Philadelphia, Detroit, Boston, Cleveland, St. Louis, Baltimore, Milwaukee, Cincinnati, New Orleans, which are all rather old systems for the most part.

Los Angeles loses. Chicago, I see, gets money.

Secretary GOLDSCHMIDT. I don't know which printout you are looking at. First of all, nobody loses money. There is a hold harmless clause.

The perception is somehow this administration would be proposing the same dollars for operating subsidies without a formula change, which is wrong. We would probably be here with OMB approving a 7 percent increase and you would be beating us up because it isn't adequate to meet the needs.

My numbers indicate that Boston, for example, gets about a 19 percent increase in terms of the fiscal 1982 impact. This is a problem; we are trading numbers in the air here.

I have looked at some of the runs. I would have to say to you I am not satisfied with the outcome in all of those communities. We said at the beginning of the testimony we want to start as a benchmark or guidepost with the objective. I do not believe within the constraints of the Federal budget today that it is possible to let everybody say what's mine is mine and what's yours is half mine. I don't think you can take money from somebody else to build a program, politically; and second, financially, we don't think we can do it by letting everybody operate on the assumption if they are adding service, they can do it under a set of rules now that leaves New York, Boston, these other communities that get a relatively low level of support for a very high level of service and a very high level of fare box effort.

I would confess to you that the formula as we cranked it through, worked it back and forth, doesn't do everything we wanted. Boston, for example, is really high on the population density side. I am not sure what you would do to compensate for that.

There is no way I think they can claim that they are getting less. The question is whether the more they are getting is enough more. Most of the communities that I know once this issue comes up want to go for the throat. They want a 100 percent cure. They have been in pain for a long time. Frankly, they would rather stay with what they have sometimes than wait to fight the battle another day.

My judgment is that is a serious mistake. I think over time it is going to be harder to change.

Senator TSONGAS. Are your figures available?

Secretary GOLDSCHMIDT. We will have them by Monday.

Senator WILLIAMS. I wonder on that whether the computer runs that have been made, both in your formula and the formula that is in the bill that I have introduced, with others, are they in process?

Secretary GOLDSCHMIDT. They will all be here on Monday.

Senator WILLIAMS. Not available now but will be available?

Secretary GOLDSCHMIDT. Some are done. We will deliver some.

Senator WILLIAMS. The unofficial run that we have there that Senator Tsongas referred to shows some—I would call alarming results, where there is a decrease shown in areas where we know the whole thrust of this transit program is to be encouraged for major older cities.

We have included in our bill a reponse to what we felt was an inadequacy of the program in modernization of rail projects.

You, in your bill, do not focus specifically on this; am I right or wrong on that?

Mr. LUTZ. We do not change the current provision on the modernization program. As I recall in your proposal, you are suggesting moving towards a more formula approach toward the rail modernization element of the program. Clearly, we want to look at that with you.

We are concerned, though, that in any discussion of this matter, we do believe it is important to retain basic discretionary elements of this large investment program. Just sitting in that chair for 75 days and seeing the types of projects, there is probably a difference between a New York situation where you have such a big capital plant, that they have a continuing investment and reinvestment

need, as opposed to special types of projects. No formula in the world could deliver the kind of money for the kind of one-shot rehabilitation of a south shoreline in northern Indiana, going into Chicago.

I do believe that there is a sound basis for the past congressional action in this area. I want to say to you, though, we certainly share your concern about elevating the rail moderization program in terms of investment.

I think we find that—if I am not mistaken, Senator—the current law has a minimum amount for rail modernization that is somewhere between $3 and $4 million.

We have been in this year, as I outlined to you, considerably above that. Should our proposal be enacted, we will start to move rail modernization and extensions up into the billion dollar range. I think we have a joint concern and objective about insuring proper attention to systems that have been neglected.

We are concerned about retaining the discretionary element.

Senator WILLIAMS. This would still retain discretionary elements in 3. This would add, as we did with buses? That's our motto. It made sense; am I right?

Mr. LUTZ. We have used the bus program formula. If it is coupled with ample discretionary money, that can be used effectively.

Senator WILLIAMS. Exactly what we are doing here with rail modernization. I am encouraged by what you said first. You said that this should be discussed further. We will look forward to that.

Secretary GOLDSCHMIDT. One other comment, I think it is always important to know how these things will be paid for. It is my discretion this new mechanism is paid for by holding tier 1 pretty much constant.

Mr. LUTZ. I think the Senator was talking about the capital provision in section 3.

Senator WILLIAMS. This would be in 3.

It would be in addition to that?

Senator Tsongas?

Senator TSONGAS. Just two questions. If I could submit the rest for the record, I would appreciate it, since there are other witnesses.

One, on your idea—which I support—to have a guaranteed purchase of transit vehicles very much like what we did in the Energy Committee a couple of years ago on photovoltaics—which we have seen a positive impact on; are you in any way mandating fuel efficiency in those buses?

Mr. LUTZ. I think that is a very, very fair question, Senator. The question is just what we are going to do in the country to promote greater fuel efficiency in the transit vehicles that we are claiming are part of the solution.

I would say in fairness to the manufacturers, when they designed their new vehicles, the advanced design bus, and conducted their market surveys, 7, 8, 9 years ago, the fuel issue was not the one people were talking about.

The issue was consumer amenities; and they designed vehicles which they felt responded to that market challenge. There was added weight because of that. We are now finding that these buses are much less fuel efficient than the earlier designed bus.

Consequently, we are now faced with what can we do to reflect the new realities? Certainly the manufacturers are working at that. There are several steps we have taken. One is under the authority, which I think was a very wise one, in the 1978 act to introduce as a basic purpose of the section 3 program the introduction into public transportation service of new and improved technology. This committee had a key role in that.

We are authorizing actions to try and promote fuel economy. I know even in the short time I have been there, I have ordered our people to approve a modification to demonstrate a more fuel efficient engine in the city of Miami and another northern city—Milwaukee, I believe—to see if that will pay off. We believe it will.

We are experiencing—and I think rightly so in the transit industry—a-back-to-the-basics movement of maintainability, operational efficiency, and the other elements that are so important for the reliability of the service.

Secretary GOLDSCHMIDT. The answer is we are not going to have manufacturers come to us and say this is a great piece of equipment, but it gets half of the mileage. The transit companies can't afford it.

We are not pushing it against a resistant transit agency. The industry has a capital investment in some things they built. It's the same problem for the auto industry.

I think all the momentum is running the other direction.

Senator TSONGAS. I am pleased by your sensitivity to it. It seems to me there is obvious capacity for a breakthrough in that industry.

Let me ask one final question. I am not sure you want to answer it.

The major issue in my State, and I suspect it's true elsewhere—my question obviously does not have an audience among my colleagues—is the relationship between the unions and the authorities.

It's been sort of a scorpions-in-a-bottle approach. In my own State, we have gone through a rather nasty period. I guess you read the Boston Globe's spotlight team report.

Is there an effort being made to bring unions into decisionmaking? To make them realize they are part of the system? Are we making any progress in that respect?

Mr. LUTZ. Well, let me give you my perspective on it.

One of the first things I felt I should do was to sit down with the national representatives, Dan Monroney, Mr. Bierwagen, to talk about what are some of the things we could do jointly to recognize a common interest in the productivity matter.

We have several cooperative research projects along that line that we have either started in the last year or are about to start; and this is not just training. It's also to take away from the confrontation oriented collective bargaining; aren't there some things we could look at for the good of the realm that may, you know, produce a better working condition for the employees and a more productive service for the citizen?

We have not done enough of this. Much of this has to happen at the State and local level, where the real action is; but I think we have a role in using our research, and demonstration programs to

foster and promote the kind of cooperation that in the end yields a better product and enhances productivity.

I think we also have a role as we place greater emphasis on maintenance facilities, for example, that has a direct—I found in my case—correlation. We couldn't ask people to work in 1901 facilities, with poor lighting, lousy facilities, and then wonder why these $140,000 buses were having great trouble getting out in the street.

Part of our effort has to be in recognizing that while perhaps not as sexy as some other investments, these maintenance improvements can contribute to both better working conditions for the employee and thus greater productivity in the important area of service every day.

There has been an issue in your city, as you well know, about how many buses every day get out in the street. It's that basic.

I think there are some things we can do; and I also think a great deal of that is going to have to be from thoughtful work at the State and local level.

Secretary GOLDSCHMIDT. I want to reinforce that. It is a message we are delivering around the United States. We have no impression on the basis of my limited time here or of Lillian or Ted's considerably more experience here that Congress or this administration or any that preceded it desire to be in the middle of local labor battles.

13(c) is not the issue there. It's a question of how they can work together under the laws of the State.

We have said again and again and again that the inefficiencies and friction, the continual battling and slowdown and arguments because the basic human issues aren't dealt with properly, makes it very hard to make it attractive for Congress to come in and get in the middle of that.

We are doing everything we can to encourage the things Ted is talking about. It was begun before I got here. It's something we can work harder at.

To be candid about it, I think State governments, local governments, general purpose governments have to start focusing on these important issues and weighing in on them. There are some places which face the problems of negotiating with large, large numbers of unions, in which you can settle with 10 and have the 11th close you up—I had this at the Port Authority.

That is a serious problem. I don't suggest there is a Federal answer. I think it is important to let the local people recognize it.

Senator TSONGAS. When you take that message around, it might be helpful for the Senators who are prolabor, we just don't like what's going on. Productivity has to be a major issue of the eighties. That includes everybody. I will be damned if I am going to be the kind of person people come to for relief. I feel very strongly if we are ever going to sell mass transit to our colleagues in rural States, we can't have that kind of nonsense going on.

It's a very major, damaging issue in which everyone loses.

Secretary GOLDSCHMIDT. I would make one other point, Senator. The time to attack it is when we are expanding service on the system, when jobs are not threatened, and we are not talking about taking people off.

If we can't solve those problems in an expansion period, it's going to be very tough to wrestle with them at a time when service is shrinking.

Senator TSONGAS. I agree. I don't think there is any issue in my State that is as poisonous as this one, mainly because of the articles that appeared. Leave it aside who is right and who is wrong. There needs to be a new attitude on everybody's part to get through.

Thank you, Mr. Chairman.

Senator WILLIAMS. Thank you, Senator Tsongas.

Just one final question, Mr. Secretary.

Has the administration taken a position on the bill introduced by the chairman of our committee, Senator Proxmire, S. 2105? He would want me to ask that question.

It says for 1 year, beginning on the date of enactment of this act, that the powers of the Secretary of Transportation under section 3 of U.S. Urban Mass Transportation Act of 1964, will be transferred to the Urban Mass Transportation Adminstrator.

Secretary GOLDSCHMIDT. If he would like to have one, we would certainly be happy to provide him with one.

Senator WILLIAMS. Thank you. An excellent, excellent piece of testimony.

[Answers to subsequent questions from the subcommittee follow:]

Question. The President's policy announced last summer to double transit ridership was very ambitious and commendable. Is this goal attainable? What impact would it have on energy consumption?

Answer. The Administration's transportation energy initiative is designed to accomplish about a 50-percent increase in transit capacity over the next 10 years. We estimate that service improvements made possible by increased capacity, when combined with actions to give buses preferential treatment and other incentives for transit use, might produce a transit ridership increase of about 75 percent by 1990.

Assuming that such a ridership increase represents predominantly a diversion from automobiles, and assuming average trip lengths, auto occupancy and auto gas mileage, we estimate that oil savings would amount to more than 100,000 barrels per workday in 1990. This savings would be offset by the petroleum used to operate the additional transit capacity, resulting in a net estimated savings of about 79,000 barrels per workday.

If our proposed capacity increases are accompanied by even more effective incentives for shifting from auto to mass transit, actions to greatly expand the daily periods of peak travel to allow more efficient use of transit capacity, and increased off-peak transit use, and resulted in transit ridership increases of 100 percent, our comparable estimate of petroleum savings would be 138,000 barrels per workday, offset by 24,000 for the increased transit operations, for a net savings of 114,000 barrels per workday.

Question. Both of our bills contain the authority for the Secretary to purchase vehicles directly. Your bill is limited to buses, while S. 2296 would also allow purchase of rail cars. While most subway systems are not standardized, many commuter systems could use similar equipment. Why don't you include railcars in your proposal?

Answer. We agree that benefits realized from the direct purchase of buses might also be realized in a direct purchase railcar program. However, it would be of greater advantage to operators and the public to implement standardization in order to realize the economic benefits of lower purchase and life-cycle costs, and higher reliability of equipment. The annual market for railcars is a far smaller fraction (approximately 1/16) of the annual bus production. The major problem with direct purchase of railcars is their lack of uniformity because of physical and performance differences between systems, and it would be impossible to operate one "standard" car on all systems similar to buses. Therefore, subsystem performance and contractual standardization coupled with joint purchases (such as Miami and Baltimore) where more than one system operates similar cars are more feasible approaches.

Question. In Mr. Lutz's December 13th letter to Senator Proxmire, he discussed various approaches to limiting some of the discretionary aspects of the Section 3 program. Specifically, he stated that he would like to expand, refine, and publish "urban initiatives program guidelines" along with other relevant grant decision factors for the public to see. What progress, if any, has been made in this effort?

Answer. Efforts to publish external procedures for participating in the Urban Initiatives Program have been reasonably successful. Program Guidelines were published in the April 10, 1979 Federal Register. Copies were transmitted to all State DOTs, Metropolitan Planning Organizations, transit agencies and Mayor's Offices. Comments were favorable. After a year of operating the program, UMTA staff has refined the Guidelines to identify specific elements which UMTA considers in its evaluation. This revision will be published in the next several months and will be effective for projects to be selected in fiscal year 1981.

UMTA has also participated in joint conferences with representatives of the HUD Action Grant Program to brief potential project sponsors as to the program's requirements. In addition, regional meetings have been scheduled to review with potential applicants the eligibility of their projects, and recommendations for increasing their attractiveness.

Question. During Administrator Lutz' last appearance before this Committee we spoke of local transit contingency plans to accomodate riders who do not ordinarily use transit. How successful has UMTA been in helping to get these contingency plans in place?

Answer. UMTA (together with FHWA) first requested that contingency planning be given high priority in local planning be memorandum to field offices on March 29, 1979. To assist local agencies in doing so, a series of workshops were held across the country in July 1979 covering existing local efforts in this area. Also, at that time, UMTA issued a report excerpting some of these plans. In October 1979, UMTA indicated that energy planning activities were to receive highest priority in the allocation of Section 8 Technical Studies funds granted in fiscal year 1980.

As a result of these activities, every urbanized area over 1,000,000 in population has programmed contingency planning in its 1980 Work Program. More than half of the smaller areas are also conducting such studies. We expect all of these areas to complete at least their initial efforts this year. Certain areas which are further along will have completed much more detailed efforts including laying out the specific routes and schedules, developing public information programs and detailing planning of bus and driver utilization. We will continue to press for the development of plans, in all areas, of sufficient detail and currency to be ready for rapid implementation should an emergency occur.

Question. At Administrator Lutz' confirmation hearings, he expressed a desire to initiate improvements in local transit maintenance practices. What types of initiatives have been taken to upgrade local transit maintenance? Were you able to follow-up on my suggestions to coordinate job training in the maintenance areas with CETA or the Job Corps?

Answer. Since the hearing, UMTA has been studying the various options available to further the goal of improving local transit maintenance practice, which we hope in turn will improve vehicle reliability and ensure the most cost efficient use of equipment and facilities. Based on the results of this analysis, UMTA will publish guidance on the project. Your suggestion to coordinate job training with CETA and/or the Job Corps is being considered in the development of this guidance.

UMTA places a high priority on this activity. We intend to make adequate transit maintenance a requirement of our grant agreements with grantees starting in fiscal year 1981.

Question. Two years ago we rewrote the planning regulations under the UMTA statute to assure adequate cost/benefit analysis and also improve alternatives analysis in the development of transit projects. What has been your experience with these requirements?

Is transit planning showing significant improvement?

Answer. The planning provision of the Federal Public Transportation Act of 1978 incorporated what was formerly administrative policy of the Urban Mass Transportation Administration (UMTA) into the statute itself. This change clarified the statutory basis for UMTA's Policy on Major Urban Mass Transportation Investments, and for the Department's more recent Policy Toward Rail Transit, which have been in effect since September 1976 and March 1978, respectively.

Since the 1978 Federal Public Transportation Act was passed, UMTA has continued its administration of these policies, and three more cities have essentially completed the analysis of alternatives prescribed by the policies. These cities—

Detroit, Los Angeles, and Boston (for the Blue Line extension)—will shortly be seeking funds to support preliminary engineering from UMTA.

We believe the alternatives analysis requirement has served the purpose well. It has provided a rigorous means of screening prospective investments, so that only those with demonstrated merit progress beyond the planning stage. For example, alternatives analysis helps to ensure that a wide range of transportation alternatives are evaluated.

We also believe that by increasing the accountability in project evaluations, the analysis requirement has fostered more cost-effective project proposals. For example, in Los Angeles, alternatives analysis and local funding contraints have led local decision-makers away from region-wide rail rapid transit systems (costing in the range of $5–$10 billion). The area is now pursuing a 19-mile rail facility from the San Fernando Valley to the downtown costing $1.2 billion (to be complemented with a major bus improvement program).

During the past year, the General Accounting Office (GAO) completed a review of UMTA's planning and project development requirements for major transit projects and concluded that alternatives analysis was a reasonable requirement. Further, GAO stated that alternative analysis ". . . resulted in the adoption of more modest projects than originally proposed . . ."

In summary, we believe that the alternatives analysis requirements are improving local transit planning studies as well as promoting more cost-effective transit investments.

Question. Some manufacturers feel that the Department has been less than vigorous in its enforcement of the Buy America provision included in the 1978 Act.

What steps have been taken to insure compliance with the requirements of "Buy America" that 50 percent of all components be manufactured from U.S. materials and that assembly take place in the United States on all contracts over $500,000.

What impact has this provision had on the marketplace?

Answer. The Department has actively enforced the Buy America provision of the Surface Transportation Assistance Act of 1978 (the Act). Within weeks after the President signed the Act into law, UMTA issued regulations implementing the Buy America provisions of Section 401 of the Act.

The regulations require, for a product to be considered "domestic", that: (a) final assembly be in the United States; and (b) more than 50 percent of the components be of U.S. origin.

All firms regardless of origin are required to submit a certificate with their bid stating that they comply with these requirements. Any exceptions are noted on the certificate.

Since issuance of the regulations, several rail car procurements have been conducted. All successful bidders for these procurements have signed the certificate indicating their intention of complying with the regulations (i.e. supplying a domestic "end product"). On one occasion, the Budd Company challenged Nissho-Iwai American's (N-I) certificate submitted for the purchase of light rail vehicles in Philadelphia. UMIA's review of the Budd Company's request for an investigation resulted in our determination that N-I indeed was providing a domestic end product.

Question. In the future, should we look to strengthen this provision and encourage the development of domestic manufacturers or should we encourage foreign manufacturers to participate in the American market subject to the restrictions of the Buy America provisions?

Answer. For the future we should continue the current Buy America requirements in an effort to encourage re-entry of domestic manufacturers and establishment of manufacturing facilities in the United States by foreign firms. We do not recommend imposing additional Buy America requirements at this time. We intend to use the existing requirement to encourage manufacturers to build equipment in the United States if they wish to receive contracts under our proposed direct purchase authority.

Question. Some manufacturers maintain that consultants to local transit authorities consistently design vehicles with specifications unique to that particular city. What steps have been taken to promote the concept of standardized design specifications, particularly in the procurement of railcars?

Answer. A Railcar Standardization Program was initiated in 1976 in response to the concern of transit operators and equipment suppliers over spiraling costs, increased complexity and lower reliability of newly delivered railcars and of carbuilders over inequitable contractual terms and conditions. After a consensus was reached between industry elements represented by the American Public Transit Association (APTA) and the Railway Progress Institutes (RPI) that standardization

was feasible, an effort was undertaken in September 1977 to develop a standard design specification for rapid rail vehicles.

In a separate but related activity, standard railcar procurement terms and conditions were developed by the operators and suppliers, resulting in the promulgation of 16 guideline clauses which were issued in 1978. Work on three additional unresolved contract clauses (guaranty, warranty and reliability has been recently initiated.

Through an iterative review process involving APTA and RPI committees, a standard design specification has evolved, the final version of which will be completed in June. This specification will be used as a guideline in future railcar procurements. The New York City Transit Authority is planning to use the design specification as the basis for their next vehicle purchase scheduled for early 1981.

In addition to the design specification, other standardization products developed under this program include an evaluated products list, a propulsion procurement methodology, a carbody materials selection approach and product qualification procedures.

A similar activity is being pursued for light rail transit vehicles. UMTA is currently revising the standard light rail vehicle specification to reflect improvements identified from recent procurements and to incorporate the results from a cost reduction/value engineering study performed by UMTA. An industry group of light rail vehicle operators has been formed for the purpose of implementing the standard design specification.

Recently, a consensus position was developed between APTA, UMTA and RPI regarding the future direction of standardization. After citing the need to establish a permanent industry-government standardization coordinating body, a number of specific standardization elements were identified for future consideration. We are currently in the process of establishing this permanent organization in order to effect the implementation of standardization in new equipment procurements.

Question. The 1978 Act included a provision allowing state or local transit agencies to consider life cycle costing elements when accepting bids for the purchases of transit equipment. What effect has this provision had on the bidding and procurement process for the purchase of such equipment?

Answer. The provision did provide a broader base for bid evaluation without adversely affecting the timeliness of procurements. UMTA is working towards improving and refining these procurement techniques. On January 10, 1980, we sent interim guidance to the regional offices. These guidelines have been coordinated with Appropriations Committees of the House and Senate. These guidelines were published in the Federal Register on May 15, 1980.

As can be seen from the attached guidelines, we do not impose any artificial restrictions on the bidding process. We are attempting to utilize existing procedures while we develop new procedures. For example, our procurement procedure for the Advanced Design Bus (ADB) does provide for cost offsets.

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

[Docket No. 80-E]

Rolling Stock Procurement; Additional Requirements and Program Guidelines

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: UMTA is issuing these guidelines in order to establish interim procedures and to implement the new requirements affecting the procurement of rolling stock that were mandated by the FY 1980 appropriations act for DOT. The additional procurement requirements affect the procurement of any rolling stock under the Urban Discretionary Grants or Urban Formula Grants programs using FY 1980 funds.

DATES: 1. The guidelines in this notice are effective May 15, 1980.

2. Comments on these guidelines must be received by July 8, 1980.

ADDRESS: Comments on the guidelines should be submitted to UMTA Docket No. 80-E, Urban Mass Transportation Administration, Room 9320, 400 Seventh Street, SW, Washington, DC 20590. All comments and suggestions received will be available for examination at the above address between 8:30 a.m. and 5 p.m., Monday through Friday. Receipt of comments will be acknowledged by UMTA if a self-addressed, stamped postcard is included with each comment.

FOR FURTHER INFORMATION CONTACT: Gary C. Flynn, Office of Transit Assistance, (202) 472-7037.

SUPPLEMENTARY INFORMATION: On November 30, 1979, the President signed into law the Appropriations Act (the Act) for fiscal year 1980 for DOT and related agencies (Pub. L. 96-131). The Act incorporated new requirements affecting the procurement of rolling stock under both the Urban Discretionary Grants (sections 3 and 16(b)(2)) and the Urban Formula Grants (section 5) programs of UMTA. The additional requirements had previously existed qas optional procedures available to grantees (c.f. Pub. L. 95-599, section 308, 49 U.S.C. 1608(b)(2)). The Appropriations Act, therefore, has changed this provision from an optional one to a requirement for grants utilizing FY 1980 funds.

The new legislative language affecting the capital grant programs for rolling stock under section 3, section 16(b)(2) and section 5 states:

Provided further, that grants awarded for contracts for the acquisition of rolling stock, including buses, which will result in the expenditure of Federal financial assistance, shall only be awarded bases on consideration of performance, standardization life-cycle costs, and other factors the Secretary may deem relevant, in addition to the consideration of initial capital costs. Where necessary, the Secretary shall assist grantees in making such evaluations.

The effect of this language is to require that UMTA be assured that the factors mentioned in the Act are taken into consideration by a grantee prior to awarding a procurement contract for any type of rolling stock using FY 1980 section 3, 16(b) (2) or (5) funds. Whenever requested by a grantee, UMTA will work with grantees in evaluating these factors in considering bids.

Recognizing that the incorporation of life-cycle costs, performance and standardization factors in present procurement evaluation techniques is an evolutionary process, UMTA believes that these factors are reflected, at least to a minimal degree, in the current state-of-the-art in these techniques. Therefore, UMTA believes that the procurement evaluation techniques used in purchasing rolling stock represent, for the present time only, an absolute minimum standard which meets the requirements of the legislation.

The development and refinement of procurement methods will continue as an evolutionary process; improved methods will be incorporated as they become available. UMTA believes that the procurement evaluation techniques currently employed by grantees incorporate elements of standardization, performance and life-cycle costs, though rudimentary. The Advance Design Bus (ADB) procurement procedure including cost offsets is a more advanced method by which to address these factors than that used for most other rolling stock. Until modified by UMTA, this will continue to be the only acceptable method for procuring ADB's. Even in this case, it is UMT's intention to continue to improve the procurement evaluation techniques.

In recognizing our responsibility to advance the state-of-the-art in these important areas of procurement evaluation, UMTA is conducting studies to find better means by which to implement life-cycle cost techniques as well as standardization and performance evaluation methods. As the results of these on-going studies become available, UMTA will make these techniques available to grantees. In the interim, since current techniques are not ideal, all grantees procuring rolling stock other than ADB's are encouraged to add elements as appropriate, subject to UMTA concurrence in the specific approach, to current procurement evaluation methods in order to improve their consideration of the factors contained in the legislative provision. This provision should not, however, be used to create single bidder situations. UMTA will be available whenever requested to review any revised procurement evaluation techniques developed by grantees.

The procurement guidelines for grantees are set out below. These guidelines describe how present procurement evaluation techniques are affected by the new requirements and what steps UMTA grantees must take in order to comply with those requirements. Specific methods of implementing these requirements have not been prescribed in order to allow grantees the maximum degree of flexibility possible in meeting these requirements.

All interested parties are invited to submit written views or comments concerning the guidelines. Each comment should include the name and address of the person submitting the comment, reference the docket number (80-E), identify the specific section of the guidelines to which the comment applies, and include sufficient detail to indicate the basis for each comment. All comments received before the expiration of the comment period will be considered before any changes are made to the guidelines. UMTA also requests that comments be submitted concerning additional mechanisms that may be used to implement the statutory provisions.

The guidelines are being published in order to give notice to all interested and affected parties as well as to provide the opportunity to comment. The Administrator has determined that these guidelines are effective immediately but has determined that it is in the public interest to allow comments in order to assist UMTA is assessing the guidelines.

Guidelines: Rolling Stock Procurement Under the Section 3,5, and 16(b)(2) Programs

In order to respond to the requirements of the DOT Appropriations Act for FY 1980 (Pub. L. 96-131), a modification to the standard grant contract has been developed and a local certification has been prepared. Exhibit 1 is the additional condition to be incorporated into Part I of the standard grant agreement for all section 3, section 5, and section 16(b)(2) grants for rolling

stock using FY 1980 funds. Additionally, grantees utilizing FY 1980 section 3, section 16(b)(2) or section 5 grants for the procurement of rolling stock (as indicated below) must certify to UMTA after the procurement award that they have considered performance, standardization and life-cycle costs in awarding their procurement contracts. An example of such a certification appears in Exhibit 2.

In order to explain best how this new provision affects UMTA's present and prospective grantees, several categories of grants under varying circumstances are described below.

1. *New Capital Grants for Rolling Stock Using FY 1980 Funds.* All new section 3, section 16(b)(2) and section 5 capital grants using FY 1980 funds for the procurement of rolling stock are subject to the new provision and grantees must ensure that consideration will be given to these factors in the award of procurement contracts. Any grants utilizing FY 1980 monies that are made by UMTA after the end of FY 1980 (September 30, 1980) are still subject to the requirements of the new provision, regardless of when obligated.

2. *Holders of a Letter of No Prejudice (LNP) Who Request Section 3, Section 16(b)(2) or Section 5 Capital Grants for Rolling Stock Using FY 1980 Funds.* Holders of an LNP who will request a FY 1980 section 3, section 16(b)(2) or section 5 grant from UMTA for the reimbursement of a procurement contract that has not yet been awarded, must take the factors mentioned in the Act into consideration in the award of a procurement contract. Holders of a LNP who have already awarded a procurement contract must demonstrate that the factors were considered in the procurement award before UMTA may make a section 3, section 16(b)(2) or section 5 grant using FY 1980 funds. This applies even in those cases where a procurement contract was previously concurred in by UMTA and awarded by the LNP holder prior to the Act. The important element in determining the applicability of the new provision is whether the grant will use FY 1980 funds.

3. *Section 3, Section 16(b)(2) or Section 5 Capital Grants for Rolling Stock That are Minor Amendments to Pre-FY 1980 Capital Grants Where the Project Scope is Not Changed.* Any grant for rolling stock using FY 1980 funds which supplements an existing pre-FY 1980 grant and is applied against a procurement initiated by the earlier grant is not governed by the new provision, as long as the scope of the original project is not changed by the grant amendment. In these cases, the recipient of the grant amendment is exempt from compliance with the provision. Where a grant amendment changes the scope of the original project, the grantee must comply with the requirements of the provision and must certify that the factors were considered in the award of the procurement contract before UMTA may make the new grant.

4. *Section 3, Section 16(b)(2) or Section 5 Capital Grants for Rolling Stock That are Amendments to Pre-FY 1980 Capital Grants for Multi-Year Phased Projects.* Any grant using FY 1980 funds to amend a pre-FY 1980 grant to provide planned supplementary funding, subject to the availability of funds, for a multi-year phases project which was initiated by a pre-FY 1980 grant is not affected by the FY 1980 grant amendment. The grant amendment in such a case only serves to continue funding for an original contract entered into under good faith by the grantee when the multi-year phased project was initiated. It was not the intent of Congress to apply retroactively new legislative requirements for such multi-year procurement projects which were approved by UMTA, subject to the availability of funds, and initiated by grantees based upon the legislative requirements in effect at an earlier time. Therefore, any grant using FY 1980 funds which amends a pre-FY 1980 grant involving a multi-year phased rolling stock procurement without changing the scope of the project is exempt from compliance with the requirements of the new provision. Where a grant amendment does change the scope of the multi-year phased project, the grantee must comply with the provision's requirements and must certify that the factors were considered in the award of the procurement contract before UMTA may make the new grant.

5. *Recipients of Section 3, Section 16(b)(2) or Section 5 Capital Grants for Rolling Stock Using Pre-FY 1980 Funds But Have Yet to Award Procurement Contracts.* The new provision does not apply to grants made by UMTA using pre-FY 1980 funds, even in those cases where grantees have not yet awarded procurement contracts. Because applicable law at the time did not require UMTA to ensure consideration of the factors in the Act, any future procurement contracts awarded by grantees using these pre-FY 1980 funds are not subject to the requirements of the new provision. For these grantees, section 12(b)(2) of the UMT Act allows the grantee to consider these factors in the procurement award, if the grantee so desires.

The two exhibits below have been prepared by UMTA in order to illustrate the changes in documentation required by the new provision. Exhibit 1 will be included in Part I of UMTA's standard grant document for any section 3, section 16(b)(2) of section 5 grant. Exhibit 2 is an example of a certification that grantees may use in certifying to UMTA that they are in compliance with the new requirements.

Exhibit 1—Clause for Sections 3, 5, and 16(b)(2) Grants for Rolling Stock Using FY 1980 Funds

In accordance with guidelines issued by UMTA, the grantee/recipient shall make third party contract awards for the acquisition of rolling stock, including buses, only after consideration of performance, standardization, and life-cycle costs, in addition to the consideration of initial capital costs. Where necessary, the Secretary will assist the grantee/recipient in making such evaluations.

Exhibit 2—Certification

The undersigned duly qualified and acting (Title of Officer, Name of Officer) of the (Legal Name of Recipient) certifies that the above named recipient of an UMTA section 3, section 16(b)(2) or section 5 capital assistance grant for the procurement of rolling stock has considered performance, standardization, and life-cycle costs, before having awarded a procurement contract for the purchase of any rolling stock, including buses.

If the grantee has an official seal, impress here.

(Signature of Authorized Officer)
(Title of Authorized Officer)
(Date)

Dated: May 8, 1980.

Theodore C. Lutz,
Administrator.

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BILLING CODE 4910-57-M

Question. In the 1978 Act, we created a new Section 20 to provide assistance for manpower training programs, minority employment outreach and minority business enterprise programs in the transit field.

Can you tell me what has been done under this program to date?

Answer. Section 20 was passed by the Congress as part of the Surface Transportation Assistance Act of 1978. This section provides for assistance to transit authorities for establishment of manpower training programs, minority employment outreach efforts, and minority business enterprise (MBE) programs. Immediately following the passage of Section 20, interest from the transit industry was high and numerous requests were received by the Office of Civil Rights for further information regarding Section 20 project development. At many public meetings, a similarly high degree of interest was evident, particularly in the MBE aspects of Section 20.

Since any Section 20 project must now be funded from Section 3, 5, or 8 monies, and would therefore compete with existing priorities, only one grantee proposed a working Section 20 project to establish a venture capital fund to assist MBEs under Section 3. This grantee is the Port Authority of Allegheny County and this project should come to fruition by 1 June 1980.

As a result of the above experience, DOT has submitted to the Congress a proposal for a pilot MBE demonstration program with emphasis on guaranteeing surety bonds and the provision of venture capital. This authority would allow several demonstration projects to be undertaken. Where feasible, cooperation with existing outreach centers of the FRA's Minority Business Resource Center will be sought. The results of this pilot project, and the experiences learned, will be generalized into other UMTA operations.

Question. Recently, the Federal courts upheld DOT's regulations under Section 504, subject to the filing of an environmental impact statement.

Can you give us a brief update on your progress in implementing these regulations?

Do these regulations affect the ability of localities to use specialized services where they feel it is appropriate?

Answer. The Department and UMTA have made steady progress in implementing the 504 regulation both before and after the District Court decision upholding the regulation. For instance, the regulation required that all procurement solicitations for fixed route buses issued after the effective date of the regulation (July 2, 1979) require these buses be accessible to handicapped persons including wheelchair users. Since this date, bus manufacturers have been awarded contracts for the production and delivery of approximately 2,000 buses equipped with lifts to permit wheelchair users, and other handicapped persons for whom bus steps are a barrier, to gain access to these buses. Also, the regulation required recipients to prepare a transition plan describing the steps necessary for achievement of program accessibility. For cities with bus systems these plans are due by July 2, 1980, while cities with rapid, commuter, and light rail may have until January 2, 1981. UMTA has developed guidance for recipients on the development of these plans and has held several briefings. Based on our conversations with recipients, we have learned that substantial progress is being made on the preparation of these plans.

With respect to the ability of localities to use specialized service, the Department believes that door-to-door specialized service is a very useful means of transportation for many handicapped persons. The Department's 504 regulation encouraged, but did not require, the provision of such service for handicapped persons who cannot reach transit facilities, use accessible vehicles, or travel from transit stops to their destinations. UMTA funds are available to assist in the provision of specialized service, and we have recommended in the 504 regulation that it be coordinated with accessible mainline service. In addition, the Department's regulation contains several provisions designed to result in better coordination of existing specialized services currently funded by localities themselves or by other Federal agencies such as the Department of Health and Human Services.

Question. All recipients of formula grants are required to participate in the reporting system established under Section 15 of the Act. What kind of information is being collected through this system? Are there problems in gaining compliance with this requirement from local operators? If so what is being done to improve compliance? What assurances does UMTA have that the reported information is accurate?

Answer. The Section 15 Reporting System collects information from transit properties pertaining to the balance sheet (capital, assets, liabilities); sources of revenue (farebox, federal, state, local assistance, etc.); operating expenses (labor, fringe benefits, pensions, supplies and materials, utilities, etc.); and operating data indicating service supplied and service consumed.

Reports for last year have been received and are now being reviewed for accuracy and completeness. After the data has been verified, industry aggregate as well as individual transit operator reports will be generated and distributed to permit operators and other interested parties to make various analyses. We anticipate these reports will be made available during the summer of 1980.

There have been no compliance problems associated with this reporting system. We have granted some time extensions for the report submissions due to late audits, changes in personnel at the properties, installation of management information systems, etc. Many of the delays can be attributed to the initial start-up of the system, and we have every reason to believe that timeliness will not be a factor after two years' experience. The uniform system of accounts and records mandated by Section 15 has been widely acclaimed throughout the industry and compliance is not an issue. Of course, the receipt of Section 5 funds is conditional upon the properties' submission of the Section 15 Report. That in itself is sufficient to ensure compliance.

The Section 15 Reporting System does require an audit of the financial data, ensuring its integrity. The operating data is not audited on any formal basis. However, the performance indicators generated from the data base will enable us to spot very quickly deviations from a mean in a peer group analysis. While it may be possible for an operator to manipulate the operating statistics, the number of cross checks that will be available through the data base make it unlikely that it would go undetected. We have no reason to suspect that there has been or will be any attempt to submit unsubstantiated operating statistics.

Question. Both Senator Leahy and Mr. King from North Carolina have talked about problems related to the delay in the availability of funds under Section 18. Mr. King noted that it took from November until the middle of March to draw down Section 18 funds for fiscal 1980.

What has been the cause of this delay, and what steps can be taken to speed up the availability of funds?

Answer. As you are aware, the Section 18 program is jointly administered by FHWA and UMTA. Funds appropriated for this program are received by UMTA, and are then transferred to FHWA. The FHWA fiscal procedures are used for programming, obligation, and reimbursement.

Last year's delay was primarily the result of these successive conditions. First, the DOT appropriations bill was not completed until November 30, 1979. Thereafter, a complex chain of activities was required both within and among OMB, Treasury, UMTA, and FHWA to effect the transfer of funds.

However, we believe that the experience gained in last year's transfer and apportionment effort will improve our delivery performance for fiscal 1981.

Question. Section 18 requires that States submit a program of projects for public transportation services in non-urbanized areas to the Secretary. These plans are required to reflect a fair distribution of funds within the State and also provide maximum coordination with other transportation services assisted by other Federal sources. Have these requirements been adequately followed by the recipients?

Have they facilitated program coordination?

Answer. The Federal Highway Administration (FHWA) requires each State to submit an annual program of projects to be approved by the FHWA and the Urban Mass Transportation Administration Regional Offices. The State's program of projects must include: (a) the criteria by which the State will ensure the "fair and equitable distribution" of Section 18 funds during a *four* year period; and (b) a description of how the State plans to coordinate the projects with other appropriate State agencies.

During December 1979 FHWA conducted a study of the "fair and equitable distribution" of Section 18 funds to determine if more explicit instructions were needed and to monitor the distribution of funds. The results support the immediate and projected conclusions that the requirements have been adequately followed and they are facilitating program coordination. The study also showed that FHWA should not define a single criterion or universal criteria to assure a fair and equitable distribution of funds. In fact, such criteria would be counterproductive.

Some of the results of the study are summarized as follows: (a) Fourty-four States had developed procedures to distribute funds fairly and equitably, as of December 31, 1979; (b) fourty-two of the fourty-four States specifically stated that they approved of FHWA's policy on fair and equitable and would consider it unwise and unnecessary to provide the States with a universal definition of "fair and equitable" distribution; (c) thirty-one States distribute some of their funds in a discretionary manner; (d) twenty-three States distribute some of their funds by means of a formula; and (e) fourteen States distribute their funds by means of a formula/

discretionary mechanism. In most cases, the discretionary use of the funds only occurs when the funds distributed on the basis of a formula have not been spent, after a reasonable period of time.

Even though FHWA has chosen not to define "fair and equitable," it is carefully monitoring the States' distribution of funds. For example, it has asked for clarification and even changes when a State has distributed a significant proportion of its total apportionment to only one place or when the annual program of projects does not contain Indian projects and there are Indian reservations in the State.

We believe that the FHWA requirements do facilitate program coordination. Not only is coordination a fundamental part of the program of projects mechanism, it is also an essential element for the approval of individual projects. In order for an application to be approved the applicant must describe their efforts to coordinate with other transportation providers in their area, both public and private, and especially with social service providers. These efforts have assured at a minimum the flow of information in the community and at a maximum the development of a fully coordinated transportation system.

In addition, FHWA has taken additional steps in conjunction with the White House Rural Transportation Initiatives Committee to facilitate coordination. The FHWA has issued a list of Federal funds that can be used as part of the local match to Section 18 funds; has issued with HEW an "Advisory on Coordination and Section 18"; has cooperated with the Community Service Administration (CSA) and HEW in the preparation of their coordination guidelines to the field on the Section 18 program.

Coordination is an essential part of the Section 18 program and we are encouraged by the number of coordinated applications being submitted. We intend to strengthen the ties with the other Federal agencies and further encourage the States to emphasize coordination.

Question. When Section 18 was first created there was some question as to the eligibility of smaller communities for Section 3 capital assistance. I understand it has now been determined that these smaller areas are eligible for Section 3 grants.

Do you have any sense of how much Section 3 funding is going to areas eligible for Section 18?

What criteria are used to approve Section 3 capital grants for communities that are eligible for Section 18?

Answer. You are correct in stating that smaller areas are eligible for Section 3 grants. Already, in fiscal year 1980, as of March 31, 17 grants for slightly over $9 million have been made in nonurbanized areas to places such as Cape Ann, Massachusetts, Manitowoc, Wisconsin and Ketchum, Idaho for buses and maintenance facilities. Generally, funds totalling in excess of $20 million/year are granted to nonurbanized areas through the § 3 program.

Prior to applying for a Section 3 grant, a prospective grantee from a small urban or rural area must first seek Section 18 funds through the State designated agency. If it can be demonstrated that Section 18 funds allocated to the State over a two year period will be insufficient to meet estimated transit capital assistance needs in the State's non-urbanized areas, including the proposed project, then the prospective grantee can make application to UMTA for a Section 3 grant. Criteria for approval of an application from a nonurbanized area do not differ from those used for applications from urbanized areas. All Section 3 grants are discretionary and all applicants must "compete" for funds available in any given fiscal year.

Question. Existing legislation contains no requirement for transportation planning in non-urbanized areas. What provisions have been taken to insure effective use of Federal monies in non-urban areas?

Do you believe there should be a specific requirement?

Answer. In an effort to expedite program implementation, Congress removed the initial Federal planning requirement that was attached to an early draft of Section 18. Although there is no federally mandated planning process, measures have been taken to assure the effective use of Federal funds in non-urbanized areas.

At the State's discretion, projects may be planned in non-urbanized areas with several categories of DOT planning funds. Statewide Highway Planning and Research funds (23 U.S.C. 307) may be used ". . . for the planning of future highway programs and local public transportation systems." Statewide UMTA Section 8 funds may also be used. MPO's with jurisdictional authority beyond the urbanized boundary may use Section 8 funds to plan for rural and small urban systems. Also, the 15% Administrative and Technical Assistance funds under Section 18 may be used for project planning. States may choose to pass a portion of these funds to regional or local bodies.

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DOT is considering revisions to the existing Section 18 regulation which will require each State to develop a State Management Plan. In anticipation of this requirement, many States have already developed interim plans. This plan describes the State's procedure for compliance with several Federal provisions. These include the State process for assuring that the proper project supporting information, eligibility requirements, and local share commitments are met by the applicant.

The project supporting information is "product" in nature, that is, a description of the project, its service area, coordination activities, budget, public involvement results, private business participation, Section 504 Handicapped Accessibility, Section 13(c) labor protection provisions, Title VI Civil Rights, etc. Thus the State plan must describe the State's procedures to assure that these planning products are developed. This procedure allows each State to determine the requirements for the planning process to obtain federally mandated planning products.

The major advantage, in addition to minimizing the Federal administrative burden, is the flexibility afforded to each State. It allows the States to respond to the diversity of circumstances, abilities, and needs among their applicants, and to make informed, localized decisions regarding level of effort requirements.

This process is necessitated by the wide range of applicant and service characteristics. That is, (1) new versus existing operations, (2) demand responsive, fixed route, social service contract or mixed mode of operation, and (3) system sizes ranging from single vans to normal, fixed route public transportation fleets.

We do not believe there should be a federally specified planning process requirement.

Question. Please submit a list of the state-by-state apportionment under the Section 18 program for Fiscal Years 1979 and 1980 showing total amounts of funds actually granted to date to each state in each fiscal year. This list should separately show how much has been made available to each state for Section 18 administrative expenses.

Please list those states that have received Section 18 administrative funds but are not currently funding actual services under Section 18.

Please explain how administrative costs available to the states have been used, and the criteria used to approve grants for administrative expenses.

Answer.

APPORTIONMENT AND OBLIGATION OF SECTION 18 FUNDS DURING FISCAL YEAR 1979

State	Total apportionment	Administrative funds available	Total obligations	Administrative funds obligations
Alabama	$2,128,950.00	$319,342.00	$319,342.00	$319,342.00
Alaska	170,250.00	25,537.00		
Arizona	546,975.00	82,046.00	70,850.00	70,850.00
Arkansas	1,373,175.00	205,976.00	45,000.00	45,000.00
California	3,258,075.00	488,711.00		
Colorado	696,675.00	104,501.00	25,000.00	25,000.00
Connecticut	703,950.00	105,592.00		
Delaware	176,475.00	26,471.00	20,000.00	20,000.00
Florida	1,823,325.00	273,498.00	273,498.00	273,498.00
Georgia	2,408,325.00	361,248.00	210,000.00	210,000.00
Hawaii	291,300.00	43,695.00	43,690.00	43,690.00
Idaho	558,375.00	83,756.00	83,756.00	83,756.00
Illinois	2,795,100.00	419,265.00		
Indiana	2,480,100.00	372,015.00	601,695.00	372,015.00
Iowa	1,754,625.00	263,193.00	163,557.00	163,557.00
Kansas	1,292,400.00	193,860.00	88,860.00	88,860.00
Kentucky	1,845,300.00	276,795.00	632,854.00	276,795.00
Louisiana	1,647,525.00	247,128.00	247,128.00	247,128.00
Maine	730,950.00	109,642.00	109,642.00	109,642.00
Maryland	1,177,050.00	176,557.00	400,000.00	100,000.00
Massachusetts	1,197,675.00	179,651.00	179,651.00	179,651.00
Michigan	2,782,350.00	417,352.00	571,434.00	
Minnesota	1,638,975.00	245,846.00		
Mississippi	1,604,175.00	240,626.00		
Missouri	1,859,550.00	278,932.00	186,450.00	186,450.00
Montana	491,250.00	73,687.00		
Nebraska	789,000.00	118,350.00	173,381.61	118,350.00
Nevada	134,025.00	20,103.00		

APPORTIONMENT AND OBLIGATION OF SECTION 18 FUNDS DURING FISCAL YEAR 1979—Continued

State	Total apportionment	Administrative funds available	Total obligations	Administrative funds obligations
New Hampshire	501,375.00	75,206.00	18,750.00	18,750.00
New Jersey	961,800.00	144,270.00	144,270.00	144,270.00
New Mexico	639,075.00	95,861.00	95,861.00	95,861.00
New York	3,369,525.00	505,428.00	250,000.00	250,000.00
North Carolina	3,296,775.00	494,516.00	93,329.00	93,329.00
North Dakota	501,975.00	75,296.00	75,296.00	75,296.00
Ohio	3,552,450.00	532,867.00	521,963.00	521,963.00
Oklahoma	1,334,925.00	200,238.00	.....	.....
Oregon	977,400.00	146,610.00	44,300.00	44,300.00
Pennsylvania	4,267,425.00	640,113.00	453,459.06	47,791.00
Rhode Island	181,875.00	27,281.00	.....	.....
South Carolina	1,653,450.00	248,017.00	160,750.00	160,750.00
South Dakota	525,000.00	78,750.00	78,750.00	78,750.00
Tennessee	2,060,025.00	309,003.00	50,200.00	50,200.00
Texas	3,733,275.00	559,991.00	300,000.00	300,000.00
Utah	290,025.00	43,503.00	43,503.00	43,503.00
Vermont	395,550.00	59,332.00	395,550.00	42,357.00
Virginia	1,991,400.00	298,710.00	298,710.00	298,710.00
Washington	1,237,500.00	185,625.00	185,625.00	185,625.00
West Virginia	1,189,500.00	178,425.00	.....	.....
Wisconsin	2,083,800.00	312,570.00	.....	.....
Wyoming	295,650.00	44,347.00	44,319.00	44,319.00
District of Columbia	.....	.....	.....	.....
Puerto Rico	1,440,450.00	216,067.00	216,067.00	216,067.00
American Samoa	24,150.00	3,622.00	.....	.....
Guam	75,600.00	11,340.00	11,340.00	11,340.00
Northern Mariana Islands	8,550.00	1,282.00	1,282.00	1,282.00
Virgin Islands	55,575.00	8,336.00	.....	.....
Total	75,000,000.00	11,249,981.00	7,929,112.67	5,658,047.00

APPORTIONMENT AND OBLIGATION OF SECTION 18 FUNDS DURING FISCAL YEAR 1980 (AS OF MAR. 14, 1980)

State	Total apportionment	Administrative funds available	Total obligations	Administrative funds obligations
Alabama	$2,058,459.00	308,768.00	.....	.....
Alaska	192,928.00	28,939.00	.....	.....
Arizona	619,878.00	92,981.00	$11,196.00	$11,196.00
Arkansas	1,557,073.00	233,560.00	.....	.....
California	3,701,504.00	555,225.00	240,000.00	240,000.00
Colorado	789,537.00	118,430.00	54,000.00	54,000.00
Connecticut	797,792.00	119,668.00	40,000.00	40,000.00
Delaware	200,023.00	30,003.00	.....	.....
Florida	2,074,897.00	311,234.00	328,945.00	.....
Georgia	2,731,169.00	409,675.00	263,540.00	122,000,00
Hawaii	330,146.00	49,521.00	.....	.....
Idaho	632,862.00	94,929.00	318,854.00	.....
Illinois	3,169,441.00	475,416.00	979,873.00	100,000.00
Indiana	2,821,005.00	423,150.00	566,528.00	.....
Iowa	1,998,808.00	299,821.00	99,636.00	99,636.00
Kansas	1,474,885.00	221,232.00	.....	.....
Kentucky	2,101,561.00	315,234.00	268,326.00	.....
Louisiana	1,877,399.00	281,609.00	.....	.....
Maine	828,451.00	124,267.00	.....	.....
Maryland	1,344,186.00	201,627.00	152,234.00	.....
Massachusetts	1,365,853.00	204,877.00	203,034.00	.....
Michigan	3,163,516.00	474,527.00	1,582,202.00	.....
Minnesota	1,866,039.00	279,905.00	.....	.....
Mississippi	1,911,546.00	286,731.00	.....	.....

APPORTIONMENT AND OBLIGATION OF SECTION 18 FUNDS DURING FISCAL YEAR 1980 (AS OF MAR. 14, 1980)—Continued

State	Total apportionment	Administrative funds available	Total obligations	Administrative funds obligations
Missouri	2,117,709.00	317,656.00		
Montana	556,741.00	83,511.00	397,344.59	73,687.00
Nebraska	902,689.00	135,403.00	522,621.00	30,000.00
Nevada	153,593.00	23,038.00		
New Hampshire	568,264.00	85,239.00		
New Jersey	1,098,542.00	164,781.00		
New Mexico	724,318.00	108,647.00		
New York	3,827,258.00	574,088.00		
North Carolina	3,744,839.00	561,725.00	3,101,877.00	15,000.00
North Dakota	568,872.00	85,330.00	426,679.00	
Ohio	4,034,590.00	605,188.00	988,489.20	200,230.00
Oklahoma	1,522,306.00	228,345.00	200,230.00	
Oregon	1,116,224.00	167,433.00	853,685.00	
Pennsylvania	4,846,654.00	726,008.00	2,111,318.50	259,711.82
Rhode Island	206,127.00	30,919.00		
South Carolina	1,882,436.00	282,365.00	542,957.00	
South Dakota	594,990.00	89,248.00	200,800.00	
Tennessee	2,343,209.00	351,481.00	1,716,831.00	62,409.00
Texas	4,239,568.00	635,935.00		
Utah	328,712.00	49,306.00		
Vermont	448,303.00	67,245.00		
Virginia	2,265,456.00	339,818.00	48,268.00	
Washington	1,411,015.00	211,652.00		
West Virginia	1,356,607.00	203,491.00	807,241.00	
Wisconsin	2,370,166.00	355,524.00	1,100,000.00	
Wyoming	335,085.00	50,262.00		
District of Columbia				
Puerto Rico	1,641,027.00	246,154.00		
American Samoa	27,377.00	4,106.00		
Guam	85,678.00	12,851.00		
Northern Mariana Islands	9,717.00	1,457.00		
Virgin Islands	62,970.00	9,445.00		
Total	85,000,000.00	12,749,970.00	18,126,709.29	1,307,869.82

The following States have obligated administrative funds but have not (as of March 14, 1980) obligated any project assistance funds: Alabama, Arizona, Arkansas, *California, Colorado, *Connecticut, Delaware, Hawaii, *Iowa, Kansas, Louisiana, *Maine, *Missouri, *New Hampshire, New Jersey, *New Mexico, *New York, *Oklahoma, *Texas, Utah, *Washington, Wyoming, Puerto Rico, Guam, and Northern Mariana Islands.

The eleven States with asterisks have DOT approved programs of projects. All States and territories listed expect to obligate project assistance funds this year with the exception of Guam and the Northern Mariana Islands.

The States have used their 15 percent Administration and Technical Assistance funds in a variety of activities designed to establish the basis for responsible, effective management of the Section 18 program at the State level. Activities to date have included hiring program staff, developing State management plans, conducting Section 18 information programs, developing State allocation procedures, coordinating with other State agencies, soliciting and reviewing applications, composing State programs of projects, and establishing technical assistance progams for potential applicants as well as recipient operators. Some States have passed a portion of their Administrative and Technical Assistance funds to regional or local planning authorities.

Use of the "15 percent funds" is limited to those activities which have been declared eligible. In accordance with Congressional intent that red tape be minimized in order to expedite program implementation, FHWA Headquarters has not issued a work plan requirement as a criterion for "15 percent funds" grant approval. Rather, any requirements for specific Administrative and Technical Assistance project supporting information have been left to the discretion of the regional office.

Question. Please provide the Committee with a state-by-state breakdown of the amount of Section 18 funds committed to projects on or primarily serving Indian reservations.

For each state, also indicate the percentage of the state's rural population living on Indian reservations.

Answer. The following is a "State-by-State breakdown of the amount of Section 18 funds committed to projects on or primarily serving Indian reservations" and the population percentage in each State.

STATE BY STATE BREAKDOWN

State	Percent of population	Amount Obligated
Alaska	0.02	$30,170 (2 projects).
Arizona[1]	18.8	0
California[1]	.002	0
Colorado	12.8	0
Florida	.05	0
Idaho	.006	61,175 (3 applications to be submitted by July 1, 1980).
Iowa	.0003	0
Kansas	.0005	40,000 (1 application to be submitted by Aug. 1, 1980).
Louisiana	.0001	0
Maine[1]	.001	26,679 (3 applications to be submitted by July 1, 1980).
Michigan[1]	.0005	841,000 (3 projects which are primarily serving Indians).
Minnesota	.006	0
Mississippi	.001	0
Montana	.04	45,000 (1 preapplication).
Nebraska	.003	0
Nevada	.03	0
New Mexico	11.4	0
New York	.002	0
North Carolina	.001	23,500 (1 application to be submitted by June 1, 1980).
North Dakota	.02	0
Oklahoma	.05	0
Oregon	.002	0
South Dakota	.06	0
Utah	.02	0
Washington	.01	12,000 (1 project) (1 application to be submitted by May 1, 1980 for 102,250).
Wisconsin	.003	0
Wyoming	.01	0
Total percent of Indians	.006	
Total obligated for projects		883,170
Total obligations to be committed		298,604
Total		1,181,174

[1] Programs still using section 147 funds.

The FHWA is sensitive to the concern for Indian involvement in the Section 18 program and careful consideration of Indian rural public transportation needs has been emphasized to the FHWA division offices. Besides this, the FHWA has requested that the Bureau of Indan Affairs be a member of the White House Rural Transportation Committee. This action has allowed FHWA to broaden the information flow between the Indians and ourselves. In addition, FHWA and UMTA are currently reviewing a final report on the Indian Section 147 transportation projects. We are hopeful that the experiences with the 147 demonstration will allow us to make the Section 18 program more responsive to Indian needs. The "fair and equitable" study conducted in December paid particular attention to the Indians.

Question. Under the Administration's bill, the Section 5 Operating Assistance formula would be changed from the current population/population density formula to population/revenue-vehicle miles.

What would the impact of this change be on Massachusetts and the "MBTA"? Would you please provide the Committee with your figures and formula computer runs?

Answer. The attached table shows the apportionment of the Tier 1, 2, and 3 money and the possible apportionment under the incentive program proposed in our legislation for the Boston urbanized area. As can be seen, the Boston area has an increased amount, in all tiers from the inception of the new proposal.

APPORTIONMENT OF TIER PROGRAM

	Alternative allocations (tiers 1 and 2)		Tier 3 allocation	Formula apportionment	Incentive grants	
	Hold harmless	New formula			10 percent	7.5 percent
Boston, Mass.:						
80	22922	.....	6438	29359	.....	
81	25199	.....	6476	31674	.....	
82	25199	30028	10361	40389	.....	
83	25199	34260	10361	44622	4462	3347
84	25199	37728	10361	48089	4809	3607
85	25199	40796	10361	51157	5116	3837

Question. What provision, if any, would the Administration provide to hold-harmless properties which receive Section 5 funds to more than 25 percent of operating deficit?

Answer. The Administration's proposal switches the basis for operating assistance from 50 percent of operating deficits to a percent of total eligible operating costs. Therefore, there is no provision for holding a city harmless based on an operating deficit. What the Administration has proposed is that no city would receive less, in terms of total allocated Section 5 funds, under the new formula than they would have received under the existing formula (population/population density) at the proposed 1981 funding levels. However, superimposed on that funding level is a limit on the use of the allocated funds for operating assistance, the so-called "cap". This limitation is based on a percent of total operating expenses (43 percent in fiscal year 1982, stepped down 3 percent annually to 34 percent during the life of the authorization). The difference between the allocation level and the limitation on the use of the funds for operating assistance mandated by the cap may be used for capital assistance.

For fiscal year 1982, the only cities that would be affected by the cap are those where fares cover less than 14 percent of the costs of the system and the section 5 allocation currently covers 50 percent of the deficit. Again, it must be pointed out that the current formula program is based on the Federal money paying a portion of deficits, while the new proposal would pay for a portion of eligible operating costs. Our proposal would hold-harmless an amount only, and that amount could be used to pay a percentage of eligible operating expense up to the legislatively determined cap.

Question. The Administration has proposed that UMTA procure transit equipment in order to ensure a steady market and the availability of equipment. This idea has been successful in other areas and is a good one. Is the Administration willing to purchase rail as well as bus equipment, since the rail industry equally needs a proven market? What options would transit properties have relative to the purchase of equipment?

Answer. At this time, the Administration perfers to focus on direct bus purchase. While we agree that benefits could accure from a direct purchase rail car program, for a number of reasons we feel buses would be a more logical place to start. Rail cars offers less potential for economies to be realized through standardization, for example, and the smaller market for rail cars offers considerably less assurance of a successful and timely distribution of Federally purchased vehicles. We therefore feel it would prudent to limit this program initially to direct bus purchases and, depending on our experience, to consider expanding to direct rail car purchase later. Since we are requesting direct purchase authority for only a small segment of the domestic market, transit operators would retain the option to purchase vehicles built to their own specifications under the current procurement practices, if they prefer, and UMTA capital assistance would continue to be available to them as in the past.

Question. Many transit operators have complained that the new buses are less energy efficient than the old ones. What is UMTA going to do to encourage or demand energy efficient designs on new buses?

Answer. We are continually requesting the manufacturers to produce a more energy efficient vehicle. Specifically we encourage weight reduction of the Advanced Design Bus (ADB) by continuing to support and refine the weight incentive provisions of the ADB specification. A monetary incentive is provided for manufacturers who can effectively reduce vehicle weight. We are encouraging the introduction of more fuel efficient power plants and in that spirit will participate in a test program now scheduled for mid-summer 1980 to assess the fuel-economy characteristics of the ADB when equipped with each of several different engines.

The manufacturers maintain, correctly, that some of the reduced efficiency comes from Federal requirements, such as noise and air pollution control equipment, safety requirements, and wheelchair lifts. They assert that older buses comparably equipped to ADB's are almost identical in fuel efficiency. We believe, however, that we can make more progress in this area, and will continue to work with the manufacturers to do so.

Question. The Interstate Transfer law allows local communities the option of applying highway funds to transit over and above the Section 3 allocations. In other words, transfer funds should not be allowed to offset a transit properties discretionary funds. It is my understanding that the Interstate Transfer law was established in order to provide additional funding. Massachusetts has always been a leader in transferring funds. At the same time, Section 3 grants to the MBTA have declined. Are we being penalized for developing a progressive transit policy?

Answer. Boston has not been penalized for transferring Interstate funds to urban mass transportation projects. Instead, it has benefited immensely by being able to supplement its Section 3 funds with the Interstate funding. This in turn has enabled the area to proceed with major construction projects (the Red Line Northwest Extension, the Orange Line Relocation project, and the Red Line Extension to Braintree) for which normally there would not be sufficient Section 3 funding for construction.

Approximately $50 million per year in Section 3 funds has been awarded in capital grants to Boston in each fiscal year since 1976. The area did receive a larger amount of funds in fiscal year 1975 but this was a unique situation caused by the fact that the MBTA had back-up projects ready at a time when other urbanized areas were unable to complete their applications for funding.

The present level of Section 3 funding to Boston is very fair when compared to the level of funds provided to the other major areas of the country. Additionally, although the Boston area ranks seventh in urbanized area population, it has received the sixth largest amount of Section 3 funds awarded to any urbanized area. The fact that Boston has Interstate funds available has in no way limited the amount of Section 3 funding it receives.

Question. The Administration proposes an incentive "bonus" formula based on increased ridership and operating revenues as a percent of operating cost. While I understand your intentions, your bonus formula would in essence penalize those cities which have high ridership and are unable to increase ridership. It also penalizes systems like the MBTA which have as a policy decision received a strong commitment from local communities to fund transit through taxes rather than the fare box. Are you considering any bonus funds based on service or local commitment to transit funding?

Answer. The incentive program is directed at encouraging areas to increase transit ridership and revenue coverage of operating costs. True, areas with a presently large ridership will have to post larger absolute ridership increases in order to achieve the 5-percent increase; however their potential market is also larger.

Although the proposed formula provides an inherent reward for service expansion, we decided a more direct and visible incentive program was needed to underscore our commitment to increase transit ridership as a means of conserving energy, to promote responsible revenue policies, and to encourage improvements in operating efficiency.

While we realize that it may appear that the incentive penalizes communities that have chosen to fund transit by local taxes rather than the farebox, this is not what was intended. Rather we intended to encourage communities to set realistic fare policies in this age of increasing/continuing inflation when the costs of competing transportation have risen much faster than transit fares.

I do, however, understand your concern in accounting for local revenue commitments other than fare box and we would support the inclusion of dedicated transit taxes in the eligibility criteria of the incentive tier.

Question. In light of the current budget cutting craze, will the Administration stand firm in its commitment to mass transit as a means of reducing oil consumption and reducing the deficit in our balance of payments?

Answer. The Administration is continuing to request substantially higher program levels for mass transit. Anti-inflationary budget cuts proposed by the Administration have only slightly cut the size of increase and have not cut the size of the existing program.

Question. We are painfully aware of the shortage of transit vehicles being produced in this country. Is the "Buy America" policy hampering the growth and modernization of the nation's transit systems? Is it realistic to maintain a "Buy America" policy, forcing the exclusion of foreign vehicles from our systems, when the American manufacturers can't keep up with demand?

Answer. We do not believe that the "Buy America" provision is hampering the growth and modernization of the nation's transit system. Neither the "Buy America" provision enacted by Congress for the UMTA program nor the "Buy America" regulations as issued by UMTA excludes foreign firms from bidding. An end product consisting of components comprising 50 percent of total cost of all components with final assembly in the United States is considered a domestic end product. A foreign company who is willing to manufacture in the United States can meet these requirements. Furthermore, the statute provides that foreign manufactured equipment can be purchased when the equipment is not available in the United States or when the foreign manufacturer can bid 10 percent less than the United States manufacturer. These provisions ensure that the advantages of healthy competition are not sacrificed.

BUY AMERICA

Question. Your emergency Buy American regulations, which I understand are in the process of being revised, require that all UMTA funding must conform to the current UMTA regulations; if a grantee imposes a state domestic preference which is any different from your regulations then federal aid is denied. By administrative action you are in essence, insuring that federal regulations take precedence over state statute if any conflict exists.

As you know, Section 401 of the 1978 Surface Transportation Assistance Act (P.L. 95–599) reflects the considered judgment of Congress that only American-made materials, including steel, shall be used in mass transit projects, unless one of four well-defined exceptions (public interest, unavailability, and two exceptions for unreasonable costs) are present. Congress did not intend that Section 401 be interpreted by administrative action to permit the use of foreign materials, including steel, except in unusual circumstances. Since there is no limitation in Section 401, what gives UMTA the authority to require some states to violate their own procurement laws or be denied federal funding for mass transit projects?

I think this case is a class example of an administrative agency exceeding the authority granted to it by Congress. No satisfactory justification for this UMTA limitation on federal procurement exists in my opinion, either in the statute or the legislative history; furthermore, the Federal Highway Administration did not include such a limitation in its Section 401 emergency regulation. Where does UMTA get the authority from in the Surface Transportation Act?

Answer. Section 401 and its legislative history create a very comprehensive framework of domestic preference provisions for Federal transit grants. Colloquies on the Senate and House floors with the respective floor managers established that the implementation of Section 401 was to be consistent with the implementation of the Buy American Act of 1933 that governs direct Federal contracts. The 1933 Act created a system of preference for domestic materials, but it did not forbid the purchase of foreign materials in all cases. For instance, a bidder could comply with the 1933 Act by delivering an end product that had only 50 percent United States component content. As an example, if the United States government buys airplanes, the steel in the engines may be foreign steel without the airplane being considered foreign. The United States can even buy foreign built airplanes, if buying from the lowest United States builder would add more than 6 percent to the purchase price.

The UMTA regulations are consistent with the 1933 Act and its implementing regulations except in those areas where the language of Section 401 is manifestly different from the 1933 Act. For instance, the "unreasonable cost" waiver of Section 401 offers companies who manufacture in the United States much more protection than the "unreasonable cost" waiver of the 1933 Act. The implementation of the 1933 Act deems the cost to be unreasonable if the company which is located in a non-surplus labor area in the United States is 6 percent higher than the foreign manufacturer. In Section 401, the domestic manufacturer wins the contract even if he is 10 percent higher.

In the case of an applicant seeking funds covered by Section 401, it can be seen that Congress struck a balance between domestic preference and price competition

when Section 401 was enacted. Companies who manufacture in the United States are placed in a preferential position compared to all other manufacturers, but the waivers in Section 401(b) and the history of the 1933 Act clearly establish that there are instances where foreign materials must be permitted. Since Congress struck this balance, we do not believe than an administrative agency has the authority to permit states to strike a different balance and to limit competition where the Federal statute would permit it. There is nothing in the legislative history of Section 401 to indicate that the Federal statute should bow to state statutes that offer different domestic preference requirements.

In addition to this issue of Federal pre-emption because of the comprehensive framework of Section 401, Section 3(a)(2)(C) of the Urban Mass Transportation Act states: "nor shall any grant or loan funds be used to support procurement utilizing exclusionary or discriminatory specifications."

The legislative history of this provision, which is limited to the introductory remarks of Congressman Brademas, shows that the purpose of this language was to require "that the spirit of the Federal [procurement] regulations—fairness and economy in making purchases—be made applicable to these transactions" and that the "rule of competition" should apply. Congressman Brademas stated that he wanted to insure that UMTA funds made available for capital purchases "be expended in a manner that is fair, and gives the Federal Taxpayer the greatest return for his dollar." 119 Cong. Rec. 32,821 (October, 3, 1973) (Remarks of Cong. Brademas).

In the only case interpreting the statute, the Court stated that "[w]hile it is clear that the [Brademas Amendment] prohibits specifications adopted for the purpose of excluding a competitor from bidding without regard to the merits of the product involved, neither the language of the statute nor its legislative history indicates that the statute was intended to prohibit specification of a product improvement simply because not every competitor chooses to offer such an improved product." *AM General Corp.* v. *Dept. of Transp.*, 433 F. Supp. 1166, 1178 (D.D.C. 1977) (emphasis added). The Court also stated that the Brademas Amendment "would prohibit the federal defendants from abruptly revising their public policies to accommodate the investment decisions of one supplier, to the detriment of other suppliers that relied upon the prior public policies" and that the statute "would prohibit the federal defendants from implementing any such revised policies without giving competitiors enough time to make informed investment decisions and thereby to compete under the new policies." 433 F.Supp. at 1179.

While judgments regarding the fairness of State and local buy-American provisions could vary, these provisions would not insure the greatest return on the Federal taxpayer dollar since buy-American provisions limit competition and could lead to some domestic companies being unable to compete for work in areas that had more restrictive domestic requirements.

Further, there are very serious constitutional questions presented where a State or local jurisdiction acts to restrict competition from foreign producers in a manner inconsistent with that of the Federal Government. The Constitution vests within the Federal Government the authority to regulate interstate and foreign commerce, and to impose import and export taxes. The Supreme Court has consistently taken the position that States or local jurisdictions are not free to enact regulatory schemes to promote local interests which have the effect of unduly burdening the free flow of commerce. This is particularly true where foreign commerce is affected, since exclusive control over relations with foreign nations is reserved to the Federal Governments's conduct of its foreign trade policies, preventing it from "speaking with one voice"on particular issues, their acts have been struck down by the courts.

Finally the approach taken in the UMTA regulation encourages competition in the transit supply and construction industry. In contracts funded by UMTA, it prevents the total exclusion competitors, technologies, and products by State and local governments while still providing the levels of protection for domestic products called for by Congress in the Buy America statute. The approach in the regulation aids U.S. manufacturers because it means that, in federally-funded transit equipment, they have one set of rules to follow in the area of domestic preference. This permits manufacturers to standardize their transit equipment rather than having to comply with variant procedures. Variant State Buy-America provisions could be especially difficult in bi-state and multi-state procurement contracts. This approach also ensures that the ederal Government establishes the foreign policy considerations that will be involved in the award of Federally-assisted transit grants.

Question. Is there reason for you to be concerned that there is only one car builder remaining in this country, and if work isn't forthcoming for that shop soon, there will be zero car builders?

Answer Yes, we are concerned that the Budd Company is now the only rail car builder remaining in this country. As you know, the Budd Company is owned by a foreign company. We are encouraging other foreign-owned rail car builders to also establish manufacturing facilities in the United States. In addition, we would like to see American-owned manufacturers compete in this marketplace.

RAISED PRICES

Question. Isn't it also true that foreign producers, once they have no domestic competition, tend to drastically raise prices for their goods?

Answer. We believe competition is the essential element which is necessary to ensure the best price. We are deeply concerned that situations where there is only one bidder, and the bidder knows he is the only bidder, could lead to inflated bid prices. However, this is not an issue of foreign versus domestic, but is rather a problem of single-bid situations, even when the single bidder is domestic. Avoidance of single-bid situations is a Congressional mandate in the UMT Act since section 3(a)(1)(C) precludes UMTA from participating in "procurements utilizing exclusionary or discriminatory specifications." The Executive Branch has a separate, but related, requirement for all grant programs in OMB Circular A–102 which requires "open and free competition." Both of these provisions are designed to expand the number of bidders.

Congress struck a balance in section 401 of the STAA (P.L. 95–599) between domestic protection and price competition. Section 401(b)(4) requires that the domestic protection provisions of section 401(a) "shall not apply where the Secretary determines that inclusion of domestic material will increase the cost of the overall project contract by more than 10 per centum." Under this provision, a domestic bidder can be 10 percent higher than a foreign bidder and still be awarded the bid. However, if he is 11 percent higher, the Secretary must waive the application of section 401(a). Section 401 provides more protection in procurements using Federal grants than exists in most direct Federal procurements. The unreasonable cost determination in direct Federal procurement is tied to a 6 percent differential for most areas.

Question. What can be done to establish a healthy, competitive passenger car industry in this country?

Answer. The problems associated with the railcar market have been debated with no universal agreement between the affected constituencies as to the courses of action required to rectify the situation. It is apparent that no single approach, e.g., standardization, is the answer to assuring a stable market because the basic issues are so intermingled with all facets of the rail transit industry, procurement practices and methods, maintenance, training, product improvement, product innovation, management planning, financial constraints, etc., illustrate the nature of this problem.

A key problem with the transit railcar market from the manufacturers viewpoint has been the cyclical nature of car orders. Little has been done by the industry to solve the timing of orders. It has been UMTA's contention that because we have no control over the availability of local share funding, we cannot control the placement of car orders. By closer coordination and long range planning with the properties, a projected schedule of procurements could be derived and leveling of the orders could be achieved. The estimated schedule could be published, updated, and made available to industry.

UMTA has continued to support efforts to stabilize the railcar market by encouraging joint procurements, as with the Baltimore/Miami buy and by staging the procurements to the extent practicable.

Historically, the size of the domestic transit railcar market seems unable to support more than two domestic carbuilders because the U.S. manufacturers are generally geared toward large production orders. The Buy America provision does not seem to have deterred foreign companies. These companies have planned on buying U.S. components and doing final assembly in the U.S.

Other activities aimed toward achieving a healty domestic rail transit industry are being considered, including railcar standardization, alternate procurement practices, standard terms and conditions and product qualification procedures.

STATEMENT OF BRENDAN BYRNE, GOVERNOR, STATE OF NEW JERSEY, ACCOMPANIED BY LOUIS GAMBACCINI, COMMISSIONER OF TRANSPORTATION, STATE OF NEW JERSEY

Senator WILLIAMS. We welcome now Governor Brendan Byrne of the State of New Jersey, appearing in his own right, and also representing the National Governor's Association and the Coalition of Northeastern Governors.

He is accompanied by Lou Gambaccini, who has been here in other capacities, too. We feel comfortable to know our cause will be advanced by your presence.

Governor Byrne. Thank you, Senator.

I don't intend to read the formal testimony which I have submitted to the committee. With your permission, I will mark that in evidence as if it were read in full to the committee, if I may.

Senator WILLIAMS. It will be included in full. I appreciate that.

Governor BYRNE. I think it would be presumptuous for me to appear before a commitee headed by Senator Williams and start explaining mass transportation or public transportion. You have been in the forefront in this field for many years; and before the issues of public transportation came to be appreciated in the present context of both energy crises and inflation.

Yet I come from a State where 600,000 commuters depend on public transportation every working day. So perhaps our State can be used to dramatize in some respects the problem of public transportation. Somehow I think public transportation may be a better word these days than mass transportation. Too many people have come to equate mass transportation with probably the Northeast.

Public transportation is equated with the real problem as it truly exists.

The problems of public transportation in New Jersey I think can be used to dramatize some of the problems that exist and some of the justification for the need for adequate Federal funding levels for a mass transit effort.

I have with me my Commissioner of Transportation. His name is Gambaccini. He has a remarkable background in the field. Prior to running the New Jersey Department of Transportation, he ran a very successful PATH operation for the Port Authority of New York and New Jersey.

There are days he tells me he would like to go back and do that instead of wrestling with some of the problems he has to wrestle with.

Public transportation is in vogue because of the inflation and energy problems. I have, and I know you, Senator, and the committee are familiar with all of the statistics which indicate the advantages of mass transportation in terms of those issues; and I will not repeat them.

The fact is that a State like New Jersey, because of its reliance on mass transportation, is using less energy per capita for transportation than virtually any other State; and it certainly indicates that that is typical of the Northeast States. That there has been a payoff to the rest of the country in terms of energy savings. Because the less energy we use, the less oil we use, the more oil is put in the pot for distribution throughout the rest of the country and indeed throughout the rest of the world.

That impacts on both the energy issue and the inflation issue.

If I may, let me disabuse the committee or the public, more accurately, of the concept that States really rely on the Federal Government to fund mass transit; that we are engaged in mass transit because we have a largesse from the Federal Government; that we do not make much real effort on our own.

I would again, using my State as an example, remind all of us that we have a substantial effort being made on our own. We put before the voters of New Jersey—Senator, you will remember—at the last election a $450 million transportation bond issue. This was primarily for mass transportation.

We also, in raising tolls on the bridges and tunnels between New York and New Jersey, identified a substantial portion of that fare increase for trans-Hudson crossings; and identified a substantial portion of that, $120 million for each State for mass transportation.

We have, through our legislature, just completed the establishment of The New Jersey Transit Corporation. We are in the process of putting together a coordinated transit system which I think will improve bus transportation in New Jersey. So that the State, our State, does make a substantial commitment to mass transit in terms of a State effort, by the State taxpayers dollars.

So without repeating the testimony of the Secretary or without assuming that this committee does not have enough detail, I think that in my position as a Governor from a Northeast State, as the head of the CONEG transportation committee, and as the former head of the National Governor's Conference Committee on Transportation, I can underscore the need for a mass transit bill, a public transportation bill and for the adequate funding of that bill.

If I can be slightly parochial, I think that there are a couple of things that are especially important to our area, and that is of the rehabilitation of transit lines. There has been, and we have tried to downplay a conflict between new starts, and rehabilitation.

That the mass transit system in our State has been in place for a long time. It has lost ridership because of serious deterioration.

We are in the process of electrifying certain lines. We are in the process of replacing buses which are very old, inadequate, and breaking down; of realining schedules and identifying bus lanes.

So I would make this one parochial point. I have an even narrower issue and concern about the so-called series 200 trains and the need for continuing support for the series 200 trains under the AMTRAK system.

Mr. Gambaccini can talk to you a little about that if you are interested. I wanted to touch on the broad general picture, the need for mass transportation, the fact that if we had to rely on automobiles—and frankly, buses, too—to get people out of New Jersey and into New York and Philadelphia every day, we could just not do it.

It is absolutely essential that we have a good public transportation system in our State, and in those States that I am familiar with in the Northeast. We do support the Williams bill; and we are not asking for the Federal Government to pick up anywhere near the entire burden.

We are doing our part. We recognize the need for a partnership. We recognize the State responsibility.

We think we have the kind of partnership that is meaningful, especially in light of the problems which now face the American people.

Thank you.

[Complete statement of Govenor Byrne follows:]

TESTIMONY OF GOVERNOR BRENDAN BYRNE OF NEW JERSEY ON BEHALF OF THE NATIONAL GOVERNOR'S ASSOCIATION AND THE COALITION OF NORTHEASTERN GOVERNORS

I appreciate the opportunity to come before you today on public transportation needs, and in support of the objectives of S. 2296, the Federal Public Transportation Act of 1980. Public transportation is one of the highest priorities in New Jersey and of my administration. I am appearing before you, however, not only as the governor of New Jersey, but as a representative of the National Governors' Association, and specifically on behalf of the coalition of Northeastern Governors' Transportation Committee.

I come before you at a time when this country is in the midst of an energy crisis. As we all realize, the dependence of our Nation upon imported petroleum has resulted in uncontrolled inflation and has endangered our Nation's ability to function independently and effectively. Approximately 50 percent of petroleum consumption is due to transportation uses; 54 percent of all oil consumed for transportation goes into the private automobile. A substantial portion of petroleum usage in this country is due to the public's reliance upon the automobile for transportation.

The President, in recognition of this problem, has called upon us to curb our usage of gasoline principally by relying more heavily on public transportation. It is, therefore, with a sense of urgency and with the need to respond effectively to the energy crisis through improved and extensive public transportation services and that I address your proposed bill.

S. 2296 represents a significant step in assisting State and local governments, in the northeast and in every region of the country, to improve their mass transit services. At this point, I must emphasize the magnitude of the need before us nationally.

The northeast depends on public transportation: rail, and buses. The States represented by the coalition of northeastern governors contain a bus and rail system responsible for carrying millions of passengers daily. New Jersey, for example, carries 600,000 passengers daily. We have the third largest rail system in the country. New York has the largest. We realize that we are not the only region with needs—that there are rapidly growing public transit needs in rural areas and in the growing and newer regions of this country. Personally, I am leading an effort through CONEG to establish a North-South coalition for public transportation so that we can begin to work more closely together to provide the kind of public transportation systems we need in all regions—urban and rural, and to broaden the base of support for public transportation.

But, we in the northeast have watched our aging transportation network seriously deteriorate. We are very much in need of help to maintain and to rehabilitate these systems to keep them going.

In addition, we are now faced with greater demands being placed on existing transit services by those who now look to these systems an an alternative to the automobile. However, our capacity to carry new passengers depends to a large extent on our ability both to replace aged and outdated equipment and to expand our fleet of buses, and heavy and light rail cars. But without sufficient Federal capital assistance to support our essential rehabilitation and expansion programs, we will be unable to accommodate demands or to improve the reliability and performance of our existing systems.

We are moving on self-help solutions. for example, New Jersey has initiated three major programs:

It has arranged with the Port Authority of New York and New Jersey to finance a $600 million program of rail and bus improvement projects, called TRANSPAC, through a $120 million purchase of buses funded by the Port Authority using revenues from its tolls. This should in turn enable us to draw down $480 million from the urban mass transportation administration for rail and bus improvements.

A bond referendum was recently passed by the voters of New Jersey which will raise $475 million for transportation projects, $150 million for public transportation.

And last summer, the New Jersey Legislature passed, and I signed into law, a bill establishing the new Jersey transit corporation as an independent public agency

having the power to effectively operate and maintain public transit services in the State.

The success of these efforts in New Jersey depends to a large extent upon the availability of Federal matching funds to allow us to proceed in a timely manner with our capital program, particularly in the rail modernization area where a substantial amount of improvements are planned. We are at a critical juncture in New Jersey. We are finally moving ahead but we need Federal Assistance to realize these goals. Now is the time to move forward on public transportation, more than ever before.

Nationwide there have been $40 billion of rail modernization, new start and bus service needs identified that require support over the next ten years. I believe that S. 2296 goes a long way toward meeting this important goal. CONEG, the National Governors' Association and, in particular, New Jersey support strongly your six-year $19 billion capital assistance program.

In New Jersey, we undertook an intensive effort over the last year to identify our essential capital needs. We have identified $1.7 billion of clearly essential mass transit capital projects. This $1.7 billion is needed primarily to rehabilitate and retain our existing system and not for extensive new starts.

To be candid, New Jersey needs $248 million in Federal capital assistance in fiscal year 1980 alone to simply be able to keep current commitments and projects on line. Those applications have already been submitted to UMTA. New Jersey's funding from section 3 last year was $97.5 million. We have been told that we cannot expect any substantial change in that figure for fiscal year 1980, if we even get this amount. Therefore, less than one-half of our real needs will be met. Commuter frustrations and project costs will continue to escalate.

Rail modernization needs, in my judgment, represent one of the areas of greatest need within transportation. S. 2296 calls upon the secretary to submit to Congress a plan to meet these modernization and rehabilitation needs. I support the type of allocation formula proposed in S. 2296 because it examines the total need and makes an attempt to realistically and rationally relate those needs to actual funds available.

I further support the effort made in Congressman Howard's mass transit bill to assess more rationally and systematically the Nation's new start needs. We must find a way to adequately provide for both kinds of need, and in the right proportions. We must get a better handle on and more control over the way in which we assess our mass transit needs and the way in which we fund them and allocate resources. And we must move toward a system that will ensure longer term financial stability.

New Jersey and CONEG strongly support the provision in S. 2296 enabling the Secretary to purchase public transportation equipment. The transportation manufacturing industry has declined to a point where there are only two major transit bus manufacturers and only one rail car manufacturer in the United States. Although demand for rail and bus rolling stock has increased, the manufacturers are understandably reluctant to gear up to meet present levels of demand without some assurance that demand will continue. Giving the Secretary the authority to purchase transit equipment directly would enable him to step in during periods when demand has fallen off to maintain production, thus stablizing the transit manufacturing industry. This provision has the added benefit of allowing the Secretary to create a strategic fleet reserve so that equipment is immediately available for service expansions during energy emergencies when additional equipment is required.

S. 2296 also revises and extends the operating assistance program. Over the years, many states have made substantial contributions to the operation of their transit system. Most states, especially in the Northeast, have subsidized public transit services to the fullest extent possible. Fare box revenues account for a substantial portion of the cost of operating the service. In New Jersey, our fares cover anywhere from 40 percent to 60 percent of the cost of operating the service. But as the costs for operating transit service has escalated exponentially, and despite the fact that states and local agencies have increased their support and have been willing to increase fares, federal operating assistance as a percentage of costs is constantly diminishing and will continue to do so. For example, using existing authorization levels New Jersey's Federal share costs declined from 20 percent in 1979, to 19.5 in 1980 to a projected 16.8 percent in 1982. The Massachusetts Bay Transportation authority's Federal share of costs, also based on authorization levels will decline from 10 percent in 1979 to 7 percent in 1982.

Given that state and local resources have been stretched to the limit, I believe strongly that the Federal share of costs must be dramatically increased. Without

such increased assistance, we will be forced to raise fares even further and reduce services, certainly actions which are contrary to our National efforts to encourage greater use of public transportation. For these reasons I support the authorization levels in S. 2296 for operating assistance.

I would like to make one suggestion regarding the Federal Operating Assistance Program. There are times, such as the gasoline shortage we endured last summer, when there is a quantum leap in demand for public transportation services. If transit agencies are to meet this added demand during energy emergencies, there must be funds set aside to permit agencies to get an additional service on the road on an expedited basis. The creation of an emergency standby operating assistance fund to be used in the event of a national energy emergency, as declared by the President pursuant to the emergency energy conservation act of 1979, would make available the necessary money to provide transportation for those who are unable to use their automobiles. Such a program would complement the strategic fleet reserve program and could be funded at an approximate level of $100 million.

We also support the proposed bus capital assistance formula revision proposed in S. 2296. It is generally recognized that the current formula using population and population density does not adequately reflect the capital needs of transit agencies. Linking capital assistance to operating characteristics, such as bus revenue vehicle miles, will provide a more realistic basis for the formula allocation of bus assistance and ensure that funds are directed to the areas most in need as evidenced by their higher service levels.

S. 2296 would also ease the uncertainty of state and local governments regarding the actual level of appropriations for the following year by making appropriations one year in advance. Uncertainty arises becauses regretably in recent years appropriations have not equaled authorized levels for operating assistance. Permitting appropriations to be made one year in advance will ease budgetary uncertainty by letting state and local agencies know in advance the level of federal assistance. This will enable localities to better assess available resources against anticipated needs and adopt the appropriate fiscal strategy.

Finally, S. 2296 provides an interim solution to the issue of the possible discontinuance of certain Amtrak intercity trains now scheduled for discontinuance on April 1, 1981. In the USDOT Amtrak restructuring report of 1979, several trains which had been historically operated by Amtrak as intercity trains were identified for discontinuance by October 1, 1979, because they exhibited certain commuter service characteristics. The Amtrak Authorization Act of 1979 continued these trains through April 1, 1981. These trains include the 200 series trains which operate between Philadelphia and New York, the Philadelphia-Harrisburg service, the New Haven-Springfield trains, the Blue Ridge service operating between West Virginia and Maryland and a few others. We support the grandfathering of these trains within Amtrak. We believe these trains which are heavily patronized are essential parts of the Amtrak system and their operation contributes substantially to the goals of energy conservation and increased rail ridership. The cost to Amtrak to continue these trains would be only $5 million and is not unreasonable when you consider the tremendous burden that would be placed upon the commuter agencies if taken out of the Amtrak system. If the commuter agencies were required to assume these costs, it would pose substantial financial, administrative and legal problems that it would make the continuation of these trains highly problematical. We support the provision in S. 2296 which would continue these trains within the Amtrak system through fiscal 1985 but with the recognition that this is an interim step to eventually grandfathering the trains into the Amtrak system and to resolve this issue once and for all.

In closing, I would like to make one final point. Very recently we have heard that substantial cuts are to be made in the fiscal year 1981 budget of, among other departments, the USDOT to help fight inflation. We believe it is unwise to decrease Federal assistance to transportation programs which are tied closely to the fight against inflation. It is well recognized as I said earlier that one of the prime causes of inflation is the rapidly escalating costs of imported oil. In order to curb inflation, we have made a national commitment to reduce our dependence on foreign oil through conservation efforts and a greater reliance on public transportation.

If we are to see further reduction in the support of public transit services, we cannot expect to provide the quantity and quality of service which will effect a transition from the automobile to public transportation. Consequently, if we are serious about our commitment to reduce domestic gasoline consumption and thereby control inflation, then we must increase support for public transportation and not decrease it.

Thank you for giving me this opportunity to appear before you today and present my views.

Senator WILLIAMS. Thank you very much, Governor. It is remarkable—and I know it personally, of course, coming from New Jersey—the degree from which the State from a slow start some years back has come on to make a State contribution to the improvement of public transportation. Remarkable indeed; and within the last 4 years, particularly.

As you meet with your colleagues, the Governors of other States, do you sense that other States are, to a similar degree, making this contribution from a State level to public transportation?

Governor Byrne. Yes. I think it varies a little bit from State to State. I have had the experience in the last year of meeting with the Southern Growth Policy Council in North Carolina at this annual meeting, and at an annual North-Summit to meet with the Governors who constitute what they call WESTPO, a Western Governors' association.

Public transportation was on both agendas. There is no question that the various States recognize more and more what the problem is and the need to respond by taking some State responsibility and working with the Federal Government.

Senator WILLIAMS. Relying on the discretionary program of section 3 for rail rehabilitation and modernization, it has impressed me that there has been an uncertainty of results and a lack of emphasis on the effort. Therefore, in the bill that I have introduced, we have used the formula approach in part to meet the needs of rail modernization.

I wondered if this has been considered by you, Governor Byrne, and by your commissioner, and whether there is a sense that it is far more equitable and far fairer to have this formulized rather than rely entirely on the discretionary grant approach?

Governor Byrne. The commissioner may want to talk on that particularly.

Mr. GAMBACCINI. Yes. Senator, if the funding level is sufficient, obviously, we prefer the allocated basis. It's worked very successfully on the highway side.

The problem has been insufficient funding, the severe competition of new starts with rail modernization. I, for one, applaud the direction of your bill which is based upon an orderly assessment of need and then an allocation consonant with that need.

I particularly am struck, since I have been in this job for 2 years, at the relentless way in which the highway program which was described—for example, the interstate system—was described as to need 25 years ago and is still being funded to accomplish the original specific objective instead of the current need.

Unfortunately, I think many of our transportation programs other than highway, particularly intercity rail and transit, have been more the captive of the capricious budget process and how much funding is available without regard to where the needs are, and without a rational approach to the expeditious completion of those things that should have been done a long time ago.

I, for one, believe deeply that there can be no question but that the repair and rehabilitation of existing rail infrastructure should be a national, priority-1 objective, even ahead of expansions, capac-

ity, and the like, in order to stabilize what we have, in order to set the stage for expansions, to increase ridership and really go at the kinds of energy objectives the President has stated and so many others are articulating currently.

Senator WILLIAMS. I wonder with your long experience, deep background in transportation, does the formula—well, first, do the basic conditions for the application of the formula that we have described in that bill make sense in practical terms?

Is there a way to move into an area and assess—be able to understand the needs for rehabilitation and modernization so they can be stated in quantitative terms?

Mr. GAMBACCINI. I believe so, Senator. I particularly like also your approach in getting an, in effect, interim fix on that, but then a more refined fix a couple of years later. I definitely think it is possible to do so. There has not really been an intent to try to identify those needs.

Perhaps there is some element of fear one would then have to cope with what was then articulated in the way of need. I think this is the sensible way to go if we are for real as to rational policy about trying to set the stage for greater reliance on public transportation, energy conservation, and the like.

Senator WILLIAMS. Thank you. Senator Tsongas?

Senator TSONGAS. Mr. Chairman, I have an 11:30 commitment that I have to go to. I apologize for not being here.

Just two questions. One, has the National Governor's Association taken a position on Senator Williams' bill per se, 2296?

Governor Byrne. I don't know that it has taken a position on that bill. There are very few policy positions that the NGA takes on specific bills. They take positions on general principle.

There are an abundant number of resolutions from NGA on the basic principle. But their policy positions and the Williams legislation are consistent. The NGA is supportive.

Senator TSONGAS. Will we have a chance to see any kind of analysis of 2296 as opposed to the administration's bill from your organization?

Governor Byrne. You will get it from me if not from the organization.

Mr. GAMBACCINI. You are asking about the NGA? We have, functioning as the Governor indicated, a functioning transportation committee. I would say without question each of those organizations will be producing specific position papers on each of the bills.

As the Governor indicated, I think it is fair to say that both CONEG and NGA have generally supported the major principles as outlined.

We simply don't have a lot of the data we need or have not had the opportunity to analyze the practical impact of Senator Williams' proposed allocation formula. We like the idea but want to see how it impacts our respective members.

Senator TSONGAS. I will not be here for the testimony of the next panel, Mr. Chairman, but I would note that the bill that you and I put together on the Community Energy Act is in the process of seeking cosponsors. We would be delighted to have the two men from Pennsylvania and California join us and I would lobby the mayor of Pittsburgh and the city council of Los Angeles that since

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this is the cities' bill, that we could welcome their efforts on that behalf.

Thank you.

Governor Byrne. If I can make one more observation, I was interested in the dialogue between Senator Heinz and the Secretary on funding levels in terms of budget cuts.

I headed the National Coalition on the Windfall Profits Tax, and I think we had some impact on the passage of the windfall profits tax.

One of the representations made by the citizen coalition was that a substantial component of the windfall profits tax would be for mass transit; and I think it was sold on that basis.

I believe that if there were cuts out of, especially, the windfall profits tax in the field of mass transit, that it would belie the representations that were made in gathering public support.

Senator WILLIAMS. I am glad you brought this up, Governor. It is very significant. There might be an early test this year on that when the time for consideration of the supplemental appropriations comes up.

Thank you.

Senator WILLIAMS. We now invite the Honorable Richard Caliguiri, mayor, city of Pittsburgh, representing the U.S. Conference of Mayors and the Honorable Robert Farrell, council member, city of Los Angeles, representing the National League of Cities.

STATEMENT OF RICHARD CALIGUIRI, MAYOR, CITY OF PITTSBURGH, REPRESENTING THE U.S. CONFERENCE OF MAYORS; AND ROBERT FARRELL, COUNCIL MEMBER, CITY OF LOS ANGELES, REPRESENTING THE NATIONAL LEAGUE OF CITIES

Senator WILLIAMS. Welcome.

Mayor CALIGUIRI. Because of the length of time taken by the previous witnesses, I will edit my remarks. I have made available to the committee the full testimony that I have presented as well as other materials and background information from the conference of mayors, that has been done over the past summer.

As you know, the conference represent cities of 30,000 population and over.

Senator WILLIAMS. All of these materials will be for our record.

Mayor CALIGUIRI. There is no doubt in my mind as mayor of a major city that the next 10 years, the decade of the eighties, are critical years for our cities in this country. One of the key elements has to be where we are going with mass transit.

Your bill along with the administration's bill are two elements that the conference of mayors and most mayors feel is a very good start in tackling this critical problem of mass transit in all of its forms. If we are in any way going to try to correct the energy crisis and our consumption of gasoline, it has to be through our transit systems.

In Pittsburgh, we have done a number of things besides winning Super Bowls and World Series, which we are quite proud of. I hope when Chuck Tanner and Chuck Noll decide to quit, that I can get them into my administration.

We are proud of what we have been doing in Pittsburgh. One of the key elements of bringing our downtown alive again is a subway

system that will be within the Golden Triangle, plus an exclusive bus lane running throughout our eastern and southern suburbs.

We have a grant now through the Federal Government to continue this process, and we are hoping that we will see a reauthorization of the UMTA programs.

Transit ridership in Pittsburgh has increased some 13 percent over the last year. I am sure you will see this across the country. There is no doubt that in the months ahead, that increase will continue at a dramatic rate.

The difficulty we have is that, as you know, the fare box will only bring in anywhere between 20 and 30 and 40 percent of the operating costs. Pittsburgh just this past month had to raise its cost between 10 to 15 cents on that fare.

I think that increase makes our fare probably one of the highest in the country at this time; but we know that we have to do our share. By the same token, we have to look for help from the State and Federal Government.

Senator WILLIAMS. What is the basic fare? I missed that.

Mayor CALIGUIRI. There are different zones, Mr. Chairman. The basic fare is about 80 cents for one of the smaller zones, limited zones in Pittsburgh.

Senator WILLIAMS. The shortest ride?

Mayor CALIGUIRI. Yes.

Senator WILLIAMS. The fare box is contributing heavily.

Mayor CALIGUIRI. My own personal opinion of that is that in some way we have to be able to lower these fares if we are in any way going to get people to use the transit system. There has to be ways of reducing that fare. Hopefully, it won't be all through subsidies through the Federal Government; but also through a modernization of our transit systems, a better way of delivering that system to the people, a more convenient way.

In that way, we can get both ridership and hopefully a reduction in fares to get people on the system. We are looking to do a number of those items in Pittsburgh.

Again that goes back to the bills that you have and, of course, one that Neil Goldschmidt indicated earlier that the administration has.

We are also looking at the windfall profits tax, another item that is going to bring in billions of dollars over the next 10 years. We are supporting those items that are in S. 2296 in the hopes that we can use those dollars under sections 3 and 5 for capital improvements and operation of the transit system.

I guess in conclusion, Mr. Chairman, this bill of yours and the bill of the administration couldn't come at a more opportune time, particularly for the Northeastern cities—the older cities in this country, in order for us to revitalize ourselves, to make these cities grow. Transit is growing to be a large aspect in those cities.

I want to commend you and what you have done over these past months in being a strong proponent and advocate of mass transit, things that are necessary for the cities.

At this time, I would conclude my testimony and allow my colleague here, representing the League of Cities, to continue and answer any questions you might have.

[Complete statement of Mayor Caliguiri follows:]

STATEMENT OF

THE HONORABLE RICHARD S. CALIGUIRI
MAYOR, CITY OF PITTSBURGH

on behalf of

THE UNITED STATES CONFERENCE OF MAYORS

Mr. Chairman, my name is Richard S. Caliguiri, Mayor of the City of Pittsburgh. I am here today on behalf of the U.S. Conference of Mayors, which is composed of the nation's cities with populations over 30,000. Within the Conference I serve as a vice chairman of the Transportation Committee.

The Conference is pleased to be here this morning to present our views concerning reauthorization of the Urban Mass Transportation Act.

We approach this hearing with deep concern, but not without optimism.

Our concern is focused on the continuing energy crisis. Nowhere is the impact of it more severe than in the nation's cities. The Conference of Mayors study, The Gasoline Shortage and the Cities, which I wish to submit for the record, prepared at the height of last summer's crises, proves this point. We are optimistic for three reasons.

First, after years of struggle, it is finally clear to all that public transportation must be the center of national energy conservation and transportation policy.

Secondly, in Neil Goldschmidt we have a Secretary of Transportation who is not only one of our own, but understands the link between energy and transportation as do few in this country. He proved that in Portland.

Finally, Mr. Chairman, we have the benefit of your continued leadership within this Committee and the Congress. That has been the most important element for over twenty years in the creation, growth and maturity of the federal public transportation program. This hearing today is an extension of the solid foundation you have built and the Mayors are grateful to you for it.

Mr. Chariman, good progress is being made in cities all across the country in public transportation, with the help of the Urban Mass Transportation Administration. Pittsburgh is a proud example. We have received funding approval and will begin construction by mid-year of a 10.5 mile light rail line, mostly above ground, that will connect downtown Pittsburgh with southeastern suburbs and terminate in a major shopping center. Pittsburgh has been both creative and cost effective. We have managed to keep costs at a reasonable level by rebuilding track from our old trolley line and using an existing Penn Central railroad tunnel. The 10.5 mile light rail line will be integrated with our existing 12½ mile trolley line. In fact, we will be using about 45 of the old trolley cars on the new line, along with 55 new vehicles to be purchased in the future.

The key station on the new light rail line, Midtown, is the focal point of another UMTA project underway

in Pittsburgh. Last year, The Port Authority of Allegheny County received one of the first Urban Initiative grants for a project including approximately 30,000 square feet of retail space, one million feet of office space, a 600 room hotel, an "open space" plaza, pedestrian accessways, 1,500 parking spaces, and the new underground light rail station. The project is a cooperative effort between the city, Port Authority and the property owner/developer, U.S. Steel. A new possibility for the project now being discussed is construction of residential units by U.S. Steel on the parcel of land directly over the station. The entire project is a vital element in downtown Pittsburgh's revitalization, linking other major existing buildings to insure their continued maintenance and use. This illustrates what we have all said for years -- transit improvements can be a superb catalyst for urban economic development.

In addition to the fixed guideway projects in Pittsburgh, we have also had great success with busways. Five miles of exclusive busways on the southern arterial (Route 51) going into the city, last year showed increased bus ridership by 13 percent and a reduced trip time to downtown of 10-15 minutes. We have a 7-mile busway to the east now under construction that is scheduled to be completed in 1982. The $110 million busway is funded by UMTA and

parallels the Conrail mainline tracks into downtown. It terminates on Grant Street, which is undergoing a $12 million facelift with funding from the Federal Highway Administration and about $2 million from the affected building owners on that street.

Mr. Chairman, with your help the nation's cities have become transportation and energy conservation leaders. We can do more and better. That's what this hearing is all about.

As we look to the future, the nation's Mayors want to help the Administration and the Congress balance the needs and the resources to do the job in public transportation.

The Windfall Profits Tax and S.2296

Phased oil price decontrol is in effect. This means that gasoline prices will rise. That will bring about a big increase in the demand for public transportation. Since last spring alone, ridership has been increasing at over 7 percent over the previous year. If this continues -- and it is certain that it will -- transit ridership will double over the next decade.

Congress has all but finalized the Windfall Profits Tax and indicated that a portion of these revenues should be available for public transportation purposes. We supported earmarking 25 percent of the windfall tax into a

public transportation trust fund. Congress has chosen to put those funds in the general revenue and have specific earmarkings accomplished by the normal Congressional authorization and appropriation process. Mr. Chairman, your proposal, S.2296, the Federal Public Transportation Act of 1980, and these speedy hearings are a direct response to our need to move quickly to turn the promise of the Windfall Profits Tax into reality.

At the time the Administration submitted its original gross windfall proposal of $140 billion, oil was $16 per barrel, gasoline was 85 cents per gallon and the proposal for new public transportation expenditures was $16.5 billion.

However, since that time, oil has increased to over $30 per barrel which has driven the gross windfall profits tax estimate to $410 billion. This same force has meant gasoline prices of $1.25 per gallon and rising. This means a much greater increase in the demand for public transportation.

Mr. Chairman, S.2296 rightfully reflects these drastically changed circumstances. The new realities of the price of oil and the demand for public transportation illustrates the need for a program in excess of the Administration's proposed $16.5 billion.

S.2296 would set the stage for a comprehensive public transportation growth program for the 1980's, including assistance for buses and bus-related facilities, rail modernization, new rail starts and extensions and operating assistance.

Of our national fleet of 52,000 buses, more than 25 percent (14,000) are over-age. To double ridership, we will have to replace those and enlarge the fleet by 70 percent. This will mean new maintenance facilities and better procurement policies. The provision of S.2296 which would allow DOT to purchase buses directly for transfer to cities is an excellent one. It will help both cities and bus manufacturers alike.

The UMTA Discretionary Assistance Program and S.2296

S.2296 will greatly help to enhance a significant national resource, our existing commuter rail and fixed guideway systems. Cities with rail have the lowest per capita energy consumption.

S.2296 would correct an important gap in the rail modernization effort -- it would create a goal and policy for the program which has always been lacking.

S.2296 would create a national comprehensive rail modernization program, based on a needs survey which would be used to assist DOT to allocate funds among

urbanized areas. This will help not only rail modernization, but will also end confusion and clarify the capital needs for bus and bus facilities, new starts and extensions and other programs. With S.2296 we will have sharp goals -- and a means to achieve them. We support this with enthusiasm.

We also believe that the Committee should adopt a separate section within the discretionary program for new starts, extensions and automated systems projects, with a ten-year authorization. As a start, we recommend a level of $8.3 billion which could be used to finance projects such as continuation of rail lines in Atlanta, Baltimore, Buffalo and Miami; new starts in Detroit, Los Angeles, Portland and Honolulu; downtown people movers in several cities; extensions in New York, Chicago, Pittsburth and Philadelphia and new commitments on extensions in New York, Boston and Philadelphia.

This would go a long way towards ending uncertainty within Congress and the cities as to exactly how much in authorized funds are available for issuing letters of intent to finance major construction projects. It will also be most useful for this Committee to be involved in the letter of intent process, as S.2296 proposes.

Formula Assistance and S.2296

S.2296 increases the funds available for operating assistance. That makes sense. As demand increases, so will operating costs. We'll need more drivers. And every 3 new buses requires a new maintenance person. And fuel costs will continue to rise.

Since 1975, we have had a federal-state-local partnership in supporting the operating costs of public transportation. Over the next decade, this should be maintained. Cities will have to continue to develop innovative transit financing methods. The Conference of Mayors draft publication, Transit Financing, which I would like to submit for the record, reports on some of these. However, the partnership will be the foundation for the future.

The Administration estimated the operating assistance program for the next five years at $7.25 billion. Because of increased ridership and inflation resulting from decontrol, we believe that the $10.7 billion range reflected in S.2296 would be more appropriate. This increase would allow the total federal amount to approach 25 percent of costs by 1985, including the larger areas of the country. S.2296 also includes a provision for a one-year advanced appropriation for the Section 5 program. We strongly support

this provision which will greatly help in the local government budget planning process. We also support the provision of S.2296 to continue support of certain Amtrak commuter operations. There is a national need for a commuter rail assistance program and this portion of S.2296 will help move us towards meeting that important goal.

Towards Reauthorization

Mr. Chairman, by virtue of Secretary Goldschmidt's testimony this morning, as well as your own S.2296, it is clear that both the Administration and this Committee have given great thought and consideration to effective reauthorization of the UMTA program. Cities from all across the country will be meeting later this month to continue to review the specifics of all proposals in this area. However, the U.S. Conference of Mayors believes we are off to an excellent start with S.2296 and this hearing, for which you have our thanks.

We look forward with great eagerness to working with this Committee and the Administration to fashion a final package, which will build upon the record of public transportation as an anti-inflation and energy conservation weapon.

The U.S. Conference of Mayors appreciates the opportunity to present our views this morning and would be pleased to respond to any questions.

THE GASOLINE SHORTAGE AND THE CITIES

Impact and Action — A 100 City Survey

June 27, 1979

UNITED STATES
CONFERENCE OF MAYORS

INTRODUCTION

The staff of the U.S. Conference of Mayors has prepared this survey, The Gasoline Shortage and the Cities, to provide a timely report on the impact of the gasoline shortage of recent weeks on our nation's cities and the actions taken by these cities to deal effectively with this difficult problem.

It illustrates, in a wide variety of cities, that while impacts are diverse, few cities have fully avoided the effects of the gasoline shortage.

Whether the result is gas lines, increased public transportation ridership, higher prices, or municipal gasoline belt-tightening, it is clear that the gasoline problem has arrived in many of our cities. Cities also face substantial uncertainty regarding future supplies of gasoline and the potential impact of continued, or increased, shortages on municipal services and consumer needs.

Following this Introduction, the report contains a brief Background section which discusses how the survey was undertaken and reviews some of the definitions and concepts used throughout the report. A Summary section reviews the key findings of the survey and includes a table which arrays the basic information on a city-by-city basis. The Recommendations section outlines some suggestions for dealing with the shortage. Finally, the City Profile portion of the report provides a brief synopsis of each of the 100 city situations as reported to Conference staff.

The U.S. Conference of Mayors hopes that the information contained in this report will prove useful to the public and policymakers as we continue to work towards effective policies to manage the nation's energy needs.

Sincerely,

John Gunther

John J. Gunther
Executive Director

BACKGROUND

For the period of June 20-27, the United States Conference of Mayors staff conducted telephone interviews of one hundred cities across the country to determine the impact of the gasoline shortage and some of the actions taken to deal with it. The fifty largest cities were contacted, as well as a sampling of other population groups. While not a scientific survey, the one hundred cities sampled do represent a broad range of city sizes and geographic locations.

Information was collected in a variety of areas: the incidence of gas lines, restrictions on gas sales, impact of the shortage on municipal services, impact of price increases on budget, allocation fractions being applied to city gasoline supplies, contingency plans to reduce consumption, public transit ridership, applications to the state set-aside, gasoline reserve and familiarity with federal allocation regulations, among other areas.

Because of the timely nature of the survey and the differing perceptions of city government officials, the data presented here is not meant to give definitive information about the cities surveyed. Comparable data is not available for all cities. Nonetheless, the survey does provide an early indication of the depth and breadth of the problems confronting Mayors in the gasoline shortage. Below is a brief description of factors included in assessing each of the categories reported in the table of city impacts and actions which appears in the Summary section. Additional information is included in the City Profile section of this report.

Gas Lines. Perceptions of the incidence and extent of gas lines vary by city. Furthermore, some cities had gas lines on weekends, but not during the week. For the purposes of this analysis, a positive indication (X) means only that the city considers itself to be experiencing gas lines. It does not indicate that the lines are constant or that all stations have long waits for service; nor does it mean that gas lines are a daily occurrence. It merely states that the city in question believes it has had sufficient supply disruptions--from whatever source--to affect service stations' operations.

Odd/Even Sales. A positive indication (X) of odd/even sales means that such sales have been mandated by state or local government. Voluntary odd/even sales restrictions are not included; they are categorized under "Other Restrictions." The information in this section of the survey is

accurate, but may be quickly outdated. During the course of the survey, for example, a number of Florida counties instituted odd/even sales. In those instances where changes were known, cities were resurveyed. However, more state and local governments may have implemented this program since the day of the survey.

Other Restrictions. This category includes minimum/maximum purchases, reduction of hours of operation, staggered hours of operation, and weekend closings. If cities reported that many or most service stations were restricting sales or hours, a positive indication (X) has been noted on the table.

Contingency Measures. This category is intended to show action by city government to reduce consumption in response to the current gasoline shortfall. It is not an indication of the presence or lack of ongoing conservation programs. In fact, almost all of the cities surveyed had instituted vehicle fleet conservation programs prior to this latest supply disruption. This category attempts to determine whether cities have been forced to undertake additional reduction measures to keep consumption in line with available supplies. Implementation of contingency measures does not necessarily correlate with a reduction in city services, but does mean that the city has taken additional steps--over and above existing programs--to reduce consumption.

Transit Increase. This category denotes whether or not a city has seen a recent increase in public transit ridership. In many cases, analysis of current data has not been completed or is not yet available. Estimates provided to the Conference of Mayors may be for earlier months (April, May), or may be a subjective judgment on the part of the respondent. A few cities noted an increase in transit ridership, but felt it was possibly due to other factors, such as earlier promotional campaigns. Not all cities contacted had mass transit systems or had access to data for regional transit systems. Thus, the absence of a positive response may not accurately reflect local conditions in all cases.

SUMMARY

A U.S. Conference of Mayors survey of one hundred cities shows that the gasoline shortage is being felt in some form or another in almost every community. While the impact on city residents has varied across the country--with some cities reporting no gas lines or availability problems for residents--almost every city government contacted reported impacts on city operations.

Financial Impact

The current energy situation has hit city governments in two areas: budget and supply availability. The combination of the two threaten cities' capabilities to continue to deliver municipal services on a "business as usual" basis. All cities have had to contend with sharp and rapid increases for gasoline and diesel fuel. Many cities had budgeted for price increases, but not of the magnitude experienced. Lincoln, Nebraska has witnessed a 140 percent increase in the price of fuel since September, 1978. Albany, Georgia estimates a 125 percent price increase. Prices for gasoline have risen 23 percent in the last quarter in Los Angeles. Faced with a projected one-half million dollar overrun in fuel costs, Oakland, California has instituted contingency measures to reduce the deficit.

The full impact of the price surge for gas and diesel fuels is difficult to assess. Cities approaching the end of their fiscal years in the first half of 1979 have been particularly hard hit. Those cities at the beginning or middle of their fiscal years are not yet sure whether budgeted levels will be able to cover costs, or how great any cost overruns will be. Other cities have fixed-price contracts with suppliers, insulating the city from price increases for the contract period.

The steep price increases are bound to have an impact on delivery of municipal services. Portland, Oregon, for instance, reports that it is forced to cutback on filling potholes, due to a 100 percent increase in the price of asphalt, a petroleum product. Other cities confronting actual or potential budget overruns have re-emphasized the importance of efficient use of energy. These approaches are an attempt to reduce consumption without cutting into the actual delivery of services.

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Shortage Impact

The availability of gasoline and diesel fuels has had an equally serious impact on city operations. Almost every city surveyed was operating with an allocation factor of less than 100 percent. Only five cities reported receiving 100 percent of their use needs.

In most cases, reduced supplies have not yet meant a reduction in city services. However, the combination of price increases and short supplies may soon force cities to undertake a cutback in service. To mitigate the impact of reduced supplies, cities have undertaken a wide variety of initiatives. Some cities have a large storage capacity for gasoline which has allowed them to stockpile fuel, reducing the impact of shortages in the near term. Others have gone to spot purchases at retail outlets to augment existing supplies. Finally, some cities have applied for state set-aside gasoline supplies for additional fuel. The state set-aside is an additional reserve of gasoline available to meet hardship cases, as determined by the state.

The curtailment of gas supplies to city governments has, in many cases, prompted implementation of contingency plans to reduce municipal consumption. Virtually all of the cities surveyed have had vehicle fleet conservation programs in place for a number of years. These programs have focused on the purchase of more fuel-efficient vehicles, reduced discretionary use, better driving habits, and improved planning for vehicle use. As a result of these programs, many cities--for the present--have been able to maintain the current level of service deliveries. Of the cities surveyed 81 percent, however, were undertaking additional contingency measures, either to meet current supply shortfalls, or in expectation of further reductions in supply. In virtually every case, essential city services--fire, police, and sanitation--are all being maintained at existing levels as long as possible. Beyond that service group, approaches to cutting consumption fall into two categories: cities instituting across-the-board cuts, i.e., reducing all department vehicle use by the same fraction, and prioritizing services, cutting non-essential services, such as street tree trimming, first.

Cities are also encouraging car pooling and public transit use by city employees. For example, San Antonio is offering reduced parking rates for car pooling employees and using parking revenues to help subsidize bus passes for other city employees.

Federal Allocation Impact

Cities which had instituted strong vehicle fleet conservation programs are discovering that application of federal allocation regulations seriously threatens municipal services and casts a pall over ongoing conservation programs. With the exception of essential services (police, fire and sanitation), allocations for city vehicle fleets are computed using a base year--currently 1978--to determine consumption levels. The allocation fraction represents the percentage of 1978 consumption which a city will receive from its suppliers for 1979 supplies. Thus, cities with strong conservation programs find allocation fractions being applied to diminishing historic consumption patterns, resulting in even less fuel being supplied. As a consequence, those cities are finding that allocations are cutting into the bone of city services, rather than any fat from profligate use.

Cities which have made substantial reductions in consumption thus find themselves with insufficient supplies. Those cities are reluctant to undertake further conservation measures--not from any unwillingness (since budget considerations may mandate such measures)--but from a fear that a change to a new base year for computations may cripple the city government's ability to protect the health and welfare of its constituents in the future.

The combination of much higher prices, shortages, and federal allocation regulations has endangered city governments' abilities to provide residents with city services. Further reductions in supplies or still higher price increases may affect every city in the country. Past conservation efforts by cities have helped to mitigate the impact for the near term, but may penalize those urban centers in the future. Long term shortages and rising prices will demand increasing ingenuity of Mayors to meet the crises, and may force cities to begin to cut back on municipal operations.

Gas Lines

The two primary community impacts have been expressed in terms of gasoline availability and public transit ridership. About 47 percent of the cities reported gas lines of varying length and frequency, with one northeastern city reporting an eight and one-half hour gas line; 26 cities said odd/even gas sales restrictions were in effect; 46 percent said that some form of restrictions on sales were in effect, ranging from staggered hours of operations for stations to station-imposed minimum or maximum purchases. Odd/even sales restrictions were in place in 22 of the cities reporting gas lines.

Public Transportation

Public transportation ridership was up in 77 percent of the cities surveyed. Many cities did not have current data, but even preliminary figures show a dramatic upswing in riders. Interestingly, use of transit systems had increased in cities which were not experiencing gas lines, suggesting a consumer response to the price impacts of the shortage as well as to curtailed fuel availability. In some cases, increases were over and above already rising use trends. In a few instances, increases were due to expanded services or marketing efforts.

The increase in ridership has severely strained the peak hours capacity of transit systems across the country. Commuter trains serving Rockville, Maryland and Washington, D.C. are "standing-room only." Spokane, Washington reported a 40 percent increase in mass transit ridership. Madison, Wisconsin, a city with historically high use of public transit, has seen a 25 percent increase in riders. To help ease the situation, some cities have instituted staggered work hours, encouraging similar action in the private sector.

While impacts may be on the municipal government or community, it is clear that the gasoline shortage, and the uncertainty which it promises for the future, has arrived in many of our nation's cities.

City	Gas Lines	Odd/Even Sales	Other Restrictions	Contingency Measures	Transit Increase
Albany, Ga.				X	
Albuquerque, N.M.				X	
Ann Arbor, Mich.	X		X	X	
Atlanta, Ga.			X	X	X
Austin, Tx.				X	X
Baltimore, Md.	X	X	X	X	X
Berkeley, Ca.	X	X	X	X	X
Billings, Mont.				X	X
Birmingham, Ala.				X	X
Boise, Ida.				X	X
Boston, Mass.	X		X		X
Boulder, Colo.			X	X	X
Buffalo, N.Y.				X	
Burbank, Ca.		X	X	X	
Burlington, Vt.				X	X
Canton, Oh.	X			X	
Charleston, W.Va.			X	X	X
Chicago, Ill.	X			X	X
Cincinnati, Oh.	X		X	X	X
Clearwater, Fla.	X		X	X	
Cleveland, Oh.	X		X	X	X
Columbus, Ga.					X
Columbus, Oh.				X	X
Dade County, Fla.	X	X	X	X	X
Dallas, Tx.	X	X	X	X	X

City	Gas Lines	Odd/Even Sales	Other Restrictions	Contingency Measures	Transit Increase
Dayton, Oh.				X	X
Denver, Colo.				X	X
Detroit, Mich.					X
Duluth, Minn.	X	X	X	X	
Elizabeth, N.J.	X	X	X	X	X
El Paso, Tx.				X	
Erie, Pa.			X	X	X
Eugene, Ore.					X
Ft. Lauderdale, Fla.	X	X	X	X	X
Fort Worth, Tx.	X	X	X	X	X
Garland, Tx.	X	X	X	X	X
Gary, Ind.					
Greensboro, N.C.					
Honolulu, Haw.					X
Houston, Tx.	X	X	X	X	X
Huntington, W.Va.	X			X	
Indianapolis, Ind.				X	X
Jackson, Miss.	X				X
Jacksonville, Fla.				X	X
Kansas City, Mo.	X			X	X
Knoxville, Tn.				X	X
Lake Charles, La.				X	X
Las Vegas, Nev.					
Lima, Oh.				X	X
Lincoln, Neb.				X	X

City	Gas Lines	Odd/Even Sales	Other Restrictions	Contingency Measures	Transit Increase
Los Angeles, Ca.		X	X	X	X
Louisville, Ky.	X			X	X
Madison, Wis.				X	X
Manchester, N.H.				X	X
Memphis, Tn.	X		X	X	X
Miami, Fla.	X	X	X	X	X
Milwaukee, Wis.				X	X
Minneapolis, Minn.	X			X	X
Nashville, Tn.	X		X		X
Newark, N.J.	X	X	X	X	X
New Bedford, Mass.	X		X	X	
New Haven, Conn.	X	X	X	X	X
New Orleans, La.	X			X	X
New York City, N.Y.	X	X	X	X	X
Oakland, Ca.	X	X	X	X	X
Oklahoma City, Okla.				X	X
Omaha, Neb.				X	X
Peoria, Ill.				X	X
Philadelphia, Pa.	X			X	X
Phoenix, Ariz.				X	X
Pittsburgh, Pa.	X	X	X	X	X
Portland, Me.	X		X		
Portland, Ore.	X		X	X	X
Providence, R.I.	X		X		
Provo, Utah				X	

City	Gas Lines	Odd/Even Sales	Other Restrictions	Contingency Measures	Transit Increase
Richmond, Va.				X	
Rochester, N.Y.	X		X		
Rockville, Md.	X	X	X	X	X
Salt Lake City, Utah				X	X
San Antonio, Tx.				X	X
San Diego, Ca.		X	X	X	X
San Francisco, Ca.		X	X	X	X
San Jose, Ca.	X	X	X	X	X
San Juan, P.R.					
Savannah, Ga.				X	
Seattle, Wash.	X			X	X
Sioux Falls, N.D.					
Spokane, Wash.					X
Springfield, Mass.	X		X	X	
St. Louis, Mo.	X		X		X
St, Louis Park, Minn.	X		X	X	X
St. Paul, Minn.			X	X	X
Tacoma, Wash.	X	X	X	X	X
Tallahassee, Fla.					X
Tempe, Ariz.				X	X
Toledo, Oh.				X	X
Tucson, Ariz.					X
Washington, D.C.	X	X	X	X	X
Wilmington, Del.	X	X	X	X	X
Yonkers, N.Y.	X	X	X	X	
GRAND TOTAL	47	26	46	81	77

RECOMMENDATIONS

The recommendations which appear below are derived from U.S. Conference of Mayors policy and discussions with local officials contacted during the preparation of this report.

1. Priority Urban Needs

Essential city services such as police, fire, emergency medical, sanitation and public transportation should be recognized as among first priority in the allocation of gasoline and diesel fuel, receiving the full amounts required.

2. Allocation Regulations

The Department of Energy should conduct a thorough review of allocation regulations to assess their effectiveness and equity, determine if any changes are required, and institute changes where necessary.

3. Price Regulations

The Department of Energy should review its gasoline price regulations and evaluate reimposition of price regulations on diesel fuels in light of the cost increases of these products which are creating strains on municipal budgets. In addition, the Department should determine whether recent changes in price regulations have affected gasoline production.

4. State Set-Aside

The Department of Energy should review the operations and effectiveness of the state set-aside program in meeting urban needs, devising a streamlined structure for application and consideration.

5. Local Set-Aside

The Department of Energy should review the possibility of the establishment of a local government set-aside, comparable to the state program, for major urban areas to ease municipal and community disruptions.

6. Public Transportation Programs

The Administration should seek to fund public transportation programs at least at the levels authorized by the Surface Transportation Assistance Act of 1978, and review the adequacy of those levels in light of increased transit demands resulting from the energy shortage. Employers should also be encouraged to develop carpool/vanpool programs, as well as institute staggered hours for employees to reduce the strain on transit systems during peak periods.

7. Cause of the Shortage

The Administration should investigate and report on the roots of the current gasoline shortage, including full review of the operations of all elements of petroleum production, refining and distribution systems.

8. Urban Economic Impact

The Department of Energy, in cooperation with other federal agencies and state and local government, should conduct an analysis of the fiscal and economic impact on cities of the short- and long-term gasoline shortage and possible routes to alleviate the impact.

9. Energy Preparedness and Management

The Department of Energy should seek to establish an Office of Energy Emergency Preparedness and Management, reporting directly to the Secretary of Energy, which would assist Mayors in preparing for and managing energy shortages.

The U.S. Conference of Mayors members and staff stand ready to work and meet with the President, the White House staff, the Administration and the Congress, to facilitate equitable solutions to the gasoline shortage and to minimize its disruption of our nation's cities.

CITY PROFILES

• Albany, Georgia. At present, the city is receiving 100 percent allocation, and is able to meet its gasoline requirements. The gas situation has not resulted in any cutbacks in the delivery of municipal services with problems arising primarily from price increases (estimated at 125 percent) rather than supply. City residents have not been faced with any problems in obtaining gasoline.

• Albuquerque, New Mexico. At present, gasoline supplies are adequate in the city of Albuquerque for both city government and residents. There has been some disruption in the availability of diesel fuel due to the truckers' strike but the city will be receiving additional supplies to cover the shortage.

• Ann Arbor, Michigan. The city has faced some difficulties due to the gas shortage with lines mainly on the weekends and a ten gallon minimum purchase requirement in effect. The city government allocation for the month of June is 80 percent of last year's usage; the city has applied to the state for additional gasoline through the state set-aside.

• Atlanta, Georgia. With a June allocation of 80 percent and indications that July will be 70-75 percent, the Atlanta city government has taken steps to curtail usage of city vehicles. Shortages have not affected city residents as yet, with no long gas lines reported. Public transit ridership has shown a noticeable increase, although current figures are not yet available.

• Austin, Texas. While there have been some gasoline lines in Austin, they have not reached the extent of those in the Dallas and Houston areas of the state. Odd/even sales have not been instituted, but the city is considering placing some restrictions on gas sales. Contingency plans to reduce municipal consumption are targeted for a 15 percent reduction through scheduling and re-routing, and tighter controls on the use of city vehicles.

• Baltimore, Maryland. The Baltimore-Washington metropolitan area has been faced with a much-publicized gas shortage. The city has had long gas lines, and the state has implemented an odd/even gasoline sale. Since the implementation of this plan, lines appear to have lessened. The city government is developing plans to reduce municipal consumption by ten percent on top of a ten percent decrease obtained last year. Plans include: moving to smaller cars for the city vehicle fleet; pooling trips; ending idling of cars; and the formation of an in-house conservation committee to monitor ongoing programs and develop new strategies.

• Berkeley, California. Although Berkeley saw severe gasoline shortages in the month of May, June has seen a lessening of gas lines for city residents. The city government's June allocation is 80 percent of last year's usage, and steps are being taken to reduce municipal consumption by 20 percent. While public transit ridership showed a sharp increase during the month of May, ridership appears to be dropping off this month.

• Billings, Montana. City residents have not been faced with the long lines at gas stations seen in many Eastern states, however the city government is faced with a supply allocation 20 percent below last year's figures. In order to meet this reduction, the city has taken such steps as rescheduling police and bus routes; rescheduling sanitation pick up routes; doubling up trips and instituting a monitoring system on the use of gasoline.

• Birmingham, Alabama. While gasoline price increases are affecting the city budget, much of the increase is being counter-balanced by conservation measures initiated by the city government. These measures have resulted in keeping costs at approximately the same level as last year. The city has seen a few gas lines on weekends.

• Boise, Idaho. As in a number of cities surveyed, Boise's city government appears to be the first to experience the impact of the gasoline shortage. Although city residents have not faced long gasoline lines, the municipal government is faced with an allocation for June of 30 percent less than last year. A number of plans have been developed and are being implemented to meet this lowered allocation figure.

• Boston, Massachusetts. State set-aside policy diverting gasoline away from metropolitan areas to tourist areas has recently been changed to help ease Boston's massive gas lines. The Metro-politan Transit Authority reports a one and seven-tenths percent increase in its usual steady ridership from January 1 to May 31 over last year. The city has witnessed demonstrations by both truckers and taxis.

• Boulder, Colorado. Sporadic gas lines of two weeks ago have largely disappeared in Boulder, Colorado. Lines have been a result of weekend closings and erratic hours for stations. Since the city's June allotment is at 70 percent, steps are being taken to meet this allocation with reduced municipal consumption.

• Buffalo, New York. Northern New York state appears to be less hard hit by the present gasoline shortage than the New York City area. There have not been any long gas lines, and the city has not had to joint with the southern part of the state in instituting odd/even gas sales.

• Burbank, California. The situation in Burbank reflects the general trend in California cities with gas lines disappearing since shortages in May. Odd/even sales and minimum purchase requirements are still in effect,however. The city government is taking a number of steps to combat the gas situation including the testing of gasohol and propane for city vehicles.

• Burlington, Vermont. While the city government has sufficient fuel, costs have increased by ten percent in Burlington. The city contingency efforts include cutting down on usage of municipal cars, and controls on driving, such as no idling of engines.

• Canton, Ohio. The city has experienced some gas lines on weekends with station closings, and the city government is in the process of developing a plan to reduce municipal gasoline consumption.

• Charleston, West Virginia. At present, Charleston has not been hard hit by the gas shortage although there is some difficulty in finding open stations on weekends. The city government faces a problem of price increases -- as much as one-third greater than last year -- more so than shortages.

• Chicago, Illinois. Municipal allocations range from 60 percent for diesel to 70 and 80 percent from gasoline suppliers. The city has applied for assistance from the state set-aside to maintain emergency services while contingency plans are put into effect. Measures to be instituted include improved fleet management, careful monitoring and purchase of smaller cars. A 20 percent increase in gasoline costs has inflated the city energy budget by about two million dollars this year.

• Cincinnati, Ohio. Gas lines have begun forming in this Ohio city. Although odd/even gas sales have not been instituted, stations are staggering their hours, and it is becoming more difficult to find open stations. Ridership on public transit has increased. The city, with an allocation of 30 percent less than last year, has applied to the state set-aside for additional gasoline to help them through this period.

• Clearwater, Florida. There are some gas lines in this western Florida city, with early closings of stations and some stations instituting a maximum ten dollar purchase. The city government has developed contingency plans for muncipal operations with actual reductions in gas consumption of ten percent.

• Cleveland, Ohio. With an increase in lines at area gas stations, the city has seen an increase in public transit ridership. The situation has not, as yet, affected the ability of the city to deliver municipal services; however, steps are being taken to reduce municipal gas consumption.

• Columbus, Georgia. Gasoline disruptions in Columbus have been minor to this point, although the transit system has seen an increase in ridership. The city government has been able to function within its allocation without cutting back on services, and is in the process of developing plans to reduce municipal consumption.

• Columbus, Ohio. As is the case with its Georgia namesake, Columbus, Ohio has not experienced long gasoline lines to this point either. The city government has, however, faced the crunch of a shortage (allocation estimated at 60-70 percent for July), and is in the process of applying to the state for additional gasoline for the month of July.

• Metropolitan Dade County, Florida. Southern Florida has been hard hit by the gasoline shortage. Dade County has seen lines several miles long; however, this appears to be lessening as much of the shortage was the result of the truckers' strike. The state has instituted a plan for odd/even sales. Public transit ridership is up approximately 20 percent. The municipal government has instituted a four day work week for some crews, and staggered hours in efforts to reduce consumption.

• Dallas, Texas. In one of the peculiarities of the present gasoline shortage, a number of Texas cities have been very hard hit. Dallas has faced extreme hardship with the possibility of having to cut back on needed city services to stay within its allocation. The city is taking strict measures to reduce its municipal consumption without service interruption, but is presently faced with an allocation of 70 percent of last year's use. City residents have faced long lines, and Dallas, along with two other Texas counties, have instituted odd/even gasoline sales.

• Dayton, Ohio. As yet, city residents have not been faced with long gas lines. Ongoing conservation measures in city operations have kept municipal consumption at the same level as 1976.

• Denver, Colorado. Although the gas shortage has not yet reached Denver, public transit ridership has seen an increase which is pushing the system to its limits. The city government, while not experiencing drastic cuts in allocations, has an ongoing program of gas conservation.

• Detroit, Michigan. Both the city residents and the city government of Detroit have at present, adequate supplies of gasoline. The city has seen an increase in its public transit ridership of approximately ten percent.

• Duluth, Minnesota. At the time this survey was conducted, Duluth was just beginning to experience lengthening lines at gas stations. The city government allocation for the month of June stood at 80 percent, and steps were being taken to prioritize municipal gas usage.

• Elizabeth, New Jersey. The state of New Jersey has been severely affected by gas shortages. The New Jersey turnpike has instituted a maximum purchase requirement of one dollar. The city of Elizabeth has seen an increase in public transit ridership of almost 100 percent over last year, and price increases for municipal gasoline of 40 percent.

• El Paso, Texas. Unlike their fellow Texas cities to the north, El Paso has not, as yet, experienced critical gasoline problems. Residents have not been faced with long gas lines. The city government has instituted programs to reduce municipal gasoline consumption to meet a June allocation of 80 percent of last year's usage.

• Erie, Pennsylvania. Although there are not long gas lines in the city yet, the Governor has set a minimum purchase requirement of five dollars. Public transit ridership has seen an increase but estimates are not yet available.

• Eugene, Oregon. The city has not seen the gas lines facing the East; nevertheless, ridership on public transit has increased by 25 percent, and residents are biking even more than usual in a city with a tradition of biking.

• Ft. Lauderdale, Florida. As the survey was being taken, the city was beginning to experience lengthening gas lines, primarily as a result of the truckers' strike. The city government has developed contingency plans to meet allocation cuts from five to 50 percent of last year's usage.

• Ft. Worth, Texas. The Ft. Worth/Dallas area has been hard hit by gasoline shortages. There are long gas lines, and odd/even sales restrictions. The city government has plans to reduce municipal consumption by 20 percent to meet its present allocation of 80 percent.

• Garland, Texas. Another Texas city which has felt the impact of the gasoline shortage, Garland also has seen long gas lines and has plans to start odd/even sales beginning July. The city has an ongoing plan of switching to smaller vehicles and has now developed contingency plans to reduce consumption by 20 percent.

• Gary, Indiana. At the time this survey was taken, the effects of the present gasoline shortages had not reached Gary. While there were some early closings of gas stations on the interstate, the city itself had not witnessed long lines. The city government is presently receiving its full allocation of gasoline.

• Greensboro, North Carolina. The city of Greensboro instituted a comprehensive fleet management program in 1975 which has saved about 30,000 gallons of fuel over the period from May 1977 to May 1979. The city's official allocation is at 80 percent, but because of ongoing conservation measures, Greensboro finds itself with little opportunity to decrease fuel use without reducing city services. The city does not meet eligibility criteria for application to the state set-aside program.

• Honolulu, Hawaii. With no restrictions on gasoline sales, Honolulu has not yet seen gasoline shortages in the community; the city government is currently on an 80 percent allocation. The city is considering reduced parking rates for car pooling employees.

• Houston, Texas. Mayor Jim McConn called the gasoline situation in the city "critical." In the center of the petroleum production area, Houston finds itself struggling with municipal fuel allocations ranging from 75 to 80 percent. A widely-spread city with limited public transit, Houston citizens have been joining long gas lines -- eased recently with the institution of odd/even gas sales.

• Huntington, West Virginia. Huntington is sharply reducing use of the city vehicle fleet, eliminating most discretionary use and curtailing use of general administrative vehicles. Some gas lines have developed.

• Indianapolis, Indiana. Though there are no gas lines and no mandated restrictions on sales, public transit ridership is up some 17%. City operations have been jeopardized by a 61 percent allocation from the city's major supplier. The city is preparing to implement contingency plans to reduce municipal consumption and has applied to the state set-aside for relief.

• Jackson, Mississippi. Gas lines have appeared in Jackson, though there are not yet any mandatory restrictions on sales. Picketing truckers have blocked a bulk supplier, severely curtailing deliveries, threatening delivery of municipal services.

• Jacksonville, Florida. Jacksonville has not yet been hit by the gas lines affecting other parts of the state. Nonetheless, the city has gone ahead in instituting conservation measures to reduce consumption. Public transit ridership is up.

• Kansas City, Missouri. Some gas lines have developed in Kansas City, possibly exacerbated by striking truckers tying up deliveries. The steep price increases have affected the city budget, with costs running about one-third over budget levels. The city is taking additional steps to reduce municipal consumption, but is hesitant because application of allocation regulations discourages ongoing conservation efforts. The city is expanding its car pool/van pool program to include private industries; there is currently a waiting list of car pool/van pool applicants.

• Knoxville, Tennessee. A 90 percent allocation for city gasoline supplies has prompted Knoxville to implement contingency measures in city vehicle operations. Fuel costs were running 50 percent above last year's levels. Transit ridership in April was up 15 percent, even without gas lines.

• Lake Charles, Louisiana. In the face of a 70-75 percent allocation and fuel costs 10-12 percent higher than last year, Lake Charles is aiming at reducing gasoline consumption by 10 percent. There are no gas lines, but public transit ridership is up approximately ten percent.

• Las Vegas, Nevada. Gas lines have disappeared in Las Vegas, after lines during the month of May. There are no restrictions on gasoline sales, and the city has been purchasing fuel on the spot market to make up for any shortages.

• Lima, Ohio. The jump in gasoline and diesel fuel prices has forced Lima to cut back on delivery of some municipal services, including programs for targeted population groups. One of two taxi companies in Lima has gone out of business due to fuel and insurance cost increases. Shortened hours and weekend closings have not resulted in gas lines; public transit riders are up about 19 percent over last year.

• Lincoln, Nebraska. A 140 percent increase in the price of fuel since September 1978 and a 70 percent allocation have severely affected Lincoln's ability to delivery municipal services on a business as usual basis. Earlier conservation programs have resulted in severely diminished supply deliveries, as a consequence of the allocation program. Service has been curtailed in parks and recreation programs, code administration and aging programs. The city is implementing conservation programs to reduce consumption 20 percent.

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• Los Angeles, California. There are no longer any gas lines in Los Angeles, but prices for gasoline have risen 23 percent in the last quarter. Public transit riders are up 20-30 percent over last year. The city is taking steps to reduce consumption, curtailing some city services such as street tree trimming, and encouraging consolidation and reduction of trips by city vehicles. Odd/even gas sales restrictions are in effect.

• Louisville, Kentucky. Gas lines have appeared in Louisville; currently there are no restrictions on sales. A 75 percent allocation has prompted the city to reduce some sanitation collection services and to offer a car pool program for city employees. The city also has a hot line for citizens to obtain information on gasoline availability.

• Madison,Wisconsin. Madison has not been forced to cut into delivery of municipal services in the face of an 80 percent allocation. Public transit riders are up 25 percent. The city has a contingency plan ready should shortages worsen.

• Manchester, New Hampshire. Twenty-six to 34 percent increases in gasoline and diesel prices have forced the city to use all of a $200,000 fuel reserve fund. Costs are still exceeding budget levels. The city is consolidating services, aiming at reducing consumption by 25 percent by January, 1980.

• Memphis, Tennessee. There are no mandated restrictions on gasoline sales in Memphis and only a few gas lines. Public transit ridership is up. The city budget anticipated price increase but not of the magnitude seen recently. The city is aiming at reducing gas and diesel consumption by ten percent a figure over and above savings achieved through an ongoing conservation program. The city has instituted a hot line for citizens to obtain energy information.

• Miami, Florida. Miami has not yet been affected by the price increases, since city officials budgeted for a 25 percent rise in cost. Long gas lines have led to odd/even sales and ten gallon maximum purchases. Striking truckers have closed Port Everglades, significantly reducing gasoline deliveries. The city is on an 85 percent allocation, but is only receiving about half that amount due to delivery disruptions.

• Milwaukee, Wisconsin. Public transit ridership is up ten percent even without gas lines in Milwaukee. The city has not yet had to institute strong contingency measures reducing service delivery, but is promoting more efficient use and operation of city vehicles.

• Minneapolis, Minnesota. There are some short gas lines in Minneapolis, and public transit has seen an increase in riders. The city is working on a contingency plan to reduce consumption, if necessary.

• Nashville, Tennessee. Trucks blocking supply depots have created light to moderate lines for gas in Nashville. The city has not seen cost overruns yet, even with a 14 cent increase since January 1. The city is developing fuel contingency plans in the event of prolonged or increased shortages.

• Newark, New Jersey. Contingency plans to stay within the city's 70 percent allocation are being developed but are as yet not fully implemented. Municipal fuel supplies are allocated on a priority basis, and research is being conducted into alternative fuel vehicles (propane, electric, gasohol). The city reports gas lines are very long (up to 8-1/2 hours in some cases) but may be shortened by the newly-implemented odd/even sales and minimum purchase requirement of one half tank.

• New Bedford, Massachusetts. New Bedford has not yet been hit by gasoline shortages. Some gas stations closing on weekends have resulted in some lines on weekends. Striking truckers have disrupted deliveries, threatening city operations.

• New Haven, Connecticut. Striking truckers have blocked access to the harbor and tank farms. The city is on a 75 percent allocation and has taken steps to reduce consumption as much as possible without reducing municipal services. Odd/even sales and minimum purchases are in effect.

• New Orleans, Louisiana. There have been some lines at gas stations in New Orleans, as well as an increase in public transit ridership. The city has an ongoing program to reduce municipal consumption, and at present has had little problem with availability.

• New York City, New York. An 80 percent allocation has not forced New York to reduce delivery of essential services. The city has developed contingency plans to reduce city consumption in ten percent increments, if necessary. There are gas lines and odd/even as well as minimum/maximum purchases in effect.

• Oakland, California. Faced with a 70 percent allocation and budget overruns of $400,000-500,000, Oakland is still maintaining delivery of municipal services to city residents. When necessary, city cars have used retail stations for fuel. The city is stepping up its vehicle conservation program. Gasoline shortages have forced the city to apply to the state set-aside program in April and May. The city has also sought assistance from the Economic Regulatory Administration in securing diesel fuel. There are still some gas lines, but odd/even sales have had a beneficial effect.

• Oklahoma City, Oklahoma. Public transit ridership is up; there have been no gas lines yet. There has also been no impact on city services to this point, even with a 75 percent allocation. July and August may be worse, however. Contingency plans target a 25 percent reduction in consumption for city vehicles.

• Omaha, Nebraska. Since February, public transit riders have increased 10-15 percent; there are no gas lines. The city is emphasizing consolidation and more efficient use of city vehicles.

• Peoria, Illinois. To keep city consumption within a 70 percent allocation, the city of Peoria has limited city vehicles other than emergency vehicles to ten gallons per day. Additionally, the city is discouraging use of city vehicles, asking managers to consolidate vehicle use and encouraging better route planning. Through these actions, the city hopes to reduce consumption 5-10 percent. Though there are no gas lines, public transit ridership is up. The city applied to the state set-aside for relief, receiving 8,000 gallons of a 13,000 gallon request.

• Philadelphia, Pennsylvania. Gas lines are cropping up from time to time in Philadelphia; there are mandated restrictions on gasoline sales, but some service stations are imposing minimum or maximum purchase requirements. The city is reducing municipal consumption, but at the moment there is no hardship.

• Phoenix, Arizona. Phoenix is currently operating under a 95 percent allocation. To conserve fuel, sanitation services are being consolidated, using larger trucks. In spite of the absence of gas lines, public transit ridership is up about 20 percent.

• Pittsburgh, Pennsylvania. Pittsburgh has seen an increase in public transit ridership, the worse gas lines in the state, and the imposition of odd/even gas sales and minimum purchases. The city government is taking steps to reduce consumption, but has not yet had to substantially reduce delivery of municipal services.

• Portland, Maine. A 75 percent allocation for June has not yet affected the city's capability to provide services to the community. The city has developed a contingency plan to reduce municipal consumption by 25 percent, but has not had to implement the plan yet. The plan ranks city services so that essential and emergency services will receive top priority. Gas lines in Portland were moderate. Most lines occur on weekends when curtailed hours and Sunday closings reduce the number of stations providing service.

• Portland, Oregon. Portland, Oregon has some gas lines, but as yet no restrictions on gasoline sales have been imposed by the state. The city has witnessed a 15 percent increase to transit riders, but these figures are not up to date. City services have not been affected yet. However, the cost of asphalt has doubled and the city has curtailed filling potholes at this time. In the last year, the city reduced gasoline consumption by 13 percent, an important factor in its ability to continue to provide services today.

• Providence, Rhode Island. Fuel costs for Providence are up 100 percent over last year. Municipal services have not yet been affected by shortages or price increases. The city is preparing contingency plans to deal with further reductions in supply. Gas lines are worse on weekends. Minimum purchases are in effect, but there are no odd/even sales restrictions.

• Provo, Utah. Though there has been little evidence of the gasoline shortage in Provo, the city is taking steps to reduce consumption in city operations by ten percent. Savings will be achieved through greater efficiency. The city is operating under an 80 percent allocation and has applied to the state set-aside for additional supplies.

• Richmond, Virginia. While some service stations have been restricting their hours, there have been no gas lines in Richmond. Through a conservation program emphasizing smaller cars and switching to diesel engines, the city reduced consumption by ten percent. Richmond is subject to a 75 percent allocation; the city applied for the state set-aside, receiving one-third of the requested amount. The city has contingency plans for reducing consumption incrementally to meet allocation levels.

• Rochester, New York. Rochester's allocation is 70 percent; however, the city has applied for state set-aside gasoline supplies which has brought city supplies up to nearly 100 percent in recent months. Contingency plans are being developed by each department utilizing a priority system for departmental vehicles. There are occasional gas lines in the city, usually associated with Sunday or early closings.

• Rockville, Maryland. In 1978, Rockville was paying 41 cents per gallon for gas. This year, the price is already up to 65 cents per gallon, totalling a $48,000 increase in fuel costs for city vehicles. There has not been a cut back in city services, and the city has a contingency plan based upon service priorities to reduce consumption by 20 percent so the city can operate within its 80 percent allocation. There are gas lines, odd/even sales and minimum purchases in effect. Commuter trains serving Rockville and Washington, D.C. are standing room only.

• Salt Lake City, Utah. The gas shortage has not affected Salt Lake City; however, increased prices have caused an increase in public transit ridership. The city has reduced municipal gasoline consumption through doubling up police and other city personnel.

• San Antonio, Texas. The increase in gasoline prices has run San Antonio one million dollars over budget levels for fuel. The city has not yet experienced shortages of gasoline, but public transit ridership is up 16 percent in May over last year. San Antonio has organized car pools for city employees, and subsidizes bus passes.

• San Diego, California. During the California shortage, San Diego has maintained city services by utilizing their large fuel storage capacity. Contingency plans are being developed to conserve municipal fuel, and city staff have taken the lead in developing a multi-jurisdictional car pool system. Public transit has reached and held record ridership levels.

• San Francisco, California. Bay area public transit is presently functioning above capacity, after a 20-30 percent increase in passengers. City departments are urged to reach 20 percent across-the-board fuel savings although city allocations range from 85 to 90 percent.

• San Jose, California. Gas lines here are reducing slowly. Rapid transit ridership rose to 82,000 at the height of the crisis, from 56,000 a year ago. As gas supplies increase, transit levels have steadied at 63,000. The city has developed a categorical reduction system for municipal fuel use, with priority for emergency vehicles. Cards have been printed to control and monitor fuel use.

• San Juan, Puerto Rico. San Juan is bracing itself for the gas shortage, expected at the end of July. Contingency plans are being formulated now, speeded by the jump in gasoline prices from 65 cents to one dollar a gallon over the last month and a half.

• Savannah, Georgia. The gas shortage has not yet appeared here. Price is more of a problem than supply.

• Seattle, Washington. Seattle foresightedly budgeted for 96 cents a gallon gasoline, so they have not yet encountered budget problems. Seattle has had an ongoing program of municipal conservation since 1973. City consumption in 1972 was 2.7 million gallons, and six years later, in 1978, Seattle used only 2.0 million gallons. The 80 percent allocation has hit Seattle particularly hard since it is already using a minimum amount of fuel. The city has applied for and received supplements from the state set-aside for March through June and thus avoided disruptions in city services. Public transit ridership increased by about 13 percent a month during this period.

• Sioux Falls, North Dakota. Sioux Falls reports no shortage of gasoline but is preparing contingency plans as a result of price increases. The Mayor and Commissioners are developing plans which include a switch to smaller vehicles, mileage reductions and car pools.

• Spokane, Washington. No serious shortages have occurred here, but prices are causing increased mass transit ridership (up 40 percent over last year) and have resulted in a one-quarter million dollar overrun in the city budget.

• Springfield, Massachusetts. The city is conserving gasoline to stay within their 75 percent allocation while maintaining services. Gas lines exist despite a required half-empty tank before fill-up.

• St. Louis, Missouri. St. Louis allocations are 70 percent, but the city has obtained assistance from the state set-aside to bring supplies up to nearly 100 percent. Long term conservation measures are being implemented, including the hiring of a full-time Energy Monitor for the city, and replacement of the city vehicle fleet with four cylinder cars. Gas lines exist in the city, and public transit ridership is up 12 percent (based on revenues over last year).

• St. Louis Park, Minnesota. Gas lines began appearing last week, and some dealers are instituting a 10 gallon maximum purchase. The city began conservation efforts last year, so their 70 percent allocation for this year is based on lower-than-normal consumption levels. The city has tightened the conservation measures, aiming at a 25 percent reduction.

• St. Paul, Minnesota. Striking truckers blockaded supply depots, closing all service stations last week. Since the Governor called out the National Guard, the situation has largely cleared up; there are no gas lines presently. The state has just instituted minimum purchase requirements. The city is implementing contingency plans to reduce city consumption to meet an 80 percent allocation.

• Tacoma, Washington. Tacoma reports odd/even gas sales and shorter gas lines than last month. A brief shortage of diesel supplies caused reduction in city bus routes, despite a rider increase of 15 to 20 percent. Voluntary contingency plans are in effect for municipal fuel use, focusing on reducing use of city cars.

• Tallahassee, Florida. No shortages of gasoline are reported for the city of Tallahassee. Prices have increased by 15 percent over last year.

• Tempe, Arizona. The 80 percent allocation has forced Tempe to go to retail dealers for gasoline to maintain city services. The city has applied for state set-aside assistance, but are developing contingency plans aimed at a 20 percent reduction which may cause some reduction in services. Present conservation practices emphasize reducing unnecessary mileage and good driver habits such as not idling equipment and vehicles.

• Toledo, Ohio. Located in a refining area, the city of Toledo has not felt the impact of gasoline shortages as severely as other parts of the country. There have not been lines at gas stations though transit ridership is up. The city has an ongoing program to reduce municipal consumption through such measures as car pooling and reduced idling time; it is in the process of developing contingency plans for gas rationing for city departments if needed.

• Tucson, Arizona. Tucson reports minor cutbacks in city services. The 80 percent allocation was supplemented by a five percent increase trucked in from California and Utah this month. Increases in diesel prices have caused severe budget impacts.

• Washington, D.C. City contingency plans aim for a 15 percent reduction in fuel usage without curtailing service delivery. The plan calls for improved management practices, such as logging in and out all vehicles, and replacement of existing fleet vehicles with smaller cars and sanitation equipment with energy-conserving models. There are still gas lines, despite the imposition of odd/even and minimum sales requirements.

• Wilmington, Delaware. Last year's consumption levels are being maintained by contingency plans which allot 100 percent of need to emergency vehicles, a half tank plus five gallons to compact sedans and a half tank plus 25 gallons for heavy equipment. Gas lines are modest, and limits on sales only occur on the interstate highways.

• Yonkers, New York. The increases in gas prices will be offset by the reductions in consumption achieved through vehicle management practices and driver training. Gas lines in the community are beginning to appear; however, it has not been as hard hit as the southern part of the state. Odd/even sales have been instituted.

TRANSIT FINANCING

An Overview of the National Transit Financing Picture
In Terms of Federal and State Funding Levels, Fare
Structures and Local Revenue Sources

SEPTEMBER 20-21, 1979
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DRAFT

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United States
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TRANSIT FINANCING

As government budgets at all levels get tighter, Mayors and other local officials are facing greater challenges in deciding how to adequately finance the capital and operating costs of their transit systems. At the same time, the energy crisis and other factors have pushed ridership to its highest levels in many cities across the country, changing the entire landscape of public transportation. This period of solid growth for the nation's mass transit systems is the most appropriate time for all levels of government to take stock of the transit financing picture and to respond with comprehensive, viable plans for paying for these services.

At the local level, officials are justified in their concern in finding new funding sources with the operating costs of U.S. transit systems rising at a rate somewhat higher than the consumer price index.[1] Figures show that total transit operating deficits were about $300 million in 1970 compared to $2.2 billion in 1977, a dramatic increase. According to a recent study by the Institute of Public Administration, these increases are expected to continue and,

> It is therefore reasonably certain that transit financing will continue to demand a growing proportion of state and urban government budgets. The extent to which demands are met will depend on a number of factors, including underlying trends in urban development which will determine the role that transit can play in the future; public attitudes in continuing willingness to support transit subsidies; and the political influence of transit proponents.[2]

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[1] Institute of Public Administration, Financing Transit: Alternatives for Local Government (Washington, D.C.: 1979) pp. 1-4, hereinafter referred to as Financing Transit.

[2] Financing Transit

This paper presents an overview of the national transit financing picture for Mayors and other local officials, and discusses how cities are utilizing these available sources, how they are developing their transit fare structures and what some cities are accomplishing in terms of innovative financing alternatives. The final section includes issues for Mayors to consider in evaluating new local funding sources, and raises policy questions on the roles state and federal governments should play in financing public transportation systems.

THE FEDERAL SHARE

Impetus for federal support for urban mass transportation originally came from the Mayors of the country's larger cities with existing rapid rail and commuter rail systems that were experiencing ridership decline. This decline along with a rapidly increasing auto population forced Federal, state and municipal governments to begin subsidizing public systems in the 1960s. These first subsidies were for capital expenditures and debt service and covered the cost for the public sector to acquire transit systems from former private owners. However, as operating deficits escalated and local governments tried to keep fares low, operating subsidies were also provided.

Federal grant-in-aid programs for public transportation are administered by the Department of Transportation's Urban Mass Transportation Administration (UMTA). The present UMTA program includes three major sources of capital and operating funds: formula

grants, capital facilities grants, and interstate transfer grants. Following is a brief discussion of each source:

Formula Grants (Section 5)

The Formula Grant Program was created by the National Mass Transportation Assistance Act of 1974. This created Section 5 of the Urban Mass Transportation Act, which provided for funds that could be used for capital or operating assistance. This program was continued and expanded by the 1978 Surface Transportation Assistance (STA) Act. The STA Act created these three new formula assistance programs under Section 5:

Tier I Basic Program: Grants for capital and operating assistance, apportioned on the basis of population and population density, continue the program started by the 1974 Act. Authorization calls for $900 million a year for fiscal years 1979 through 1982.

Tier II - Supplemental: Grants for capital and operating assistance are apportioned on the basis of population and population density with 85 percent going to urbanized areas with populations greater than 750,000, and 15 percent to urbanized areas with populations less than 750,000. The authorization for this program is $250 million a year for fiscal years 1979-1982.

Commuter Rail/Fixed Guideways: Grants for capital and operating purposes of commuter and fixed guideway transit projects are apportioned on the basis of fixed guideway and commuter rail route mileage and commuter train mileage. This program authorizes $115 million for fiscal years 1979; $130 for 1980; $145 for 1981 and $160 for 1982.

Bus Formula: Grants for purchase of buses and the construction of bus related facilities are apportioned on the basis of population and population modified by density. This program is authorized at $300 million for fiscal years 1979 and 1980, $300 million in 1981 and $400 million in 1982.

During fiscal year 1978 $742.4 million of Section 5 funds were obligated. Of this amount 92 percent was for operating assistance and 8 percent for capital assistance. This follows the trend of the program, which since its inception has obligated over 90 percent of available funds for operating assistance.

Under the present Section 5 formula, the federal share for capital projects is 80 percent, and for underwriting operating deficits is 50 percent. The Administration proposed in the 1978 Act that the federal share for operating deficits be limited to one-third of an area's total operating costs. During Congressional testimony, former UMTA Administrator Richard Page said that the number of cities having their operating costs subsidized by Section 5 in excess of one-third is under 20, with most being mid-sized cities from the Midwest.[3] The Administration's proposal was modified and included in the Senate's version of the 1978 Act, but failed to be included in the final legislative package.

Capital Facilities Grants (Section 3)

This fund is discretionary and is available for all capital

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[3]House Appropriations Subcommittee on Transportation, Hearings on UMTA Budget, March 6, 1979.

projects. Since the creation of the new formula bus program will affect the uses of Section 3 funds, UMTA will attempt to finance more routine bus projects from Section 5 and leave Section 3 for extraordinary projects. At the end of fiscal year 1978 about $8.5 billion has been obligated from this fund.

Interstate Transfer Grants

This authority was created by the 1973 Federal Aid Highway Act. Section 103(e)(4) of Title 23, U.S. Code provides authority for State and local officials to withdraw a planned Interstate highway segment and to use the funds for a substitute highway or transit project. The Surface Transportation Assistance Act of 1978 established September 30, 1983, as a cut-off date for making interstate withdrawals and increased the Federal share for all substitute projects up to 85 percent from the current 80 percent. The cut-off date was set to encourage the urban areas of the country to make decisions on about $13 billion worth of uncompleted Interstate highways.

Some eleven urban areas have withdrawn $5 billion worth of interstate routes, and a little over $2 billion has been obligated for transit projects.

Urban mass transit projects funded under the interstate transfer program are subject to the same criteria as if regular UMTA funds are to be used. For a major investment, an alternatives analysis

would be required.[4]

Between now and 1983 several major urban areas will be reviewing urban interstate projects and will have the opportunity to weigh them against public transportation needs.

Another provision of the 1973 Federal Aid Highway Act provided for the use of funds apportioned under the Federal Aid Urban System (FAUS) program to be used for urban transit projects. The FAUS category for fiscal years 1975-1977 amounted to $800 million a year, or 14 percent of total federal highway appropriations. Since fiscal year 1974 $146.3 million of these funds have been used for transit purposes. Of that amount, $108.9 million was in New York City alone. This program is not a source of funds for major transit projects but does present a viable new resource for smaller projects.

STATE AND LOCAL SHARES

Until World War II, fares paid by transit riders made most cities' systems self-supporting. As transit ridership declined and operating costs soared, subsidies were needed so that by the

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[4]Alternatives analysis is the process that state and local transportation officials must conduct for proposed public transportation projects. Procedures are in effect for mass transit projects and are now being formulated for highway projects as well. The procedure require that officials analyze a variety of alternative approaches to a public transportation project and make this analysis by comparing the costs of each alternative against its effectiveness in achieving a broad range of transportation, social, economic, environmental, energy conservation and urban revitalization objectives.

mid-1970s, fares paid for only about half the operating costs, with this figure varying from system to system. Other figures show local and state governments picking up about 30 percent of total operating costs in 1976.[5] As will be discussed later in this paper, the issue of how much in transit costs should be subsidized and how much should come from the farebox is a volatile one, and one on which the views of local officials are important.

Subsidies at the state and local levels can take a variety of forms, with most subsidies falling into one of these five categories:

- o General fund appropriations (general subsidies for capital projects or operating expenses, tax relief, in-kind services or debt guarantees, reduced fare compensation)
- o Traditional non-user taxes (income, sales, property; excise, including utility)
- o Special non-user mechanisms (payroll tax, occupational tax, merchant subsidies, lotteries, commuter tax)
- o User-related mechanisms, other than fare increases (parking tax, charter revenue, motor fuels, tolls, motor vehicle taxes)

Another source of funds still in the development stages are those revenues linked to "joint development" where a public transit system interfaces with private development. These sources include tax increment financing and special transit district funds.

TRENDS IN THE USE OF FEDERAL FUNDS

Capital Facilities Grants

As cities have used this mix of fares and federal, state and

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[5] Report of the U.S. Senate Committee on Banking, Housing and Urban Affairs, The Federal Public Transportation Act of 1978, May 15, 1978.

local funds to pay for their transit systems, some changes in spending the federal dollars have occurred. While the Section 3 capital program in the 1960s was mainly used for modernizing bus fleets and for allowing public agencies to acquire private transit firms, the emphasis shifted in the 1970s to construction and modernization of rail transit.

As indicated earlier, obligations for the Section 3 program were about $8.4 billion by the end of fiscal year 1978. The obligations of funds by program areas are:

Type	Obligations, 1964-1978 (millions)	Percent of Total
Bus	2,941.8	35.01
Fixed Guideway Modernization	2,460.0	29.28
Fixed Guideway Extension	1,270.0	15.11
Fixed Guideway New Starts	1,659.0	19.74
Downtown People Movers	71.0	.86
	$8,401.8	100.00

Over 90 percent of these funds have been obligated in 31 urbanized areas. A list of the urbanized areas that have received over $100 million from the Section 3 program are:

Area	Section 3 (in millions)	Percent of Total obligations
New York - Connecticut - New Jersey	2,085	24.8
Atlanta	853	10.1
Chicago	852	10.1
San Francisco	594	7.0
Boston	536	6.3
Baltimore	481	5.7
Philadelphia	389	4.6
Los Angeles	202	2.4
Pittsburgh	168	1.9
Washington	155	1.8
Cleveland	139	1.6
Seattle	118	1.4
Miami	116	1.3
	$6,688	79.0

The 1978 Surface Transportation Assistance Act provides that the Section 3 needs be evaluated every two years and that two additional years will be added to the program. Thus, during 1980 the Congress will review the authorization levels for 1981-1983 and provide new authorization for 1984 and 1985.

While it is impossible to speculate on precisely what levels will be authorized by the appropriations committees, some growth can be expected to take place, especially with the possibility of an Energy Security Trust Fund to be derived from returns on the proposed windfall profits tax.

President Carter's address to the nation on July 15, 1979 proposed $16.5 billion from the windfall profits tax revenue be dedicated to mass transit and automobile fuel efficiency over the next 10 years. Of the $16.5 billion, the current Administration proposal is for $13 billion to be used for capital investment in transit infrastructure. This money would go for increased bus

purchases by local public authorities, accelerated rail modernization and extension projects, and expedited completion of new rail starts which have already been approved. About $800 million of the $13 billion will be used for interstate transfer grants, as discussed later on in this paper. The rest of the $13 billion is divided this way, according to current Administration proposals:

- $900 million added to current budget plans to bring programs up to authorized levels in 1980, 1981, 1982 and 1983 (primarily for discretionary transit capital grant programs, including new starts.)
- $5 billion for bus and bus-related facilities (funds would support expansion and improvement of bus fleets and facilities; consideration is being given to possible incentives to the intercity bus industry for service expansion)
- $5.4 billion for rail modernization and extension (funds would be used to expand and modernize existing mass transit rail systems and to finance route extensions)
- $900 million for acceleration of new rail system already approved (funds would be applied to systems already planned and committed).

Formula Grants

Comparing Section 5 subsidies to contributions from state and local government and farebox returns, figures show Section 5 provided an estimated 10 percent of the total operating costs of the transit industry in 1976.[6] In addition, farebox and other revenues covered almost 60 percent of costs with the rest coming from state and other local sources. In 1977 and 1978, higher

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[6]Report of the U.S. Senate Committee on Banking, Housing and Urban Affairs, The Federal Public Transportation Act of 1978, May 15, 1978.

Section 5 authorizations slightly increased the Federal share; and in 1977 the Federal share of operating costs is estimated at about 13.5 percent.

Interstate Transfer Grants

Funds provided when local officials withdraw a planned Interstate highway segment have totaled about $5 billion to date with little over $2 billion obligated for transit projects. The following table shows the areas and the funding levels on these Interstate transfer funds:

Area	Withdrawn Authority	Obligation	Balance
	(millions of dollars)		
District of Columbia	1,645.1	1,002.7	642.4
Boston	1,285.4	495.8	789.6
Chicago	648.9	85.8	563.1
Hartford	368.6	3.9	364.7
Philadelphia	319.8	152.2	167.6
Portland	280.6	10.8	269.8
Denver	221.3	4.1	217.2
Minneapolis	103.4	----	103.4
Tucson	56.7	----	56.7
Albany	51.1	----	51.1
Salem	47.1	.6	46.5
	5,028.0	1,755.9	3,272.1

In addition to the balance of $3.3 billion of withdrawn Interstate routes, as mentioned before $13 billion of designated interstate projects remain to be completed in the urbanized areas of this country. Estimates are that about $5 to $6 billion of of these interstate routes are nonessential and are considered

controversial. About $800 million from the Energy Security Trust Fund is also earmarked by these grants.

DEVISING A FARE STRUCTURE

While federal subsidies for capital grants and operating assistance have helped publicly-owned mass transit systems through some lean times, local officials still face a series of issues tied to generating funds at the state and local levels. The first source to evaluate is the farebox, which by the mid-1970s only paid for about half of the operating costs of transit systems across the country. The fares transit systems levy range from such low, flat-fare charges of 25 cents in Boston and Atlanta to such fares in the San Francisco Bay Area and Washington, D.C. where the distance traveled and time of day influence amounts.

Setting fares for transit systems in many cities can be highly political, with local officials frequently agreeing to hike fares only when a grave financial crisis to the public transportation system is imminent. Some areas have adopted a more comprehensive approach to developing a fare structure, with one good example being the Metropolitan Transportation Commission (MTC), which is the regional transportation planning, programming and coordinating agency for the nine-county San Francisco Bay Area.

Moves are now underway to establish a uniform fare structure for the six major transit operators under MTC's jurisdiction. At the present time, state legislation requires that the three major transit operators in the MTC region pay for at least 33 percent of their operating expenses out of the farebox in order to qualify

for certain funding. This legislation was recently revised. Beginning July 1, 1981, three operators (Alameda-Contra Costa Transit District, Bay Area Rapid Transit District, and San Francisco Muni) collectively would have to achieve a 33 percent farebox return. MTC would have the authority to allow any single operator a five percent variance based on certain findings.

Another key element in MTC's fare structure policy that did not become part of state law but is in MTC's guidelines is a provision that "fares of any individual operator must be further increased to recover in full any labor cost increase exceeding 5.5 percent." According to the MTC,

> This resolve is our most important signal to operators that they will be held accountable for results of their labor settlements - and to labor that it has now achieved parity with other crafts and must be content with settlements that will not jeopardize continuing transit service.[7]

In addition to this direct correlation with labor settlements, other factors the MTC asks its operators to consider when revising their fare structure include:

- individual differences in local tax support
- time needed to develop ridership on new services
- extent to which existing fares reflect patrons' different income circumstances
- level of service and its comfort

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[7]Metropolitan Transportation Commission, Transit Financing Study (Summary)(Berkeley, California: January 10, 1977) p. 18.

- extent to which other budgetary means are being used to reduce reliance on higher fares and taxes

- sacrifices being made in the interest of service coordination.

Regarding the uniform, regional fare structure policy MTC has adopted, the following are principles that form the basis for a new structure:

- the fare structure should be built upon a uniform minimum base fare for local service, with additional charges based on distance traveled, service quality and the value of the service to the traveler.

- the uniform fare structure must be consistent with other MTC policies and requirements regarding the ratio of fare revenues to operating costs

- the fare levels in the uniform fare structure should be reevaluated periodically by the operators in light of changing financial, operational and travel conditions.[8]

Another city that has faced the question of fare structure in a direct manner is Portland, Oregon. A recent report by a Special Task Force on Transit Financing made this recommendation to the Board of Directors of Tri-Met, the regional agency that operates the transit system: "User fees, especially transit fares, should continue to pay a significant portion of increasing transit costs. The user as the direct beneficiary of transit service should expect fare increases, not only as a result of inflation but as a result of improved services."[9]

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[8]Resolution 620, Metropolitan Transportation Commission, (Berkeley, California: December 20, 1978).

[9]Special Task Force on Transit Financing, Report to the Tri-Met Board of Directors, February 6, 1978.

The Tri-Met Board has had a goal of maintaining farebox revenues at a level to cover 40 percent of operating costs, which translates into about 32 percent of total systems costs. The Board has recommended periodic increases to maintain this 40 percent level of user support, even if the average fare (now at 36 cents) will hit 60 cents for adults by 1985, which is projected.

TRENDS IN NON-USER SUBSIDIES

State Level

As the operating costs for urban mass transit and commuter rail systems has grown, many states have moved to help local communities finance their transit systems. The IPA study reports that "as of 1975, some 32 state budgets were providing assistance for transit totaling more than $900 million. Seven states with large cities accounted for more than 90 percent of total state appropriations, but 17 state budgets provided more than $1 million for capital or operating assistance or both."[10] Table I provides a quick review of the level of effort these 32 states are providing to transit.

Allocations to local transit programs from the state level falls into three general categories. The first category, which is the type of assistance provided to most major urban states in the Northeast, consists of appropriations from the state's general funds.

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[10] Financing Transit, pp. 2-5.

TABLE I

TRANSIT ALLOCATIONS IN STATE BUDGETS, 1973-1974

State	Expenditure Category (Millions of Dollars)			
	Capital	Operating	Planning	Total
Maryland	129.3	50.3	1.9	181.5
Illinois	40.0	113.0	.7	153.7
New York	100.0	45.9	.4	146.4
New Jersey	32.0	72.0	.8	104.8
California	a	a	a	154.1
Pennsylvania	15.0	74.0[b]	1.0	90.0
Massachusetts	17.0	48.0		65.0
Michigan	13.0	11.0	.5	24.5
Virginia	3.6		.2	3.8
Connecticut	.8	15.1	.2	16.1
Florida	7.0		.7	7.7
Washington	6.0			6.0
Rhode Island		2.4	f	2.4
Wisconsin		1.0	.4	1.4[c]
Tennessee	1.0		.6	1.6
Delaware	.4	.8	.1	1.2
Nebraska		1.0	f	1.0
15 others[d]	1.6	.6	.8	3.0
Total	366.7[e]	435.1[e]	8.3[e]	905.1

a. Total figure is for 1973-74; breakdown not available. Total represents state collection of a locally imposed sales tax minus streets and road purposes.

b. Excludes reimbursement for senior citizen fare reduction, from state lottery proceeds.

c. Budget figures include federal grants; state funds are estimated at 20% of total

d. Ten of these states made grants only for planning.

e. California omitted.

f. Less than $50,000.

Sources: A Survey of State Involvement in Mass Transportation, Division of Mass Transportation, North Carolina Department of Transportation, 1975.

California Department of Transportation, TDA Annual Report, 1973-74.

The second category employs special taxes including highway user or other special levies. The third category gives localities the power to impose special taxes earmarked for transit. Ohio and Washington, two states using the third category of assistance, also give their municipalities a choice of taxes. Michigan imposes a special tax for transit and authorizes the state's major metropolitan areas to levy other taxes. The situation in Maryland is especially unique because that state makes transit grants from a consolidated Transportation Trust Fund with receipts from both highway user taxes and a portion of the state corporate income tax.

No set formula exists for how much states contribute to local transit systems. Usually states that contribute funds provide 50 percent or more of the local share, but the amount, especially to large metropolitan areas, is usually negotiated rather than determined by a set formula. Fitch's study points out that some states with large urban areas and expensive rail systems provide little or no funds for transit operations.

> These include several states in which heavy rail transit systems recently have been built or are under construction, such as Virginia or Georgia; the latter state provides no assistance for either capital or current expenditures.[11]

Other variations in state aid include the states of Connecticut, Rhode Island and Maryland that directly help public transit by owning and operating systems. The State of New Jersey, on the other hand, gives subsidies for commuter rail service through contracts with carriers and subsidies to private bus lines.

In addition to these direct subsidies for capital and operating

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[11] Financing Transit, pp. 2-7.

assistance, the transportation departments of state provide other services in terms of planning assistance, research and development, and technical assistance for tasks such as preparation of federal grant applications.

Regional and Local Levels

In 1976 the total operating deficits of the transit systems of the largest 25 urban areas came to about $1.8 billion, more than 90 percent of the total deficits for all of the transit systems in the United States.[12] Of these aggregate operating costs, fares covered 45 percent. Table II and III on the following pages clearly show how deficits are shared between state and local governments. Table III provides an overview of the types of funding sources tapped at state and local levels.

These two tables point up a number of clear trends, with a major one being that the sales tax appears to be the predominant earmarked revenue source, at least in these 25 major urban areas. Fitch's figures show that local sales taxes earmarked for transit were a funding source in 10 cities and accounted for 65 percent of state-local contributions to transit deficits in 1976. He adds that local sales taxes comprised more than 60 percent of the state-local contributions of Los Angeles, San Diego, Denver, Atlanta, Chicago, Kansas City, St. Louis and Seattle.

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[12] Financing Transit, pp. 2-8

TABLE II

STATE-LOCAL FUNDING SOURCES FOR TRANSIT OPERATING DEFICITS IN 25 LARGEST U.S. URBAN AREAS, 1976

	Amount of State-Local Funding (Millions of Dollars)	Percentage of State-Local Funding			
		State Government	Regional and Local Taxes	Motor Vehicle Tolls	Other
California					
Los Angeles	72	-	100	-	
San Diego	9	-	100	-	
San Francisco region	216	-	96	- 0	4[a]
Colorado					
Denver	18	-	100	-	
Florida					
Miami	8	-	100	-	
Georgia					
Atlanta	26	b	100	-	
Illinois					
Chicago	134	15	81	-	4[a]
Louisiana					
New Orleans	12	-	6	-	94[c]
Maryland					
Baltimore	9	100	-	-	
Massachusetts					
Boston	146	53	47	-	
Michigan					
Detroit	15	47	53	-	
Minnesota					
Twin Cities	25	64	36	-	
Missouri					
Kansas City	10	-	100	-	
St. Louis	16	-	100	-	
New York					
Buffalo	4	50	50	-	
New York City	616	29	50	21	
Ohio					
Cincinnati	7	-	100	-	
Cleveland	38	2	98	-	
Oregon					
Portland	12	-	100	-	
Pennsylvania					
Philadelphia	82	68[d]	32[d]	-	
Pittsburgh	24	76	24	-	
Texas					
Dallas	3	-	100	-	
Houston	9	-	100	-	
Washington					
Seattle	31	39	60	-	
Wisconsin					
Milwaukee	4	57	43	-	

NOTES: a. Cross-subsidy to rail commuter service from rail freight.
b. Less than 1%.
c. Cross-subsidy from electric utility.
d. Data are for 1975.

SOURCES: John Pucher, A Detailed Listing of Funding Sources for 26 Large U.S. Cities, Transportation Studies Center, Massachusetts Institute of Technology, 1977. Metropolitan Transportation Commission, Berkeley, California.

TABLE III

TAXES EARMARKED OR MANDATED FOR TRANSIT - 1976

PERCENTAGE OF STATE - LOCAL TRANSIT CONTRIBUTION IN 18 LARGEST URBAN AREAS

	State Tax		Local Tax		General Fund & Other	
	Highway User	General	Highway User	Gen ral	State	Local
California						
Los Angeles				S-73		27
San Diego				S-83		17
San Francisco * region	F-1	S-42(TDA)		S-46 P-74		45
Colorado						
Denver				S-75) P-25		
Florida						
Miami			MF-99			1
Georgia						
Atlanta				S-100		
Illinois						
Chicago	F-16%		R-12) MF- 2)	S-70		
Louisiana						
New Orleans				U-94		6
Maryland						
Baltimore	F-100%					
Massachusetts						
Boston		C-53		P-47		
Michigan						
Detroit	MF-46%					54
Minnesota						
Twin Cities				P-36	64	
Missouri						
Kansas City				S-87		13
St. Louis				S-100		
Ohio						
Cincinnati				E-99		1
Cleveland				S-98	2	
Washington						
Seattle	VE-39%					
Wisconsin						
Milwaukee				P-43	57	

Legend:
- C - General Fund (formerly cigarette tax)
- E - Earnings Tax
- F - Highway or Consolidated Transportation Fund
- MF - Motor Fuel Tax
- VE - Motor Vehicle Excise (personal property tax)
- P - Property Tax
- S - Sales Tax
- U - Utilities Charge

SOURCES:

Pucher, A Detailed Listing of Funding Sources for 26 Large U.S. Cities.

Metropolitan Transportation Commission, Annual Report, 1976-77

California Department of Transportation, TDA Annual Report, 1975-1976 and 1976-77 Budget.

Despite its popularity, major objection to the sales tax has been its regressivity in terms of disadvantaging the poor. Many states have met this objection by exempting such items as food, drugs and other necessities. [13] Analysis shows the food exemption making the tax about proportional in the lower and middle-income brackets. The extensive use of the sales tax in large metropolitan areas has been explained by the fact that "it is politically less objectionable than the other broad-based taxes."[14] Smaller cities use the property tax as their main source of transit support; it also provides assistance, between 25 and 50 percent, in five metropolitan areas: Boston, the Twin cities, Milwaukee, San Francisco and Denver. Denver no longer uses the transit property tax.

Cities using more unusual taxes include Portland, who earmarks a payroll tax on employers for transit, and Cincinnati and New Orleans. Cincinnati, which levies a supplement to the city's earning tax; and New Orleans, which uses a supplement to its electricity rates, are both considering changing to more conventional taxes. New Orleans, in fact, has been levying a tax on motor vehicles which presented some collection problems, and the city is now studying some new alternatives.

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[13] Financing Transit, pp. 7-2.

[14] Financing Transit, pp. 7-3.

WHAT TYPE OF FINANCING TO CHOOSE? SOME EXAMPLES

With the wide variety of fare structures and taxes available to fund transit systems, Mayors and other local officials are faced with the need to choose the mix best suited to their own community's needs. A major issue is how much should be funded from the farebox and how much from taxes. The fares versus taxes issue will be alive well into the future for a number of reasons.[15] One analyst notes that

> First is the continued rise in transit costs, which have consistently outrun the overall cost of living. Second is the pressure in many communities to improve, or at least maintain, transit services. Third is the well-publicized taxpayers' revolt, which has been gathering steam for nearly a decade, and which culminated in the passage of California's Proposition 13 slash of property taxes, and similar tax reduction measures in a number of states.

A number of cities, either through the city government, or in most cases, through a regional transportation authority, have addressed their need for local sources of transit funds in ways that seem to be working well and provide enough flexibility to cope with future financial crises. Visits were made by the U.S. Conference of Mayors staff to four cities to study their approaches, and the following summaries on each city describe the highlights of their transit financing plans.

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[15] Financing Transit, Introduction.

Houston

The Metropolitan Transit Authority (MTA) of Harris County, serving the City of Houston, nearby cities, as well as most of the western portion of Harris County and parts of three other counties was created by the voters at the same time they decided to levy a one-cent sales tax to support the MTA. State legislation creating METRO also authorized the MTA Board to propose any tax, other than a property tax for voter approval. Other taxes considered but rejected by the MTA board were emissions tax, gasoline and motor vehicle registration taxes (which the Texas Constitution commits to highways and public schools), motor vehicle sales tax (which state law commits to public schools and the state Omnibus Tax Fund), payroll taxes (which have no precedent in Texas and attracted little public support); corporate income taxes (which also found no support because they are difficult to collect and are usually passed on to the consumer); and amusement taxes and parking taxes (for which revenues were projected to be extremely low).

The sales tax was chosen and presented to the voters for these reasons:[16]

*Fairness - The sales tax is a broad-based tax which, by reason of the exemption of medicine, food and rent, is fair in application. Further, this tax secures significant revenue from non-resident purchases, who also benefit from the system.

*Collection - The State of Texas has an existing system for collecting the sales tax. Accordingly, MTA will not need to create a tax office bureaucracy to collect its revenues.

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[16]Metropolitan Transity Authority, METRO Regional Transit Plan, 1978.

*Community Support - The sales tax was supported by the majority of the citizens who participated in MTA's community meetings. (A report analyzing the election and campaign said the sales tax was the "least repugnant" choice among the voter's realistic options).

Voters approved creation of the Metropolitan Transit Authority and the sales tax levy on August 12, 1978, with the tax effective in October, 1978. The new MTA Board has seven members, with five from Houston appointed by the Mayor and City Council; one from Harris County appointed by the County Commissioners' Court; and one representing the other cities outside of Houston chosen by a vote of the Mayors of those 16 municipalities.

In addition to having the income from its sales tax as a solid local funding source for transit (supplying about $1.5 billion over the next 10 years), the MTA Board has adopted by formal resolution a goal of providing 40 percent of the annual cost of operations from farebox revenues. The Board's Regional Transit Plan states, "This is significantly higher than for many other large systems, but the METRO user must pay a fair share of the cost of operation."

From its inception, the MTA Board made a strong commitment to follow its conservative fiscal plan and operate the public transit system in a business-like manner. Presently 35 percent comes out of the farebox, and the Board recognizes significant fare increases will be needed in order to help meet the 40 percent goal. These fare increases will go into effect once METRO attains substantive service improvement goals.

The 1978 MTA election was not Houston's first attempt at

creating a regional transit authority. In 1973, a referendum for the creation of the authority to be funded by an emissions tax was overwhelmingly rejected----by about 70 percent of the Harris County voters. Prior to the 1978 election, an attitudinal survey conducted for the MTA campaign showed most taxpayers preferred the one cent sales tax as a funding mechanism for the transit authority.

San Francisco Bay Area

The Metropolitan Transportation Commission in the San Francisco Bay area funds the transit operators under its jurisdiction from a wide variety of sources. In addition to the federal funds available through the Federal Aid Urban Systems (FAUS) program, and UMTA Sections 5 and 3, substantial funds come from property taxes for all three major transit operators (AC Transit, BART and MUNI). Four major state sources also assist Bay area transit operators including:

*Transportation Development Act (TDA) funds - The TDA Act, also known as the Mills-Alquist-Deddeh Act, was passed in 1971 by the California Legislature and designates MTC as the administrator of these funds in the Bay Area. The funds are derived from a $\frac{1}{2}$ of 1 percent tax on sales occurring in the region, and the Act provides that the funds "be spent for better coordinated transportation services throughout the region."

*Proposition 5 - Approved by California voters in June 1974, this act makes funds in the California Highway Users Tax Account available for exclusive public mass transportation guideway research and planning and for such capital projects and payments on voter-approved bonds issued under specified conditions, as well as for highway purposes.

*Toll Bridge net revenues - As provided in the state

Streets and Highway Code, toll bridge net revenues in the Bay Area can be used to "further the development of public transportation" near toll bridges. Use of these net revenues was made possible by a bridge toll increase effective July, 1977.

*"Bart Counties" sales tax - This regional tax of one-half percent is levied in San Francisco, Alameda and Contra Costa counties, with 75 percent of the revenues going to the BART system and the other 25 percent spent on AC Transit, BART or MUNI, with the final decision on this percentage left to MTC's discretion.

The MTC is a regional authority with 18 appointed commissioners which include a number of Mayors. Three of the 18 commissioners are non-voting because they represent government agencies including the California Department of Transportation, and the U.S. Departments of Transportation and Housing and Urban Development. Other members are divided between the "urban" and "rural" counties, with each county's Mayors Conference playing a role in appointments.

Portland

Portland's transit financing plan combines a tax on employer payrolls with a goal of maintaining farebox revenues at a level to cover 40 percent of operating expenses. A regional transit agency, Tri-Met, was established through state legislation in 1970. This legislation enables Tri-Met to tax employers up to .6 percent, which it is now levying. The tax is fairly predictable and reliable, increasing from 10 to 15 percent annually with job growth and inflation. When the tax was first levied in 1970, the rate was .5 percent, which then dropped to .3 percent in 1971, .4 percent in 1975 and .5 in 1976. The Tri-Met Board voted to levy the maximum .6 percent tax in 1978, with the long-term recommendation

that serious consideration be given to another kind of tax for a future referendum.

In 1974, Tri-Met through its payroll tax had accumulated a $14 million surplus, which the Board refused to spend on major service increases. A recent study by James Womack and Alan Altshuler at the Massachusetts Institute of Technology attributes this refusal by the board to spend its surplus to the fact that most of the board members were prominent downtown business representatives who showed little concern for expanding services to outlying areas to help conserve energy and improve air quality. The Governor replaced the entire board with members more sympathetic to energy conservation and air quality concerns. Womack and Altshuler said that Tri-Met's surplus was so large "that it financed a considerable increase in service...and was not exhausted until fiscal 1979. Thus fiscal 1980 will be the first year the Portland system feels a fiscal pinch."[17]

By levying the maximum payroll tax of .6 percent, Portland's Tri-Met agency should not feel a strain until a few years beyond 1980, according to Tri-Met finance experts. But the Tri-Met Board will be reviewing a number of alternatives over the next six months so that adequate time is allotted for the general public to become educated about a new, broad tax that they could support.

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[17] James Womack and Alan Altshuler, An Examination of the Transit Funding Process at the Local Level, Center for Transportation Studies, Massachusetts Institute of Technology, May, 1979.

When Tri-Met set up a Special Task Force on Transit Financing last year to review alternatives, no one tax received unanimous support. A consensus favored an auto-related tax, but other Task Force members recommended a sales tax. While less acceptable but approved by some was a property tax for transit instead of a sales tax. Some members suggested a lottery. Following is a list of the "pros" and "cons" as presented by the Tri-Met's Special Task Force on Transit Financing on these sources:

*Auto related-tax - This tax was considered more equitable since auto users, next to transit users, comprise the largest group most directly benefited by transit. Tri-Met, however, already experienced defeat of such a measure in 1976 for a $5 per year auto registration fee and an accompanying measure to amend the constitution to allow the revenue to be used for transit. Despite these drawbacks, the Tri-Met task force called the auto-related tax "fair, productive and economical from an administrative standpoint."

*Sales tax - Since Oregon does not already have a sales tax, collecting the tax would create the need for spending significant amounts of money, making a low tax of 1 percent possibly impractical. In terms of its positive aspects, the sales tax was described by the task force as being "reliable and predictable...providing the broadest base possible for transit support, and increasing proportionately with inflation and population growth while also generating ample revenues."

*Lottery - Some members of the task force gave high marks to this source pointing out that it offered "optional participation" and did not infringe on an existing funding source for other public services." The task force stated, "While revenue projections for lotteries are uncertain - experience in other states indicate that lottery revenues increase and decrease without much direct relation to inflation and population growth - a lottery based on the successful New Jersey model, and effective in the tri-county area only, could be expected to yield $4.6 million in 1979-1980.

*Property Tax - Called reasonably fair, reliable and predictable, this source would present no administrative problems for collection. On the negative side, the task force reported that "since the source is already heavily burdened, a property tax is not likely to be approved at this time for transit funding."

*Use of Oregon Mass Transportation Financing Authority Bonds - This source would be used as a way to finance up to $35 million of Tri-Met's capital needs in the 13-year program, beginning in 1984. It would have a negative effect on operating costs since operating revenues would be required to service and retire the bonds.

Chicago

The Regional Transportation Authority (RTA) has primary responsibility for seven commuter railroads and eighteen suburban bus carriers. The RTA was established in 1973 by the Illinois General Assembly and ratified by the residents of Northeastern Illinois in 1974, in order to aid and assist public transportation in the area. Since its creation, the RTA's primary goal has been to preserve the quality of the existing public transportation network, followed by a push to extend service to those parts of the region without public transportation and to improve the existing system.

Another major objective of the RTA is to develop a plan for financial stability for the region's public transportation network. RTA has instituted a number of different measures since its establishment to secure adequate funding including raising fares in 1976 to meet increasing costs and a 5 percent regionwide gas tax in 1978 to raise revenue. The RTA now has a uniform region-wide fare system and estimates operators overall have a 50 percent farebox return.

The RTA is currently confronted with a deficit that must be addressed immediately either by state legislation for new taxes, raising fares, or a combination of both. When the Illinois General

Assembly adjourned on June 30, 1979, a variety of new tax proposals were under consideration. A Special Session to deal with this issue was scheduled for early September. Two of the plans were submitted by Governor James Thompson and Chicago Mayor Jane Byrne and rely primarily on a regional sales tax that would levy an additional 1 percent in Cook County and between .25 to .5 percent for the other five RTA counties. Other proposals considered include:

*Illinois Motor Fuel Tax - Now set at 7.4 cents per gallon, one proposal would raise this tax to 9 cents.

*RTA Gas Tax - This tax is levied at the rate of 5 percent of the retail price minus state and federal excise taxes. Under most of the proposals this tax would be removed.

*License Plate, Drivers License Fees - Under one proposal supported by State Representative Lee Daniels these fees would be increased. License plates would increase $3 per year for small cars and $5 per year for larger cars. Drivers license fees would increase $2 every 3 years.

*"Sin" Taxes - A number of the proposals under consideration suggest a combination of tax increases on cigarettes, distilled liquor, beer and wine.

*Bonds for Capital Projects - One proposal calls for the state to put up 20 percent in bonds on capital projects, which some critics regard as a mixed blessing. Since 1972, the Illinois Department of Transportation has been providing 2/15 of the local grantees' non-federal shares.

Because of its looming deficit, the RTA is under more pressure than some other transit agencies such as Portland who are conducting studies to find new sources of funds for transit, whether they be taxes or fare increases. A decision is expected by early fall.

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CHECKLIST OF ISSUES FOR MAYORS TO CONSIDER IN EVALUATING THEIR TRANSIT FINANCING PLANS

Following is a list of issues for Mayors and their staffs to review and discuss in preparation for the regional meeting in Milwaukee on September 20-21, 1979 on "Transit Financing."

What should be the role of the federal government in development of a local community's fare policy? Should the federal government provide a fixed percent of operating deficits? What measures might the federal government take to stimulate fare policy development at the local level?

How much should the fare box produce? What factors among the following should be given highest priority when a local community formulates its fare structure: equity for low-income patrons, time needed to develop ridership on new services, other local revenue sources, and level of service and comfort.

How much financial assistance should the federal and state governments be expected to provide to local communities in terms of capital projects? Operating costs?

To what extent should a large metropolitan area expect to receive help from the state for funding capital projects or meeting daily operating expenses? Should there be attempts made by the federal government to assure that such state aid reaches a fixed percentage each year?

Should contributions from state and local governments be kept strictly separate?

What kind of guidelines should be developed in terms of meeting the demands of labor? What is the desirability of the guidelines established by the Metropolitan Transportation Commission (Bay Area) that requires an individual operator to increase fares to recover in full any labor cost increase exceeding 5.5 percent? Should productivity be related to wage increases? What other controls might be considered to deal with labor demands?

What kinds of taxes appear to be the least objectionable to voters and why?

What kind of flexibility in federal funding should exist?

This overview of transit financing is a draft of an Issue Paper the Conference of Mayors will publish later this year as part of a series. If you have ideas to contribute for the final draft, please contact Linda Gortmaker of the Conference staff, 1620 Eye Street, N.W., Suite 600, Washington, D.C. 20006, Phone (202)293-5156.

Senator WILLIAMS. Thank you very much, Mayor.

Mr. Farrell?

Mr. FARRELL. Thank you very much, Mr. Williams, Mayor. I am Robert Farrell with the city council of Los Angeles. Kevin McCarty of the National League of Cities staff is with me. We have submitted our statement on behalf of the National League of Cities, and I will present some abbreviated comments.

Senator WILLIAMS. They will be included in the record.

Mr. FARRELL. Mr. Williams, the National League of Cities, as you know, represents approximately 15,000 cities through direct membership in NLC and 48 State and municipal leagues. Within NLC, I serve on the Transportation, Public Safety and Communications Steering Committee. I appreciate the opportunity to testify today on S. 2296, the reauthorization of UMTA.

I would like to commend you for your continuing and strong support for an expanding Federal role in the public transportation system. In a way, you are like a comrade to most of us in local government. We are very proud of you.

The expansion of public transportation systems throughout the country is one of the few clear alternative ways we have in meeting the major challenge of the decade: less energy at ever-increasing prices. Public transportation provides an opportunity to preserve our tradition of mobility while at the same time consuming nonrenewable fossil fuels in a more efficient manner.

I would like to note as gas prices increase, public transit offers the single area where an increased mobility is going to be available to poor people and the aged who are on fixed incomes.

Now that oil prices are increasing much faster than projected under the administration's earlier estimates, we believe that the administration's $16.5 billion transportation initiative calling for a 50-percent increase in transit capacity must be revised upward to reflect higher oil prices and anticipated increases in transit demand.

Last year alone transit ridership increased by 7 percent nationwide. If this trend continues, and NLC believes it will, a 100-percent goal is much more realistic.

Mr. Chairman, S. 2296 provides the Federal commitment to meet the anticipated transit demand that will inevitably develop as decontrol drives gas prices upward. It is appropriate for this subcommittee to now authorize and, consequently, claim a higher level of these gross tax revenues for public transportation.

The Nation is presently making a series of adjustments to the new realities of the energy problem. Nowhere in this country will this adjustment be more difficult than in my own State of California. Yet I have sensed a willingness, even an enthusiasm, to take new initiatives that meet these challenges.

In my city of Los Angeles, we are now preparing for a major expansion of the public transportation system that includes a range of activities: new bus purchases, a downtown people mover and a major new fixed rail system and transit system management improvements. We view this expansion as a commitment to a better transportation system as well as an attempt to address the urgent need to conserve valuable energy resources.

When Secretary Neil Goldschmidt was mayor of Portland, his now famous comprehensive energy program was based, in large part, on this relationship between the development of an effective public transportation system and overall community energy use. Many other cities are now reviewing Portland's work to see how these energy principles can be applied in their communities. I might say, Mr. Chairman, that the Community Energy Act which Senator Tsongas and you have sponsored will help to further stimulate and promote Portland-type energy programs in other cities throughout the country.

I hope Senator Cranston will respond as Mr. Tsongas suggested and be a cosponsor of the legislation.

I would now like to make some specific comments on the reauthorization of the UMTA program. I would point out to the committee that NLC's transportation policy has not addressed all of the changes that are proposed in S. 2296 and, consequently, I will limit my testimony to those major changes that NLC has considered. The remaining issues in the administration's proposal will be reviewed when NLC's Transportation Committee meets later this month. NLC would like to submit additional comments for the committee's consideration at that time.

Senator WILLIAMS. Fine.

Mr. FARRELL. First, the increased funding levels for the section 3 program emphasize the importance of a rapid expansion of public transportation.

Second, S. 2296 should be amended to include a separate authorization within the section 3 program for major new construction projects: new starts, extensions, and downtown people movers. Section 2296 provides a level of overall authority for section 3 that is sufficient to accommodate these major transit construction projects through 1985.

NLC urges the committee to consider a 10-year authorization to provide a clear national policy that commits Federal resources to these new transit projects.

Third, NLC believes that the new formula for rail rehabilitation and modernization under section 3 provides an equitable process for the allocation of funding, since it commits Federal resources to transit systems based on relative long-term needs.

Fourth, NLC supports the provisions of section 6 which authorize the Secretary of Transportation to purchase public transportation equipment. This provision adds stability to the national public transportation system by allowing Federal transit equipment purchases that can be made available to local operators upon request. In addition, this proposal will allow DOT to organize a process for the orderly demand of new transit equipment, particularly for bus procurement.

Fifth, NLC endorses section 10 of S. 2296 that provides continued support for important commuter rail service. We are pleased to know that this subcommittee is taking a serious look at the role of commuter rail service in the context of the national public transportation system. In southern California, the introduction of commuter rail services in the major urban areas has provided a dramatic example of the growing national interest in this type of public transportation activity.

Finally, we note that the Secretary of Transportation and this subcommittee have suggested changes in the section 5 formula. NLC plans to review these proposed changes to the formula and we will provide the subcommittee with our views at a later time.

In closing, Mr. Chairman, I must commend you on behalf of the Nation's cities for your continuing support for an effective and efficient national public transportation system. NLC looks forward to working closely with this subcommittee and the administration on this important reauthorization of the UMTA program.

[Complete statement of Mr. Farrell follows:]

TESTIMONY OF ROBERT FARRELL, COUNCIL MEMBER, LOS ANGELES, CALIF., ON BEHALF OF THE NATIONAL LEAGUE OF CITIES

Mr. Chairman and Members of the Subcommittee. My name is Robert Farrell, Council Member from Los Angeles, California. As you know, the National League of Cities represents approximately 15,000 cities through their direct membership in NLC and in 48 State municipal leagues. Within NLC I serve on the Transportation, Public Safety, and Communications Steering Committee.

It is a pleasure to testify today on S. 2296, the reauthorization of the Urban Mass Transportation Act. I would like to commend the Chairman for his continuing and strong support for an expanded federal public transportation system. The bill before the Committee today attests to your strong belief, which NLC shares, in the need to move forward with an aggressive public transportation program. Now that the country is finally focusing on its energy dilemma, the need for an expanded public transit program is not only prudent, but essential.

Mr. Chairman, the expansion of public transportation systems throughout the country is one of the few clear alternatives we have in meeting the major challenge of this decade, less energy at ever increasing prices. Public transportation provides an opportunity to preserve our tradition of mobility, while at the same time consuming non-renewable fossil fuels in a more efficient manner.

A renewed federal commitment to public transportation will require additional federal investment over the next decade. We commend the Administration and the Congress for its work on the windfall profits tax bill, a measure that will provide a revenue source for this expanded effort.

When the Administration developed its overall energy program, which included a $13 billion initiative for public transportation, the program levels were based on assumptions about future oil prices and total windfall tax revenues that have been proven to be unrealistically low. For the public transportation initiative, these assumptions about oil prices indicated that a national goal calling for a 50 percent increase in transit capacity by 1990 was warranted.

Now that oil prices are increasing much faster than projected under these earlier estimates, NLC believes that the Administration's initiative must be revised upward to reflect higher oil prices and anticipated increased in transit demand.

Last year alone transit ridership increased by seven percent nationwide. If this trand continues, and NLC believes it will, a 100 percent goal is much more realistic.

Mr. Chairman, S. 2296 provides the federal commitment to meet the anticipated transit demand that will inevitiably develop as decontrol drives gas prices upward. It is appropriate for this Subcommittee to now authorize and, consequently, claim a higher level of these gross tax revenues for public transportation.

The nation is presently making a series of adjustments to the new realities of the energy problem. Nowhere in this country will this adjustment be more difficult than in my own State of California. Yet I have sensed a willingness, even an enthusiasm, to take new initiatives that meet these challenges.

In my City of Los Angeles we are now preparing for a major expansion of the public transportation system that includes a range of activities: new bus purchases, a downtown people mover and a major new fixed rail system. We view this expansion as a commitment to a better transportation system as well as an attempt to address the urgent need to conserve valuable energy resources.

For the first time, many cities are rightly recognizing the linkage between energy, public transportation, and a wide array of other urban conservation objectives. At first glance, the expansion of public transportation, when taken as an isolated activity, does not provide dramatic reductions in energy consumption. However, the development of public transportation must be viewed in a broader context. When one considers the potential efficiency of the secondary impacts, such as the energy

savings that result from higher density development along major public transportation corridors, expanded public transportation becomes one of the few rational energy policies for the future.

Another important indirect impact of public transportation systems is the potential for substitution of electric energy for liquid fuels. For subway systems, this substitution has occurred for several decades. Now some cities are evaluating the possibility of using electric bus systems and automated guideways in downtown areas. The City of Seattle is currently completing a downtown electric bus system and in Los Angeles we will soon begin to construct a downtown people mover.

When Secretary Neil Goldschmidt was Mayor of Portland, his now famous comprehensive energy program was based, in large part, on this relationship between the development of an effective public transportation system and overall community energy use. Many other cities are now reviewing Portland's work to see how these energy principles can be applied in their communities. I might say, Mr. Chairman, that the Community Energy Act, which Senator Tsongas and you have sponsored will help to further stimulate and promote Portland-type energy programs in other cities throughout the country.

I would now like to make some specific comments on the reauthorization of the UMTA program. I would point out to the Committee that NLC's transportation policy has not addressed all of the changes that are proposed in S. 2296 and, consequently, I will limit my testimony to those major changes that NLC has considered. The remaining issues in S. 2296 and the Administration's proposals will be reviewed when NLC's Transportation Committee meets later this month. NLC would like to submit additional comments for the Committee's consideration at that time.

First, the increased funding levels for the Section 3 program emphasize the importance of a rapid expansion of public transportation. When NLC considered the Administration's request of $13 billion in additional authority for Section 3 over a ten-year period, NLC's membership specifically recommended significantly higher levels of authority in the first half of the decade. This would enable many cities to accelerate the completion of existing commitments and undertake new starts, while minimizing the effects of inflation and higher construction costs due to energy price increases.

Second, S. 2296 should be amended to include a separate authorization within the Section 3 program for major new construction projects: new starts, extensions and downtown people movers. S. 2296 provides a level of overall authority for Section 3 that is sufficient to accommodate these major transit construction projects through 1985.

NLC urges the Committee to consider a ten-year authorization to provide a clear national policy that commits federal resources to these new transit projects. Major new capital projects, such as fixed rail systems, require a long-term commitment to complete. A ten-year federal funding commitment would help give the assurance that these significant projects will be built. Effective Congressional review of funding commitments to these new projects will be enhanced by the proposed change to the letter of intent process that requires notification of the authorizing committees.

Third, NLC believes that the new formula for rail rehabilitation and modernization under Section 3 provides an equitable process for the allocation of funding, since it commits federal resources to transit systems based on relative long-term needs. In addition, it is prudent federal policy to maintain these major national energy conservation resources—existing rail systems—through a systematic, equitable allocation of federal assistance.

Fourth, NLC supports the provisions of Section 6 which authorize the Secretary of Transportation to purchase public transportation equipment. This provision adds stability to the national public transportation system by allowing federal transit equipment purchases that can be made available to local operators upon request. In addition, this proposal will allow DOT to organize a process for the orderly demand of new transit equipment, particularly for bus procurement.

Fifth, NLC endorses Section 10 of S. 2296 that provides continued support for important commuter rail service. We are pleased to know that this Subcommittee is taking a serious look at the role of commuter rail service in the context of the national public transportation system. In California, the introduction of commuter rail services in the major urban areas has provided a dramatic example of the growing national interest in this type of public transportation activity.

Finally, we note that the Secretary of Transportation and this Subcommittee have suggested changes in the Section 5 formula. NLC plans to review these proposed changes to the formula and we will provide the Subcommittee with our views at a later time.

In closing, Mr. Chairman and Members of the Subcommittee, I must commend you on behalf of the nation's cities for your continuing support for an effective and efficient national public transportation system. NLC looks forward to working closely with this Subcommittee and the Administration on this important reauthorization of the UMTA program.

Senator WILLIAMS. Thank you very much, Councilman Farrell.

I wonder if you each could give our committee an evaluation of the section 5 formula, distribution and funds?

You know, the administration is proposing a major restructuring; what are your feelings are about the adequacy of the existing formula?

Has it failed to meet the transit needs of your cities?

Mayor CALIGUIRI. The first part of your question, Mr. Chairman, a number of mayors will be meeting in Tucson sometime in the next several weeks to answer just that question; to go over the administration's bill to find out exactly what that formula does for certain cities and how effective it will be.

So, at that time, as soon as that conference is concluded, I am sure we will make that testimony available to you

Senator WILLIAMS. That's the end of the month, did you say?

Mayor CALIGUIRI. I understand that the Senator's staff will be invited March 27 to Tucson to be part of that conference.

Mr. FARRELL. Mr. Williams, the National League of Cities is in a similar situation. The matter will be discussed at the Congressional Cities Conference. Once again as a representative of NLC, we don't have a consensus on that yet.

My city—one of the cities, a large city in NLC, has been able to have its point heard and we are very appreciative of that. Once again from the perspective of the interests of all cities, we have yet to get a consensus.

Senator WILLIAMS. Another question for each of you, if I might.

When we had the critical energy crisis last year, we had all the reports of the tremendous increase in ridership on public transportation in our cities. So many transit systems were really overwhelmed. I wonder what has been the—what was your experience in your cities; were you able to cope with this sudden major increase in ridership?

Then I would like to ask whether you have developed contingency plans to deal with short term energy crises?

Mayor CALIGUIRI. As with most cities in the Northeast, we had lines at our gas pumps. Our ridership increased 13 percent over the past year. There was an increase in ridership because of the gasoline crisis.

In fact, you will see, Mr. Chairman, the—part of the testimony that we are presenting to you today, "The Gasoline Shortage and The Cities." This is a 100-city survey. It even shows those cities that did not have a shortage, but because of—whether it was the media each day presenting itself, showing the lines that existed in other cities, even those cities without gasoline shortages showed a dramatic increase in ridership; so that people are concerned. They are thinking about it.

I guess in a number of cases, they are taking an opportunity to try the transit system. In Pittsburgh, we have purchased more buses. We are trying new things to take on the increase that's

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coming about. However, we know today that if this continues, without the modernization of our transit system, that at the present time, we probably can't support the increase in ridership.

It is incumbent upon us—and I will talk to Pittsburgh right now—over the next few years to get along without exclusive busways that is not under construction, to get along with the subway system.

Again S. 2296 is a tremendous beginning. It will have a tremendous initial impact on mass transit and is a great beginning.

I'm sure, if you look over this survey, it will show you just what's happening in the majority of the cities across this country.

Mr. FARRELL. Mr. Williams, in Los Angeles I think we were prepared for the crisis, thanks to the farsightedness of Mayor Tom Bradley and the leadership of the rapid transit district. There was almost an immediate commitment of everything rolling, even some of the older buses that were as old as 35 years were literally being put into service, anything that would move.

We learned quite a bit from that. I think the public in Los Angeles, in the Los Angeles area, got the message. From that time through today, the ridership has been increasing on the buses. It's also been reflected in carpooling, vanpooling, the concept of ridesharing has been catching; and even though there are—there are an increasing number of vehicles on the freeways, they are carrying more people in a voluntary way. People are beginning to rideshare, neighbors to neighbors, informally.

It's the kind of thing that you see the change yourself. I don't know where the figures are. Perhaps we will have some soon, organized by the RTE, or perhaps by Caltran, the California Department of Transportation.

It's obvious that the change is catching; and, in fact, there's a phenomena today in downtown Los Angeles. We are seeing people riding bicycles to work, on those days when it's not raining.

Senator WILLIAMS. The crisis first was felt in California, as I recall last year, in April. I happened to be out there on a field trip on another matter. That's where it all started and it came like a wave eastward. It's good to hear that a major city, Los Angeles, was able to respond as you describe it. It wasn't true everywhere.

You have been here and heard us discuss earlier the approach to rail modernization needs that many of us feel deserves a response through a formulized approach.

Can you give us any idea as to the extent of the decay, the decline of rail facilities and equipment in cities that you are familiar with?

Could you give us the dimension of this as a problem that we ought to address ourselves to?

Mayor CALIGUIRI. We support the formula as represented in the bill. I am familiar, a little bit, with Philadalphia. Pittsburgh doesn't have exactly that problem. Philadelphia in its rail modernization plan has about a $1 billion, I guess, bottom line figure that they need for their rails.

Mayor Green would have been here to testify to that, but there is an example of a lot of dollars necessary; but when you have rails already running through your city, it's ludicrous not to use that system.

What we have done in Pittsburgh is move a rail right-of-way, the tracks, about 30 feet to the right; and now we have an exclusive bus lane that will share that same right of way on approximately a 10-mile track from downtown Pittsburgh to one of the eastern suburbs.

So we're looking to utilizing these right-of-ways that now exist in central cities. That's going to cut about 30 minutes of driving time of those people coming from our eastern suburbs, able to get on this right of way, share it with, in this case, ConRail, and come into the downtown area.

So again the formula is one that we feel we can support; and certainly the item of rail modernization is a good item in the transit system.

Senator WILLIAMS. Of course, Los Angeles has a different situation.

Mr. FARRELL. Yes.

Senator WILLIAMS. Long ago, it seems, a rail system that did exist was discontinued. As a matter of fact, right-of-ways were lost; am I right on that?

Mr. FARRELL. You are right, sir.

Senator WILLIAMS. It is popularly thought that Los Angeles is really the most automobile-dependent major city that we have.

I just wonder, while that is a popular thought, I have an understanding of Los Angeles, it might not be accurate, although from limited experience it seems to me to be the way it is.

Can Los Angeles become a city of transit users?

Mr. FARRELL. Mr. Williams, yes. I think the great challenge to southern California as a region is to devise an appropriate mix where we have some of the right-of-ways still in place; perhaps light rail there can be brought back.

Most certainly, as you know, there is the exciting experiment going on now with heavy rail between the city of Los Angeles and San Diego, and some proposals to extend the San Diego experiment up to Santa Barbara. That would make a definite contribution to some of the communities of southern California that at this point are still heavily dependent on the automobiles and service roads.

Senator WILLIAMS. Is that line, the rail line that runs south to San Diego, is that a significant commuter facility?

Mr. FARRELL. It's crowded every day. It's become one. It took a little while for the consumers, basically in Los Angeles, Orange County, going down to San Diego, to grab hold of that. Once the commitment was made, once the schedule was adhered to, the promise was fulfilled, there was a response in the marketplace.

There are some who believe that if the opportunity was there for more rail, especially along that San Diego-Santa Barbara corridor coming through Los Angeles County metropolitan area, there would be a response. Railroad rights-of-way are there.

The attitude of the railway management is something else; but I think that given the current crisis we face, they will respond in an appropriate and responsible way.

Senator WILLIAMS. That is not a significant commuter line now?

Mr. FARRELL. It is significant now. I am just saying if more heavy rail mileage, the existing rail was upgraded and brought into

play with commuter service, there would be a response on it and you would see a decline in cars on the freeway.

Senator WILLIAMS. Gentlemen, it's been excellent testimony for our record. We appreciate it.

Mayor CALIGUIRI. Thank you, Senator.

Mr. FARRELL. Thank you.

Senator WILLIAMS. Thank you.

We return to hearings on March 19.

[Whereupon, at 12:05 p.m., the hearing was adjourned, to reconvene at 9:30 a.m., Wednesday, March 19, 1980.]

[Copies of the bills being considered at this hearing follow:]

II

96TH CONGRESS
1ST SESSION

S. 2004

Entitled "The Public Transportation Energy Conservation Act of 1979".

IN THE SENATE OF THE UNITED STATES

NOVEMBER 13 (legislative day, NOVEMBER 5), 1979

Mr. WILLIAMS introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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A BILL

Entitled "The Public Transportation Energy Conservation Act of 1979".

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Emergency Public Transportation Energy Conservation Act of 1979".

SEC. 101. (a) Section 4(c) of the Urban Mass Transportation Act of 1964 is amended by adding at the end thereof the following new paragraph:

"(4) To finance grants and loans under section 3 of this Act, there are authorized to be appropriated from tax receipts earmarked for energy efficient transportation which

have been placed in a trust fund additional sums not to exceed $1,150,000,000 for the fiscal year ending September 30, 1980. Appropriations pursuant to the authority of this paragraph shall remain available for three years following the close of the fiscal year for which such appropriation is made. Grants and loans financed under this paragraph shall be subject to the aggregate restriction of section 4(c)(3)(B).

96TH CONGRESS
1ST SESSION

S. 2015

To amend the Urban Mass Transportation Act of 1964 and title 23, United States Code, to provide for authorizations, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 15, 1979

Mr. RANDOLPH (for himself, Mr. CANNON, and Mr. WILLIAMS) (by request) introduced the following bill; which was read twice and referred jointly by unanimous consent to the Committees on Environment and Public Works; Commerce, Science, and Transportation; and Banking, Housing, and Urban Affairs

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A BILL

To amend the Urban Mass Transportation Act of 1964 and title 23, United States Code, to provide for authorizations, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Transportation Energy Efficiency Act of 1979".

★(Star Print)

TITLE I—ENERGY EFFICIENT PUBLIC TRANSPORTATION

SEC. 101. Section 4(c) of the Urban Mass Transportation Act of 1964 ("Act") is amended by adding at the end thereof the following new paragraph:

"4(c)(4) To finance grants and loans under sections 3 and 5(a)4(A) of this Act and to finance grants and contracts under subsection (i) and subsection (g) of this section, there are authorized to be appropriated for allocation by the President from the Energy Security Trust Fund aggregate additional sums not to exceed $1,050,000,000 by September 30, 1980, $2,100,000,000 by September 30, 1981, $3,200,000,000 by September 30, 1982, $4,300,000,000 by September 30, 1983, $5,600,000,000 by September 30, 1984, $6,900,000,000 by September 30, 1985, $8,200,000,000 by September 30, 1986, $9,500,000,000 by September 30, 1987, $10,800,000,000 by September 30, 1988, and $12,100,000,000 by September 30, 1989. In any fiscal year not more than 4 per centum of such year's appropriation pursuant to this paragraph shall be used for the purposes of subsection (i) of this section. Appropriations pursuant to the authority of this paragraph may be in an appropriations Act for a fiscal year preceding the fiscal year in which the appropriation is to be available for obligation and shall remain available for three years following the close of the

fiscal year for which such appropriation is made. Amounts transferred by the Secretary of Treasury to cover revenues forgone as a result of the tax credit for acquisition of intercity buses that expand the existing bus fleet shall be charged against the authorization contained in this subsection."

SEC. 102. Section 4(c)(3)(A) of the Urban Mass Transportation Act of 1964 is amended by inserting after the first sentence the following: "Not to exceed an aggregate of $650,000,000 of these authorizations may be appropriated from the Energy Security Trust Fund for allocation by the President."

SEC. 103. Section 5(a)(4)(B) of the Urban Mass Transportation Act of 1964 is amended by adding after the last sentence the following: "Not to exceed an aggregate of $250,000,000 of these authorizations may be appropriated from the Energy Security Trust Fund for allocation by the President. There is authorized to be appropriated from the Energy Security Trust Fund for allocation by the President for the fiscal year ending September 30, 1983, an amount not to exceed the difference between $250,000,000 and the aggregate amounts appropriated pursuant to the authority of this subparagraph from the Energy Security Trust Fund for prior fiscal years.".

SEC. 104. Section 4(i) of the Urban Mass Transportation Act of 1964 is amended by striking out "section 4(c)(3)(A)" and inserting "sections 4(c)(3)(A) and 4(c)(4)."

TITLE II—IMPROVED AUTOMOBILE USE

SEC. 201. Chapter 1 of title 23, United States Code, is amended by adding at the end thereof the following new section:

"SEC. 157. (a) Notwithstanding any other provision of law, the Federal share of projects under title 23, United States Code, may, at the discretion of the Secretary, be increased from the Federal share provided in section 120 and section 402(d) of this title to a Federal share of 90 per centum, for energy conservation projects under regulations which the Secretary shall issue. In those States containing nontaxable Indian lands, individual and tribal, and public domain lands which receive an increase in the Federal share under section 120(a) of this title, the Federal share shall be increased 15 per centum but shall not exceed 95 per centum. Funds for such increase in the Federal share are authorized to be appropriated from the Energy Security Trust Fund.

"(b) The Secretary is authorized to make grants to States, counties, municipalities, metropolitan planning organizations, and other units of local and regional governments, and private entities, for energy conservation projects, and for the purpose of planning, implementing, or evaluating innova-

tive transportation strategies for more efficient use of automobiles and alternatives to low occupancy automobiles. Grants to entities other than private entities shall be made through the State. Grants made under this section shall be consistent with regulations which shall be promulgated by the Secretary establishing eligibility criteria therefor. The Federal share of projects under this section shall be 90 per centum. Federal funds for projects under this section are authorized to be appropriated from the Energy Security Trust Fund.".

SEC. 202. Subsection (a) of section 402 of title 23, United States Code, is amended by inserting after the fifth sentence thereof the following: "Programs developed in accordance with this section may include programs for increased automotive fuel efficiency, including improved driver practices, vehicle operation, and vehicle maintenance, for which program funds may be provided at the discretion of the Secretary from the Energy Security Trust Fund.".

SEC. 203. There are authorized to be appropriated out of the Energy Security Trust Fund for allocation by the President, for carrying out the purposes of sections 154, 157, and 402 of title 23, United States Code, additional sums not to exceed $250,000,000 by September 30, 1980, $500,000,000 by September 30, 1981, $750,000,000 by September 30, 1982, $1,000,000,000 by September 30,

1983, $1,250,000,000 by September 30, 1984, $1,500,000,000 by September 30, 1985, $1,750,000,000 by September 30, 1986, $2,000,000,000 by September 30, 1987, $2,250,000,000 by September 30, 1988, and $2,500,000,000 by September 30, 1989. Not more than 3 per centum of sums so appropriated for any fiscal year may be used as the Secretary may deem necessary for public information programs directed to improve automobile use. The Secretary shall deduct a sum not to exceed 1 per centum of sums so appropriated for any fiscal year as the Secretary may deem necessary for the costs of administering programs arising under chapter 4 of title 23, United States Code. Appropriations pursuant to the authority of this section shall remain available until expended.

SEC. 204. Section 103(e)(4) of title 23, United States Code, is amended by striking the eighth, ninth, and tenth sentences and inserting the following in lieu thereof: "Notwithstanding any other provision of law, for highway projects approved on or after the date of enactment of the Transportation Energy Efficiency Act of 1979, there are authorized to be appropriated out of the Highway Trust Fund for liquidation of the obligations incurred under this paragraph such sums as may be necessary. Appropriations for public mass transit projects substituted pursuant to this paragraph are authorized under section 4(g) of the Urban Mass Transportation

Act of 1964, as amended. Obligations incurred after the date of enactment of this sentence under this paragraph for highway projects substituted as a consequence of withdrawals shall be charged against sums apportioned to the State under section 104(b)(5)(A) of this title. Unobligated apportionments for the Interstate System in any State where a withdrawal is approved under this paragraph after the date of enactment of the Transportation Energy Efficiency Act of 1979, shall, on the date of such approval, be reduced in the proportion that the amount made available as a consequence of such withdrawal for the Federal share of the cost of substitute public mass transit projects, as determined by the Secretary, bears to the Federal share of the total cost of all Interstate routes in that State as reflected in the latest cost estimate approved by the Congress, but an amount equal to such reduction shall remain available to the Secretary for reallocation to any other State in accordance with the provisions of the third sentence of section 118(b) of this title."

SEC. 205. Section 104(b)(5)(A) of title 23, United States Code, is amended as follows:

(1) By striking the twenty-third sentence and inserting the following in lieu thereof: "Upon approval by Congress, the Secretary shall use the Federal share of such approved estimates in making the apportionment for the fiscal year ending September 30, 1981.

The Secretary shall revise the estimates transmitted to the Congress within ten days subsequent to January 2, 1979, to reflect the amount available for highway substitution projects substituted as a consequence of withdrawals approved pursuant to section 103(e)(4) of this title, and transmit such revised estimates to the Congress not later than September 1, 1980. Upon the approval by Congress, the Secretary shall use the Federal share of such approved estimates in making the apportionment for the fiscal year ending September 30, 1982.";

(2) By inserting after the words "then designated Interstate System" in the existing twenty-fourth sentence, and each sentence thereafter wherever these words appear in the paragraph, the following: "and such revised estimate shall reflect the amount available for highway substitution projects substituted as a consequence of withdrawals pursuant to section 103(e)(4) of this title,".

TITLE III—BASIC AUTOMOTIVE RESEARCH PROGRAM

There is authorized to be appropriated not to exceed $800,000,000 to be derived from the Energy Security Trust Fund and for allocation by the President, to carry out cooperative basic automotive research to advance the state of

knowledge underlying automotive technology. The research shall include, but not be limited to, such areas as thermal and fluid sciences; structural mechanics; electrochemistry; aerodynamics; materials science and processing; control systems; tribology; surface science and catalysis; and acoustics and vibrations. Appropriations pursuant to this authority may be made through fiscal year 1989 and without fiscal year limitation.

TITLE IV—FUEL ECONOMY TECHNOLOGY ASSESSMENT

There is hereby authorized to be appropriated from the Energy Security Trust Fund for allocation by the President an aggregate amount of not to exceed $200,000,000 for the fiscal years 1980 through 1989, inclusive, to remain available until expended to assist in carrying out automobile fuel economy technology assessment under the Motor Vehicle Information and Cost Savings Act (15 U.S.C. section 1901 et. seq.).

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II

96TH CONGRESS
1ST SESSION

S. 2105

To delegate the functions of the Secretary of Transportation under section 3 of the Urban Mass Transportation Act of 1964 to the Urban Mass Transportation Administrator.

IN THE SENATE OF THE UNITED STATES

DECEMBER 10 (legislative day, NOVEMBER 29), 1979

Mr. PROXMIRE (for himself, Mr. STEVENSON, and Mr. HEINZ) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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A BILL

To delegate the functions of the Secretary of Transportation under section 3 of the Urban Mass Transportation Act of 1964 to the Urban Mass Transportation Administrator.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, for the one-year period beginning on the date of enactment of this Act, the functions of the Secretary of Transportation under section 3 of the Urban Mass Transportation Act of 1964 are transferred to the Urban Mass Transportation Administrator.

II

96TH CONGRESS
2D SESSION

S. 2296

To amend the Urban Mass Transportation Act of 1964 to provide authorizations for appropriations, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 18 (legislative day, JANUARY 3), 1980

Mr. WILLIAMS introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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A BILL

To amend the Urban Mass Transportation Act of 1964 to provide authorizations for appropriations, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Public Transportation Act of 1980".

AMENDMENTS TO DISCRETIONARY GRANT PROGRAM

SEC. 2. Section 3(a) of the Urban Mass Transportation Act of 1964 is amended by adding at the end thereof the following new paragraphs:

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"(5)(A) Prior to July 1, 1980, the Secretary shall submit to the appropriate authorizing committees of the Senate and the House of Representatives an interim allocation plan for the modernization or rehabilitation of rail mass transportation facilities and equipment. The interim allocation plan shall be based on existing studies of the cost of such modernization or rehabilitation for rail mass transportation systems other than intercity rail passenger service as defined in section 102 of the Rail Passenger Service Act. The interim allocation plan shall contain for each urbanized area a calculation of the ratio that the estimated cost of such area's modernization or rehabilitation program bears to the total of the estimated costs of the rail modernization or rehabilitation programs for all urbanized areas.

"(B) Prior to January 1, 1982, the Secretary shall submit a proposed final allocation plan to the appropriate authorizing committees in the Senate and the House of Representatives. Such plan shall become final unless disapproved by a majority vote of both authorizing committees within twenty days of continuous session of the Congress after submission. The final allocation plan shall be based on a thorough survey of the necessary costs of modernizing, rehabilitating, or replacing rolling stock and fixed facilities to improve the reliability, safety, and attractiveness of such rail mass transportation systems. The final allocation plan shall

contain for each urbanized area a calculation of the ratio that the cost of such area's modernization or rehabilitation program bears to the total of the costs of the programs for all urbanized areas as estimated by the survey.

"(C) Annual appropriations Acts shall establish the annual level of funding to be granted under the interim allocation plan for fiscal years 1981 and 1982 and under the final allocation plan for subsequent years. Such appropriations Acts shall also establish the amount for the modernization and rehabilitation of rail facilities and equipment which will not be subject to the allocation plans.

"(D) The Secretary shall apportion annually amounts identified as subject to the allocation plan in accordance with that allocation plan.

"(E) For the purpose of subparagraph (B)—

"(i) continuity of session is broken only by an adjournment of Congress sine die; and

"(ii) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of any period of time in which Congress is in continuous session.

"(6)(A) The Secretary is authorized to purchase equipment for use in public transportation service with funds authorized to be appropriated under this section. These pur-

chases may be undertaken directly or through the use of a Federal purchasing authority.

"(B) The Secretary shall transfer ownership of such equipment to States or local public bodies and such transfers must comply with statutory requirements which are applicable to grants under section 3, except as otherwise provided under this paragraph. The United States shall not be liable for any loss, cause of action, or suit arising out of the use of equipment purchased with funds provided under this Act.

"(C) Any State or local public body which applies to the Secretary for transfer of such equipment under this paragraph must provide at least 20 per centum of the net project cost in cash or inkind contributions. Cash shall be returned to the Urban Mass Transportation Fund and remain available until obligated.".

DISCRETIONARY GRANT OR LOAN AUTHORIZATIONS

SEC. 3. The first sentence of section 4(c)(3)(A) of the Urban Mass Transportation Act of 1964 is amended by striking out "$1,410,000,000" and all that follows through "1983" before the period at the end thereof and inserting in lieu thereof the following: "$2,510,000,000 for the fiscal year ending September 30, 1980; $2,750,000,000 for the fiscal year ending September 30, 1981; $3,025,000,000 for the fiscal year ending September 30, 1982; $3,325,000,000 for the fiscal year ending September 30, 1983;

$3,625,000,000 for the fiscal year ending September 30, 1984; and $3,985,000,000 for the fiscal year ending September 30, 1985".

LETTER OF INTENT

SEC. 4. Section 3(a)(4) of the Urban Mass Transportation Act of 1964 is amended by inserting immediately after the first sentence thereof the following: "At least thirty days prior to the issuance of a letter of intent under this paragraph, the Secretary shall notify, in writing, the Committee on Public Works and Transportation of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate of the proposed issuance of such letter of intent.".

FORMULA GRANT AUTHORIZATIONS

SEC. 5. (a) Section 5(a)(1)(B) of the Urban Mass Transportation Act of 1964 is amended to read as follows:

"(B) There are authorized to be appropriated for the purposes of this paragraph $900,000,000 for the fiscal year ending September 30, 1981; $900,000,000 for the fiscal year ending September 30, 1982; $900,000,000 for the fiscal year ending September 30, 1983; $900,000,000 for the fiscal year ending September 30, 1984; and $950,000,000 for the fiscal year ending September 30, 1985.".

(b) Section 5(a)(2)(B) of the Urban Mass Transportation Act of 1964 is amended to read as follows:

"(B) There are authorized to be appropriated for the purposes of this paragraph $250,000,000 for the fiscal year ending September 30, 1979; $250,000,000 for the fiscal year ending September 30, 1980; $250,000,000 for the fiscal year ending September 30, 1981; $325,000,000 for the fiscal year ending September 30, 1982; $475,000,000 for the fiscal year ending September 30, 1983; $575,000,000 for the fiscal year ending September 30, 1984; and $625,000,000 for the fiscal year ending September 30, 1985.".

(c) Section 4(d) of the Urban Mass Transportation Act of 1964 is amended by striking out "and September 30, 1982" and inserting in lieu thereof "September 30, 1982, September 30, 1983, September 30, 1984, and September 30, 1985".

(d) The first sentence of section 4(e) of the Urban Mass Transportation Act of 1964 is amended by striking out "and $120,000,000 for the year ending September 30, 1982" and inserting in lieu thereof the following: "$120,000,000 for the fiscal year ending September 30, 1982; $140,000,000 for the fiscal year ending September 30, 1983; $160,000,000 for the fiscal year ending September 30, 1984; and $185,000,000 for the fiscal year ending September 30, 1985".

(e) The first sentence of section 4(f) of the Urban Mass Transportation Act of 1964 is amended to read as follows: "There are authorized to be appropriated to carry out the

functions of this Act, other than sections 3, 5, 8, 11(b), 16(b), 18, 21, and 22, not to exceed $90,000,000 for the fiscal year ending September 30, 1979; $95,000,000 for the fiscal year ending September 30, 1980; $100,000,000 for the fiscal year ending September 30, 1981; $155,000,000 for the fiscal year ending September 30, 1982; $180,000,000 for the fiscal year ending September 30, 1983; $205,000,000 for the fiscal year ending September 30, 1984; and $230,000,000 for the fiscal year ending September 30, 1985.".

(f) Section 5(a)(3)(B) of the Urban Mass Transportation Act of 1964 is amended to read as follows:

"(B) There are authorized to be appropriated for the purposes of this paragraph, $115,000,000 for the fiscal year ending September 30, 1979; $130,000,000 for the fiscal year endng September 30, 1980; $145,000,000 for the fiscal year ending September 30, 1981; $205,000,000 for the fiscal year ending September 30, 1982; $315,000,000 for the fiscal year ending September 30, 1983; $405,000,000 for the fiscal year ending September 30, 1984; and $500,000,000 for the fiscal year ending September 30, 1985.".

(g) Section 5(a)(4)(B) of the Urban Mass Transportation Act of 1964 is amended to read as follows:

"(B) There are authorized to be appropriated for the purposes of this paragraph $300,000,000 for the fiscal year ending September 30, 1979; $300,000,000 for the fiscal year

ending September 30, 1980; $370,000,000 for the fiscal year ending September 30, 1981; $455,000,000 for the fiscal year ending September 30, 1982; $500,000,000 for the fiscal year ending September 30, 1983; $550,000,000 for the fiscal year ending September 30, 1984; and $600,000,000 for the fiscal year ending September 30, 1985.".

AVAILABILITY OF APPROPRIATIONS

SEC. 6. Section 5(c)(3) of the Urban Mass Transportation Act of 1964 is amended to read as follows:

"(3) Appropriations pursuant to the authority of this section may be in an appropriations Act for a fiscal year preceding the fiscal year in which the appropriation is to be available for obligation and shall be available until expended.".

AMENDMENTS TO FORMULA GRANT PROGRAM

SEC. 7. Section 5(a)(4)(A) of the Urban Mass Transportation Act of 1964 is amended to read as follows:

"(A) To make grants under this section for the purchase of buses and related equipment, or the construction of bus related facilities, the Secretary shall apportion in each fiscal year the sums appropriated pursuant to subparagraph (B) of this paragraph. Sums shall be apportioned on the basis of the ratio that the number of bus revenue vehicle miles traveled serving each urbanized area bears to the total number of bus revenue vehicle miles traveled serving all urbanized areas.

Sums apportioned under this paragraph shall be available only for projects for the purchase of buses and related equipment, and the construction of bus related facilities, except that projects assisted pursuant to section 3(h) of this Act may utilize funds apportioned under this section for any eligible construction project.".

DEFINITION OF FIXED GUIDEWAY

SEC. 8. Section 12(c)(2) of the Urban Mass Transportation Act of 1964 is amended to read as follows:

"(2) the term 'fixed guideway' means any public transportation facility which utilizes and occupies a separate right-of-way or rails for the exclusive use of public transportation service including, but not limited to, fixed rail, automated guideway transit, and exclusive facilities for buses and other high occupancy vehicles;".

SAFETY INVESTIGATIONS

SEC. 9. Section 12 of the Urban Mass Transportation Act of 1964 is amended by adding at the end thereof the following:

"(h)(1) The Secretary shall investigate unsafe conditions in any facility, equipment, or manner of operation of any transit system financed under this Act which creates a serious hazard of death or injury for the purpose of determining the nature and extent of such hazard and the means which

might best be employed to eliminate or correct such hazard. If the Secretary determines that such facility, equipment, or manner of operation is unsafe, he shall require the State or local public body or agency to submit to the Secretary a plan for correcting the unsafe facility, equipment, or manner of operation, and the Secretary may withhold further financial assistance under this Act to the applicant until such plan is approved or implemented.

"(2) Notwithstanding the provisions of subsection (d), the Secretary is authorized to establish safety criteria and standards for use during the investigation of unsafe conditions in any facility, equipment, or manner of operation of any transit system financed under this Act.".

COMMUTER RAIL PUBLIC TRANSPORTATION

SEC. 10. (a) Section 403(d)(2) of the Rail Passenger Service Act is amended to read as follows:

"(2) Any commuter rail passenger service which is operated by the Corporation on January 1, 1980, shall, until September 30, 1985, continue to be operated by the Corporation and funded in accordance with the method of funding in effect for that service on January 1, 1980.".

(b) Section 403(d)(3) of the Rail Passenger Service Act is amended by striking out "April 1, 1981" and inserting in lieu thereof "September 30, 1985".

(c) Section 601(b)(1) of the Rail Passenger Service Act is amended—

(1) by striking out "and" at the end of clause (D);

(2) by striking out the period at the end of clause (E) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following:

"(F) for the payment of the operating and capital expenses of commuter rail passenger service provided pursuant to section 403(d)(2) of this Act, not to exceed $3,500,000 for the period April 1, 1981, through September 30, 1981, not to exceed $8,000,000 for the fiscal year ending September 30, 1982, not to exceed $8,600,000 for the fiscal year ending September 30, 1983, not to exceed $9,500,000 for the fiscal year ending September 30, 1984, and not to exceed $10,400,000 for the fiscal year ending September 30, 1985.".

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96TH CONGRESS
2D SESSION

S. 2479

To amend the Urban Mass Transportation Act of 1964 to provide authorizations and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 25 (legislative day, JANUARY 3), 1980

Mr. WILLIAMS (by request) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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A BILL

To amend the Urban Mass Transportation Act of 1964 to provide authorizations and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act be divided into sections according to the following table of contents.

TABLE OF CONTENTS

Sec. 101. Short title.
Sec. 102. Amendments to discretionary grant program.
Sec. 103. Program authorizations.
Sec. 104. Amendments to formula program for urbanized areas.
Sec. 105. Revised fixed guideway definition.
Sec. 106. Amendments to formula program for nonurbanized areas.
Sec. 107. Safety criteria.

SHORT TITLE

SEC. 101. This Act may be cited as the "Public Transportation Amendments of 1980".

AMENDMENTS TO DISCRETIONARY GRANT PROGRAM

SEC. 102. (a) The Urban Mass Transportation Act of 1964 as amended (the "Act") is amended by striking subparagraph 3(a)(1)(E) and subparagraph 4(c)(3)(C).

(b)(1) Section 3(a) of the Act is amended by adding at the end thereof the following new paragraph:

"(5)(A) The Secretary is authorized to purchase buses and related equipment for use in public transportation service with funds authorized under section 4(c)(3)(C) and with funds made available under this paragraph. Such funds shall remain available until expended. These purchases may be undertaken directly or through the use of a Federal purchasing authority. These purchases will be made based upon projections of the needs of States and local public bodies and will consider costs in addition to initial acquisition costs.

"(B) The Secretary is authorized to make grants of these buses and related equipment to States and local public bodies. A grant under this paragraph must comply with statutory requirements that are applicable to grants under section 3, except as otherwise provided under this paragraph.

"(C) The State or local public body which receives a grant of buses and related equipment under this paragraph

must provide at least 20 per centum of the net project cost in cash or in-kind contributions. Cash shall be returned to the Urban Mass Transportation Fund and shall be available for the purposes of this paragraph when so provided in an appropriations Act.

"(D) In an urbanized area, the Secretary may make a grant under this paragraph only after reducing the apportionments available to that area under section 5(a)(4) by an amount that would be reasonably available under that section to purchase buses and related equipment.".

(2) Section 4(c)(3) of the Act is amended by inserting a new subparagraph following section 4(c)(3)(B) to read as follows:

"(C) In each fiscal year, not more than $150,000,000 of the sums appropriated pursuant to subparagraph (A) shall be available for the purposes of section 3(a)(5).".

PROGRAM AUTHORIZATIONS

SEC. 103. (a) The first sentence of section 4(c)(3)(A) of the Act is amended by striking out "1,410,000,000" and all that follows down through and including the period at the end thereof and inserting in lieu thereof the following: "2,360,000,000 for the year ending September 30, 1980; $2,490,000,000 for the year ending September 30, 1981; $2,625,000,000 for the year ending September 30, 1982; $2,775,000,000 for the year ending September 30, 1983;

$2,930,000,000 for the year ending September 30, 1984; and $3,090,000,000 for the year ending September 30, 1985.".

(b) Section 4(e) of the Act is amended by striking out "and $120,000,000 for the year ending September 30, 1982." and inserting in lieu thereof "$120,000,000 for the year ending September 30, 1982; $130,000,000 for the year ending September 30, 1983; $140,000,000 for the year ending September 30, 1984; and $150,000,000 for the year ending September 30, 1985.".

(c) Effective October 1, 1981, section 4(f) of the Act is amended to read as follows:

"(f)(1) There are authorized to be appropriated for administrative costs, including salaries and expenses necessary to carry out the functions of this Act, such sums as may be necessary.

"(2) There are authorized to be appropriated to carry out the purposes of sections 6, 10, and 11(a) of this Act aggregate sums not to exceed $85,000,000 by September 30, 1982; $175,000,000 by September 30, 1983; $270,000,000 by September 30, 1984; and $370,000,000 by September 30, 1985. Sums appropriated under this paragraph shall remain available until expended.".

(d) Section 4 of the Act is amended by adding at the end thereof the following new subsection:

"(j) In any fiscal year not more than $15,000,000 of the funds appropriated in that fiscal year pursuant to subparagraph 4(c)(3)(A) may be used for the purposes of section 20, including related administrative costs.".

(e) Section 4(h)(2) of the Act is amended to read as follows:

"(2) On or before March 1, 1982, the Secretary shall report to Congress on authorization requests for sections 3 and 5 of this Act for fiscal years 1984 through 1987. On or before March 1, 1984, the Secretary shall report to Congress on authorization requests for sections 3 and 5 of this Act for fiscal years 1986 through 1989. Such authorization requests shall contain a description and analysis of the methods used and the assumptions relied upon by the Secretary.".

AMENDMENTS TO FORMULA PROGRAM FOR URBANIZED AREAS

SEC. 104. (a) Amendments made by this section shall become effective on October 1, 1981, except that the amendment made by section 104(e)(1) shall be effective on October 1, 1980.

(b) Section 5(a)(1) of the Act is amended to read as follows:

"(1)(A) To make grants and loans for construction or operating assistance purposes under this subsection, the Secretary shall apportion for expenditure in each fiscal year, the

sums appropriated pursuant to subparagraph (C). Urbanized areas will be entitled to receive an apportionment which is the greater of the apportionment under the formula of subparagraph (B) or the hold-harmless apportionment calculated under section 5(a)(2).

"(B) The apportionment for each urbanized area under this subparagraph shall be an amount equal to the sum of—

"(i) one-half of the amount to be apportioned under this subparagraph multiplied by the ratio which the population of the urbanized area, as designated by the Bureau of the Census, bears to the total population of all urbanized areas in all the States as shown by the latest available Federal census; and

"(ii) one-half of the amount to be apportioned under this subparagraph multiplied by the ratio which the number of revenue vehicle miles directly serving the urbanized area, as determined by the Secretary, bears to the total number of revenue vehicle miles directly serving all urbanized areas.

"(C) There are authorized to be appropriated for the purposes of this paragraph $1,190,000,000 for the fiscal year ending September 30, 1982; $1,290,000,000 for the fiscal year ending September 30, 1983; $1,390,000,000 for the fiscal year ending September 30, 1984; and $1,490,000,000 for the fiscal year ending September 30, 1985.".

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(c) Section 5(a)(2) of the Act is amended to read as follows:

"(2) The Secretary shall calculate hold-harmless apportionments for urbanized areas. The hold-harmless apportionments shall be calculated based on the latest available Federal census and shall be the sums of the amounts calculated using the formulas of sections 5(a)(1)(A) and 5(a)(2)(A), as they were enacted by section 304 of Public Law 95–599, and the appropriation levels for such sections from the Appropriations Act for fiscal year 1981.".

(d) Section 5(a)(3)(B) of the Act is amended by striking out "and" and all that follows down through and including the period at the end thereof and inserting in lieu thereof the following: "; $160,000,000 for the fiscal year ending September 30, 1982; $160,000,000 for the fiscal year ending September 30, 1983; $160,000,000 for the fiscal year ending September 30, 1984; and $160,000,000 for the fiscal year ending September 30, 1985.".

(e) Section 5(a)(4) of the Act is amended as follows:

(1) Paragraph (4)(A) is amended by striking out the second sentence and inserting in lieu thereof the following sentence: "Such sums shall be made available for expenditure in urbanized areas on the basis of a formula under which urbanized areas will be entitled to receive an amount equal to the amount so apportioned

multiplied by the ratio which the number of bus revenue vehicle miles directly serving the urbanized area, as determined by the Secretary, bears to the total number of bus revenue vehicle miles directly serving all urbanized areas.".

(2) Paragraph (4)(B) is amended by striking out "and" and inserting after "1982" the following: "; $475,000,000 for the fiscal year ending September 30, 1983; $475,000,000 for the fiscal year ending September 30, 1984; and $475,000,000 for the fiscal year ending September 30, 1985.".

(f) Section 5(a) of the Act is amended by adding at the end thereof the following new paragraph:

"(5)(A) To make incentive grants under this subsection to urbanized areas, the Secretary shall apportion in each fiscal year beginning after September 30, 1982, the sums appropriated pursuant to subparagraph (C). An incentive grant shall be 7.5 per centum of the urbanized area's apportionment under paragraphs (1)(A) and (3)(A) if the urbanized area qualifies for an incentive grant under either subparagraph (B)(i) or (B)(ii) and a total of 10 per centum of such apportionment if it qualifies under both subparagraph (B)(i) and (B)(ii). Incentive grants under this paragraph shall be supplementary to, and not in substitution for, sums otherwise available under this Act. Such grants shall not be subject to

the local share requirements of this Act and may be used by the recipient for any purpose which would be eligible for funding under this Act.

"(B)(i) An urbanized area will receive an incentive grant apportionment if the ridership increase compared to the previous year exceeds 5 per centum.

"(ii) An urbanized area will receive an incentive grant apportionment if the ratio of operating revenues to eligible operating expenses exceeds the national median of such ratios as determined by the Secretary.

"(C) There are authorized to be appropriated for the purposes of this paragraph such sums as may be necessary.".

(g) Section 5(e) of the Act is amended as follows:

(1) Insert "(1)" immediately following "(e)".

(2) Strike out the second sentence.

(3) Insert at the end, thereof, the following new paragraph:

"(2) The total Urban Mass Transportation Act grant for any year for the payment of operating expenses under sections 5(a)(1) and 5(a)(3) shall not exceed the following percentage of eligible operating expenses: 43 per centum for the local fiscal year ending before October 1, 1982; 40 per centum for the local fiscal year ending before October 1, 1983; 37 per centum for the local fiscal year ending before October 1, 1984; and 34 per centum for the local fiscal year

ending before October 1, 1985. The remainder of the operating expenses shall be provided from sources which include revenues from the operation of public mass transportation systems and non-Federal subsidies and may include sums from other Federal grant programs.".

REVISED FIXED GUIDEWAY DEFINITION

SEC. 105. Section 12(c)(2) is amended to read as follows:

"(2) the term 'fixed guideway' means a guideway used by public transportation which is dedicated for use exclusively by railcars, buses, or other high occupancy vehicles. It includes facilities using rail, catenary, dedicated bus lanes, and automated guideways;".

AMENDMENTS TO FORMULA PROGRAM FOR NONURBANIZED AREAS

SEC. 106. Section 18(a) is amended by inserting after the second sentence the following: "Each State (other than the Commonwealths of Puerto Rico and the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands) that contains an area other than an urbanized area shall receive in each fiscal year an amount which is at least 1 per centum of the sums appropriated for such fiscal years pursuant to this subsection.".

SAFETY CRITERIA

SEC. 107. Section 107 of the National Mass Transportation Assistance Act of 1974 is repealed and the Urban Mass Transportation Act is amended to add the following new section:

"SAFETY CRITERIA AND DETERMINATIONS

"SEC. 23. (a) Notwithstanding the provisions of section 12(d), the Secretary is authorized to establish safety criteria and standards for use during the investigation of unsafe conditions in any facility, equipment, or manner of operation of any transit system financed under this Act.

"(b) The Secretary shall investigate unsafe conditions in any facility, equipment, or manner of operation of any transit system financed under this Act which create a serious hazard of death or injury for the purposes of determining the nature and extent of the conditions and the means which might best be employed to eliminate or correct them. If the Secretary determines that any facility, equipment, or manner of operation is unsafe, he shall require the State or local public body or agency to submit to the Secretary a plan for correcting the unsafe facility, equipment, or manner of operation, and the Secretary may withhold further financial assistance to the applicant until such plan is approved or the approved plan is implemented.".

AMENDING THE URBAN MASS TRANSPORTATION ACT

WEDNESDAY, MARCH 19, 1980

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SUBCOMMITTEE ON HOUSING AND URBAN AFFAIRS,
Washington, D.C.

The subcommittee met at 9:30 a.m., in room 5302, Dirksen Senate Office Building, Senator Harrison A. Williams (chairman of the subcommittee) presiding.

Present: Senators Williams, Tsongas, and Garn.

OPENING STATEMENT OF SENATOR WILLIAMS

Senator WILLIAMS. Good morning. We can come to order.

This morning we continue our hearings on the Federal public transportation program. On March 6, we heard from the Secretary of Transportation, and from the cities and the States on how important it is to increase our commitment to transit as an important national resource in an energy scarce era.

In the last several days, as we all know, the administration has been going through a major budget cutting exercise. The final results of the exercise are still not public, so it is difficult to know for certain whether the administration is adhering to its new commitment to transit.

At the March 6 hearing, Secretary Goldschmidt gave us a firm commitment that the administration will not back off its proposed funding for fiscal 1981. I would hope there would be no reneging on that commitment. The new consensus we have just achieved on the importance of public transit must not be lost. Transit is a keystone to effective energy policy. Major cuts in this program would cost us years of progress in making efficient and attractive transit service available.

Today we have a number of issues to delve into. We will have the opportunity to take a closer look at the pending authorization proposals. We will also have an opportunity to review certain important aspects of the UMTA program, particularly the transit supply industry, the rural and small urban program and other important commuter rail services.

We are very fortunate this morning to have as our first witness, Senator Patrick Leahy of Vermont, who I know will be giving us constructive thoughts and ideas on rural transportation. We welcome you, Senator Leahy.

STATEMENT OF PATRICK J. LEAHY, U.S. SENATOR FROM THE STATE OF VERMONT

Senator LEAHY. Thank you, Mr. Chairman.

Mr. Chairman, I would ask that my whole statement be made a part of the record and I would like to highlight it.

Senator WILLIAMS. It will be.

Senator LEAHY. First, I want to thank you for inviting me to testify and I appreciate that courtesy.

As chairman of the Rural Development Subcommittee, I have spent a great deal of my time working with you to see that our mutual goal for the success of this rural bus program is realized, and I commend the leadership you have given to the Senate and the Nation in this area. I can tell you that, after having talked with rural advocates and representatives at all levels and branches of the government, that with unanimity, they support and appreciate your commitment to and leadership in bringing public transportation to rural America.

A lot of people when they think of public transportation think of New York City or the Metro system. I must admit I look at it from two different points. As the Rural Development Subcommittee chairman and a resident of a very rural State, I have one thought of mass transportation. As chairman of the D.C. Committee, I get another thought. I often think of putting a dollar bill into a Metro farecard machine and seeing it folded, mutilated, spindled, and shootup and sent back out to me getting everything back except the farecard.

There are real rural transportation needs in this country. Let me just give you a couple statistics; 60 percent of low-income households with inadequate transportation are in rural areas. Yet rural areas receive only 6 percent of federal funds for mass transportation; 57 percent of the rural poor and 45 percent of the rural elderly do not own an automobile.

Only 500 of America's 20,000 towns under 50,000 population have a public transportation system.

In our oversight capacity—and I think that this Congress has probably spent more time on oversight than any in many, many years, wisely so, because there is only so much money and we should only have the best programs—one of those is the section 18 rural bus program. I held oversight hearings in my committee, worked with the White House, developed the June 1979 Rural development initiatives on rural transportation programs, held oversight hearings, as I said, we followed the section 18 program closely, and my recommendations based on all the hearings and the meetings and everything else you had come from that.

Now there are several areas in section 18 that deserve attention. Some are regulatory, some legislative. They include a more substantive State and Federal partnership in the program, a more equitable and effective allocation of resources, innovative and expanded use of a variety of federal programs to support section 18 projects, and the resolution of the section 13(c) labor and section 504 handicapped issues.

Administrative squabbling over four matters in particular have hurt the section 18 program. These are the eligibility of section 18 bus projects for the Urban Mass Transportation Administration's

sections 3 and 16(b)(2) capital assistance grants; the use of nonrestricted Federal funds to help meet section 18 projects' local share requirement; and the participation of private intercity bus companies in the program. All of these matters can be easily and clearly resolved by amending the section 18 legislation to state simply that section 18 projects shall be eligible applicants to the Urban Mass Transportation Administration's section 3 and section 16(b)(2) capital grant assistance programs, that private intercity bus companies are eligible to participate in and receive funds as section 18 projects, and a reaffirment of section 18 projects' authority to use other nonrestricted Federal funds to help meet their local share costs.

I think that legislatively a State should be given a choice of either committing State funds of no less than 10 percent of its total section 18 allocation to its section 18 projects, or that a State not be allowed to use more than 5 percent of its section 18 funds for administrative expenses. The current ceiling on administrative expenses is 15 percent. This would increase a State's commitment to the program while giving it more control over its operation. It would strengthen the Federal and State partnership in rural public transportation in a meaningful manner, and it should be mandated—and this would help rural States—it should be mandated that no State receive less than 1 percent of the total section 18 appropriations for any given year. Finally, to ease the financial burden that many smaller towns have borne to bring section 18 services into their community, the interest charged on capital loans to section 18 projects should be eligible for payment from a project's section 18 capital assistance funds.

Because the section 13(c) issue is of extreme significance, it should not be addressed legislatively until the Department of Transportation completes its recently self initiated study on the extent of current problems with section 13(c).

Answers must be found quickly to the potential ramifications of DOT's proposed method of guaranteeing handicapped persons access to all rural bus lines. As far as I know, no study has been initiated on this matter, and I think there should be prior to steps being taken on that because basically what we have now in regulations are an urban solution which does not take into consideration the unique rural problems.

We talk about this section and that section and regulations and so forth, Mr. Chairman, when we do build our legislative record let's not forget that people are involved and the whole reason for doing this is to help people.

Let me just conclude by telling you about one Vermonter, a man named Warren Mason. He's an elderly gentleman. He lives in a very rural area outside of Rutland, Vt., which as you know is in the southern part of our State. His transportation problems are severe for a number of reasons, not the least of which is he's blind.

Previously, there had been no public transportation available to take him shopping or to the doctor or any of the other services provided only in Rutland. Before the section 18 program, here's what he had to do. This blind, elderly gentleman took the local schoolbus which took him halfway to town. He would get out at the schoolyard and hitch a ride with a postal truck. The postal truck

would drop him off 10 miles outside of town. Keep in mind we have a State where we can have a week or more of 35° below zero weather. He would then hitchhike the remaining 10 miles into Rutland.

The section 18 program means a whole new life for him. He doesn't have to rely on that kind of patchwork of favors for his transportation needs. Now, Rutland's section 18 bus picks him up at his front yard and takes him right to downtown Rutland where all the health care and everything else he needs are available to him.

I rather suspect that in rural New Jersey or rural any other State there are hundreds and thousands of other Warren Masons. After we figure out what we do with this section and that section, when we figure out what the States' share and the local share is, and figure out what regulations will be used or not, it all comes down, Mr. Chairman, to Warren Mason, whether in your State or mine or any other; and in a time of high budgetary restraints and all I would hope we never lose sight of the fact that as a society we have a responsibility to these people. I know you have it, sir, and I applaud you and the committee for that. Thank you.

[Complete statement of Senator Leahy follows:]

STATEMENT OF SENATOR PATRICK J. LEAHY

Mr. Chairman, I want to thank you for inviting me to testify today on the section 18 bus program for smaller cities and rural areas before this Subcommittee on Housing and Urban Affairs. As Chairman of the Rural Development Subcommittee, I have devoted a good deal of my time to working with you to see that our mutual goal for the success of this rural bus program is realized. I have spent many hours discussing the Section 18 rural bus program with rural advocates and representatives from all levels and branches of government. I can tell you that, with unanimity, they support and appreciate your commitment to and leadership in bringing public transportation to rural America.

Mr. Chairman, there can be no doubt that the public transportation needs of rural America's 60 million people are great and pressing, when people think of public transportation, images of crowded subway trains in New York City and the Metro system come to mind. I, too, get these images as the Chairman of the D.C. Appropriations Subcommittee. My most recurring image is of a crumpled dollar bill being sucked in, chewed up and spit out, over and over again, by one of the Metro farecard machines.

The fact that most people in Washington think of mass transportation as basically an urban issue reflects an urban bias in the federal conception of the scope of our transportation needs.

There are real and serious rural transportation needs in this country. These needs are most telling statistically: 60 percent of low-income households with inadequate transportation are in rural areas. Yet, rural areas receive only 6 percent of federal funds for mass transportation; 57 percent of the rural poor and 45 perrcent of the rural elderly do not own an automobile; only 500 of America's 20,000 towns under 50,000 population have a public transportation system.

Though the needs of rural public transportation are great and deserving of increased federal attention, one cannot forget that inflation is ripping apart the fabric of this society and that federal expenditures must be restrained if America's economic structure is to survive intact. What this means is that the standard federal response of simply throwing money at a problem and hoping it will go away is, thankfully, no longer an option.

Due to these economic facts of life, it is of the utmost importance that we, as Senators holding the purse strings of government, make certain that existing federal programs are working the best they possibly can. The oversight duties of Congress must be stepped up significantly to ensure that these programs are running efficiently and effectively, unfettered by red tape, restrictive regulations, or confused legislation.

I have tried to live up to this oversight responsibility with regard to the Section 18 rural bus program. Following enactment of the Section 18 program in 1978, I

worked throughout the spring of 1979 with the White House to develop the June, 1979 rural development initiatives on an array of rural transportation programs, including Section 18. And, on October 24 of last year the Rural Development Subcommittee held an oversight hearing on the Section 18 bus program.

Mr. Chairman, I have followed the Section 18 program closely, from its early beginning in the Federal Highway Administration as the Section 147 demonstration program, through its birth pains in 1978, and on to the present. The recommendations that follow are the culmination of this work. I urge you to study them carefully. I don't pretend to have all of the answers. What I offer for your consideration are my suggestions, based on experience, on how the Section 18 program could be imported to more efficiently meet the needs of rural America.

Mr. Chairman, there are several areas of the Section 18 program that deserve attention and need remedy. Some are regulatory, other legislative. They include a more substantive state and federal partnership in the program, a more equitable and effective allocation of resources, innovative and expanded use of a variety of federal programs to support Section 18 projects, and the resolution of the Section 13(c) labor and Section 504 handicapped issues.

Administrative squabbling over four matters in particular have hurt the Section 18 program. These are the eligibility of Section 18 bus projects for the Urban Mass Transportation Administration's Sections 3 and 16(b)(2) capital assistance grants, the use of non-restricted federal funds to help meet Section 18 projects' local share requirement, and the participation of private intercity bus companies in the program. All of these matters, I believe, can be easily and clearly resolved by amending the Section 18 legislation to state that: Section 18 projects shall be eligible applicants to the Urban Mass Transportation Administration's Section 3 and Section 16(b)(2) capital grant assistance programs, that private intercity bus companies are eligible to participate in and receive funds as Section 18 projects, and a reaffirment of Section 18 projects' authority to use other now-restricted federal funds to help meet their local share costs.

From what I have seen and learned of the program, I suggest a number of new legislative components to the Section 18 authorization bill. The first is that a state be given the choice of either commiting state funds of no less than 10 percent of its total Section 18 allocation to its Section 18 projects, or that a state not be allowed to use more than 5 percent of its Section 18 funds for administrative expenses. The current ceiling on administrative expenses is 15 percent. This would increase a state's commitment to the program while giving it more control over its operation. It would strengthen the federal and state partnership in rural public transportation in a meaningful manner.

To make federal funding of Section 18 projects in sparsely populated rural states meaningful and effective, it should be mandated that no state receive less than one percent of the total Section 18 appropriations for any given year. Finally, to ease the financial burden that many smaller towns have borne to bring Section 18 services into their community, the interest charged on capital loans to Section 18 projects should be eligible for payment for a project's Section 18 capital assistance funds.

Mr. Chairman, there are two remaining issues that this Committee will hear of repeatedly while considering the reauthorization of this smaller city bus program. These are the Section13(c) Labor provision, and the application of Section 504 of the Rehabilitation Act of 1973 to rural bus projects.

I am convinced that these two issues should only be confronted after thorough study and analysis. Currently, we have only anecdotal tales of the problems to be caused by Section 13(c) and 504. The depth and extent of these problems is neither known nor understood. I expect the upcoming issue of ensuring handicapped access to Section 18 buses will be the most serious, but no one can say this for a fact.

Because the Section 13(c) issue is of extreme significance, it should not be addressed legislatively until the Department of Transportation completes its recently self inititated study on the extent of current problems with this Section. Recommendations from that study will be available by mid-summer and should be weighed in balance with companion recommendations by the Department of Labor before any legislative remedy is sought. To move on this matter before it is fully understood is to move blindly with no way of knowing if the cure is worse than the disease.

Answers must be found quickly to the potential ramifications of DOT's proposed method of guaranteeing handicapped persons access to all rural bus lines. As far as I know, no study has been initiated on this matter. The effects of the Department of Transportation's Section 504 final rules on rural bus lines have never been established. The Section 504 regulations were drawn with an urban bias and show no

consideration for unique rural circumstances. They are an urban solution to a rural problem, and they are troublesome.

Coordinated efforts should be taken immediately by the Congressional committees with legislative jurisdiction over the Section 18 program, the White House Rural Development Working Group, and the Department of Transportation to add flexibility to these regulations as they apply to rural areas. The regulations go into effect in July 1980. As such, these efforts should begin immediately, and I am ready to assist in them in any way I can.

Mr. Chairman, I want to thank you for considering here my recommendations on the Section 18 bus program for smaller cities and rural areas. You have listened patiently as I droned through my list of amendments, etc. To anyone not in government, or for many of us in government for that matter, my suggestions may have sounded like dry bureaucratise relating this acronym to that section in such and such a fiscal year.

What I would like to relate to you is what all this bureaucratise means to one Vermonter, Mr. Warren Mason.

Mr. Mason is an elderly gentleman living in a very rural area outside of Rutland, Vermont. His transportation problems are severe as he is blind and previously there had been no public transportation available to take Mr. Mason shopping, to the doctors, or to any of the other services provided only in Rutland.

Before the Section 18 program was enacted, Mr. Mason had to rely on Yankee ingenuity and sheer guts for his transportation needs. This blind, elderly gentleman used to have to rely on the local school bus to take him halfway to town. From the schoolyard he would catch a ride with the postal truck which would drop him off ten miles outside of town. Mr. Mason would then hitch hike the remaining ten miles into Rutland.

The Section 18 program means a new life to Warren Mason. For now he no longer has to depend on an unreliable patchwork of favors for his transportation needs. Now, Rutland's Section 18 bus takes Mr. Mason from his front yard right to downtown Rutland, and to the health and other agency centers that he must depend on for his basic human needs.

Tailoring of rural legislation to rural circumstances can be dry and doesn't make the headlines, but to the Warren Masons of rural America it means a new freedom and life.

Thank you.

Senator WILLIAMS. Well, I thank you very much, Senator Leahy, and your thoughts on how this program can be improved will be very helpful to us.

None of the ideas for program change that you have are in the bill that I have introduced. The 1-percent suggestion is in the administration's bill. The change in the nature of the State contribution is something that neither bill has, as I understand it.

Senator LEAHY. That's right, and I would hope that that could be given some very serious consideration because many of these programs are going to work only with help from the State and only with a realization of the need. Quite frankly, I'm hoping that this will be such to make the State think of all their communities other than just the urban areas.

Senator WILLIAMS. It has been a point of wonderment to me, and disappointment, too, that this program has not been used to the extent of its hard-fought appropriations. We will hear, I'm sure, a lot of reasons why.

Evidently within your State, a rural State, you have been alert to the potential possibilities, the opportunities of section 18, and are using it; but it's a fraction of the appropriation that is really out there serving people, which is an unusual thing, I would suggest, where appropriations go begging.

So we've got to find how our States can respond better. I was very interested in your description of Mr. Mason and how section

18 buses have served his need. As I added up the miles that he had to travel in various ways to Rutland, he lives about 30 miles out.

Senator LEAHY. Yes.

Senator WILLIAMS. I'm sure that is classical, that rural people have—that is the kind of distance to get to any center for services. I spend a lot of time just west of you out in the Adirondacks where my mother lives and I have discerned no service similar to the one you have described for people. The only buses you do see are the schoolbuses.

Senator LEAHY. The school buses and an occasional tour bus going through, and it's really an essential thing because a lot of these people become absolutely homebound for every need, and I'm not suggesting in any way that we put an urban system into a rural area. That would make no sense. We don't need to have a bus every 10 minutes as we might in the urban areas, but we have got to have the flexibility to tailor a system for rural areas and I think that when we talk about mass transportation we just can't think of just Washington, D.C. or any other large metropolitan area. The needs are just as real in rural areas. The ways they are met may be different, but we've got to make it attractive to the States themselves to want to help their citizens and make sure that we get these appropriations through and that they are being used for both our urban and rural population. And I agree with you, the fight to get appropriations for section 18 was tough—I serve on the Appropriations Committee. After going through the battles we waged, and then they are not going to be used——

Senator WILLIAMS. One further question on the Rutland situation. Is this rural route part of a municipal bus company in Rutland?

Senator LEAHY. It is. It's been called "The Bus" and it is part of Rutland's metropolitan system, to the extent that Rutland is a metropolitan area.

Senator WILLIAMS. Well, I wonder about the application here. The state led the city to come into this extension of service?

Senator LEAHY. In this particular case, it was the other way around. The local communities were far more energetic in this than was the State.

Senator WILLIAMS. In the history of bringing the rural service into the urban mass transit program, it started with the whole program in a way that made it appear to many here that it was just a metropolitan or big city program and, of course, we have more of a responsibility to the people in this country than city people, so it was broadened early, but it has always limped as a program—the rural aspects of this. I recall Senator Randolph years and years ago making sure that we understood that there's a great population out there not being served by the earlier programs back in the 1960's, and we responded and so it's there. Now it must be improved because it isn't being fully used.

Your ideas will be very helpful. Thank you very much, Senator Leahy.

Senator LEAHY. Thank you, Mr. Chairman.

Senator WILLIAMS. We now turn to panel I, representatives of the American Public Transit Association. I invite Mr. John D. Simpson, APTA vice president for government affairs, and executive director of the Metropolitan Transportation Authority of New York, to come to the table; and Mr. James Robillard, general manager, Winston-Salem Transit Authority, Winston-Salem, N.C.; and Mr. Walter J. Addison, executive director, Metropolitan Transit Authority, Houston, Tex.

We are certainly pleased that you are here and I know that your contribution will be essential to moving the program we have before us.

STATEMENT OF JOHN D. SIMPSON, VICE PRESIDENT FOR GOVERNMENT AFFAIRS, AMERICAN PUBLIC TRANSIT ASSOCIATION; AND EXECUTIVE DIRECTOR OF THE METROPOLITAN TRANSPORTATION AUTHORITY, NEW YORK CITY, ACCOMPANIED BY JAMES ROBILLARD, GENERAL MANAGER, WINSTON-SALEM TRANSIT AUTHORITY, WINSTON-SALEM, N.C.; AND WALTER J. ADDISON, EXECUTIVE DIRECTOR, METROPOLITAN TRANSIT AUTHORITY, HOUSTON, TEX.

Mr. SIMPSON. Thank you, Mr. Chairman. We appreciate your kind words and we certainly appreciate the support you and your colleagues on this committee have given the public transit industry across the country in the past years.

Mr. ADDISON. In the prepared testimony, Mr. Chairman, there are several pages of comment on the record on rail transit and energy conservation. I would also like to parenthetically add that Houston is probably the most rapidly growing city in the country. The estimates vary from 60 to 70 thousand a year. It thrives, but it is having tremendous transportation pains and these pains can only be alleviated by systems that are developed not based on the past but based on the future. We and the community are very anxious to go ahead with a rapid rail transit system and we heartily endorse for your consideration this "New start" program.

Thank you very much for your interest. I'd like to turn the presentation back to Mr. Simpson.

Mr. SIMPSON. Thank you, Walt.

Just to summarize, we believe that we must rehabilitate and modernize our transit systems to meet the challenges of the future and we believe that your bill in the main addresses these needs quite well. But I should emphasize that the transit systems, whether large or small, firmly believe that there is no more urgent need at this time than increased operating assistance and that's true whether you're talking about New York's MTA where we have need for some $300 million in our current fiscal year's budget that we are not presently able to get from our local, Federal and State assistance or from the farebox, or a small system such as Jim's. Their needs may be less in absolute terms, but relative to the services they are required to provide and the increases in operating budgets, it is just as urgently important that we get the increase in operating assistance because every bus we put on the road, every

rail car we put on the tracks, every passenger we carry requires additional subsidy.

Mr. Chairman, we thank you very much for your attention and your assistance and we would be pleased to answer any questions you may have.

Senator WILLIAMS. Well, we thank you. You are right up front and on the action line here and certainly your knowledge and your opinions and your wisdom are essential to the development of the best workable program that we can put together.

Is it fair to say, to try to bring this together, that what your observations are represent really a metamorphosis of ideas of basically three bills all going the same place in somewhat different ways—the administration, House and Senate? As I get it, you have brought with your positive statements support for some of the principles of the administration's bill that are not as clear in the other bills. The productivity incentive measure is basically the administration's.

Mr. SIMPSON. Yes, that's correct.

Senator WILLIAMS. That is something that is in neither of the congressional bills. It is in theirs. You strongly support it as a principle with further refinement as to how that principle is implemented?

Mr. SIMPSON. Yes, sir.

Senator WILLIAMS. The House has a set aside for special new programs and that is something that is not specifically stated in the administration nor in the Senate bill.

Mr. SIMPSON. Right.

Senator WILLIAMS. What is the other one—well, my staff here tells me the rail modernization formula that we have in our bill you endorse.

Mr. SIMPSON. Yes.

Senator WILLIAMS. Basically, what you support is the Senate bill with the metamorphosizing of the best ideas you have seen in the administration and House bill?

Mr. SIMPSON. Yes, that's right, Senator. What we have tried to do is look at all three bills that have been submitted this year and to look at the features, because there are strengths in each of them. I think you're correct in saying that certainly we support the funding levels and the approach that you have taken in your bill. We think there are some interesting ideas that the administration has come up with and while we disagree with the details of them we think the concepts deserve additional consideration by this committee, such as the productivity tier in section 5 as a way of promoting better productivity in transit systems.

But fundamentally, the funding levels that you have and the capital programs, both section 3 and section 5 bus capital, we think are on the mark. Our real point is in operating assistance; we simply have to find a way to do better. I think it's not clearly understood by the public that every time we put a new bus on the street, every time we add a rail car, it costs more; it requires additional subsidy; and for all the need there is to buy more buses, to rehabilitate and expand our systems, it must be understood that that costs additional moneys in the operating budget as well as the capital budget, and we therefore believe that some appropriate

portion of the windfall profits tax or other general revenues should be applied to increasing operating assistance as well as our capital programs.

Senator WILLIAMS. I have further questions, but before we get into some of these questions, I wonder if I could get a bit more history from Winston-Salem and from Houston and what you have as a basic transportation system within your communities. Could you describe it for us?

Mr. ROBILLARD. Yes. The city of Winston-Salem is a city of about 145,000 in population and has been receiving operating assistance since 1973. We have used section 3 capital when it was discretionary to build new facilities. We have made tremendous progress in ridership increases in the range of 15 to 20 percent. We bought 29 new buses when we first started and took over the system. We have gone into a——

Senator WILLIAMS. You took over the system?

Mr. ROBILLARD. Yes. We purchased a system that was going out of business and the system that we have developed there——

Senator WILLIAMS. A private system?

Mr. ROBILLARD. Yes. So now that the system itself has expanded to provide services within that community, over three million passengers a year ride this, up about 10 to 12 percent a year, and we are looking for those types of gains in the future. We have had fare increases that the users themselves have taken quite well in our municipality and they have——

Senator WILLIAMS. What is your radius? What is your operating radius?

Mr. ROBILLARD. We operate just within the city limits of Winston-Salem and we do have charter rights outside of the 30 miles.

Senator WILLIAMS. What is the basic fare?

Mr. ROBILLARD. The basic fare at the present time is 40 cents and it will be going to 50 cents the 1st of July. We started at a 30 cent level 2 years ago. We have been forced to make these increases to try to get more local money, but the Federal operating assistance that we get under section 5 is essential to keep up the level of effort that we have been paying on the local level. The dollars that are coming in from the users are almost twice as much as they were 2 years ago. So those users are paying more dollars. The State of North Carolina provides 10 percent of capital assistance so that does help in buying equipment. The process of buying new equipment has been a matter of redtape that has bogged us down in small municipalities for years and years. That is starting to ease somewhat, but it took us almost two and a half years to put new buses on the street from the time that we first applied for a grant.

Senator WILLIAMS. What is the Federal part of your operating expenses at this point?

Mr. ROBILLARD. It's approximately $800,000 out of $2.9 million, so it's about 27 percent.

Senator WILLIAMS. And do you have any buses on order now?

Mr. ROBILLARD. I have some that will be delivered in April, 20 new buses that will replace buses that are 1964, 1965 and 1966, and they are 14 to 16-year-old buses that had an 8-year life. So they are very sorely needed for replacement.

Senator WILLIAMS. When you get a bus, can you quite accurately predict its lifespan?

Mr. ROBILLARD. I think with the vehicles that we have had we have had very good luck, in the 12 to 13 year life range that we have had for the vehicle. Some of the smaller vehicles of the 35-passenger capacity that were built in 1964–1965 are still running in 1980. That's 14 or 16 years later, but you do not get the 20 and 30 thousand miles a year out of them any more that you were able to get. You can only use them for short trips. We're in our first overhaul on our buses we got in 1973. That's seven years. We will be able to go the remaining life of those engine vehicles with the engines we are replacing.

Senator WILLIAMS. How long does it take from order to receipt of buses?

Mr. ROBILLARD. From order to receipt on this order will take us approximately—I'm trying to think of the month—we ordered them in July and we will get them in April—a little less than a year. We had a 52-week delivery in our contract and they will be in under that, at about ten months instead of 12 months.

Senator WILLIAMS. Do you ask for any tailoring and specific description of specification of the bus accommodation, any specialized bus manufacturing?

Mr. ROBILLARD. No, sir. We use the White bus spec and we went right down the line. We do not have wheelchair lifts on those 20 vehicles we are ordering. We have an alternative service that we provide known as Transaid in our community. It is sanctioned back by the State that uses social security vehicles which are given to this system. The dollars come from social service agencies and some local and State—some State dollars, but both city and county dollars to run that alternative means of service.

Senator WILLIAMS. Has section 13(c) presented any special problems for you?

Mr. ROBILLARD. It has not so far as we know. We have contracted with the TWU and we have been able to work amicably with them. We have 2-year contracts that have gone on from December every 2 years and our wage is $5.70 an hour.

Senator WILLIAMS. When was your transit authority created?

Mr. ROBILLARD. In 1971, there was a bond issue passed in Winston-Salem. That bond issue purchased the old system, built a new facility, purchased 29 buses and the 20 buses, and there is up to 5 cents set aside—not set aside, but that can be used by the city to support operating costs, and that 5 cents is approximately $1 million in our area of the taxes.

Senator WILLIAMS. What airport serves Winston-Salem?

Mr. ROBILLARD. We have a local airport in Winston-Salem for the Piedmont Airlines which is the home base of Piedmont, but in Greensboro-Winston-Salem we have a regional airport that's about 16 miles from each city.

Senator WILLIAMS. Does your transit authority serve that airport?

Mr. ROBILLARD. No, we do not.

Senator WILLIAMS. What is the transit from the airport to Winston-Salem?

Mr. ROBILLARD. It's limousine service.

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Senator WILLIAMS. Now could we go to Houston and get a feel, a sense of what's happening in Houston? When was the metropolitan transit authority created in Houston?

Mr. ADDISON. Mr. Chairman, the current transit authority was created as a result of the August 1978 referendum. It went into effect January 1, 1979, so we are just a little over 14 months in existence as a metropolitan transit authority. In 1974, the city had purchased the private bus company and ran it for that period of time. Unfortunately, during that period of time and certainly during its predecessor period very little money was available; consequently, almost no investment went in as far as capital equipment is concerned, making facilities or anything of that sort.

The city has an area of approximately 550 square miles and only about 40 percent of that area was actually served by public transportation. When the referendum took place and the metropolitan transit authority was created, our territory went to 1,300 square miles and we were faced with the requirement to service from about 250 square miles to 1,300 square miles almost overnight. This is an impossibility.

Noting the questions that were asked previously, I would anticipate by saying at this time, at least for the current period of time, we have not utilized any section 5 funds for operating expenses. We are doing that out of our local regional sales tax. We are using all section 5 moneys for the capital programs to get our maintenance facilities up to the level that we need in order to develop a bus fleet that can serve a 1,300 square mile area. This is a tremendous territory.

The population in that area is roughly 3 million and growing very rapidly. Buses will be the backbone of the system. We are one of the few properties that apparently got some of the most early models of the new buses and had some of the current problems that came with them. It's been a very serious problem in light of our inadequate maintenance and service facilities.

Senator WILLIAMS. Could you just pause there for just a moment? When you say the "new buses," now my materials describe a Canadian bus as the new bus. Is this the bus?

Mr. ADDISON. No. I'm talking about the advance design buses. The city acquired 150 of the GM-RTS-2s and we just received delivery of 326 Grumman Flexibles. They are operating right now and straining hard to keep up with the demands. One of the problems that we face in Houston is that the temperature and the humidity in the summertime is quite high and as a consequence it places a severe demand on air conditioning requirements and this has been less than successful in the past. We are keeping our fingers crossed that we may be able to make out better in this coming summer.

In putting it into perspective, this is a tremendous territory. There is a very strong eagerness for greater and improved public transportation, as evidenced by the resounding vote to tax themselves in that area to create something.

Senator WILLIAMS. The 5 percent sales tax?

Mr. ADDISON. The sales tax was 5 percent. It's now 6 percent. One percent goes to the Metropolitan Transit Authority. Our catch-up program in maintenance facilities is our most critical immedi-

ate problem and we are working at that diligently. We are not even in the position of considering adding any more buses to our fleet because our maintenance facilities at the current time aren't capable of supporting a larger fleet.

Senator WILLIAMS. What percentage of your operating costs is that contribution by the sales tax?

Mr. ADDISON. We're now about 65 or 68 percent supported by public taxes, by the sales tax. The remainder is out of the farebox.

Senator WILLIAMS. Am I right in concluding that not applying any of section 5 to operating costs is a unique situation?

Mr. ADDISON. I think it is.

Mr. SIMPSON. I think so. When I was in Denver, Mr. Chairman, Denver for a couple years did not apply section 5 to operating costs, but it is almost unique not to have to need it. In New York clearly every nickel we get of section 5 goes in, but maybe, if I may, Mr. Chairman, the springboard to get some contrasts that might be useful, in talking about the New York system, in contrast to the systems that Jim and Walter have, let me say that the New York system, of course, was historically back first a subway system 75 years ago. To put it into a business perspective, the value of the capital assets in New York's transit system today is over $50 billion. In other words, if we were a private business and looked at what do you have to put in each year simply to replenish the capital assets, that figure would be over a billion dollars a year and we are putting in less than a quarter of that to preserve what we have. That's one of the reasons we need better capital assistance. We are carrying more people each day in New York than the combined total of Chicago, Boston, Los Angeles, Washington, D.C. and about any other three cities you can add together. We carry 7 million users a day. That's like carrying the whole population of the country of Austria. It's like taking the whole U.S. Army to work in the morning and back home at night and we do that every day on the subways and buses and commuter railroads in New York.

Now if you look at Federal assistance and the need for Federal assistance, we carry about a third of the national transit ridership and we get only 14 percent of the federal operating assistance. Measured as a percent of our budget in New York, in contrast to the 27 percent for instance that section 5 makes up out of Jim's budget, in New York our Federal operating assistance makes up 7 percent of the New York budget. In New York the riders pay 60 percent of the operating costs, higher than any other system in the United States. With the number of people we carry, the urban vitality of New York literally depends on transit and in many respects the economic structure of the country depends on New York City's public transit system. We carry on public transit in New York 85 percent of the people who get to work in Manhattan every day and if we didn't carry them they couldn't get to work because there's no place to park a car in Manhattan for that number of people. If the system shuts down and if New York's economy shuts down, the heart blood of the financial community of the country shuts down.

In a lot of ways it seems to me there's eminent sense to begin to look at transit systems and, from my parochial sight, New York's,

as something of a national asset. The nation depends on it, in our city more than perhaps any other place in the country, but in a way that I think is deserving of additional Federal assistance and additional Federal support.

Senator WILLIAMS. We'll be hearing from Boston in a minute.

Mr. ADDISON. Mr. Chairman, I'd like to elaborate. I'm sure the situation is relatively unique as far as Houston is concerned, and the decision was agonized over not to devote section 5 money to operating assistance, but essentially the immediate problem in Houston was to maintain facilities and the option of getting any sizable amount of section 3 money for capital purposes was looked upon as dim because of the fact that we could not utilize the section 5 money for that first. So, in effect, our game plan has been to use up all the section 5 money so we can get on with the section 3 money and the immediate local issue was not a matter of meeting farebox deficits with Federal assistance because we are fortunate with our sales tax to be able to do that out of our own taxation.

Senator WILLIAMS. How are you proceeding under section 3?

Mr. ADDISON. Well, we are in the process of coming in for a major program request for a new start rail system in this current year and this, of course, will be section 3.

Senator WILLIAMS. What is your plan for the new rail system? Can you describe the service area for that?

Mr. ADDISON. Yes. We have concluded the required phase one alternatives analysis which is to look at the entire region and examine all types of alternatives in each section or sector and corridor region to come up with what is the best candidate for the corridor. We have concluded that and we have come up with a candidate corridor which is, by far and away, the most highly developed, most highly transit oriented, most highly traffic congested and activity centered area in the region, which is what we refer to as the Southwest Freeway-West Park, which is essentially a leg that comes from downtown Houston out toward the southwest and west, a tremendously developed area with several activity centers along that route which are in effect probably larger than the downtown of most cities in the United States and are not downtown. By linking these together as well as a very dense residential and commercial activity area, we have a high candidate system.

We are now going ahead with phase two which is to finalize a particular mode and get more specific in terms of its alignment and station locations. The probabilities, however, are quite strong that the anticipated volume we are already looking at would elevate it into some form of a rail category. It would be too strong for any bus system.

Senator WILLIAMS. Is it basically a light rail system service?

Mr. ADDISON. Well, I would like to avoid the specifics of what form of rail at this point in time because that would be prejudging the activities that are now ongoing. However, it is most likely that it will be some form of rapid transit rail. Light or medium or heavy I think depends on how you design it.

Senator WILLIAMS. I know you people and your leaders like to communicate with your colleagues in other cities and other areas. Is your situation in Houston in any way comparable to what has

been discussed and has been broadly planned but never finalized in Los Angeles with a Wilshire Boulevard rail line of some kind?

Mr. ADDISON. I'm not that familiar with the Wilshire Boulevard thing, although it's my understanding that would be an extensive amount of underground construction, and our figures indicate that in about 14 miles of the area—the length that we are now looking at in Houston—possibly the maximum is a mile and a half of that would be necessary to go underground in the heart of the central business district, and all the remainder would be above ground. That is less expensive and less cumbersome to construct than the plans I'm aware of in Los Angeles.

Senator WILLIAMS. It has been useful and helpful for me to go through this with you.

Mr. ADDISON. I would also add, Mr. Chairman, that, fortunately, at least in this particular corridor, there is an existing railroad right-of-way.

Senator WILLIAMS. I was going to ask that. You do have a right-of-way. Now that's different. Los Angeles probably had it but they tore it up long ago.

Mr. ADDISON. There's an existing railroad right-of-way on this, a 100-foot right-of-way, on which there's a pair of tracks now relatively little used. I have had some discussions with the railroad who are quite amenable to working together with us. So I think we have a very excellent opportunity to move and move quickly.

Senator WILLIAMS. I'd like to say a little in reminiscence here. Texas and its representatives have been very, very instrumental in developing this program over the years as it continues to improve. I think a lot of the impetus came from the development of transit in Dallas. Is it a transit authority that operates the transit system in Dallas now? Do you know?

Mr. ADDISON. Well, there's a Dallas transit system, but that's the city of Dallas. They are now looking forward in this coming summer to doing what was done in Houston in 1978, which is to combine with Fort Worth, Irving and Arlington, and that whole metropolitan area, in going to a referendum for a regional authority, and that is scheduled to come up in August of 1980. So the Dallas-Fort Worth region has not gotten to the issue that Houston got to in 1978, which is to go to a regional authority with taxing powers.

Senator WILLIAMS. Way back in the 1960's a mayor of Dallas was a great advocate of this transit program.

Mr. ADDISON. Yes. The system in Dallas has prospered quite well, but it's basically confined to the city of Dallas and with Fort Worth and Irving and Arlington and the metroplex area they are trying to get their act together on a regional basis.

Senator WILLIAMS. I remember he was quite persuasive with one of our members here, Senator Tower. That made quite a difference as a matter of fact.

I have other questions but Senator Tsongas, who's very, very much involved here with this part of our program is here and I will yield for a while to you.

Senator TSONGAS. I'm more involved than anybody else besides yourself. I agree on that. I did not hear your testimony, but I do have two questions.

One, in terms of Houston, what prompted the Houston decision to opt for mass transit? I have never been to your community but my impression is such that it seems to me mass transit would cut across the psychic grain of your community.

Mr. ADDISON. I think that might have been true, Senator, in the past, but the situation—there are several factors that contributed to it. First of all, the growth period has brought tremendous growing pains to the Houston area and traffic congestion there is really unbelievable. The freeways have become 20-mile-long parking lots every day in the morning and in the evening, and as a consequence this has had some significance—it has created significant problems to the community.

No. 2, this growth is not because of the productivity of Houstonians in creating children. A great deal of this growth has come from people who enter from the outside. A great proportion of these people have come into the area from the Northwest—Boston, Chicago, New York, et cetera—and they are important people in the community; they are coming in to take high positions and positions of authority. They come in and they find that there is no good public transportation in Houston and they are not satisfied. As a consequence, we have begun to see in the last few years this groundswell of enough with the freeways and enough with the private automobile; this city needs a good public transportation system. It reached its fruition a year and a half ago when a substantial portion of the population voted in favor of taxing themselves and creating a regional authority, and I assure you that the basis for doing so wasn't to put more buses on the street. They were looking forward to rapid transit programs in Houston. That was the real thrust of their vote.

Senator TSONGAS. That is very encouraging. It seems to me there's going to have to be such a readjustment of our minds nationally in order to embrace conservation and mass transit and a whole range of dramatic changes in our lifestyle. If Houston can do it I don't see why—I have trouble imagining John Connally hanging on to a strap——

Mr. ADDISON. Well, John Connally, interestingly enough, backed the referendum and supported it strongly to create the authority.

Senator TSONGAS. I was just being facetious. His support I'm sure is more intellectual than any commitment to ridership.

Let me ask you a question about New York. What are your figures on the use of mass transit since the embargo of 1973–74?

Mr. SIMPSON. Well, ridership on the system has maintained itself reasonably steady and has increased over the past year on the order of 7 percent, which is about the national average.

Part of the reason it hasn't increased more is we are simply constrained by the size of the system. We have been unable to add additional commuter rail vehicles or additional subway cars or additional buses because of the operating budget constraints that New York has faced over the past 5 years.

Quite clearly, our ridership could increase more dramatically, particularly in the peak hours of the day, if we had additional vehicles to put out, and we don't. We are running at capacity on many of our longer even commuter rail lines, with trips 30 or 40 miles, where there are people standing in the aisles for that length

of trip. The latent demand is there. It's only a matter of finding the wherewithal to be able to serve it, and we haven't been able to do that yet.

Senator TSONGAS. Well, Mr. Chairman, there's clearly a movement in the country, as evidenced by the interest in Houston, which I applaud, and obviously the need in New York, and I would hope that this budget when we finish with it and the administration finishes would take into account not only obviously localized needs but also those needs which are dovetailed with the national interest. I would hope we could protect that effort. Thank you.

Senator WILLIAMS. Thank you, Senator Tsongas.

Senator TSONGAS. Mr. Chairman, I have four questions. I didn't want to ask them because I didn't know whether you had asked them or whether the testimony had answered them, but if I could submit those.

Senator WILLIAMS. Fine.

There is one thing I'd like to hear personally on the record. What we missed we may have time to discuss with you informally after the written questions. Here is the one question I would like to have your judgment on.

The administration bill is proposing a shift of the section 5 formula approaches in part of the tier structure to go to revenue vehicle miles as one of the elements. I'd like to have your evaluation of that, its effectiveness and result as you would speculate.

Mr. SIMPSON. Yes, sir. Let me speak to point out some of the flaws in the proposed revenue vehicle miles approach. The first is there is no uniform basis for looking at revenue vehicle miles. I know from my own personal experience in New York and previously in Denver that they are computed in different ways. Let me just give you a brief example.

In New York where buses are primarily in local service, the trip to get to the start of the route is deadhead time and it's not revenue vehicle miles. In Denver, for instance, express buses prior to going out to the suburban communities to pick up their first full load of passengers to bring them downtown made a trip through the downtown area. So anybody who wanted to go from the core area out to the suburbs could take a bus. Thus, a 30-mile trip out, even though it may have only one or two passengers on it, would count as a productive revenue mile and, in essence, they would be getting twice the mileage that we might in some of the larger cities where we don't operate that way.

The second point that I'd like to make is that typically when a bus is full it's operating at a slower speed and thus in a 10-hour day a bus that's operating on 5th Avenue in New York at an average speed of five miles an hour might end up with 50 revenue vehicle miles at the end of the day, whereas a bus that's operating in a wide open suburban environment operating at an average speed of say 30 miles an hour would have 300 miles in the course of that same 10-hour day. Thus, the proposed formula of revenue vehicle miles has a bias it would seem to me in favor of those areas where the buses operate very fast and in many cases without the density of use that we have in our primary urban areas of the country. I think that's a problem.

Preferable to that almost would be prorated on the number of vehicles in the system. But I'm speaking really not on behalf of APTA because APTA has not taken a formal position on it, but I think there are flaws in looking at the revenue vehicle mile approach and, frankly, I think those are fundamental. Even though New York's share would go up a little bit, it certainly doesn't rectify the imbalance between the 7 percent of our operating budget and the 20, 30, or 40 percent of other operating budgets, and the change is not significant enough it seems to me and is difficult to measure and it has its own inequities in a way that I don't recommend.

Senator WILLIAMS. Did you have a comment?

Senator TSONGAS. I was just going to point out by definition those areas that have the smallest percentage of assistance would be those to be penalized under that approach. Boston happens to fit in the same category. So I would hope we could do something to change that as it wends its way through.

Mr. SIMPSON. Senator, we recommended in our written testimony that the notion of a productivity tier of section 5 that rewarded productivity makes some sense. Specifically, it seems to us in looking at productivity as the sum of the revenues that are derived because that's both a measure of fare level and the number of passengers and the dedicated transit taxes that a community is willing to put into their systems, a showing of local concern——

Senator WILLIAMS. APTA you say has not taken a position on this specific formula proposal?

Mr. SIMPSON. APTA took a position opposing the administration's proposal for the use of revenue vehicle miles in tiers 1 and 2. What I was trying to say is that my own specific points as to why we oppose it are mine rather than APTA's.

Senator WILLIAMS. And on the proposals for change in the administration's bill, your conclusion is it would be unwise to move precipitously?

Mr. SIMPSON. They proposed fiscal 1982 as I recall.

Senator WILLIAMS. Yes. Well, I wouldn't call that particularly precipitous. There's a fundamental difference here of approach about which APTA does have some reservations and negative feelings.

Mr. SIMPSON. Yes, we do. We think it's preferable to create a new tier to look at this issue of rewarding the productive systems rather than juggling the old tiers. Among other things, people have expectations. They have budgets. They have systems that are now established and now serving people. And if all the sudden to change the rules of the game would inflict a great deal of damage on some of the newer and thriving public systems in the country.

Mr. ADDISON. I think, Senator, I'd also like to add it's quite difficult to at this particular point in time really get a fair assessment of what the impact will be because this in effect requires the development of a lot of new data which is not now available. The formula in a sense says everybody gets a percentage of what theirs represents against the total. We don't know what the total is so we don't therefore know what's really going to happen. It may take some considerable amount of time before enough data is developed

to even know whether that approach is going to positively or adversely affect any particular system or type of system.

Senator WILLIAMS. Is there any element not now included in the formula that would bring greater equity to the distribution of the funds under a formula? Ridership or population-population density factor has its logic, but is there greater equity to be arrived at by applying some degree of knowledge of ridership within that population-population density?

Mr. SIMPSON. Well, I think ridership, if it were measurable in a comparable way, has its own logic quite different from the political logic that led to population-population density to get distribution of funds across the country. I should be fair and say that ridership would obviously benefit New York where we have over 30 percent—more like a third of the national ridership. Again, I point out that we get only 14 percent of the Federal operating assistance. So there's a clear imbalance in our case. But ridership itself presents measurement problems. How do you handle transfers? Some are paid and some are not paid. I know from discussions with my colleagues in the industry that there really is no clear and consistent way to measure ridership and thus, however desirable it may be in theory, I think in practice it presents some problems.

Senator, there has to be a way to recognize the productivity in systems. All of us in APTA I think are agreed on that and certainly population and population density doesn't do it. It may be OK for the first couple tiers for the systems to rely on as a base, but again that's what leads us to the notion that there should be a new distinct separate tier with additional money that goes directly to the issue of productivity and, again, our written testimony suggests one way to do that.

Senator WILLIAMS. Thank you. I think with the other observation that on many of these questions we need your thoughts and responses we will submit them in writing.

Mr. SIMPSON. Thank you, Mr. Chairman.

[Complete statement of the American Public Transit Association follows:]

TESTIMONY OF THE

AMERICAN PUBLIC TRANSIT ASSOCIATION

REPRESENTED BY

JOHN D. SIMPSON

VICE PRESIDENT - GOVERNMENT AFFAIRS - APTA

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JAMES ROBILLARD

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HOUSTON, TEXAS

SUBCOMMITTEE ON HOUSING & URBAN AFFAIRS

COMMITTEE ON BANKING, HOUSING & URBAN AFFAIRS

WASHINGTON, D.C.

MARCH 19, 1980

THANK YOU, MR. CHAIRMAN. MY NAME IS JOHN SIMPSON. I AM EXECUTIVE DIRECTOR OF THE METROPOLITAN TRANSPORTATION AUTHORITY OF NEW YORK. I AM ALSO VICE PRESIDENT FOR GOVERNMENT AFFAIRS OF THE AMERICAN PUBLIC TRANSIT ASSOCIATION. WITH ME TODAY TO PRESENT VIEWS ON PROPOSED TRANSIT LEGISLATION ARE JAMES ROBILLARD, GENERAL MANAGER OF THE WINSTON-SALEM TRANSIT AUTHORITY OF NORTH CAROLINA, AND WALTER ADDISON, EXECUTIVE DIRECTOR OF THE METROPOLITAN TRANSIT AUTHORITY OF HOUSTON, TEXAS.

PUBLIC TRANSPORTATION OVERVIEW

MR CHAIRMAN, I WOULD LIKE TO BEGIN WITH A PROGRESS REPORT ON PUBLIC TRANSPORTATION IN THE UNITED STATES. THIS NEW DECADE WILL BE A NEW ERA IN PUBLIC TRANSPORTATION.

IN SEPTEMBER AT OUR ANNUAL MEETING IN NEW YORK, PRESIDENT CARTER SAID THAT "PUBLIC TRANSPORTATION IS ONE OF THE KEYS TO THE FUTURE OF THE UNITED STATES OF AMERICA."

IN 1979, THE AMERICAN CONSUMER TURNED TO PUBLIC TRANSPORTATION IN EVERY COMMUNITY FOR AN INCREASED PORTION OF TRAVEL NEEDS. TRANSIT RIDERSHIP HAS INCREASED ANNUALLY SINCE 1972. IN THE LAST 30 STRAIGHT MONTHS, RIDERSHIP INCREASED OVER THE SAME MONTH IN THE PREVIOUS YEAR. THE 1979 INCREASE WAS AT AN ANNUAL RATE OF ALMOST 7 PERCENT. OVER 500 MILLION NEW TRANSIT TRIPS WERE TAKEN IN 1979. WE WEATHERED AN ENERGY SUPPLY CRISIS WHICH STARTED IN THE WEST AND SPREAD TO THE EAST. DURING THAT CRISIS, RIDERSHIP SURGES IN SOME COMMUNITIES WERE 40 AND 50 PERCENT.

THE NATION'S USE OF TRANSIT CONTINUES TO INCREASE. IN JANUARY, 1980, MORE THAN 35 MILLION MORE TRANSIT TRIPS WERE TAKEN THAN IN JANUARY, 1979, AN INCREASE OF 6.3 PERCENT.

THIS PAST YEAR, WE DEPLOYED NEW BUSES AND MAINTENANCE AND GARAGE FACILITIES. WE INITIATED CONSTRUCTION IN MIAMI AND CONTINUED IN BUFFALO. WE OPENED THE NEW ATLANTA RAPID TRANSIT LINE AND THE NEW MUNI METRO IN SAN FRANCISCO. WE VASTLY INCREASED THE RIDE-SHARING OPPORTUNITIES IN CAR POOLING, IN VAN POOLING, AND IN OTHER PARATRANSIT SERVICES. WE WORKED TOWARDS A 1982 OPENING DATE IN THE BALTIMORE RAPID TRANSIT PROJECT. WE CONTINUED WORK ON EXTENSIONS IN NEW YORK, CHICAGO, PHILADELPHIA, BOSTON, AND PITTSBURGH. WE INVESTED IN MODERNIZATION IN NEW YORK, CLEVELAND, CHICAGO, PHILADELPHIA, PITTSBURGH, NORTHERN NEW JERSEY, AND BOSTON.

WE WORKED WITH THE ADMINISTRATION AND THE CONGRESS, AND TOGETHER, REJECTED THE CONCEPT OF ELIMINATION OF THE URBAN MASS TRANSPORTATION ADMINISTRATION. WE BELIEVED AND CONTINUE TO BELIEVE THAT THIS AGENCY IS CRITICAL TO THE NATION'S FUTURE AS AN AGENT OF CHANGE TO ASSIST IN MAKING BETTER USE OF OUR EXISTING PUBLIC TRANSPORTATION SYSTEM FOR THE FUTURE.

THE ADMINISTRATION'S URBAN POLICY STRENGTHENED THE PUBLIC TRANSPORTATION PROGRAM BY IMPROVING LOCATIONAL DECISIONS FOR FEDERAL FACILITIES, STRENGTHENING CENTRAL CITIES, AND ASSURING THAT THE IMPACT OF FEDERAL PROGRAMS ON URBAN AREAS WOULD BE TAKEN INTO ACCOUNT.

IN ADDITION, THROUGH JOINT DEVELOPMENT OPPORTUNITIES, A PARTNERSHIP BETWEEN GOVERNMENT AND THE PRIVATE SECTOR HAS RESULTED IN THE LEVERAGING OF PUBLIC FUNDS TO INCREASE THE VITALITY OF MANY OF OUR CITIES.

THIS YEAR, OF COURSE, HAS ALSO BEEN A YEAR OF UNPARALLELED INFLATION. THE PRICE OF PETROLEUM HAS LED THE WAY, AND IN PUBLIC TRANSPORTATION, FUEL COSTS HAVE INCREASED 120 PERCENT SINCE MIDDLE DISTILLATE PRICES WERE DECONTROLLED IN 1976. WE ARE TRYING TO GRAPPLE WITH A DOUBLING OF THE SHARE OF COSTS FROM OIL FUELS.

THE PUBLIC TRANSPORTATION PROGNOSIS IS EXCELLENT; THE FUTURE IS BRIGHT, BUT IN ORDER TO GUARANTEE THAT FUTURE, IN ORDER TO GUARANTEE THE NEW ERA, WE MUST MAKE A FINANCIAL INVESTMENT. PUBLIC TRANSPORTATION COSTS ARE SHARED BY A PARTNERSHIP OF USERS, AND LOCAL, STATE, AND FEDERAL GOVERNMENT.

LET ME BE CLEAR. NEW RIDERS, FOR THE MOST PART, MEAN ADDITIONAL COSTS. WE ARE NEAR OR AT CAPACITY IN MANY OF OUR CITIES. THE RIDERSHIP INCREASE HAS IMPROVED OUR EFFICIENCY, AND, IN FACT, TRANSIT MANAGERS ARE COMMITTED TO COST CONTROL, TO INCREASING EFFICIENCY BY CUTTING INEFFICIENT SERVICES, AND TO MAKING MAXIMUM USE OF THE PUBLIC AND USER REVENUES.

AS WE LOOK INTO THE FUTURE, HOWEVER, WE REALIZE THAT PUBLIC TRANSPORTATION IMPROVEMENTS ARE AN INVESTMENT WE MUST MAKE,

BUT ONE THAT WILL BE SHARED AMONG USERS AND ALL LEVELS OF GOVERNMENT. LOCAL AND STATE GOVERNMENT FUNDING FOR PUBLIC TRANSPORTATION IS ON THE RISE. DEDICATION OF TAX REVENUES TO PUBLIC TRANSPORTATION IS INCREASING. USER FEES ARE INCREASING. AND THE FEDERAL PROGRAM MUST KEEP PACE. WE MUST MAKE A COMMITMENT TO A FINANCIAL INVESTMENT IN PUBLIC TRANSPORTATION SIMILAR TO THE COMMITMENT WE MADE IN THE 50'S TO ESTABLISH THE MOST SOPHISTICATED HIGHWAY NETWORK THE WORLD HAS EVER KNOWN. THE INVESTMENT IN PUBLIC TRANSPORTATION IN THE 80'S SHOULD RESULT IN A PUBLIC TRANSPORTATION SYSTEM SECOND TO NONE IN THE WORLD.

YES, THIS WILL BE A COSTLY INVESTMENT. BUT CONSIDER THE BENEFITS: JOBS, JOBS FOR AMERICANS IN OUR CITIES, IN OUR TOWNS, AND IN OUR VILLAGES; MOBILITY, MOBILITY FOR OUR CITIZENS SO THAT THEY CAN ACCESS THEIR COMMUNITIES IN EVERY RESPECT; A STRATEGIC DEFENSE, PUBLIC TRANSPORTATION WILL GIVE US THE OPTION OF PROVIDING FOR A SIGNIFICANT PART OF THE REQUIRED MOBILITY OF OUR COUNTRY IN THE EVENT OF ENERGY SUPPLY INTERRUPTION; AIR QUALITY, PUBLIC TRANSPORTATION WILL DIRECTLY AND INDIRECTLY ASSIST IN THE ATTAINMENT OF THE STATUTORY AIR QUALITY GOALS; THE ECONOMY, OUR PUBLIC TRANSPORTATION PROGRAM WILL HAVE BENEFITS IN REDUCING INFLATION, IN REDUCING OUR IMPORTS OF PETROLEUM, AND EXPANDING ECONOMIC ACTIVITIES IN OUR COMMUNITIES; REDUCING TRANSPORTATION COSTS, PUBLIC TRANSPORTATION INVESTMENTS WILL HAVE A SUBSTANTIAL EFFECT IN LOWERING OVERALL TRANSPORTATION COSTS AS PEOPLE RELY MORE ON PUBLIC TRANSPORTATION FOR REGULAR COMMUTING TRIPS; AND ENERGY CONSERVATION, PUBLIC TRANSPORTATION WILL ASSIST IN

CONSERVING ENERGY DIRECTLY BY PROVIDING MORE ENERGY-EFFICIENT TRANSPORTATION, AND INDIRECTLY BY HELPING TO SLOWLY CHANGE URBAN DEVELOPMENT PATTERNS FOR NEW JOBS, NEW BUSINESSES, AND NEW RESIDENCES INTO A MORE ENERGY-EFFICIENT PATTERN OF LAND USE.

PUBLIC TRANSPORTATION WILL CONTRIBUTE TO HEALTHIER, MORE VITAL CENTRAL CITIES, SUBURBAN AREAS, AND RURAL COMMUNITIES.

LEGISLATIVE PROPOSALS

WE ARE CONSIDERING LEGISLATIVE PROPOSALS ON THE PART OF THIS COMMITTEE, THE HOUSE OF REPRESENTATIVES, AND THE ADMINISTRATION. ON FEBRUARY 17, 1980, THE AMERICAN PUBLIC TRANSIT ASSOCIATION ADOPTED A LEGISLATIVE POLICY STATEMENT TO PROVIDE A FRAMEWORK FOR OUR DISCUSSIONS WITH YOU AND WITH OTHERS IN THE CONGRESS CONCERNED WITH NEW AUTHORIZING LEGISLATION. I WOULD LIKE TO BRIEFLY REVIEW IT FOR YOU. A COPY IS ATTACHED TO THIS TESTIMONY.

WINDFALL PROFITS TAX

THE FIRST REFERENCE IS TO THE WINDFALL PROFITS TAX. WE HAVE SUPPORTED THIS PROPOSAL, AND WE ARE CONFIDENT THAT IT WILL BE ENACTED, ALTHOUGH WE ARE DISAPPOINTED THAT NO SPECIFIC STATUTORY EARMARKING WAS MADE FOR PUBLIC TRANSPORTATION. WE BELIEVE THAT REVENUES FROM THE WINDFALL PROFITS TAX SHOULD AND WILL BE USED FOR AN INCREASED LEVEL OF FEDERAL ASSISTANCE TO PUBLIC TRANSPORTATION. IN FACT, THE AUTHORIZING LEGISLATION WE ARE

DISCUSSING TODAY WILL BE THE FIRST INCREMENT OF SUCH FUNDING FOR THE YEARS 1981-1985.

OPERATING ASSISTANCE

OUR SECOND KEY ISSUE IS FEDERAL OPERATING ASSISTANCE. THERE IS NO MORE URGENT NEED THAN INCREASING OPERATING ASSISTANCE. THE LOCAL, STATE, AND USER SHARE OF OPERATING COSTS IS NOW APPROXIMATELY 82 PERCENT NATIONWIDE. THIS SHARE IS EXPANDING. THESE DOLLARS ARE INCREASING. TO MAINTAIN THE PARTNERSHIP AND THE FEDERAL COMMITMENT, ADDITIONAL OPERATING ASSISTANCE IS NECESSARY. IN THE NEXT FIVE YEARS, WE ESTIMATE A NEED FOR APPROXIMATELY $11 BILLION IN FEDERAL OPERATING ASSISTANCE TO EXPAND SERVICES, TO KEEP UP WITH INCREASING COSTS, AND TO INCREASE THE FEDERAL SHARE TO CITIES EXPERIENCING PARTICULAR DISTRESS. WE BELIEVE THAT THE EXISTING OPERATING ASSISTANCE TIERS SHOULD GROW SO THAT ALL TRANSIT SYSTEMS, WHETHER THEY ARE IN LARGE CITIES, OR SMALL CITIES AND TOWNS, CAN CONTINUE TO RELY ON THE ESTABLISHED LEVELS OF FEDERAL OPERATING ASSISTNACE AS THEIR COSTS INCREASE. WE ALSO PROPOSE THAT ADDITIONAL SECTION 5 FUNDS BE DISTRIBUTED TO THE LARGER CITIES WHERE THE FEDERAL SHARE IS NOW FAR BELOW THE AVERAGE. WE PROPOSE A NEW TIER OF SECTION 5 WHICH PROMOTES AND REWARDS TRANSIT PRODUCTIVITY.

BUS NEEDS

TURNING TO CAPITAL NEEDS, WE HAVE ANALYZED THE EXISTING BUS FLEET AND DETERMINED THAT WE NEED TO REPLACE OVER 14,000 OBSOLETE VEHICLES, AND INCREASE THE FLEET TO ACCOMMODATE INCREASING DEMAND. WE BELIEVE THAT IN THE NEXT TEN YEARS WE WILL NEED TO

BUILD AND REHABILITATE BUS FACILITIES AND PURCHASE OTHER CAPITAL EQUIPMENT FOR OUR BUS SYSTEMS. THE TOTAL REQUIREMENT FOR THIS 10-YEAR PERIOD IS AS MUCH AS $16 BILLION.

RAIL MODERNIZATION NEEDS

IN THE RAIL CITIES, WHERE EXISTING SYSTEMS HAVE BEEN IN SERVICE FOR MANY YEARS, DESPERATELY-NEEDED MODERNIZATION AND REHABILATATION WORK MUST CONTINUE. WE CONCUR WITH AND ENDORSE THIS COMMITTEE'S PROPOSAL TO DEVELOP AN INTERIM RAIL MODERANIZATION ALLOCATION PLAN, TO DISTRIBUTE FUNDS ON THE BASIS OF THIS COST ALLOCATION, TO PRODUCE A FINAL MODERNIZATION ALLOCATION PLAN, AND TO ESTABLISH A ROUTINE FUNDING MECHANISM. THIS SYSTEM OF FUNDING RAIL MODERNIZATION WILL BE AN EFFICIENT AND PRODUCTIVE WAY OF BEGINNING AND COMPLETING THE NECESSARY JOB. THE COSTS FOR THIS OVERALL PROJECT ARE ESTIMATED AT BETWEEN $16 AND $18 BILLION. ADDITIONAL COSTS TO MEET THE DEMANDS OF THE DEPARTMENT OF TRANSPORTATION REGULATIONS REQUIRING THE RETROFIT OF THESE OLDER RAIL SYSTEMS TO PROVIDE ACCESS TO WHEELCHAIR-BOUND PERSONS ARE BEING DEVELOPED PURSUANT TO SECTION 321 OF THE STAA OF 1978. WE WILL DISCUSS THEM WITH YOU WHEN THEY ARE COMPLETE.

COMMUTER RAIL

WITH RESPECT TO COMMUTER RAIL SERVICES, APTA, THE MTA, AND OTHER COMMUTER RAIL AUTHORITIES, ARE OPPOSED TO ANY SHIFTING OF FUNDING ARRANGEMENTS OF COMMUTER RAIL SERVICES TO THE UMTA BUDGET. THE AMTRAK TRAINS THAT ARE NOW LABELED COMMUTER TRAINS SHOULD BE RE-INCLUDED AS REGULAR AMTRAK TRAINS, AND THIS ENTIRE ISSUE SHOULD BE ELIMINATED FROM OUR AGENDA. WE ALSO OPPOSE

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ALTERING THE SERVICE ARRANGEMENTS THAT ARE CURRENTLY IN EFFECT WITH CONRAIL.

MR. ADDISON WILL SPEAK TO YOU IN A MOMENT ABOUT ONE OTHER CATEGORY OF OUR CAPITAL NEEDS, NEW STARTS, EXTENSIONS, AND DOWNTOWN PEOPLE MOVERS, BUT I WOULD LIKE NOW TO TURN TO SEVERAL MISCELLANEOUS LEGISLATIVE ISSUES, AND TO SPECIFY APTA'S APPROACH TO EACH OF THEM.

BUS PROCUREMENT

ATTACHED TO OUR TESTIMONY IS A COPY OF APTA's BUS PROCUREMENT TASK FORCE REPORT WHICH MAKES SPECIFIC RECOMMENDATIONS TO SOLVE THE SERIOUS PROBLEMS OF BUS PROCUREMENT. ONE KEY PROPOSAL IS THAT THERE BE LEGISLATION THAT AUTHORIZES THE URBAN MASS TRANSPORTATION ADMINISTRATION TO GUARANTEE TO ANY MANUFACTURER THAT COULD MEET REQUIREMENTS AS THE SECRETARY MAY MAKE, BUS PRODUCTION AT AGREED-UPON LEVELS. WE DO NOT BELIEVE THAT A DIRECT FEDERAL PROCUREMENT OF BUSES WOULD EVER BE REQUIRED IF SUCH A GUARANTEE WERE PUT INTO EFFECT; THE FLOW OF GRANTS AND THE DEMAND FOR BUSES WOULD SURELY EXPAND, SO THAT IT WOULD BE UNLIKELY THAT ANY BUS WOULD BE ACTUALLY PURCHASED BY THE FEDERAL GOVERNMENT. TO BE MORE CLEAR, RATHER THAN A DIRECT FEDERAL PROCUREMENT, WE ARE IN FAVOR OF A PRODUCTION GUARANTEE SO THAT THE MANUFACTURERS WOULD EXPEDITE THEIR ASSEMBLY LINES AND INCREASE THE RATE AT WHICH THEY MANUFACTURE BUSES.

BUS CAPITAL FORMULA

APTA MEMBERS HAVE DEBATED THE SECTION 5 BUS CAPITAL FORMULA AND DECIDED TO RECOMMEND CONTINUATION OF THE EXISTING POPULATION/ POPULATION DENSITY FORMULA. IT IS BASED ON EXISTING CENSUS DATA, AND WE BELIEVE IT SHOULD BE MAINTAINED. WE DO NOT FAVOR SHIFTING THE FORMULA TO A FACTOR WHICH NEEDS NEW DATA COLLECTION AND REPORTING REQUIREMENTS. WE JUST DO NOT BELIEVE IT IS WORTH IT.

EMERGENCY POWERS

WE BELIEVE THAT THE URBAN MASS TRANSPORTATION ADMINISTRATOR AND THE SECRETARY OF TRANSPORTATION MUST HAVE POWERS TO ASSURE THAT FEDERAL FUNDS ARE DEPLOYED WHERF THEY WOULD DO THE MOST GOOD IN AN ENERGY EMERGENCY. SPECIFIC PROVISION FOR THE WAIVER OF LEGISLATIVE OR ADMINISTRATIVE GRANT REQUIREMENTS AND FOR THE REPROGRAMMING OF APPROPRIATED FUNDS MAY BE THE ANSWER. IT MAY ALSO BE PRUDENT TO AUTHORIZE A SPECIFIC AMOUNT OF DOLLARS FOR THE PURPOSE OF ASSURING MOBILITY IN THE EVENT OF AN ENERGY EMERGENCY. WE RECOMMEND YOUR CONSIDERATION OF EMERGENCY POWERS LANGUAGE.

INTERSTATE TRANSFER PROJECTS

WE RECOMMEND THAT INTERSTATE TRANSFER TRANSIT PROJECTS BE FUNDED AT 90 PERCENT FEDERAL SHARE, RATHER THAN THE CURRENT 85 PERCENT.

HUMAN RESOURCE FUNDING

WE HEARTILY ENDORSE AND RECOMMEND TO YOU THE ADMINISTRATION PROPOSAL OF FUNDING FOR THE SECTION 20 HUMAN RESOURCES ACTIVITIES. WE BELIEVE A SPECIFIC INVESTMENT IN TRAINING AND DEVELOPMENT IS AN URGENT PRIORITY.

SECTION 5 FORMULA

THE ADMINISTRATION HAS PROPOSED REVISION OF THE SECTION 5 TIER 1 AND TIER 2 FORMULA. ALTHOUGH WE AGREE WITH THE GOALS AND OBJECTIVES OF THE ADMINISTRATION'S REVIEW OF THE DISTRIBUTION OF THESE FUNDS, WE DO NOT BELIEVE THAT SUCH A SIGNIFICANT AND BASIC CHANGE SHOULD BE HASTILY ENACTED. WE ARE NOT CONVINCED THAT THE SPECIFIC PROPOSAL MADE BY THE ADMINISTRATION, IN FACT, WOULD IMPLEMENT THE STATED GOALS AND OBJECTIVES. AT THIS TIME, THEREFORE, WE RECOMMEND THAT YOU CONTINUE THE EXISTING SECTION 5 DISTRIBUTION FORMULA. CONSIDERATION OF SIGNIFICANT CHANGES TO THE FORMULA SHOULD AWAIT THE DEVELOPMENT OF DETAILED INFORMATION ON THE IMPACT ON INDIVIDUAL AREAS AND AN ANALYSIS OF THESE OBJECTIVES. IN ADDITION, WE BELIEVE THE IMPACT OF THE 1980 CENSUS NEEDS TO BE STUDIED PRIOR TO THE ADOPTION OF A NEW SECTION 5 DISTRIBUTION SCHEME.

OPERATING ASSISTANCE CAP

THE ADMINISTRATION ALSO IS PROPOSING THAT A CAP BE PLACED ON THE USE OF FUNDS ALLOCATED TO EACH URBANIZED AREA FOR OPERATING ASSISTANCE. WE STRONGLY OPPOSE THIS ATTEMPT TO IMPOSE ON LOCAL-

ITIES, A FEDERAL DECISION ON THE USE OF THE FUNDS THAT ARE ALLOCATED IN SECTION 5. THE DISTRIBUTION OF FUNDS TO INDIVIDUAL URBANIZED AREAS IS DETERMINED BY THE FORMULAE AND BY THE AMOUNTS ALLOCATED. ONCE FUNDS ARE APPORTIONED TO AN INDIVIDUAL URBANIZED AREA, SECTION 5 PROVIDES FOR LOCAL DECISION-MAKING AS TO USING THEM FOR OPERATING OR CAPITAL ASSISTANCE. THIS SHOULD BE CONTINUED.

THOSE AREAS WHICH ARE NOW USING FEDERAL ASSISTANCE FOR A HIGHER SHARE OF TOTAL OPERATING COSTS THAN SOME ADMINISTRATION OFFICIALS BELIEVE IS WISE ARE BUILDING TRANSIT SERVICES FOR THE FUTURE. FEDERAL FUNDS ARE CREATING AN OPPORTUNITY FOR SIGNIFICANT PUBLIC TRANSPORTATION IMPROVEMENT. NEW SERVICES ARE BEING DEPLOYED, RIDERSHIP HABITS ARE BEING DEVELOPED, AND LOCAL FINANCIAL COMMITMENTS ARE BEING MADE. DESPITE THE SIZE OF THE FEDERAL SHARE, WE CAN NOT FORGET THAT FOR EVERY FEDERAL DOLLAR THERE IS A LOCAL MATCHING DOLLAR TO SHARE IN THE COST OF OPERATING THE TRANSIT SYSTEMS. APTA HAS RECEIVED OVER FIFTY LETTERS FROM TRANSIT AGENCIES AND MUNICIPALITIES WHO ARE OPPOSED TO THIS PROPOSAL. THEY BELIEVE A CAP WOULD BE A BROKEN PROMISE. THEY BELIEVE THAT A CAP WOULD IMMEDIATELY HARM LOCAL EFFORTS TO DEVELOP PUBLIC TRANSPORTATION. WE SEE NO POLITICAL OR FINANCIAL BENEFITS FROM THIS CAP PROPOSAL, AND, THEREFORE, WE STRONGLY OPPOSE IT.

INCENTIVE TIER

THE ADMINISTRATION IS MAKING AN EXTREMENLY POSITIVE SUGGESTION FOR AN INCENTIVE TIER IN SECTION 5. WE AGREE WITH THE OBJECTIVE OF THIS PROPOSAL; HOWEVER, WE HAVE RESERVATIONS ON THE SPECIFIC

TECHNIQUES PROPOSED. FIRST, WE ARE CONCERNED THAT ADMINISTERING THE INCENTIVE TIER COULD REQUIRE A NEW AND BURDENSOME DATA COLLECTION AND REPORTING SYSTEM AT THE LOCAL LEVEL. SECOND, WE SEE DISTRIBUTION INEQUITIES IN EACH OF THE PROPOSED INCENTIVES. THE GOAL OF AN INCENTIVE TIER TO REWARD PRODUCTIVITY AND PROMOTE INCREASED USAGE COULD BE IMPLEMENTED WITH AN APTA PROPOSAL FOR AN INCENTIVE TIER. THIS PROPOSAL IS BASED ON DATA ALREADY BEING COLLECTED BY UMTA. THE DISTRIBUTION OF FUNDS IN AN INCENTIVE TIER WOULD BE BASED ON THE INDIVIDUAL AGENCIES' SHARE OF THE NATIONAL TOTAL FAREBOX AND OTHER TRANSIT REVENUES PLUS EARMARKED TRANSIT TAXES FROM ANY LOCAL, REGIONAL, OR STATE SOURCE APPLIED TO OPERATING EXPENSES. THIS DISTRIBUTION WOULD REWARD THE COMBINATION OF LOCAL COMMITMENT AND RIDERSHIP DEMONSTRATED BY FAREBOX AND OTHER TRANSIT REVENUES AND EARMARKED LOCAL, STATE, OR REGIONAL TAX REVENUES. WE WOULD PROPOSE THAT THIS INCENTIVE DISTRIBUTION REPLACE THE PROCEDURE PROPOSED BY THE ADMINISTRATION, AND THAT $200 MILLION ANNUALLY BE AUTHORIZED TO FINANCE IT.

AUTHORIZING LEVELS

WE HAVE ATTEMPTED TO PROVIDE THIS COMMITTEE AND THE CONGRESS WITH A RATIONAL AND WELL-RESEARCHED STATEMENT OF FINANCIAL NEEDS FOR THE FEDERAL PUBLIC TRANSPORTATION CAPITAL AND OPERATING PROGRAM. WE HAVE REVIEWED THE AUTHORIZATION LEVELS RECOMMENDED IN S.2296, H.R.6417, AND THE ADMINISTRATION PROPOSAL.

APTA AGREES WITH THE SECTION 3 CAPITAL AND SECTION 5 FORMULA BUS CAPITAL ASSISTANCE LEVELS PROPOSED IN S.2296 AND THE PROPOSED SECTION 18 LEVELS OF H.R.6417.

WE RECOMMEND SIGNIFICANTLY HIGHER AUTHORIZATION LEVELS FOR SECTION 5 TIERS 1,2, AND 3, AND SEPARATE AUTHORIZATION FOR AN INCENTIVE TIER. THE TOTAL AVAILABLE IN THESE CATEGORIES FOR THE FIVE YEARS WOULD BE $11.025 BILLION.

THANK YOU FOR YOUR ATTENTION. I WOULD LIKE TO ASK MY COLLEAGUE, MR. ROBILLARD TO SPEAK NEXT.

MR. CHAIRMAN, THANK YOU FOR THE OPPORTUNITY TO APPEAR BEFORE YOU AND TO SAY A SPECIAL HELLO TO MY SENATOR, ROBERT MORGAN OF NORTH CAROLINA. TODAY I AM SPEAKING TO YOU AS A REPRESENTATIVE OF SMALL PUBLIC TRANSPORTATION SYSTEMS THROUGHOUT THE NATION IN URBANIZED AREAS, AND IN SMALL URBAN AND RURAL COMMUNITIES.

RIDERSHIP INCREASES IN THE SMALLER TRANSIT SYSTEMS CONTINUALLY HAVE BEEN AT A VERY HIGH RATE, AVERAGING 20 PERCENT OVER THE SAME MONTHS' PREVIOUS YEAR FOR THE LAST 13 MONTHS. IN THESE AREAS, CHANGES IN DIESEL FUEL COSTS, PROBLEMS IN PROCURING VEHICLES, AND INCREASING RED TAPE AND GOVERNMENT REGULATIONS HIT VERY, VERY HARD. MANY OF US ARE STRUGGLING TO MAINTAIN OUR MOMENTUM, AND TO MANAGE COMPLICATED SERVICES. WE ARE TRYING TO MADE DO WITH RESOURCES THAT ARE STRETCHED VERY THIN. WE REQUEST THAT YOU CONSIDER THE VERY DIFFERENT PROBLEMS OF SMALL TRANSIT SYSTEMS AS YOU LOOK AT THESE LEGISLATIVE PROPOSALS.

SECTION 18

WE ENDORSE AN EXPANSION OF THE SECTION 18 PROGRAM BECAUSE PUBLIC TRANSPORTATION IS A GROWING SOCIAL PRIORITY IN SMALL URBAN AND RURAL AREAS. RESIDENTS OF THESE AREAS HAVE MORE SEVERE MOBILITY PROBELMS THAN THEIR CITY COUSINS. THROUGHOUT THE NATION, LOCAL AND STATE AGENCIES ARE RESPONDING TO URGENT TRANSPORTATION NEEDS, AND ADDITIONAL SECTION 18 FUNDS ARE REQUIRED. WE ENDORSE THE FUNDING LEVELS PROPOSED IN H.R.6417.

SECTION 3 SET ASIDE

WE ENDORSE THE FLEXIBILITY PROVIDED BY A SET-ASIDE IN SECTION 3 OF A SMALL AMOUNT TO GUARANTEE ACCESS TO DISCRETIONARY FUNDS FOR NONURBANIZED AREAS. WHEN SECTION 18 FUNDS ARE INADEQUATE TO MEET A PROGRAM OBJECTIVE, SECTION 3 FUNDS ARE NEEDED TO ASSURE THAT PUBLIC TRANSIT SERVICES CAN BE EXPANDED. BECAUSE OF THE HISTORY OF THIS PROGRAM, WE BELIEVE A STATUTORY SET-ASIDE IS NECESSARY, AND WE ENDORSE THIS CONCEPT.

OPERATING ASSISTANCE

WITH REGARD TO A CAP ON THE USE OF OPERATING ASSISTANCE, I WOULD LIKE TO ADD JUST A LITTLE TO WHAT MR. SIMPSON HAS ALREADY SAID. SUCH A CAP WOULD BE BREAKING A PROMISE. IT WOULD BE A FEDERAL INTRUSION INTO LOCAL DECISION-MAKING. THE CAP PROPOSAL WILL BE BITTERLY FOUGHT BY AN IMPORTANT PUBLIC TRANSPORTATION CONSTITUENCY. THE CAP WOULD HURT THE COMMUNITIES THAT ARE DOING THE MOST OUTSTANDING JOB BUILDING PUBLIC TRANSPORTATION SERVICES. THERE IS NO REASON TO PENALIZE SUCCESS.

THANK YOU AGAIN FOR YOUR INTEREST.

MR. ADDISON WILL NOW CONTINUE OUR PRESENTATION.

THANK YOU, MR. CHAIRMAN. THANK YOU FOR THE OPPORTUNITY TO APPEAR BEFORE YOU, TO GIVE MY GENERAL RESPECTS TO THE COMMITTEE, AND TO SAY A SPECIAL HELLO TO MY SENATOR, JOHN TOWER, FROM THE GREAT STATE OF TEXAS.

HOUSTON IS AN ENERGY CAPITAL AND A CITY OF DYNAMIC GROWTH FOR THE LAST 10 YEARS. OUR TRANSPORTATION SYSTEM, HOWEVER, IS IN SERIOUS TROUBLE. THE HIGHWAYS ARE CONGESTED AND CANNOT ADEQUATELY SERVE A VERY DENSE CENTRAL BUSINESS DISTRICT. THE PUBLIC TRANSPORTATION SYSTEM IS NOT CAPABLE OF MAKING THE CONTRIBUTION THAT IS NECESSARY FOR THE FUTURE OF HOUSTON AND THE METROPOLITAN AREA.

TO ASSIST US IN RESPONDING TO THIS GRAVE SITUATION, A BROAD COALITION IN THE COMMUNITY HELPED TO PROPOSE A REGIONAL TRANSPORTATION AGENCY THROUGH A REFERENDUM. IN AUGUST, 1978, THIS REFERENDUM WAS MADE POSSIBLE BY AN ACT OF THE TEXAS LEGISLATURE. IT CARRIED WITH IT A SPECIAL TAXING POWER, AUTHORIZING A 1% REGIONAL SALES TAX SPECIFICALLY EARMARKED FOR PUBLIC TRANSIT DEVELOPMENT AND OPERATIONS. THE REFERENDUM WAS SOLD THROUGHOUT HARRIS COUNTY, INCLUDING THE CITY OF HOUSTON. IT PASSED BY ALMOST A TWO-TO-ONE MARGIN WITH 57% PERCENT OF THE VOTE, AND THE METROPOLITAN TRANSPORTATION AUTHORITY HAS BEEN IN BUSINESS FOR 14 MONTH.

WE ARE NON-EXPANDING AND IMPROVING THE EXISTING BUS SYSTEM AND EXAMING OPTIONS FOR A FUTURE CONTRIBUTE TO OUR CONTINUED GROWTH AND PROSPERITY.

AMONG THE PROGRAMS AND OPTIONS WE ARE CONSIDERING ARE SEVERAL LIGHT RAIL AND MEDIUM DENSITY RAIL ALTERNATIVES. A "NEW START" IN HOUSTON WILL BE A MODEST PROGRAM OF RAIL TRANSIT, DESIGNED TO PROVIDE SIGNIFICANT LEVELS OF ACCESSIBILITY TO OUR ACTIVITY CENTERS; TO REDUCE THE COMMUNITY'S TOTAL RELIANCE ON THE PRIVATE AUTHOMOBILE; TO MAKE A SIGNIFICANT ENERGY CONSERVATION CONTRIBUTION; TO ASSIST US IN MEETING AIR QUALITY STANDARDS; AND TO PROVIDE FOR THE GROWTH IN TRANSPORTATION CAPACITY NEEDED IN THE 1980'S AND 90'S WITHOUT REQUIRING MAJOR EXPANSION IN OUR EXISTING URBAN FREEWAY SYSTEM.

OUR PUBLIC TRANSPORTATION INVESTMENT WILL BE AN INVESTMENT IN URBAN MOBILITY FOR THE FUTURE. WE SEE HOUSTON AS EVIDENCE OF A NATIONAL NEED TO CONSIDER COST-EFFECTIVE, MODEST RAIL TRANSIT PROPOSALS WHERE TRANSPORTATION NEEDS EXIST, WHERE DEVELOPMENT REQUIRES IT, AND WHERE SOME INVESTMENT IN URBAN TRANSPORTATION CAPACITY IS A NECESSITY FOR THE FUTURE.

THE NEW START, SYSTEM EXTENSION, AND DPM CATEGORY FUNDS TRANSIT INVESTMENTS JUSTIFIED OVER A LONG PERIOD OF TIME. WE MUST EXAMINE THE LONG-TERM EFFECTS OF SUCH AN INVESTMENT IN OUR URBAN COMMUNITIES. WE CANNOT AFFORD NOT TO MAKE THESE INVESTMENTS. THE COSTS OF NOT MAKING THESE INVESTMENTS FAR OUTWEIGH THE COSTS OF MAKING THEM.

WE ENDORSE AND RECOMMEND TO THIS COMMITTEE THE PROPOSAL IN H.R. 6417 OF A SUBCATEGORY IN SECTION 3 AUTHORIZING NEW STARTS, EXTENSIONS, AND DPMs. WE THINK THIS PROPOSAL WILL ENABLE THE NATION TO CONTINUE A STEADY JUSTIFIED INVESTMENT

STRATEGY. A COMMITMENT FOR A CONSTRUCTION PROJECT MUST BE LONG-TERM, AND A NEW START AND EXTENSION SUB-CATEGORY WOULD PERMIT A FINANCING SYSTEM TO BE PUT IN PLACE BY LOCAL AND STATE GOVERNMENT TO SUPPORT ROUTINELY THE IMPLEMENTATION OF A MULTIYEAR PROJECT.

RAIL TRANSIT AND ENERGY CONSERVATION

IN 1977, APTA JOINED A CHORUS OF VOICES CRITICIZING A CONTROVERSIAL CONGESSIONAL BUDGET OFFICE REPORT DEALING WITH RAIL TRANSIT ENTITLED, "URBAN TRANSPORTATION AND ENERGY: THE POTENTIAL SAVINGS OF DIFFERENT MODES." THE ERRONEOUS CONCLUSIONS OF THAT STUDY ARE CONTINUING TO FIND THEIR WAY TO DECISION MAKERS, MOST RECENTLY IN THE FEBRUARY, 1980 CONGRESSIONAL BUDGET OFFICE PAPER REDUCING THE FEDERAL BUDGET: "STRATEGIES AND EXAMPLES."

THE 1977 REPORT ANALYZED THE VARIOUS COMPONENTS OF MODAL ENERGY USE AND CLAIMED THAT THE ENERGY SAVINGS OF A NEW RAIL TRANSIT SYSTEM WERE BELOW THAT OF EXPANDED BUS SERVICE. WE DISPUTE THE STUDY METHODOLOGY, ASSUMPTIONS, AND CONCLUSIONS OF THE CBO EFFORT.

AMONG THE MAJOR PROBLEMS OF "URBAN TRANSPORTATION AND ENERGY" WAS ITS STATIC PERSPECTIVE ON URBAN RAIL TRANSIT'S ENERGY CONSERVATION IMPACTS. CONCENTRATING ON THE ENERGY REQUIRED IN CONSTRUCTION, VIRTUALLY NO DISCUSSION WAS DEVOTED TO THE PETROLEUM SAVINGS WHICH ACCRUE OVER THE LONG-TERM FROM DIVERTED AUTOMOBILE TRIPS. ALSO, TOTALLY OMITTED WERE THE DEVELOPMENT EFFECTS OVER TIME, WHICH WILL RESULT IN SHIFTS TOWARD MORE ENERGY-EFFECIENT DEVELOPMENT PATTERNS.

THE REPORT CONTAINS A SERIES OF ADDITIONAL ERRORS WHICH UNDERMINE ITS USEFULNESS:

IMPLICATIONS OF FUEL SOURCE: CBO THOROUGHLY NEGLECTS THE SIGNIFICANT IMPLICATIONS OF DIFFERENT FUEL SOURCES. MODES WHICH REQUIRE PETROLEUM SOURCES DEPEND UPON ENERGY THAT IS INCREASINGLY EXPENSIVE, SCARCE, AND FOREIGN PRODUCED. BY CONTRAST, ELECTRICALLY-POWERED RAIL USES ENERGY RESOURCES THAT ARE RELATIVELY INEXPENSIVE, PLENTIFUL, AND PRODUCED ENTIRELY IN THIS COUNTRY.

CONSEQUENTLY, A BTU PRODUCED BY BURNING PETROLEUM ENERGY HAS VASTLY DIFFERENT ECONOMIC AND POLICY IMPLICATIONS THAN A BUT OF ELECTRICAL ENERGY PRODUCED FROM COAL, NUCLEAR POWER, OR OTHER NON-PETROLEUM SOURCE. GIVEN THE INFLATIONARY IMPACT OF ENERGY DEPENDENCE ON FOREIGN PETROLEUM, THE POTENTIAL FOR PRICE AND SUPPLY MANIPULATION ALREADY REALIZED, AND THE RELATIVE ABUNDANCE OF ELECTRICAL GENERATING ALTERNATIVES, A SIMPLE COMPARISON OF BTU'S CONSUMED BY DIFFERENT TRANSPORTATION MODES OBSCURES MANY OTHER, AND PERHAPS MORE IMPORTANT, ISSUES (INCLUDING COST).

MOREOVER, CBO'S ANALYSIS NEGLECTS ALL OTHER IMPACTS ARISING FROM THE DIFFERENT FUEL SOURCES USED FOR TRANSPORTATION, PARTICULARLY AIR POLLUTION. THUS A MODE WHICH CONSUMES MORE BTU'S PER PASSENGER MILE, BUT PRODUCES NO AIR POLLUTION, MAY OFFER SIGNIFICANTLY GREATER SOCIAL AND ECONOMIC BENEFITS THAN A SLIGHTLY MORE ENERGY-EFFICIENT MODE THAT PRODUCES CONSIDERABLE AIR POLLUTION.

ACCESS ENERGY: WHILE CBO MADE IT CLEAR THAT RAIL TRANSIT OFFERS SUBSTANTIAL ENERGY SAVINGS OVER OTHER MODES IN TERMS OF OPERATING AND LINE-HAUL CONSUMPTION, IT RAISED QUESTIONS IN THE AREA WHICH IT CALLS "MODAL" CONSUMPTION. THIS IS DEFINED AS THE TOTAL AMOUNT OF ENERGY, COMPUTED IN BTUs, CONSUMED IN DOOR-TO-DOOR TRAVEL. IN OTHER WORDS, RAIL INEFFICIENCY IS PEGGED LARGELY UPON THE MEANS OF ACCESS USED TO STATIONS.

IN FACT, THE ANALYSIS IS HIGHLY QUESTIONABLE. ASSUMPTIONS REGARDING THE PROPORTION OF PASSENGERS WHO WILL DRIVE TO STATIONS ARE VASTLY OVERSTATED. EXPERIENCE AT BART, THE LINDENWOLD LINE, AND THE WASHINGTON METRORAIL SYSTEM INDICATE THAT FAR FEWER PASSENGERS ARRIVE AT STATIONS BY CAR THAT CBO PURPORTS. AGAIN, IN ITS DISCUSSION OF ACCESS, THE LONGER-TERM IMPACTS OF RESHAPED DEVELOPMENT PATTERNS ARE IGNORED. CLEARLY, OVER TIME, MORE HOUSING, JOBS, AND SHOPPING WILL BE CREATED AROUND RAIL CENTERS. FINALLY, THE STUDY DOES NOT RECOGNIZED INSTITUTIONAL AND PUBLIC POLICY CHANGES WHICH WILL FURTHER ENCOURAGE REVAMPED LAND USE ARRANGMENTS.

TYPICALITY: DESPITE CBO'S ACKNOWLEDGEMENT THAT NO "AVERAGE" AMERICAN CITY EXISTS, THE ANALYSIS FREQUENTLY RELIES ON THE ASSUMPTION OF PROTOTYPE CITIES AND TYPICAL TRIPS. THE IMPORTANCE AND TREMENDOUS VARIANCE OF SITE-SPECIFIC FACTORS IS LARGELY DISTORTED AND AT TIMES TOTALLY DISREGARDED.

ASSUMPTIONS: SENATE HEARINGS ON "URBAN TRANSPORTATION AND ENERGY: THE POTENTIAL SAVINGS OF DIFFERENT MODES" HELD ON OCTOBER 5, 1977, PRODUCED A LARGE BODY OF EVIDENCE REFUTING MANY OF THE BASIC ASSUMPTIONS AND MUCH OF THE BASIC DATA EMPLOYED BY

CBO. WHILE INACCURACIES IN INDIVIDUAL DATA ELEMENTS MAY EACH EXERT MINOR EFFECTS ON THE VERACITY OF CBO'S FINAL CONCLUSIONS, THE CUMULATIVE EFFECT OF NUMEROUS INACCURACIES UNDERMINES THE ENTIRE ANALYSIS. A FEW SIGNIFICANT EXAMPLES FOLLOW:

A) PATCO'S OWN DATA INDICATE THAT CBO OVERSTATED THE AMOUNT OF ENERGY REQUIRED FOR STATIONS AND MAINTENANCE BY OVER 100 PERCENT.

B) PATCO'S OWN DATA ALSO INDICATE THAT CBO OVERSTATED THE AMOUNT OF ENERGY REQUIRED FOR VEHICLE PROPULSION BY OVER 200 PERCENT.

C) MOST AUTHORITIES SEVERELY DISCOUNT CBO'S ASSUMPTION REGARDING "CIRCUITRY"--THAT IS, THE ASSUMPTION THAT TRANSIT RIDERS TRAVEL IN A MORE CIRCUITOUS ROUTE WHILE AUTO USERS PICK DIRECT ROUTES TO CONSERVE ENERGY. IN FACT, AUTO USERS ARE SHOWN TO FREQUENTLY SELECT THE SPEEDIEST ROUTE, RATHER THAN THE SHORTEST, WHICH USUALLY TRANSLATES INTO HIGHER GASOLINE CONSUMPTION.

ALL OF THIS SUGGESTS AN OVERWHELMING BODY OF INFORMATION WHICH IS AT ODDS WITH CBO CONCLUSIONS. SERIOUS DOUBT MUST BE CAST ON THE VALUE OF "URBAN TRANSPORTATION AND ENERGY" TO THE URBAN TRANSPORTATION DECISION PROCESS.

THANK YOU MR. CHAIRMAN.

WE WOULD BE HAPPY TO ANSWER ANY OF YOUR QUESTIONS.

APTA LEGISLATIVE POLICY STATEMENT

Adopted February 17, 1980

When Congress passed the Surface Transportation Assistance Act of 1978 (amending the 1964 Urban Mass Transportation Act), it was anticipated that there would be a regular reauthorization cycle every two years. However, the 1980 legislation will be a major authorizing bill rather than merely a two-year update. Accordingly, APTA has adopted the proposals contained in this paper as its 1980 legislative policy.

A. WINDFALL PROFITS TAX

In addition to regular transit program funding, we are working with the windfall profits tax legislation which followed the President's decision to decontrol the price of oil. In calling for this new tax, the President asked that the revenues be put into an Energy Security Fund and used for limited and specific purposes--including public transportation. The bill has passed the House and Senate and is being considered by a conference committee.

APTA supports:

- Establishment of a separate public transportation trust fund (with contract authority) financed by 25 percent of the tax revenues;
- Failing that, an earmarking of 25 percent of the revenues to be available for public transportation through the regular authorizing and appropriating processes;
- Or, at least, an Energy Security Fund to house all the revenues with stated purposes that are limited and specific, including public transportation.

B. OPERATING ASSISTANCE

There is no more urgent transit need than increased operating assistance in this era of national energy crisis. The public demands more service. The cost of providing service is increasing dramatically as a result of escalating fuel, power, and labor costs. As existing fleet and facilities are used more intensively and additional buses and fixed guideway systems are introduced, operating costs will increase even more dramatically. But these service demands must be met in the interest of energy conservation.

Since 1975, the federal government has joined with state and local governments and transit passengers in supporting the operating costs of public transportation systems. In the next five years and the

next decade, federal support should expand to keep us with expanding service requirements, increased costs, and increases in other revenue sources.

A substantial portion of Windfall Profits Tax revenues must be allocated to increased federal operating assistance.

For all these reasons, APTA urges that a minimum of $11.0 billion be made available from federal funds for operating assistance during the next five years. In addition, funding to meet direct increases in operating costs attributable to DOT's 504 regulations will require $300 - $500 million annually.

In light of these facts, APTA supports:

- full appropriation of transit operating assistance funds to the levels of authorization;
- increased authorizations and appropriations for federal operating assistance through the use of Windfall Profits Tax revenues in a new tier of Section 5 which promotes and rewards transit productivity, and allows those transit systems which do not presently receive 25 percent of their operating costs from federal assistance to move progressively toward that level;
- steady growth in the existing tiers of Section 5 operating assistance to ensure that all transit systems can continue to rely on their established levels of federal operating assistance as operating costs increase over time; and
- the inclusion of one-year advance appropriations of operating assistance.

C. BUS AND BUS FACILITIES

1. Bus Replacement

Of the 51,968 buses in the national fleet, 14,775 are more than 13 years old. To replace these and to keep current during the decade 1981-1990 will require 44,517 buses. At an estimated $112,000 per bus of federal dollars, the total needed for 10 years would be $4,986,000,000. Of this amount, approximately 15 percent, or $750 million, is attributable to the cost of wheelchair lifts.

2. Bus Expansion

The Administration called for increasing bus ridership by 50 percent in this decade. APTA perceives an increased demand of 100 percent. To accomplish a 100 percent increase in 10 years, the annual increase must be 7.2 percent. Bus ridership increased in 1979 by 6.75 percent over 1978. A 100 percent increase in 10 years requires a 70 percent increase in the current bus fleet. The number

of buses required is 36,637; federal dollars needed are $4,103,000,000. Of this amount, approximately 15 percent, or $615 million, is attributable to the cost of wheelchair lifts.

3. Bus Facilities

There is a demand for bus facility rehabilitation projects, estimated to be approximately $3 billion. In addition, for every 200 new buses, there is a need for a new facility at an estimated federal dollar cost for each facility of $20 million. There also is a need for shelters, park and ride lots, and other such amenities. If ridership is to increase by 100 percent, the rehabilitation and expansion of facilities and related amenities would total $7,000,000,000 federal dollars over 10 years.

APTA supports, based on a 10-year ridership increase of 100 percent:

- 44,517 replacement buses costing $4,986,000,000 federal dollars;
- 33,637 expansion buses costing $4,103,000,000 federal dollars;
- 7,000,000,000 federal dollars for rehabilitation expansion of facilities and related amenities;
- total: $16,089,000,000 federal bus program in uninflated dollars, or approximately $24,000,000,000 in inflated dollars, over the program period.

D. NEW STARTS, EXTENSIONS, AND DOWNTOWN PEOPLE MOVERS

The authorization for these projects can remain part of Section 3, but should be a separate category within the Section. This is the only way to assure that funds for these major projects will be available, since Section 3 also funds bus, rail, and urban initiatives projects. By doing this, the Administration, Congress, and the transit operators will know the availability of federal funds for new projects at any given time.

Based on current commitments for rail and DPM projects, pending new starts, extension of existing systems, and pending extensions, APTA supports:

- $1,721,000,000 new starts/DPM existing commitments;
- $4,379,000,000 new starts/DPM pending commitments;
- $1,144,000,000 extensions existing commitments;

- $3,046,000,000 extensions pending commitments;
- total: $10,290,000,000 for new starts, extensions of existing systems and DPMs in uninflated 1980 dollars, or approximately $15,000,000,000 in inflated dollars over the program period.
- a separate category for these within Section 3; and
- a continuing two-year update of these dollar amounts.

E. RAIL REHABILITATION AND MODERNIZATION

An essential element of our national transportation policy is the preservation of our existing national transportation assets. Previous investments in our urban rail transportation, rapid, commuter and light, are a prime example of such assets. These assets must be properly maintained.

The existing rail systems in the country are an important asset to our energy conservation program. The low fuel consumption per person of the residents of our rail cities proves this out.

The current UMTA rail rehabilitation program lacks comprehension and consistency. Local officials are not provided with a certain program. On many occasions, local officials have expressed lack of confidence in the equity of the distribution of the funds.

Estimates of rail rehabilitation costs in uninflated 1980 dollars are between $15 and $18 billion. The additional costs required by Section 504 regulations would be approximately $3-$5 billion. Total costs would be approximately $34 billion in inflated dollars over a 10 year program period.

APTA supports:

- the development by DOT of a national rail rehabilitation and modernization program that includes standards and a cost estimate;
- the inclusion of funding in the program for elderly and handicapped retrofit requirements;
- an allocation formula based on the cost estimates developed in the program; and
- a provision for a continuing two-year update of the program.

F. COMMUTER RAIL

APTA opposes any shifting of funding arrangements to UMTA of trains currently or potentially in the AMTRAK system. APTA recommends the

reinclusion of these trains into the AMTRAK system, and the elimination of the current March 1, 1981 funding termination date. APTA also opposes any alteration of service arrangements among Conrail, AMTRAK, and local authorities at this time.

G. MISCELLANEOUS LEGISLATIVE ISSUES

A number of additional legislative changes to the UMT Act may be proposed. Among these, APTA supports:

- the authority for UMTA to guarantee bus production at agreed-upon levels;
- the continuation of bus capital formula based on population/ population density;
- the provision for emergency powers and funds in event of a declared energy emergency with permission to waive legislation and administrative grant requirements and to reprogram appropriated funds;
- the increase in federal share from 85 percent to 90 percent for transit interstate transfer projects; and
- specific funding for an expanded training and development program.

APTA POLICY STATEMENT ON BUS PROCUREMENT

ADOPTED BY THE EXECUTIVE COMMITTEE - DECEMBER 12, 1979

The American Public Transit Association welcomes the initiative being taken by the Secretary of Transportation and the UMTA Administrator-designate to increase the availability of new transit buses as rapidly as possible in light of increasing ridership demand and the urgent need to reduce oil consumption.

APTA convened a Task Force on Bus Procurement to review current bus procurement policies and to recommend changes. Although the Task Force recognized the need for increased local, state, and federal operating assistance to provide additional driver, mechanics, and training to support an increase in the bus transit fleet, this statement deals only with the bus and bus facility procurement process.

The Task Force made one principal assumption:

> Federal funds for buses and bus facilities must be dramatically increased.

The windfall profits tax and immediate corresponding authorizing and appropriating legislation is the most expeditious means of generating these added funds.

The Task Force deliberations included discussions with bus manufacturers who have assured APTA that they are prepared to respond to additional orders resulting from simplified procurement procedures.

The Task Force recommends the following:

1. Federal grant delivery procedures must be simplified and expedited.

   a. The level of available Section 5 formula capital funds should be increased so apportionments are sufficient to meet national bus and bus facility replacement needs. Since urbanized areas are entitled to apportioned formula capital funds, grant requests for buses and bus facilities should be routinely processed without elaborate justification.

   b. Section 3 capital assistance requests for replacement buses and bus facilities should be granted on a routine basis. Grantees should be subject only to a minimum justification and specification review.

   c. Where feasible, multiyear contracts which include conditional approval of funds subject to future appropriations, should be used for Section 3 and Section 5 bus and bus facility grants. Grantees would prepare one grant request instead of several annual requests and, in some cases, would complete procurement in advance of federal funding. UMTA should consider multiyear replacement and expansion commitments to large transit systems to annualize replacement needs.

d. Capital assistance for maintenance facilities should be processed as one grant with two phases, rather than as two separate grants, one for engineering and one for construction.

2. Productivity and performance of current production buses must be improved significantly.

Immediate design changes are mandatory to improve fuel economy, increase passenger capacity, reduce operating and maintenance expenses, and to lower capital costs.

To achieve these objectives the following actions are recommended:

a. APTA, UMTA, and bus manufacturers should review specifications and agree to modifications which will accomplish the objectives. Operating test results should be used to confirm that the modifications are effective.

b. Modifications should be phased into production as soon as possible.

c. Elimination of amenities no longer consistent with national needs should be considered.

3. The federal government should guarantee incremental increases in bus production for a period of at least 5 years.

The federal government should seek legislation authorizing the Secretary of Transportation to guarantee sale of up to 150% of qualified manufacturers' 1979 production. The guarantee would provide the necessary incentive for manufacturers and suppliers to increase inventories and manufacturing capacity. The guarantee should be reviewed and adjusted annually, as appropriate.

Key elements of this plan include the following:

a. The guarantee would take the form of a federal procurement of such quantity of buses which exceed those ordered by transit operators and are necessary to achieve the guaranteed production.

b. APTA will recommend specifications to achieve a simplified standard national bus for federal procurement. As an alternative, buses produced under the federally guaranteed procurement would be consistent with then current bus production.

c. Allocation of federally-procured buses would be on the basis of need, in a manner jointly determined by APTA and UMTA. In order to benefit from rapid delivery, these buses would be available to transit operators which elect to substitute such buses as an alternative to the local bid process providing local matching funds are available. In addition, such buses could be allocated by a federal grant of equipment or by temporary leasing to operators with short-term needs.

d. Any additional manufacturer who can meet all applicable U. S. laws and regulations should be invited to contract for the production of buses for testing and qualification purposes.

4. Grantees should be permitted to issue non-exclusionary bus specifications without prior federal approval.

Such specifications would conform to federal regulations.

UMTA should develop procedures for negotiated and life-cycle cost procurement techniques.

APTA will obtain agreement between manufacturers and operators on simplified standard designs and specifications of major components and features.

5. Bus rehabilitation should be encouraged.

UMTA should encourage and fund bus rehabilitation capital projects where operating agencies deem such projects feasible.

UMTA should not require rehabilitation to include lift retrofit since such installation will make rehabilitation structurally and financially infeasible.

6. Grantees should be able to create reserve fleets in accordance with local needs.

The creation of stand-by bus fleets through the replacement process or other means should be left to the discretion of local policy makers determining their own needs. Federal procedures impeding these actions should be eliminated.

7. The federal government should initiate a bus demonstration program.

Current federal regulations adversely affect bus productivity. Accordingly, manufacturers currently participating in the U. S. bus market should be invited to produce practical and economical bus prototypes to demonstrate performance and productivity improvements.

In addition, the federal government should procure a variety of unmodified foreign buses for deployment in U. S. cities to demonstrate their operating and maintenance costs, reliability, and rider acceptance.

Cost/benefit analyses of both such demonstrations could lead to changes in current federal regulations affecting bus productivity and performance levels.

APTA believes these recommendations will increase the number of buses manufactured for deployment in the United States and significantly improve bus performance and productivity. APTA is prepared to support these actions through industry committees and the Transit Development Corporation. Public transit agencies will play an active role in carrying out each action, in conjunction with UMTA and the manufacturing and supply industry.

MONTHLY TRANSIT RIDERSHIP

(Unlinked Passenger Trips)

American Public Transit Association
1225 Connecticut Avenue, N.W., Suite 200
Washington, DC 20036
Telephone: (202) 828-2828

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APTA Statistical Department

Estimated Unlinked Transit Passenger Trips on All U.S. Transit System

Month	1980	Percent Change from 1979	1979
January	685,664,000	+ 6.30%	645,053,000
December	633,212,000	+ 3.74%	* 610,373,000

Calendar Comparison

	1980	1979
Weekdays	22	22
Saturdays	4	4
Sundays	4	4
Holidays	1	1

Estimated Unlinked Transit Passenger Trips on Transit Systems in Canada and the United States

Population Groups	Current Month JAN '80 (Thousands)	Percent Change from 1979	JAN '79 (Thousands)	Year-to-Date JAN '79 thru DEC '79 (Thousands)	Percent Change from 1978	JAN '78 thru DEC '78 (Thousands)
United States (a)						
500,000 and Over	592,633	+ 5.09%	563,912	7,125,818	+ 6.00%	* 6,722,741
Heavy Rail Rapid Transit	204,233	+ 3.14%	198,015	2,380,910	+ 4.20%	* 2,284,959
Surface Lines (Rail and Bus)	388,400	+ 6.15%	365,897	4,744,908	+ 6.93%	* 395,457
250,000 to 500,000	38,196	+ 12.74%	33,880	430,655	+ 8.90%	* 395,457
100,000 to 250,000	31,155	+ 11.68%	27,897	329,648	+ 11.32%	* 226,114
Less than 100,000	23,680	+ 22.29%	19,364	244,300	+ 20.79%	* 202,258
Total United States	685,664	+ 6.30%	645,053	8,130,421	+ 6.75%	* 7,616,300
Canada						
Total Canada	(b)	+ 0.03%	(b)	(b)	- 0.56%	(b)

(a) 1970 U.S. Census of Population; transit systems assigned by urbanized areas except for urban places of less than 50,000 population outside urbanized areas.
(b) Number of unlinked transit passenger trips unavailable; percent change represents reporting sample.
* Revised figure.

Monthly Ridership Change by Population Group
Adjusted for Variance in Number of Weekdays and Other Days
Month in 1980 Compared to Same Month in 1979
(See "Calendar Comparison" on Page 1)

Month During 1980	500,000 and Over			250,000 to 500,000	100,000 to 250,000	Less than 100,000	Total United States	Total Canada (a)
	Combined Total	Heavy Rail Rapid Transit	Surface Lines					
January	+ 5.09%	+ 3.14%	+ 6.15%	+ 12.74%	+ 11.68%	+ 22.29%	+ 6.30%	+ 0.03%
February								
March								
April								
May								
June								
July								
August								
September								
October								
November								
December								

(a) Reporting sample only: not projected to entire Canadian transit industry.

U.S. Unlinked Transit Passenger Trips*
1972 through 1980
(thousands)

	1972	1973	1974	1975	1976	1977	1978	1979	1980
JAN	564,941	580,110	608,010	600,026	601,000	588,423	599,673	645,053	685,664
FEB	557,930	533,396	574,433	558,702	583,432	577,373	595,340	616,355	
MAR	624,635	651,920	660,086	632,876	705,714	670,309	692,945	723,590	
APR	533,939	563,221	604,212	605,651	605,444	594,328	642,344	667,444	
MAY	556,272	577,761	594,669	586,637	590,790	616,278	664,162	712,665	
JUN	543,409	537,563	556,520	565,168	583,338	615,099	640,637	693,542	
JUL	469,957	490,986	528,682	540,203	545,237	542,693	569,056	643,160	
AUG	511,680	518,691	524,036	532,367	543,735	589,488	620,747	672,908	
SEP	523,854	519,343	529,677	561,348	549,930	614,288	639,945	655,008	
OCT	561,288	588,360	608,325	617,982	589,020	646,243	680,141	757,465	
NOV	549,169	536,692	563,228	558,133	584,813	627,443	659,937	709,600	
DEC	549,986	561,357	583,122	612,906	598,545	603,250	610,373	633,212	
Annual Total	6,567,000	6,660,000	6,935,000	6,972,000	6,081,000	7,285,915	7,516,300	8,130,421	

Percentage Changes in U.S. Unlinked Transit Passenger Trips*
By Month and by Year, 1972 through 1980

	1972	1973	1974	1975	1976	1977	1978	1979	1980
JAN	- 4.38	+ 2.69	+ 4.81	- 1.31	+ 0.16	- 2.09	+ 1.91	+ 7.57	+ 6.30
FEB	- 0.06	- 4.40	+ 7.69	- 2.74	+ 4.43	- 0.95	+ 3.11	+ 3.53	
MAR	- 6.41	+ 4.20	+ 1.25	- 4.12	+11.51	- 5.02	+ 3.38	+ 4.42	
APR	- 5.85	+ 1.68	+ 7.28	+ 0.24	- 0.03	- 1.80	+ 8.13	+ 3.93	
MAY	- 1.30	+ 3.86	+ 2.93	- 1.35	+ 0.71	+ 4.31	+ 7.77	+ 7.30	
JUN	- 6.05	- 1.08	+ 3.53	+ 1.55	+ 3.21	+ 5.44	+ 4.15	+ 8.26	
JUL	- 7.63	+ 4.47	+ 7.68	+ 2.18	+ 0.93	- 0.47	+ 4.86	+13.02	
AUG	- 2.59	+ 1.37	+ 2.41	+ 1.59	+ 2.41	+ 8.41	+ 5.30	+ 8.40	
SEP	- 4.03	- 0.86	+ 1.99	+ 5.98	- 2.03	+11.70	+ 4.18	+ 2.35	
OCT	- 2.43	+ 4.94	+ 3.29	+ 1.59	- 4.69	+ 9.71	+ 5.25	+11.37	
NOV	- 3.72	- 2.27	+ 4.94	- 0.90	+ 4.78	+ 7.29	+ 5.18	+ 7.53	
DEC	- 7.37	+ 2.07	+ 3.88	+ 5.11	- 2.34	+ 0.79	+ 1.18	+ 3.74	
Annual Average	- 4.43	+ 1.42	+ 4.13	+ 0.53	+ 1.56	+ 2.39	+ 4.53	+ 6.75	

Index Values of U.S. Unlinked Transit Passenger Trips*
Ridership Changes by Month and by Year, 1972 through 1980
(1972 = 100.00)

	1972	1973	1974	1975	1976	1977	1978	1979	1980
JAN	100.00	102.69	107.62	106.21	106.38	104.16	106.15	114.18	121.37
FEB	100.00	95.60	102.96	100.14	104.37	103.37	106.79	110.56	
MAR	100.00	104.20	105.68	101.32	112.98	106.31	110.94	115.34	
APR	100.00	101.68	109.08	109.34	109.30	107.33	116.05	120.49	
MAY	100.00	103.36	106.90	105.46	106.21	110.79	119.40	128.11	
JUN	100.00	98.92	102.41	104.00	106.35	113.19	116.89	127.63	
JUL	100.00	104.47	112.50	114.95	116.02	115.48	121.09	136.86	
AUG	100.00	101.37	102.41	104.04	106.26	115.21	121.32	131.51	
SEP	100.00	99.14	101.11	106.16	104.98	117.26	122.16	125.06	
OCT	100.00	104.94	108.39	110.11	104.95	115.15	121.19	134.97	
NOV	100.00	97.73	102.56	101.63	106.49	114.25	120.17	129.21	
DEC	100.00	102.06	106.20	111.44	108.83	109.68	110.98	115.13	
Annual Total	100.00	101.42	105.60	106.17	107.83	110.95	115.98	123.81	

DEFINITIONS

The APTA Monthly Unlinked Transit Passenger Trips report, with ridership data for the month of January, 1978, and months thereafter, is the successor to the APTA Monthly Transit Traffic report report. Please note that "unlinked transit passenger trips" in the current report series are total passengers rather than revenue passengers in the previous report series.

Unlinked Transit Passenger Trips: A person taking a trip by transit takes an "unlinked passenger trip [ride]" each time that person boards a transit vehicle regardless of the type of fare that person pays. "Unlinked passenger trips" are identical to "Total Passengers" previously reported to APTA. The term "unlinked passenger trip" includes (A) a person who rides only one transit vehicle in going from origin to destination as well as (B) a person who rides more than one transit vehicle in going from origin to destination; a person riding only one transit vehicle is counted as ONE "unlinked passenger trip" whereas a person riding more than one transit vehicle is counted as an "unlinked passenger trip" EACH TIME that person boards a transit vehicle. For example, a person who transfers from one bus to another bus in going from origin to destination takes TWO "unlinked passenger trips" regardless of whether or not that person uses a revenue transfer or a free transfer or no transfer at all.

Revenue Passengers: Single-vehicle transit rides by initial board (first-ride) transit patrons only; excludes all transfer rides and all non-revenue rides.

CODE LETTERS AND NUMBERS

Each LETTER CODE indicates a unique combination of the type(s) of "transit passenger trips" included or excluded by each transit system reporting.

Each NUMBER CODE following a LETTER CODE indicates "partial reporting" of that particular type of "transit passenger trip."

CODE LETTER	TYPE OF TRANSIT PASSENGER TRIPS REPORTED			
	Basic Adult-Fare Passenger Trips	Reduced-Fare Passenger Trips	Transfer Passenger Trips	Charter Passenger Trips
a	YES	YES	YES	YES
b	YES	YES	YES	NO
c	YES	YES	NO	YES
d	YES	NO	YES	YES
e	NO	YES	YES	YES
f	YES	YES	NO	NO
g	YES	NO	NO	YES
h	NO	NO	YES	YES
j	YES	NO	YES	NO
k	NO	YES	NO	YES
m	NO	YES	YES	NO
n	YES	NO	NO	NO
p	NO	YES	NO	NO
q	NO	NO	YES	NO
r	NO	NO	NO	YES
s	NO	NO	NO	NO
t	Total Passengers from Superceded APTA Form 201 10-75			
u	Revenue Passengers from Superceded APTA Form 201 10-75			

CODE NUMBERS
1. Partial reporting of "Basic Adult-Fare Passenger Trips"
2. Partial reporting of "Reduced Fare Passenger Trips"
3. Partial reporting of "Transfer Passenger Trips"
4. Partial reporting of "Charter Passenger Trips"

American Public Transit Association

March, 1980

Proposed Section 5 Authorization Levels

(numbers in millions of dollars)

	1981	1982	1983	1984	1985	Total
Tier I	900	950	1000	1050	1100	5000
Tier II	250	450	600	900	1050	3250
Tier III	145	290	485	530	725	2175
Sub Total	1295	1690	2085	2480	2875	10425
Incentive Tier	-	-	200	200	200	600
Total	1295	1690	2285	2680	3075	11025

Senator WILLIAMS. Thank you very much.

We now turn to panel II which is gathered under the subject of transit supply. We invite Mr. Rene Vansteenkiste, group vice president, Commercial Products, the Budd Co., Troy, Mich.; as chairman of Railway Progress Institute, Committee on Passenger Transport; Mr. Edward R. Stokel, director, public transportation, GMC Truck and Coach Division, General Motors Corp.; and Mr. Robert Landon, president, Grumman Flxible Corp. You're almost solo in some respects in this world of transit supply. We welcome you, Mr. Vansteenkiste—did I get pretty close on that?

Mr. VANSTEENKISTE. That's pretty close, Senator. With a name like that, you really don't have much choice.

Senator WILLIAMS. What do most of the people call you?

Mr. VANSTEENKISTE. They call me "Van."

Senator WILLIAMS. I'm looking forward to this hearing and I'm very, very pleased to welcome you.

STATEMENT OF RENE N. VANSTEENKISTE, GROUP VICE PRESIDENT, COMMERCIAL PRODUCTS, THE BUDD CO., TROY, MICH.; AS CHAIRMAN OF RAILWAY PROGRESS INSTITUTE, COMMITTEE ON PASSENGER TRANSPORT, WASHINGTON, D.C.

Mr. VANSTEENKISTE. Thank you. Nice seeing you again, Senator. As you said, my name is Rene Vansteenkiste, and that's the proper pronunciation.

The proposal to extend, increase, and revise UMTA's authorizations through fiscal year 1985 is the most positive indication of your support and the sign of a potentially strong foundation for the revival of the domestic industry. We share your hopes that this

new foundation will result in the revival of a competitive American industry.

With regard to the procurement process presently mandated by UMTA, RPI has and will continue to provide industry participation for the procurement terms and conditions. We have met numerous times with UMTA officials, including former Administrator Page and present Administrator Lutz, to discuss points of ongoing concern.

In February 1978, UMTA issued special procurement guidelines that addressed some of the manufacturers' complaints about contract terms and conditions. These guidelines were the result of a series of events dating back to the summer of 1975. At that time the RPI had complained to the Secretary of Transportation and the UMTA Administrator about the excessively restrictive terms and conditions imposed on them by transit agencies.

In October 1975, a public hearing was held on the industry's problems with contract terms and conditions; 13 major problem areas were identified, including the authority of the properties' consulting engineers, guarantee/warranty, indemnity, liquidated damages, approval of subcontractors, and inspections and tests.

The implementation of domestic preference provisions provided in the 1978 Urban Mass Transportation Act is totally incomprehensive to our industry. We believe it is imperative for Congress to provide or to ask UMTA for a redefinition and clarification of the Buy American language.

Since American manufacture follows private enterprise, benefits domestic labor, utilizes domestic materials, returns public moneys to local, State, and Federal treasuries, utilizes Government funds to benefit minority businesses, and guarantees the availability of reliable replacement parts, we encourage congressional support for clarification this Buy American provision.

Even at this date, a lot of the objections of the various companies have not been addressed by UMTA. We take this opportunity to reiterate our support and willingness to work closely with UMTA so that action will be forthcoming soon.

Another area that RPI and the industry want to continue to pursue as aggressively as possible in cooperation with UMTA is that of rapid railcar standardization.

Secretary Goldschmidt and UMTA Administrator Lutz have indicated support for standardization which will result in more reasonable railcar prices, reduced operating costs, greater car reliability and fleet availability, and an orderly method of technology improvements.

At this time UMTA has spent approximately $1.5 million toward the rapid railcar standardization effort, but it feels it has no authority to mandate standardization to the properties.

In the spirit of reducing inflation by stabilizing equipment costs, thus saving tax dollars, we strongly urge you to provide clarification of UMTA's role in implementing standardization. We are, indeed, pleased to hear that Secretary Goldschmidt favors the idea to empower UMTA to purchase rolling stock directly from the manufacturers; and hopefully, this will help to standardize not only the railcars but the total procurement procedures of UMTA.

Over the past 4 years, there have been 11 contracts bid in the United States, with 7 going to foreign suppliers. These contracts, which do not include that awarded to the Japanese for the city of Philadelphia job, represent $373.2 million and an approximate total of 50,000 jobs lost directly and indirectly in the industry, plus public and private service jobs.

While this is a significant number, when you consider that there may be up to $6 billion in public funds spent in the next few years, it is evident that these figures only represent the extreme tip of the iceberg.

There is absolutely no way that the domestic manufacturer of railway passenger equipment can compete with unfair competition—with bids which are subsidized by the governments of foreign railcar builders.

If the low bid process is to be used, it must be refused to include clearly defined "other factors" which will be taken into consideration before a bid is awarded.

As an alternative to the low bid process, UMTA and the operating properties should be given the authority to negotiate a contract taking into consideration a set of criteria agreed to by the Congress, UMTA, and the operating properties.

Today's method of awarding contracts will without doubt lead to the end—to the death of the domestic railcar producing industry. Isn't it strange that with the anticipated increased demand for railcars, coupled with the windfall profits tax, that there is only one domestic railcar producer left in the United States?

And isn't it also strange that this producer is not asked or allowed to bid on railcar orders in most foreign countries, while the U.S. marketplace is open to the railcar producers from all over the world?

There is open capacity in the United States today and the capital dollars to increase manufacturing capacity would be provided if the nature of the competition is fair and factors other than the low bid are considered.

With the $6 billion to be spent on mass transit, there is no evidence that additional passenger railcar manufacturers will be coming on the scene. Something is certainly wrong with the marketplace if this situation prevails.

The city of Philadelphia, with the urging of UMTA, recently awarded their subway contract to the Japanese, whose bid was ridiculously low—leaving no doubt that it was subsidized. More importantly, the cost to the city of Philadelphia associated with lost American jobs and lost tax revenues will be greater than the difference between the Japanese and domestic bids.

There's all kinds of evidence to verify that statement.

In conclusion, Mr. Chairman, I believe I speak for the entire domestic transportation supply industry in expressing support for the authorization program you are proposing; but please take into consideration the comments I have made today. Public transportation is clearly one of the major factors for relieving the energy crisis facing our Nation. We hope to work with the Congress and UMTA in the coming months to expedite the implementation of badly needed fair legislation.

Not speaking for RPI, but speaking for myself, I say that a new direction for UMTA must come from this committee. I don't think that they'll change the way that they are currently operating, and I sincerely wonder whether UMTA cares about American industry.

I'd like to answer any questions you might have.

[Complete statement of Mr. Vansteenkiste follows:]

STATEMENT OF RENE H. VANSTEENKISTE

My name is Rene H. Vansteenkiste. I am the Group Vice President, Commercial Products, The Budd Company. I am testifying today as Chairman of the Railway Progress Institute's Committee on Passenger Transportation.

The Railway Progress Institute (RPI) is the national association of the rail and rail rapid transit equipment and supply industry. RPI represents approximately 150 of the country's leading industrial concerns which provide railroads and transit authorities with propulsion systems, cars, component parts, tracks, cross ties, signals, and just about everything that goes into making a rapid transit or railroad system.

In the words of President Carter, our national goal is to add 15 million passengers per day to the buses, trolleys, subways, and railcars of our cities and our communities. In order to meet this goal, the domestic supply industry, the Congress, and UMTA must work together to reconstruct a strong, competitive domestic supply industry. It's a massive challenge, and the utmost cooperation is needed from all sectors if we are to succeed in developing a passenger railway system that will enable our country to clear the energy hurdles in the years to come.

We are here today in strong support of the Federal Public Transportation Act of 1980 and your work to increase funding in light of the country's transportation needs and goals. We are encouraged by the potential of this legislation to improve the climate in an industry which has deteriorated rapidly. We have the technological ability in the domestic industry, but it needs the help of Congress to survive.

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In conclusion, Mr. Chairman, I believe I speak for the entire domestic transportation supply idiustry in expressing support for the authorization program you are proposing; but please take into consideration the comments I have made today. Public transportation is clearly one of the major factors for relieving the energy crisis facing our nation. We hope to work with the Congress and UMTA in the coming months to expedite the implementation of fair legislation.

I will be glad to answer any questions you may have.

Senator WILLIAMS. Senator Tsongas would like to ask a question now. But I think we will continue with the panel.

I turn to Mr. Stokel.

STATEMENT OF EDWARD R. STOKEL, DIRECTOR, PUBLIC TRANSPORTATION, GMC TRUCK AND COACH DIVISION, GENERAL MOTORS CORP.

Mr. STOKEL. Thank you, Mr. Chairman. I'm Edward R. Stokel, director of public transportation for the GMC Truck and Coach Division, a Division of General Motors Corp.

We are also pleased to be here to present our views on the potential for increased demand for transit coaches. In the interests of brevity, I thought I'd go to the major thoughts of our statement, if you have no objection.

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Senator WILLIAMS. Fine.

Mr. STOKEL. Let's turn first to the matter of production. One of the specific issues we were asked to discuss was our capability for increasing bus production. Simply stated, GMC's level of transit coach production depends on the number of orders we receive. And the number of orders we receive is dependent on our success in winning bids under the UMTA-controlled procurement process.

For example, in early February we went from an 8-bus-per-day, one shift production schedule to a double shift operation at 12 buses per day. This step was made possible by our success in winning the order of the Southern California Rapid Transit District in Los Angeles for 940 buses. At this 12 bus daily production level, we are able to reduce the delivery time for our vehicles from the previous 12 months to about eight months.

The GMC truck and coach division is ready and able to further increase daily production rates to a full double shift level of 16 buses per day with a minimum startup time. In order to make the commitment of resources for a full double shift, it would be necessary to have a sustained unfilled order bank of 2,000 units. Our present order bank is more than 2,500 units, but at this time we do not see this level being maintained, and thus cannot commit to the full two shifts.

In fact, there are only seven bids in the entire country scheduled for opening between now and early May. These bids cover a total of 245 advanced design buses. Over the years there has been—as there is now—considerable discussion of increased demand for transit coaches. But much of the time there is very little bus procurement activity behind the discussion.

Even at a full double shift production rate, GMC truck and coach would still not reach the maximum capability of present production facilities. We estimate that with our existing facilities we can support an all-out maximum production rate of 5,000 buses per year—approximately two and a half times the expected 1980 production total and more than three times the 1583 vehicles delivered in 1979.

I must emphasize that the major factor delaying another increase in our production rate is the lack of orders. GMC truck and coach is ready to cooperate in efforts to expand transit bus production and provide earlier deliveries of our vehicles to fill market needs. I am fully confident that the market's demand for advanced design buses can be met by existing domestic manufacturers.

Let's now turn to the matter of bus procurement policies. In discussing procurement policies, it is necessary to point out that there are actually three separate policies for purchasing transit buses with UMTA assistance.

When transit properties decide to purchase advanced design buses, such as our RTS–II, they must follow the detailed specifications of the so-called white book procurement plan, which has been developed by UMTA. This plan calls for specific vehicle design features, adherence to a variety of safety, environmental, training, and payment requirements, increased warranty provisions, audit rights, and use of a rather complicated evaluated low-bid pricing process, with UMTA-determined offsets for various vehicle features.

The second procurement policy, for transit systems which decide to purchase the old-style bus, the so-called New Look bus which is not produced in the United States, does not require use of any of the detailed "white book" design, procurement or increased warranty standards. The low initial bid price system is used for "New Look" bus purchases.

And yet there is still another procurement process, negotiated bids, often from a sole source, and it applies to purchases of vehicles which are in less demand, such as articulated buses.

Needless to say, the white book procurement plan for advanced design buses results in the greatest costs for the manufacturer and provides for the most control by UMTA. This rigid centralized control is an unsound procurement philosophy. We believe it needs revision to improve the transit bus procurement process.

Under the present procurement policy for advanced design buses, UMTA—not the local transit authorities— establishes all competitive bid price offsets which may be used in evaluating various vehicle features. This procedure denies to the local transit authorities, who are responsible for providing safe and efficient public transportation, the right to make their own procurement evaluation in determining the equipment best suited to their particular needs and requirements.

Similarly, imposition of a requirement for contracts to be awarded solely on a low initial price basis discourages innovation in the marketplace and pushes awards toward the apparently cheapest—lowest initial cost—equipment, without regard to the life cycle benefits provided by superior design. The Federal Government has rejected such an approach in its own procurements. Transit operators should have the same opportunity.

We note that several steps are being taken to eliminate this deficiency in the UMTA program, moving to a process under which local agencies have more control in the equipment evaluation procedure.

For instance, UMTA's proposed procedures for implementation of OMB Circular A-102 relating to third party contracting would give maximum procurement control to State and local governments which are recipients of Federal assistance. We have supported the thrust of these guidelines, to the extent that they are implemented to give the local transit systems the authority to evaluate equipment features and take responsibility for contract awards. If UMTA retains a dominating hand, the purpose of these guidelines will be lost.

In addition, Congress has twice endorsed the concept of moving away from the low bid policy serving as the only basis for awards. A provision of the 1978 Surface Transportation Assistance Act stated that after September 30, 1979, federally supported transit rolling stock procurements were to be based on consideration of life cycle costs, standardization, performance, and other factors in addition to initial capital cost. This policy was reiterated very strongly in the fiscal year 1980 DOT Appropriations Act.

We hope that Congress will continue to encourage full implementation of this provision by UMTA, and will insist that the spirit of the legislation be upheld by having the evaluation responsibility rest with the individual grant recipients.

Let's turn now to the question of the reserve bus fleet. Speaking as a bus manufacturer, we obviously support any reasonable step which will accelerate production and deployment of transit vehicles in the marketplace. Whether it would be best done through the direct Federal purchase authority called for in Senate bill 2296, the administration's proposed $150 million per year program for creation of a bus reserve fleet, the American Public Transit Association's proposal that the Federal Government's role be limited to establishing a minimum market for a certain level of production each year, or some other approach, we are not in a position to say.

With this in mind, we would like to offer comments on some of the details of the proposed legislation. If the Secretary is to be given bus purchase authority, we would prefer the approach outlined in the administration bill—that is, limiting the authority to purchase only the 1,000 bus reserve fleet, using performance rather than design specifications, and use of life cycle costing by consideration of maintenance and operating costs in addition to initial capital costs.

Under a direct purchase authority situation, the DOT will presumably make value judgments on life cycle costs. We hope that this authority will be limited to the 1,000 bus reserve fleet, and will not carry over to the regular vehicle procurement process where the life cycle cost determinations should be made by the grantee.

Further, we believe that it should be specifically provided that UMTA does not use the reserve fleet procurement to create an artificial allocation of the market. To the maximum extent possible, free market conditions should prevail in the selection of manufacturers who are to provide vehicles.

This completes my prepared statement. Thank you very much for the opportunity to participate. I also will be prepared to answer any questions.

[The complete statement follows:]

STATEMENT BY GENERAL MOTORS CORP.

I am Edward R. Stokel, director of public transportation for the GMC Truck and Coach Division. We appreciate this opportunity to discuss GMC capabilities for responding to increased demand for transit buses.

GM's involvement in public transit improvements is longstanding, presently encompassing the activities of several elements of the Corporation, including GMC Truck and Coach, Detroit Diesel Allison Division and our Transportation Systems Center.

The GMC Truck and Coach Division's background in building buses for public transit use goes back to 1925. Many features of transit buses which have contributed to greater safety and comfort for bus passengers—including automatic V-drive transmissions, diesel engines, air conditioning, the kneeling feature for easier boarding, smoother "air ride" suspension and many others—were pioneered by General Motors. Our present bus—the advanced design RTS–II—is a continuation of GM's pioneering efforts. It was designed to meet the needs of transit authorities to provide better service and attract more customers than the predecessor 1959 model which was the industry standard.

To further improve the operating economy of the RTS–II, GMC now has a weight reduction program underway to increase fuel efficiency. This program has already brought about a 400–500 pound weight savings from the original RTS production design. Other changes are also anticipated, including introduction later this year of a new 6V92 Detroit Diesel engine and a reduction in the horsepower required to drive certain accessories; both of these steps will add to fuel savings. This new Detroit Diesel engine is about 275 pounds lighter than the current engine, and is designed to run cleaner, quieter, and more efficiently.

PRODUCTION

One of the specific issues we were asked to discuss was our capability for increasing bus production. Simply stated, GMC's level of transit coach production depends on the number of orders we receive. And the number of orders we have is dependent on our success in winning bids under the UMTA-controlled procurement process.

For example, in early February we went from an eight bus per day, one shift production schedule to a double shift operation at 12 buses per day. This step was made possible by our success in winning the order of the Southern California Rapid Transit District for 940 buses. At this 12 bus daily production level, we are able to reduce the delivery time for our vehicles from the previous 12 months to about eight months.

The GMC Truck and Coach Division is ready and able to further increase daily production rates to a full double-shift level of 16 busses per day with minimum start-up time. In order to make the commitment of resources for a full double shift, it would be necessary to have a sustained unfilled order bank of 2000 units. Our present order bank is more than 2500 units, but at this time we do not see this level being maintained, and thus cannot commit to the full two shifts.

In fact, there are only seven bids in the entire country scheduled for opening through early May. These bids cover a total of only 245 advanced design buses. Over the years, there has been—as there is now—considerable discussion of increased demand for transit buses; but much of the time there is vary little bus procurement activity behind the discussion.

Even at a full double shift production rate, GMC would still not reach the maximum capability of present production facilities. We estimate that with our existing facility we can support an all-out maximum production rate of 5000 buses per year—approximately two and a half times the expected 1980 production total and more than three times the 1583 RTS–II vehicles delivered in 1979.

I must emphasize that the major factor delaying another increase in our production rate is the lack of orders. GMC Truck and Coach is ready to cooperate in efforts to expand transit bus production and provide earlier deliveries of our vehicles to fill market needs. I am fully confident that the market's demand for advanced design buses can be met by existing domestic manufacturers.

PROCUREMENT POLICIES

In discussing procurement policies, it is necessary to point out that there are actually three separate systems for purchasing transit buses with UMTA assistance.

Whe transit properties decide to purchase advanced design buses, such as GM's RTS–II, they must follow the detailed specifications of the so-called "white book" procurement plan which has been developed by UMTA. This plan calls for specific vehicle design features; adherence to a variety of safety, environmental, training and payment requirements, increased warranty provisions, and audit rights; and use of a rather complicated "evaluated" low-bid pricing process with UMTA–determined offsets for various vehicle features.

The second procurement policy, for transit systems which decide to purchase the old style coach—the so-called "New Look" bus which is not produced in the U.S.—does not require use of any of the detailed "white book" design and procurement standards. The low initial bid price system is used for "New Look" bus purchases.

And yet another procurement process—negotiated bids, often from a sole source—applies for purchase of vehicles which are in less demand, such as articulated buses.

Needless to say, the "white book" procurement plan for advanced design buses results in the greatest costs for the manufacturer and provides for the most control by UMTA. This rigid centralized control is an unsound procurement philosophy. We believe it needs revision to improve the transit bus procurement process.

Under the present procurement policy for advanced design buses, UMTA—not the local taransit authorities—establishes all competitive bid price offsets which may be used in evaluating various vehicle features. This procedure denies to the local authorities, who are responsible for providing safe and efficient public transportation, the right to make their own procurement evaluations in determining the equipment best suited to their particular needs and requirements.

Similarly, imposition of a requirement for contracts to be awarded solely on a low initial price basis discourages innovation in the marketplace and pushes awards toward the apparently cheapest—lowest initial cost—equipment, without regard for the life cycle benefits provided by superior design. The Federal Government has rejected such an approach in its own procurements. Transit operators should have the same opportunity.

We note that several steps are being taken to eliminate this deficiency in the UMTA program, moving to a process under which local agencies have more control in the equipment evaluation procedure.

For instance, UMTA's proposed procedures for implementation of OMB circular A-102 relating to third party contracting would give maximum procurement control to state and local governments which are recipeints of Federal assistance. We have supported the thrust of these guidelines, to the extent that they are implemented to give local transit systems the authority to evaluate equipment features and take responsibility for contract awards. If UMTA retains a dominating hand, the purpose of the guidelines will be lost.

In addition, Congress has twice endorsed the concept of moving away from the low bid policy serving as the only basis for awards. A provision of the 1978 Surface Transportation Assistance Act stated that after September 30, 1979, federally supported transit rolling stock procurements were to be based on consideration of life cycle costs, standardization, performance and other factors in addition to initial capital cost. This policy was reiterated very strongly in the fiscal year 1980 DOT appropriations act.

We hope that Congress will continue to encourage full implementation of this provision by UMTA, and will insist that the spirit of the legislation be upheld by having the evaluation responsibility rest with the individual grant recipients.

RESERVE BUS FLEET

Speaking as a bus manufacturer, we obviously support any reasonable step which will accelerate production and deployment of transit vehicles in the marketplace. Whether it would be best done through the direct Federal purchase authority called for in S. 2296, the Administration's proposed $150 million per year program for creation of a bus reserve fleet, the American Public Transit Association's proposal that the Federal Government's role be limited to establishing a minimum market for a certain level of production each year, or some other approach, we are not in a position to say.

With this in mind, we would like to offer comments on some of the details of the proposed legislation. If the Secretary is to be given bus purchase authority, we would prefer the approach outlined in the Administration bill—i.e., limiting the authority to purchase only the 1,000 bus reserve fleet, using performance rather than design specifications, and use of life cycle costing by consideration of maintenance and operating costs in addition to initial capital costs.

Under a direct purchase authority situation, the DOT will presumably make value judgments on life cycle costs. We hope that this authority will be limited to the 1,000 bus reserve fleet, and will not carry over to the regular vehicle procurement process where the life cycle cost determinations should be made by the grantee.

Further, we believe that it should be specifically provided that UNTA does not use the reserve fleet procurement to create an artificial allocation of the market. To the maximum extent feasible, free market conditions should prevail in selection of manufacturers who are to provide vehicles.

Thank you very much for the opportunity to participate in these important hearings. I would be pleased to respond to your questions.

Senator WILLIAMS. Thank you very much, Mr. Stokel. Now Mr. Landon.

STATEMENT OF ROBERT G. LANDON, PRESIDENT, GRUMMAN FLXIBLE CORP.

Mr. LANDON. Thank you, Mr. Chairman. The Grumman Flxible Corp., manufactures urban transit buses and is located in Delaware, Ohio. I would like to address three major issues in my testimony today—transit bus production capacity, Department of Transportation procurement procedures, and the development of a strategic reserve of buses.

Quite frankly, Mr. Chairman, I am not sure whether I should be assuring you of our ability to meet an increased demand for new buses or seeking your help in obtaining funds just to maintain our present rate of production.

We firmly believe that mass transit will play a vital role in solving this Nation's energy problems. You and your subcommittee have long recognized this and have led the way to a growing market for mass transit and transit equipment. We are also encouraged to hear from Secretary Goldschmidt of the President's goal to increase transit ridership by 50 percent in this decade.

Yet with the supplemental funds intended for mass transit in fiscal years 1980 and 1981 now an apparent casualty of the administration's anti-inflation strategy, as things now stand, less than 3,000 buses will be funded in each of these fiscal years, and that is not enough to sustain current capacity.

We have been aware of recent speculation regarding the production capacity of U.S. transit bus firms. Let me say that we are convinced that the current suppliers have sufficient capacity to meet the needs of this country for the foreseeable future.

Early last year Grumman Flxible took several steps to increase production capacity. At that time we were just introducing our new 870 design, and we were producing buses at the rate of 15 per week. Through the combination of a 50-percent increase in employment, addition of a second shift and accelerated tooling and equipment purchases, we increased our rate of production to 40 per week in November of last year. Since that time we have maintained that rate and we have initiated plans to reach 50 buses per week in the coming months.

At the current production rate, we could produce 2,000 buses per year, and by moving to 50 per week, a total of 2,500 per year is achievable.

Coupled with the efforts of others in the industry in the United States, a combined production of 5,000 to 6,000 transit buses per year is possible today using in-place production equipment, methods, and facilities. This capacity compares favorably with the transit bus market projected by the Department of Transportation. If further capacity is required, American firms have sufficient capital and desire to rapidly expand existing facilities to fulfill the additional needs.

Although Grumman Flxible is presently capable of producing over 2,500 buses a year, we now find that for a combination of reasons we are not receiving orders in sufficient quantity to maintain our present production rate. During the first quarter of this year, only 91 advanced design buses were bid. Our current backlog has fallen below 1,650 units. At our current production level, our lines will be empty by December of this year, less than 9 months from today. So that instead of considering a further increase in transit bus production, we are faced with a reduction in the rate that we so carefully built last year.

There are probably several reasons for the reduced orders we have been receiving. Department of Transportation grants for 1980 have only recently begun to be released. In addition, there may be some concern regarding the effect of the upcoming census on the existing population-based formula and the new proposals to add a ridership factor to the calculation. The recent ruling upholding the 504 regulations adds additional uncertainty, since an appeal is being considered and the outcome is unclear. Even so, at best, DOT

estimates that less than 3,000 buses will be funded this year without supplemental funds.

Faced with this situation, we can only conclude that any further expansion of transit bus capacity in the United States at this time should be keyed to a more positive indication of the market demand.

Let me now comment briefly on Department of Transportation procurement procedures. We believe the white book approach contributes significantly to stability and balance in the transit bus industry. We are pleased to continue to work with the Department of Transportation to modify and improve these specifications. To this end we plan to recommend to APTA and DOT that the present weight incentive be retained, that additional credits be provided as an incentive to improve brake life and tire life over and above what is now called for, and that air-conditioning be made optional. These recommendations will address some of the most frequently voiced operational difficulties of the advanced design bus, and the additional incentives will encourage the industry to make vital improvements in these areas.

We suggest that the flow of grant funds could be managed more closely by UMTA, and the equipment needs of transit authorities could be better coordinated to avoid the haphazard feast-or-famine nature of the procurement process. Even a central data-collection office that would track the status of outstanding grants, equipment purchase programs, availability of local funds, and so forth, would greatly facilitate the production planning process.

Finally, let me turn to the recent proposal of Secretary Goldschmidt for authority to buy 1,000 buses directly from the manufacturers. Fundamentally, this approach has several advantages.

The obvious production economies and increased reliability associated with standardization of design and long-term production runs would provide the customer a more efficient, lower cost bus. It would certainly eliminate the erratic production schedules we have experienced this past year and stabilize downstream business.

Still, most of these advantages would likewise result if funds for the additional 1,000 buses were made available through present channels, in conjunction with more aggressive administration of present specifications and improved coordination of equipment ordering plans of the transit authorities, as I suggested earlier.

In his testimony before this committee, Secretary Goldschmidt advocated the use of the strategic reserve as, "A tool to encourage foreign manufacturers to establish production facilities in the United States." But in view of the excess bus manufacturing capacity which will occur over the next 2 or 3 years as a result of current proposals to defer supplemental funds for mass transit, perhaps Secretary Goldschmidt would be willing to reconsider his efforts to attract foreign-based bus competition.

This concludes my prepared statement, Mr. Chairman. I would be pleased to answer any questions that you or the Members of the committee may choose to ask.

[Complete statement follows:]

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We have been aware of recent speculation regarding the production capacity of United States transit bus firms. Let me say that we are convinced that the current suppliers have sufficient capacity to meet the needs of this country for the foreseeable future.

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There are probably several reasons for the reduced orders we have been receiving. DOT grants for 1980 have only recently begun to be released. In addition, there may be some concern regarding the effect of the upcoming census on the existing population based formula and the new proposals to add a ridership factor to the calculation. The recent ruling upholding the 504 regulations adds additional uncertainty since an appeal is underway and the outcome is still unclear. Even so, at best, DOT estimates that less than 3,000 buses will be funded this year.

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We suggest that the flow of grant funds could be managed more closely by UMTA, and the equipment needs of transit authorities could be better coordinated to avoid the haphazard, feast-or-famine nature of the procurement process. Even a central data collection office that would track the states of outstanding grants, equipment purchase programs, availability of local funds, and so forth, would greatly facilitate the production planning process.

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This concludes my prepared statement, Mr. Chairman. I would be pleased to answer any questions that you or the Members of the committee may choose to ask.

Senator WILLIAMS. Thank you very much, Mr. Landon. I wonder gentlemen if first we can get a picture of just what our domestic supply situation is in each of your areas, including rail cars. We have seen a near total exodus of manufacturers from this production. Am I right?

Mr. VANSTEENKISTE. That's right, Senator. People like St. Louis Car and Pullman, who was the father of it all, and GE is probably a subcontractor. Boeing is probably a subcontractor. Rohr is out of the picture, leaving only the Budd Co. as the supplier.

That is true for a number of reasons. One of the primary reasons is the foreign competition that the industry was faced with. We happened to survive. I think we were lucky. We have an order from Amtrak, as a matter of fact, for 492 cars during that period of time when foreign competition was initially showing its face, but we have managed to survive.

We're certainly concerned about the future. Anytime the Japanese or Italy bids, there's no way we're going to beat that low bid because of the subsidized nature of that bid. So if in the future, we're going to have foreign competition on every bid, it's just a matter of time before the Budd Co. will not be building railcars.

As to capacity, our current shop in Pennsylvania is operating on about 75 percent of capacity. We can handle more orders. And if we feel that the competition is fair, we certainly are willing to provide additional capital dollars to expand our facilities.

I think if the competition becomes fair, you'll see some other manufacturers come back into the business or a new manufacturer come into the business. As I said, it's kind of strange that with all that money that's going to be spent on railcars, that there's only one manufacturer. I can't think of another product line where that is happening in this country today.

Senator WILLIAMS. You mentioned GE is subbing some railcars?

Mr. VANSTEENKISTE. I'm not speaking for GE, but I think GE is in a position where it would do some subcontracting for, perhaps, foreign competition.

Senator WILLIAMS. Do you know whether they are doing it?

Mr. VANSTEENKISTE. I do not know whether they are doing it. This is hearsay. I think Boeing is also in a position to operate as the assembler of railcars to support the Buy America clause, which says that the vehicle has to be assembled in the United States. I think that Boeing has worked out an agreement with Kawasaki for the light rail vehicle for the city of Philadelphia.

Senator WILLIAMS. The Buy America provision is not only 50 percent——

Mr. VANSTEENKISTE. Buy America says that substantially all of the product shall be of American manufacture. We interpret the word "substantially" to be 51 percent and that the vehicle shall be assembled in the United States.

The real definition and clarification of the 51 percent American content is still very, very much up in the air. We don't understand it, and we don't think anybody else really understands it either. We think we have to have clarification as to what the substantially all of the product shall be American may really mean.

Senator WILLIAMS. You mentioned Philadelphia. At one time, it was my impression that Philadelphia was a center for manufacturing of railcars. Weren't there other companies there?

Mr. VANSTEENKISTE. Yes. The Boeing Co. was also located in the Philadelphia area, and it is no longer producing railcars in that vicinity.

Senator WILLIAMS. How about Rohr? Where are they located?

Mr. VANSTEENKISTE. Rohr was located in Chula Vista, Calif. It also had a plant in Winder, Ga. Both of those plants are no longer producing. In fact, the Winder plant was sold.

Senator WILLIAMS. Where do you manufacture your railcars?

Mr. VANSTEENKISTE. Budd manufactures its railcars in Red Lion, Pa., part of which is inside the city line of Philadelphia.

Senator WILLIAMS. How about bus manufacturing? What is the situation there?

Mr. STOKEL. We're headquartered in Pontiac, Mich., outside Detroit. We've been there and in the business for over 50 years. There are two principal manufacturers in the United States—GMC Truck & Coach and Grumman Flxible. In addition, there are two Canadian manufacturers that serve the U.S. market.

Those four represent the total manufacturing capacity of the United States, and I think both of us have indicated that the capacity by those four manufacturers is certainly enough to meet the existing demand.

Senator WILLIAMS. What companies have just gone out of the bus manufacturing business?

Mr. STOKEL. American Motors had a subsidiary company. They announced that they were going out of the business and did so about 1½ years ago.

Senator WILLIAMS. Now, I believe it's your company, Mr. Landon, which has the same name as Grumman Aircraft. Is that a parent of Grumman Flxible?

Mr. LANDON. Yes. Grumman Corp. purchased Flxible Co. from Rohr just a little over 2 years ago.

Senator WILLIAMS. You're probably too young to remember. There was a period when Grumman couldn't meet all of its orders. It was not buses—aircraft—and looked over here to General Motors to pick up as manufacturer of part of your design.

Mr. STOKEL. Is that right?

Senator WILLIAMS. When it was the TBF and then the TBM.

Mr. LANDON. The Wildcat.

Senator WILLIAMS. There were several planes. They were Grumman planes that came on to be manufactured. They happened to win the war. Being a Navy pilot, I can tell you that.

Now we'd like to see the time when you couldn't fill all your orders on buses.

Mr. STOKEL. We'd be happy to fill their order bank, Mr. Chairman.

Senator WILLIAMS. I thought I would just go back here to look at some of the things that you've enumerated as part of the problem, and you did not address yourself—you're coming to this business, generally in your testimony, of more local say in the procurement process and letting the local input be more meaningful in deciding what its product will be.

I thought you might address yourself to the problem of the exotics, the community exotics and specialized design for the particular needs arrived at through consultants or other ways. You didn't talk about that.

Mr. VANSTEENKISTE. What I was referring to was the need, at least in the rail companies, for standardization. We feel that every time a city wants to put in a system, it shouldn't reinvent the wheel. There's certainly economies to be reached, if, in fact, we had a standardized rail vehicle. I don't mean just one rail vehicle, but a group of rail vehicles—not a new rail car every time we have a new transit system. UMTA tried this with some degree of success on the Miami-Baltimore job. That is, in fact, pretty much the same car. Philadelphia and Cleveland were to be the same type of vehicle; that fell by the wayside for a number of reasons.

But I think that direction has to be given to UMTA to really quit fooling around with standardization and really get to the job and get it done. And the industry is agreeable to work with them. You're going to get more for your money; the taxpayer is going to get more for his money; your going to have less maintenance problems; you're going to have all of the good things that go with standardization.

And perhaps UMTA, in order to influence standardization and make it work, has to buy the rail car from whomever and, in fact, sends them to the people who want them. So we're looking at standardization as being a way of helping the inflation situation we find ourselves in and really give the taxpayer more for his dollar.

Senator WILLIAMS. Are there many commuter rail cars now in manufacture?

Mr. VANSTEENKISTE. Yes. We're manufacturing cars for the Chicago RTA system, the Chicago CTA. We're manufacturing the order for the Baltimore-Miami system, and we're about to close an order for cars for Amtrak.

Senator WILLIAMS. Now in the seating of these cars, there was at one point a controversy on the nature of the seating on either side of the aisle—two, two; two, three. Is that still an issue?

Mr. VANSTEENKISTE. It's still an issue—whether it's two and one or two and two or two and three or three and three. The type of seat depends on what day of the week it is and who's asking for the product, and it's very expensive to the taxpayer. There's a lot to be said for deciding on a seating pattern as just one of the items that could lead to standardization which would help to get more for the dollar.

Senator WILLIAMS. Which way are most of the new cars now in production coming on?

Mr. VANSTEENKISTE. There really is no one way, Senator. There is a wide variety of seating patterns. I don't think there's really any standard.

You talk about inner city travel. Two by two seating is the most popular. In fact, two by two seating around the world is the most popular for inner city travel. But when you're talking about commuter, you're talking about subways and suburban use. It's a mixed bag.

I think there are some reasons for having a mixed bag. I am sure that in the city of New York you've got a lot more standees that you have got in other parts of the country, where the ridership is light.

Seating is really one of the smaller concerns with Americans, because of standardization. Standardized on the length, width, the window arrangement, the propulsion package—there's a whole series of items where you get more for your buck.

Mr. LANDON. Senator, I'd like to say that Flxible does not share the viewpoint expressed by Mr. Stokel.

Senator WILLIAMS. On the white book.

Mr. LANDON. Regarding the desirability of greater local input into specifications. We feel that the desires of the local transit authorities, when added up, do not necessarily coincide with the national viewpoint, that expressed by UMTA, that expressed by those of you who are espousing standardization.

We find that, in our opinion, a move toward greater local input would eventually break down the degree of standardization that we have been able to achieve with the white book. And I would hasten to say, the two buses that are being produced today are not in any way identical in terms of features but in terms of performance are reasonably close.

We feel that, given free rein to the local transit authorities, the bus has to cost more, because of the engineering time involved, the engineering costs involved, the additional tooling involved, the additional purchasing lead times that are required—you can't really buy anything such as the major components of the bus for inventory—because they're apt to be spaced out differently by the local transit authorities.

So we feel that the more the local authority can modify the bus, the longer it takes to design it, tool it and produce it, even though a very substantial portion of the bus may be thought of as the same from one order to another.

We feel also that the difference in specifications is confusing in terms of not just the manufacturing process, but also in terms of inspection standards. And we find that it's these changes from property to property, the change from inspector to inspector, that have had the most destructive effect on our efforts to increase production in the last year.

Senator WILLIAMS. Did you want to comment in this area, Mr. Stokel?

Mr. STOKEL. I disagree with my competitor. I think the local authority is in the best position to know what is in its best interest. I think officials in Boston know that the specifications they have written are best suited for the climatic and topograpical conditions of Boston. I believe that the people in Miami happen to know what's best for them.

And I think that inasmuch as they have to live with their decision, more of the authority should be directed toward the grantee in support of the congressional mandate. As I indicated in my prepared statement, to the effect that Congress has twice indicated that UMTA should get away from low bid and start to base their bids on life cycle costs where the grantee has a greater voice in that determination.

Senator WILLIAMS. Senator Tsongas?

Senator TSONGAS. Could we get a comparable rundown on who's in the fixed rail business besides Budd?

Mr. VANSTEENKISTE. In this country, Senator, only the Budd Co. produces——

Senator TSONGAS. Who are your competitors from foreign sources?

Mr. VANSTEENKISTE. Competition is everybody that wants to enter this marketplace. You're talking about people like Sumatoma, Kawasaki, Fiat, Breda, Franco-Belge.

Senator TSONGAS. What was the last one?

Mr. VANSTEENKISTE. Breda from Italy. They are the company that had the low bid on the Nation's Capital additional order. Corel-Fouche in France, and GTE in France, Fursa in Brazil. I'll stop there. There are some more, but this is an indication. There are many, many rail builders around the world who are interested in this marketplace. You will notice one thing, Senator, as to the Japanese. You'll never find two of them, two competing Japanese firms, competing at the same time for a U.S. order. I dare to say that they have an agreement amongst themselves as to who's going to bid for this particular order.

We don't see that happening in the United States.

Senator TSONGAS. Japan is far more into central planning than we are.

That will come because we need to do it to survive. They also have an unbalanced budget, I might add.

Boeing had entered the field and tried to design a new vehicle which apparently was very good in the draftsman's plan, but when it came down to the implementation and maintenance and so forth, it broke down in Boston. Obviously, with the recipient of that new technology and the problems of it, is Boeing capable of coming back into the business?

Mr. VANSTEENKISTE. I can't speak officially for Boeing, but from what I hear, Boeing is, I think, going to be willing to serve as an assembler of cars. They're going to be assembling, I understand, the cars for Kawasaki, for the light rail vehicle order for the city of Philadelphia, which was made some months ago.

Senator TSONGAS. Who competed in the Philadephia case?

Mr. VANSTEENKISTE. In the case of the recent Philadelphia Broad Street subway order, there was the Budd Co., Hawker-Sidley, Fiat and Kawasaki.

Senator TSONGAS. What was the range of the bids on that?

Mr. VANSTEENKISTE. The Budd bid was $81 million; Fiat was $79 million; Hawker-Sidley, I think, was $78 million; and the Japanese were $68 million.

Senator TSONGAS. And much of that would have been put together in the Philadelphia area?

Mr. VANSTEENKISTE. Yes. At the request of the city of Philadelphia. We were asked to make sure that all of the components were U.S. made, and that's exactly what we did. So the Broad Street subway car for the city of Philadelphia was going to be 100 percent American content.

Senator TSONGAS. How much of that differential can you attribute to Government subsidy?

Mr. VANSTEENKISTE. I really can't put a number on it.

Senator TSONGAS. That's quite a spread.

Mr. VANSTEENKISTE. Yes; it is. When we take a look at our numbers, and just take labor and material by itself—no overhead, no profit, no other things—our labor and material exceed the Japanese bid.

It's a pretty good indication that subsidies are happening. Our studies show that the foreign competitors, with subsidies in the form of tax relief, financing help—they get help in writing their engineering proposals, a lot of engineering is considered R. & D., which is written off.

Senator TSONGAS. The subsidy would not account—if your labor and materials exceed $68, then by definition the subsidy would not get you down to a competitive figure.

Mr. VANSTEENKISTE. No.

Senator TSONGAS. Why has there been such foreign penetration of your industry and buses?

Mr. VANSTEENKISTE. When the rest of the world saw that there was only one railcar manufacturer left, they said, "There's a marketplace we'd like to get into." Also, you will find that, for example, in Japan you have 5 railcar builders and since World War II those 5 railcar builders have provided the railcars needed for the Japanese system, for the Japanese economy, under the direction of the Japanese government.

Those industries, for the most part, are subsidized. So they said to themselves, I'm sure, under the direction of the NNR, "Go out to try to sell railcars in other parts of the world."

The thing that's unfair about it, the Japanese, the Germans, the French, the English and a lot of other people don't ask the Budd Co. to come to their country. We're excluded from bidding on rail car orders around the world. It's not fair.

Senator TSONGAS. For example?

Mr. VANSTEENKISTE. We have no requests from anybody to build rail cars who have rail car manufacturing facilities. I am talking about the Japanese, the Germans, the French, the Italians——

Senator TSONGAS. The difference between asking for a bid and prohibiting from bidding——

Mr. VANSTEENKISTE. We are prohibited from bidding in those countries. Our bid would not be recognized in those countries.

Senator WILLIAMS. They have absolute law, buy national, for those countries?

Mr. VANSTEENKISTE. What they'll do, Senator, is simply not honor—an unsolicited bid would not be honored. On the other hand, they will not ask us to submit a bid.

Senator TSONGAS. Well, one of the problems we have in the automobile market is that the foreign producers build a better car.

Mr. VANSTEENKISTE. I wouldn't agree with that. I think that's a matter of your opinion, maybe, versus the automobile industry. I wouldn't agree that foreign car builders build better cars than the United States manufacturers.

Mr. STOKEL. I certainly don't agree with you, Senator. [Laughter.]

Senator TSONGAS. Unfortunately, the market does.

Mr. VANSTEENKISTE. I think the market, in part, of our company, is also associated with the supply.

Senator TSONGAS. I don't blame you for taking the position you do, but if you look at the recent figures for the automobile industry, all three U.S. manufacturers share of the market is going down. Volkswagon's is going up. You can't buy a Toyota or Datsun without a 9- or 10-month backlog.

Mr. VANSTEENKISTE. I think that's the availability of the product in the marketplace. The American manufacturer, General Motors—I won't speak for Ed, but they're selling every X-car they can build, and they have a backlog of, I'm sure, many, many days out there.

Mr. STOKEL. You try to buy an X-car, Senator, you'll be waiting several months.

Senator TSONGAS. I made the mistake of buying a Pinto. [Laughter.]

The point that I'm trying to make is that the United States, at least in the automobile industry, simply did not adjust to the market.

Mr. VANSTEENKISTE. That might be true.

Senator TSONGAS. The market I'm talking about, the X-car, you're correct. But that's a recent phenomenon. All of the small cars that are out there that are good, engineeringly attractive, happen to be foreign cars.

The question I'm raising: is there, in essence, a drive within your particular divisions to engineer, produce and design cars that are competitive in terms of the quality, the engineering, the perception of a well-made bus or fixed rail vehicle?

Mr. VANSTEENKISTE. I think in terms of the rail car, we have as good a technology as anybody in the world. As a matter of fact, our company has technical know-how license agreements with Fursa in Brazil, with Tokyo Car in Japan, with Cummings in Australia, with Sorefam in Portugal, with CAF in Spain—they are using the technology under our license to build the railcars.

In my travels around the world, I don't think that the foreign manufacturer is building any better rail cars than we are, or has any better technology than we have.

As far as automobile passenger cars, I'd have to defer to my colleague here from General Motors.

Mr. STOKEL. I would like to address that question as it relates to buses, foreign buses. Mercedes-Benz was in the business, attempted to get in the business further, going back as recently as 5 years ago, tried desperately getting into the business 10 years ago. They were unsuccessful. And about 2 years ago, announced that they were completely getting out of the U.S. domestic market, and they did.

In terms of foreign bus manufacturers, we have two, Ikarus of Hungary and MAN of Germany. Both build an articulated bus. They have not sold any buses——

Senator TSONGAS. I hate to ask you the question, but what is an articulated bus?

Mr. STOKEL. An articulated bus is one that bends in the middle.

Mr. Vansteenkiste.

Mr. LANDON. It's "Flxible." [Laughter.]

Mr. STOKEL. With an "e," in this case. An articulated bus is one that bends in the middle, and they're generally about 60 feet long, 20 feet longer than the current domestic bus. They have sold a number of those buses in the United States and we have not entered into that particular specialized market.

Why not? Well, we have never been satisfied that the market potential on an annual basis was sufficient enough for us to get into that market. We are looking at it again.

And it's conceivable that as that market increases in numbers, that we will enter into that market. But those are the only two who are presently delivering buses of a specialized nature to U.S. transit agencies. Leyland of Great Britain has sold a limited number of double-deck buses.

Senator TSONGAS. I see it here.

Mr. STOKEL. Neoplan of Germany has also sold a limited number of double-decker buses, but collectively there have been fewer than 25 sold in the United States in recent years, so they haven't been a major thrust into the marketplace.

I don't know of any other foreign manufacturers who have made any penetration whatsoever into the U.S. market. So we are competing. We are offering one hell of a product, as evidenced by the fact that the American marketplace is placing most of their orders with the existing U.S. manufacturers.

Senator TSONGAS. You concur, I assume?

Mr. LANDON. Yes, I certainly feel very deeply that there is not a bus made anywhere in the world that can compete in terms of value with the advanced design buses that are being offered today. We've had a whole different set of design requirements, in terms of national needs, national regulations, environment and safety.

I doubt there's a bus built in the world that can meet those standards as our buses meet them today, and surely, if they did have the capability to build a bus, I'm very confident that it would not approach the price or the value of either of the two buses offered today.

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Senator TSONGAS. One final question. Mr. Chairman, I'd like to have the witnessed document, if possible, the charge that they cannot compete in foreign markets. If that indeed is the case, then I think there is some obvious violation of reciprocity and perhaps the legislation could reflect that concern.

What kinds of fuel efficiencies can we anticipate in the bus fleets of the next few years?

Mr. STOKEL. We're making a decided improvement in that regard, Senator, and I refer to the present production versus our original production, which began in the fall of 1977.

How did we go about improvement on fuel economy?

Senator TSONGAS. What kind of figures are we referring to in fuel efficiency?

Mr. STOKEL. Originally we were getting about 3.1, 3.2 miles per gallon. Based on a weight reduction program which we have implemented we're up to about 3.7 now. It'll vary from city to city and from bus to bus because of traffic conditions, road conditions, topography, climatic conditions, driver habits and so forth, but we've improved it.

And this fall, we're going to further improve on our fuel efficiency by introducing a new diesel engine called the 6V92. This engine, when combined with a weight reduction, and another engineering effort to reduce the horsepower consumed by accessories, those three efforts will further improve our fuel economy, and I am satisfied that we will be approaching fuel economy comparable to the old style bus.

Now, you have to consider that when you compare it with the old style bus, you are getting a bus that is much safer and has many more ingredients built into it because of the UMTA white book requirement, compared to the old style bus. It will have comparable fuel economy, but the bus is by far safer than the old style bus, and has many other passenger-oriented features built into it that also are not found in the old style bus.

Senator TSONGAS. And the mpg would be what, generally?

Mr. STOKEL. The same as the existing old style bus. Again, it will vary from property to property—anywhere from about 3.75 to 4.2 miles per gallon.

Senator TSONGAS. Is there any sort of accepted theoretical limit toward which the industry is working?

Mr. STOKEL. On fuel economy? No. We hope, our programs will go on forever, and we will forever improve on fuel economy. There is no limit.

Senator TSONGAS. In automobiles, as you know, there is a target.

Mr. STOKEL. I understand. There is no such limit in bus production.

We're forever striving to improve on our fuel economy and will continue to do so for obvious reasons.

Senator TSONGAS. You don't have to go much further before you get to the range of some of the cars that came from Detroit a few years ago.

Mr. STOKEL. And we have made substantial improvements there, as I'm sure you've noticed.

Senator TSONGAS. Thank you, Mr. Chairman.

Mr. LANDON. I'd like to point out a couple of things. First, in terms of the alternatives. There's been a lot of talk about lessened fuel efficiency in buses, but in terms of the objective which is helping to meet the Nation's energy requirements, there's no doubt that buses, even at today's less efficient levels, offer the only real alternative to continuing to use the automobile.

Senator TSONGAS. You're talking to the already convinced.

Mr. LANDON. Second, I would like to point out that many of the numbers that have been quoted and serve as the basis for these statements are misleading. Our buses, the advanced design buses, have been compared generally to fleet operating averages. These fleets are generally six or more years old. They do not have air-conditioning in all cases. They do not carry wheelchair lifts. They do not have the extensive air-conditioning systems, power consuming amenities that our buses have, and they do not have engines that meet today's EPA requirements, it should be pointed out.

I am glad to hear that General Motors is going to build a better engine, because we use that engine in almost every bus we build. That is generally a requirement (of the customer), and in the end, the difference between our bus, their bus, and a Canadian bus, or whatever, is very often simply weight. At the present time, there's also a misconception about weight.

A Canadian bus delivered today is in the same weight range as the buses we are building, so if we were to compare—and neither of us has had the opportunity to run the tests yet—but I think if we were able to compare with a bus that is available today from virtually anywhere in the world that meets the current safety and EPA requirements, we would find the difference in fuel efficiency would be relatively minor, a factor which is influenced primarily by weight, and those weights do not vary that much.

So what we really have to look forward to, as Mr. Stokel has indicated, is the continuing improvement in the engine itself which is taking place at a steady rate.

Senator TSONGAS. Mr. Chairman, I wonder whether we could also—I have some other questions here I would like to have answered, and also the issue of what kind of capital reinvestment have your companies engaged in, say, going back a few years. One of the problems obviously is that some of our industries are simply not reinvesting back into their capital equipment. You can tell by their reinvestment patterns what their prospects are for the long term.

If we could get some indication from you as to what the patterns are, we'd appreciate it.

Mr. STOKEL. We invested $50 million in bricks and mortar and tooling to mass produce the advanced design bus called the RTS. That investment took place between 1974 and 1977. That does not include engineering expense or testing of the vehicle. That's hard capital expenditures—tools, assembly lines, bricks and mortar.

Senator WILLIAMS. Does this describe the situation that the Rohr Co. faced? I understand that Rohr was the rail car manufacturer for the D.C. Metrocars or at least the first generation?

Mr. Vansteenkiste. They built the BART system in San Francisco, and it was the first, I think—300 cars for the Washington Metro.

Senator WILLIAMS. It was their hope, maybe expectation, that the car—the same kind of car that they produced for Metro here might make it for the Atlanta system, and they bid with that car as their base for the Atlanta purchase. They missed it; a French company got the bid, and Rohr went out of business.

Mr. VANSTEENKISTE. Rohr, Senator, did not bid on the Atlanta job. There were two bidders on the Atlanta job. That was GE and Franco-Belge. Franco-Belge was the low bidder.

Senator WILLIAMS. They did not bid, because the car that they thought would be the basis of the bid didn't make it, because it didn't meet the Atlanta specifications. Is that right?

Mr. VANSTEENKISTE. The reason that Rohr didn't bid and that we didn't bid on the Atlanta job is we felt that the terms and conditions, both commercial and technical, were such that we just couldn't bid on that order. And in the eleventh hour, as a matter of fact, GE bid, along with Franco-Belge.

Rohr's first effort into the building industry was the BART system. The BART system had a whole lot of new stuff on it. It was really reinventing the rail car. As you probably know—I guess all the lawsuits are settled now—but it was a nightmare for Rohr. It was a nightmare for Westinghouse. It was a nightmare for the BART system itself.

I think Rohr felt that they could make some money on the 300 cars on the WMATA system and they would get the followup order. There were a whole lot of reasons why Rohr went out of business.

These were the ingredients that led them to recognizing that they'd better get out of that business.

Senator WILLIAMS. Another question. Is there any litigation in any State in connection with the observation that has been made and what we've heard otherwise—that there's dumping here?

Mr. VANSTEENKISTE. Yes; we filed a dumping suit with the International Trade Commission which was rejected. We're going to appeal that decision. We know that the staff of the International Trade Commission suggested that dumping, in fact, was taking place, and much to our surprise at the 11th hour, we got a five to nothing vote from the Commission rejecting the dumping action.

We think our numbers are right. We think our homework was done properly, and we're going to appeal that decision.

Senator WILLIAMS. Was that done in connection with the Philadelphia situation?

Mr. VANSTEENKISTE. That was done in connection with the awarding of the streetcar job to the Japanese for Philadelphia and the awarding of the subway cars to Breda for WMATA.

Senator WILLIAMS. An excellent presentation.

Mr. VANSTEENKISTE. Thank you very much.

Mr. STOKEL. Thank you, Senator.

Senator WILLIAMS. Our next witness is Walter J. Bierwagen, vice president, general executive board member, and legislative representative for the Amalgamated Transit Union.

Mr. Bierwagen, I wonder if you would indulge the Chair a few minutes for a recess for an overdue phone call, unless Senator Tsongas wants to pick up with Walter and go right forward.

We will recess for 5 minutes.

[Brief recess.]

Senator WILLIAMS. All right. We will reconvene and welcome Walter J. Bierwagen of the Amalgamated Transit Union, accompanied by Kenneth Meiklejohn.

Mr. Bierwagen, you have been here many, many times. You're right on top of your job. Do you know the number of times you've testified on transit here?

Mr. BIERWAGEN. I've lost count.

Senator WILLIAMS. It's been each bill since the beginning. You've been with us really since the early 1960's on transit. So some come and go; you come and you stay.

We're very, very pleased to have you again. No hearing would be complete, and the program would be inadequate unless we heard your opinion.

STATEMENT OF WALTER J. BIERWAGEN, VICE PRESIDENT AND LEGISLATIVE REPRESENTATIVE, AMALGAMATED TRANSIT UNION, ACCOMPANIED BY KENNETH MEIKLEJOHN, LEGISLATIVE REPRESENTATIVE, AFL-CIO

Mr. BIERWAGEN. Thank you, Mr. Chairman, for those kind words. Each time I've been here, you've been here, too.

Senator WILLIAMS. That's right.

Mr. BIERWAGEN. So the longevity goes both ways.

Mr. Chairman, may I prevail on you to introduce to you Kenneth Meiklejohn, legislative representative of the AFL-CIO. He would like to make a brief oral statement introductory to mine.

Senator WILLIAMS. Fine.

Mr. MEIKLEJOHN. Senator, I don't have a formal written statement, but I do have some notes I would like to give you. I come here for the AFL-CIO to indicate our strong support for the statement that Walter Bierwagen will make on behalf of his union in these hearings. At a time when the Urban Mass Transportation Act was first passed, the labor movement, particularly the Amalgamated Transit Union and the Transport Workers Union and the UTU have played an indispensable role in developing a nationwide mass transportation program.

As you know, Mr. Chairman, we were a major factor in helping to bring about the original enactment into law of the Urban Mass Transportation Act of 1964. Thereafter, we helped to achieve constructive working relationships among the interested parties, the Federal Government, the Congress, and the executive branch, urban officials and local transit operators and unions for administration of the program and for improving and strengthening it over the years.

Indeed, without the cooperation and assistance provided by the labor movement, it is doubtful whether any viable urban mass transportation program would be before you today. Of course, when I speak of a viable program, it is with full recognition that development of the urban mass transportation program has been slow and halting.

Today, we have an economy in great difficulty, with energy sources in short supply, with many local areas in desperate need of better and more efficient mass transit systems. There can be little for smug satisfaction on anybody's part.

Clearly, the existing program needs strengthening, and it is for the purpose of helping that along that we are here today or that the AFL–CIO is here today.

Vice President Bierwagen's statement urges the extension of Federal aid to mass transportation programs, provision for earmarked funding, authorization for direct purchases of transit vehicles by the Urban Mass Transportation Administration, and establishment of a ready reserve of buses to make available a steady supply of such vehicles for broad mass transit programs and other improvements in existing legislation.

The AFL–CIO, too, supports legislation to achieve these objectives. Mr. Bierwagen's statement is in accord with a resolution on mass transit adopted by the 13th Constitutional Convention of the AFL–CIO which met here in Washington, D.C., last December.

I ask, Mr. Chairman, that a copy of this resolution—the most recent of a number we have adopted since 1964, and like you, I recall that this program has been in existence and has been considered here over a long, long period of time—I'd like to ask that that resolution be included in the record of these hearings as part of our statement.

Senator WILLIAMS. It certainly will be. Thank you very much, Mr. Meiklejohn.

Senator WILLIAMS. Mr. Bierwagen?

Mr. BIERWAGEN. Thank you, Mr. Chairman. Kenneth's statement reminds me that he's part of the triumvirate. I believe you and I and Kenneth have always been here as this legislation has progressed.

For the record, my name is Walter Bierwagen. I am vice president and general executive board member and legislative representative for the Amalgamated Transit Union, which has offices at 5151 Wisconsin Avenue, Washington, D.C. I appear here at the direction of International President Maroney.

The Amalgamated Transit Union, by way of identification, is the dominant union in the over-the-road bus and the local transit industries in the United States and Canada. We have over 155,000 members. Most of them are employed as bus drivers, maintenance personnel, clerical and administrative employees, and in other jobs in these industries.

I have also been authorized by William Lindner, international president of the Transport Workers Union and Fred Harden of the United Transportation Union to state that the TWU and the UTU are in full support of this statement we are presenting here today.

The purpose of our appearance here today is to express the ATU's support of extension, provision for earmarked funding, authorization for direct purchase of transit vehicles by UMTA, establishment of a ready reserve of buses, as well as other provisions, much of which is contained in the mass transit legislation now under consideration by this committee.

Mr. Chairman, our Nation is faced with an energy crisis. Real or contrived, it does exist. Compounding the problem is a future of dwindling domestic oil supplies and an increased dependence on foreign imports for our energy needs.

These facts portend disastrous results for industrial capacities, our standard of living, and our very way of life as an independent,

free Nation unless steps are taken immediately to alleviate this problem. Our Nation consumes 18 million barrels of petroleum daily. Of that amount, transportation uses slightly more than half, with the lion's share—80 percent of that half—being consumed by highway vehicles.

The private automobile alone accounts for more than 5 million barrels per day and nearly 2 million barrels of that total is used for commuting. Already, the gasoline crunches of the 1970's have demonstrated the seriousness of the problem. When an energy dependent country is faced with a shortage or cutoff of such resources, the economic, social, and job needs of our citizens, particularly low and moderate income people, have to be rearranged or left unfulfilled because of a lack of mobility or because of exorbitant prices to attain mobility.

Our urban areas are dying. Our unemployment rolls are rising. Our air quality is suffocating, and our travel and resort industry is languishing in the throes of energy shortages. Obviously, immediate massive conservation of energy resources is necessary in order to achieve a measurable reduction in our oil imports, a reduction of our balance-of-trade payments, and to quell a principal source of inflation.

If we are to achieve our concomitant goals of providing more jobs, reducing traffic congestion and air pollution, revitalizing our cites and our travel, resort, and recreational industries while at the same time promoting energy conservation, we must develop a national strategy. At the heart of such a program must be efforts to improve and expand public transportation and to reduce our almost total dependence on the private automobile as a major means of rush hour travel.

Public transportation is the only means of mobility for millions of Americans, especially the poor and the aged. As the energy crisis worsens, millions more will turn to mass transit.

However, in many cities the lack of equipment and facilities has seriously undermined the growth and acceptance of transit systems as a viable alternative to the private automobile. Government funding is not sufficient to permit the large scale improvements necessary to meet the Nation's needs now or in the future.

Current mass transit, either as individual systems or as a national system, does not have clearly stated and measurable goals to be achieved in any specified time, and as a consequence, the ability of the transit industry to contribute effectively and substantially to the achievement of national transportation and energy goals is constrained.

In the light of these needs and problems, much more remains to be done.

Congress established a National Transportation Policy Study Commission to examine the needs of mass transit through the year 2000. But that commission lacked even a single member from the ranks of labor, consumer, and environmental groups, so its recently released report lacks the objectivity and balance needed for the purpose of establishing national policy.

Our Nation needs a transportation policy which will provide that at least 14 percent of the transportation needs of our urban areas will be served by mass transit systems by 1990. Presently only 4

percent of those needs are so met. In line with that, Federal funding of mass transit must be increased as soon as possible, through amendment and extension of the Urban Mass Transportation Act to a minimum of $10 billion annually.

This must include aid to intercity bus industry and construction of multimodal terminals authorized and promised in the 1978 Surface Transportation Act. To insure continuation and expansion of existing programs, the formula grant portion for operating assistance must be revised to assure more equitable distribution of these funds on a per-rider basis, and the total funding available for operating assistance must be increased and extended, thereby assuring the continuation of essential services and the predictability of operating assistance for a 5-year period.

Congress should further establish an appropriately financed Mass Transportation Trust Fund or should adopt a system of multiyear appropriations which would permit compliance with the requirements of the Budget Control Act. We note that the legislation before this subcommittee proposes to address the need to assist systems with ridership higher than the average by using a vehicle miles formula. This at least is a step in the right direction.

We further urge Congress and the President to retain intact the existing provisions of the Urban Mass Transportation Act which ensure that these Federal funds will be spent and used in accordance with national needs, priorities and objectives. To that end, any bill adopted by Congress must retain intact the basic requirements of the existing law in regards to financial control, planning, and substantive labor protections.

Specifically, on fuel savings, significant fuel savings can be accomplished through the continuation and expansion of these existing programs, coupled with the implementation of an effective and comprehensive national energy policy. In line with this, we fully support and urge the Urban Mass Transportation Administration to continue with comprehensive monitored tests of no-fare transit, such as those conducted recently in Denver, Salt Lake City, and Trenton, N.J.

It has been estimated that over 1 million barrels of oil or 10 percent of our foreign oil imports can be saved daily by the adoption and implementation of such a program on a nationwide basis.

The transit industry must be prepared to respond to the expanded needs of urban travel as the energy crisis builds up. This will require an immediate tripling of our transit vehicle production and the preparation of personnel to handle the increased ridership.

Even further fuel savings can be accomplished by establishing a program of auto use disincentives and a program of rewarding citizens for conserving fuel and for using mass transit. In line with national transportation and energy policies, the Urban Mass Transportation Administration must take whatever action is necessary for transit vehicle manufacturers to operate at full capacity. This action is necessary in order to have the needed number of vehicles to accomplish these goals and also to have a ready reserve of transit vehicles in order that the Nation may cope with any contrived or actual energy crisis.

The Urban Mass Transportation Administration must assure the manufacturers that every transit vehicle manufactured will be pur-

chased by the Federal Government or by an applicant for funding assistance.

We are pleased that the legislation before you provides for a real beginning of the above-mentioned program through the establishment of the ready reserve and through the bus rehab program. As part of the national strategy, it is necessary that the Congress include in any effective and comprehensive national energy policy program provisions setting forth priorities and goals in the development of alternative sources of energy, including solar, nuclear and coal by the year 2000.

Mr. Chairman, I have some additional information which I will supply the staff for inclusion into the record, which will embellish much of what I've said.

In the interest of brevity, I've short-circuited this limited statement. The additional statement, a long statement which would include what I've already read, I would ask that you include into the record at this point.

Thank you, Mr. Chairman and to all of the members of the subcommittee who may have been here and who I hope will read the record, for thus permitting the Amalgamated Transit Union, the United Transportation Union, and the Transport Workers Union to express their views on these important matters. Thank you.

[The complete statement follows:]

COMPLETE STATEMENT OF THE AMALGAMATED TRANSIT UNION, AFL–CIO

My name is Walter J. Bierwagen. I am Vice President and General Executive Board Member and Legislative Representative for the Amalgamated Transit Union which has offices at 5151 Wisconsin Avenue, Washington, D.C. 20016. I appear here at the direction of International President Maroney. The Amalgamated Transit Union, by way of identification, is the dominant union in the over-the-road bus, and local transit industries in the United States and Canada. We have over a hundred and fifty-five thousand members, most of whom are employed as bus drivers, maintenance personnel, clerical and administrative employees, and at other jobs in these industries. I have also been authorized by William Lindner, International President of the Transport Workers Union, and Fred Hardin, of the United Transportation Union, to state that the TWU and the UTU are in full support of the statement we are presenting here today. In addition, I wish to introduce Kenneth Meiklejohn, Legislative Representative of the AFL–CIO, who has accompanied me at this Hearing. Mr. Meiklejohn will have a brief statement to make.

Thus far in our statement we have expressed our views on current legislative proposals and about the Nation's transportation goals for the foreseeable future. The following comments concern our experiences with present programs, which are presented herewith to the Committee to better assure the Committee of the "good housekeeping" of current programs.

Since enactment of the UMT Act in July, 1964, more than 4,280 capital, operating assistance and demonstration grant applications (Section 3 and 5, totalling over $12.7 billion in Federal expenditures), have been certified. Only five or six projects were not certified by the Secretary of Labor and a smaller number were approved over the objections of either the unions or the employers. Most, if not all of those rejected in the early days have since re-applied and qualified for grants. Almost all of the disqualifications took place in the very early years of the program. Although project applications were often delayed for technical reasons by UMTA and by applicants, the Department of Labor is often blamed for delays. Whatever the cause, it is important to know that the ATU currently discharges its responsibilities required by the law and the directives of the Secretary of Labor, in over 95% of the projects in less than 48 hours. This is mainly due to the development of a "piggy-back" process, which permits the parties to proceed with a new project grant under the terms of a previous grant. Some delays occur when projects differ considerably from earlier approved projects; or when requests are made for different conditions

or protections, thus requiring negotiations. New applicants proposing modification of employee protections may also require more time for negotiation.

With the introduction of Operating Assistance through Section 5., the unions most concerned with UMTA; the ATU, the TWU and the UTU, urged the development of a national agreement to expedite Section 5. grants. Such a model agreement was ultimately agreed to and has been mainly responsible for very timely processing of Section 5. grants. If there are lengthy delays in the processing of Section 5. applications, such delays are often the result of the refusal to accept the terms of the model agreement, or by the failure of an applicant to adhere to the terms of the model agreement. Almost all of the Secretary of Labor's requests for comment are responded to within two working days by the ATU.

Section 18, the Small Urban and Rural Program, is a new program. At the urging of the Administration, the unions consented to a warranty arrangement worked out by the Department of Labor, UMTA and other administration personnel. The latest information that we have (January 31, 1980) shows that twenty-five states have entered into these warranty arrangements. These states include: Florida, Georgia, Idaho, Illinois, Indiana, Kentucky, Massachusetts, Maryland, Michigan, Mississippi, Nebraska, North Carolina, North Dakota, Ohio, Pennsylvania, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, New Hampshire, Connecticut and Missouri. It is our understanding that three additional states are immediately pending and they are: Oregon, Alaska and Maine.

As of January 31, 1980, 192 Section 18. projects have been certified. The latest figures available for the amounts obligated are for November 30, 1979. These amounted to $14,475,096. This compares with the figures at the end of Fiscal Year 1979, September 30, 1979, of $6,545,984 indicating that these figures doubled in amounts effective as of September 30, 1979.

Obviously, the warranty arrangement, when accepted by the appropriate public authority, does provide for rapid distribution of Section 18 funds.

Congress did not intend to achieve broad social benefits through UMTA at the expense of the individual workers, and so expressed its intention in Section 13(c).

Unfortunately, not all has been sweetness and light in the application of Section 13(c). In several instances some properties have deliberately refused to abide by their 13(c) agreements, either initiating litigation or so deliberately flouting arrangements previously agreed to, that the ATU was forced to seek relief in the courts. In the Kansas City case, the Supreme Court refused certiorari thus sustaining the lower court decision upholding the union. In three of the cases, the enforceability of Section 13(c). has been sustained on appeal. In a similar case, an unfavorable lower court decision is now pending appeal. In several other instances the cases were declared moot after the parties reached agreement on new contract terms.

A growing number of vanpool projects have been certified. In some instances, such as Norfolk and Richmond, the transit system manages a variety of community vanpool projects and provides services to the non-transit operator/owner. Services such as maintenance and vehicle servicing work is done by union transit employees. In others, such as Cleveland, the entire operation is performed by transit employees under union contract.

The ATU has at least two reasons to be interested in the well-being of the transit industry. First, and not necessarily in this order, the industry provides our members with employment and wages. Second, as citizens, transit employees help pay for the transit system.

As an expression of its earnestness in this direction, the ATU has been a leading advocate of reduced fare and ultimately, no-fare transit. We support no-fare even though we know that thousands of transit jobs will be eliminated.

Long ago we recognized the signs of an impending shortage of trained bus drivers and skilled mechanics. As a result, we persuaded the AFL–CIO Appalachian Job Training Center to undertake a transit training project. UMTA awarded a $3½ million—3-year Grant. The project is universally hailed as a success. Mechanic training modules are now being developed.

We are also participating in the development of the National Institute of Transit Technology and Innovation. The project, called the Transit Technology and Innovation Project, will be conducted in conjunction with an independent National Institute formed by the Amalgamated Transit Union (ATU), the Transport Workers Union of America (TWUA), and the United Transportation Union (UTU).

A major component of the project will be a national demonstration training program for local union representatives, designed to increase their skills in contract administration and their understanding of major issues—particularly those related to economic and safety problems—facing the transportation industry.

While the training program gets underway, the three unions will establish the National Institute on Transit Technology and Innovation, a not-for-profit organization which will be responsible for the non-training research and demonstration activities of the project.

The overriding goal of the project is to introduce and test new approaches to improving the efficiency and effectiveness of the nation's mass transit systems, primarily bus, rail, and subway.

This goal will be achieved in part through activities—such as the demonstration training program for Local Union Representatives—which will be carried out among union members. Other project activities will be directed toward the creation of a national forum of labor, government, management, and universities for the purpose of working collaboratively to identify and study major problems facing transit systems and to make recommendations for demonstration projects in which innovative approaches to solution will be tested.

We believe that while much effective work has been done by these groups to overcome problems affecting mass transit, a concerted effort by labor, management, government, and educators could produce better results. The industry and the public, we believe, will benefit from an interdisciplinary approach in which a leading role is played by those who directly operate transit systems for the public.

Our Nation is faced with an energy crisis. Real or contrived, it does exist. Compounding the problem is a future of dwindling domestic oil supplies and an increased dependence on foreign imports for our energy needs. These facts portend disastrous results for industrial capacities, our standard of living, and our very way of life as an independent, free nation, unless steps are taken immediately to alleviate this problem.

Our Nation consumes 18 million barrels of petroleum daily. Of that amount, transportation uses slightly more than half, with the lion's share—80 percent—being consumed by highway vehicles. The private automobile alone accounts for more than 5 million barrels per day—and nearly two million barrels of that total is used for "commuting."

Already the gasoline crunches of the 70's have demonstrated the seriousness of the problem when an energy-dependent country is faced with a shortage or cut-off of such resources. The economic, social, and job needs of our citizens, particularly low and moderate income people, have to be rearranged or left unfulfilled because of a lack of mobility, or because of exorbitant prices to attain mobility. Our urban areas are dying, our unemployment rolls are rising, our air quality is suffocating, and our travel and resort industry is languishing in the throes of energy shortages.

Obviously, immediate, massive conservation of energy resources is necessary in order to achieve a measurable reduction in our oil imports, a reduction of our balance of trade payments, and to quell a principal source of inflation.

If we are to achieve our concomitant goals of providing more jobs, reducing traffic congestion and air pollution, revitalizing our cities and our travel, resort and recreational industries while promoting energy conservation, we must develop a national strategy.

At the heart of such a program must be efforts to improve and expand public transportation and to reduce our almost total dependence on the private automobile as a major means of rush-hour travel.

Public transportation is the only means of mobility for millions of Americans, especially the poor and the aged. As the energy crisis worsens, millions more will turn to mass transit. However, in many cities the lack of equipment and facilities has seriously undermined the growth and acceptance of transit systems as a viable alternative to the private automobile. Government funding is not sufficient to permit the large-scale improvements necessary to meet the nation's needs now, or in the future.

Currently, mass transit, either as individual systems or as a national system, does not have clearly stated and measurable goals to be achieved in any specified time and, as a consequence, the ability of the transit industry to contribute effectively and substantially to the achievement of national transporation and energy goals is constrained.

In light of these needs and problems, much more remains to be done.

Congress established a National Transportation Policy Study Commission to examine the needs of mass transit through the year 2000. But that Commission lacked even a single member from the ranks of labor, consumer and environmental groups, so its recently released report lacks the objectivity and balance needed for the purpose of establishing national policy.

Our Nation needs a national transportation policy which will provide that at least 14 percent of the transportation needs of our urban areas will be served by mass

transit systems by 1990. Presently, only 4 percent of these needs are so met. In line with that, Federal funding of mass transit must be increased as soon as possible through amendment and extension of the Urban Mass Transportation Act to a minimum of $10 billion annually. This must include aid to intercity bus industry and construction of mulitimodel terminals authorized and promised in the 1978 Surface Transportation Act.

To insure continuation and expansion of existing programs, the formula grant portion for operating assistance must be revised to assure more equitable distribution of these funds on a per-rider basis, and the total funding available for operating assistance must be increased and extended, thereby assuring the continuation of essential services and the predictability of operating assistance for a five-year period. Congress should further establish an appropriately-financed mass transportation trust fund, or should adopt a system of multi-year appropriations, which would permit compliance with the requirements of the Budget Control Act.

We further urge Congress and the President to retain intact the eisting provisions of the Urban Mass Transportation Act which insure that these Federal funds will be spent and used in accordance with national needs, priorities, and objectives. To that end, any bill adopted by Congress must retain intact the basic requirements of the existing law in regard to financial control, planning and substantive labor protections. In addition, any program of expanded federal aid for mass transit must assure that each level of government shall preserve and promote the collective bargaining process.

Moreover, it is clear, we believe, that the interpretation, administration and application of the labor protection provisions included in the Urban Mass Transportation Act and related programs are, and must remain, the exclusive responsibility of the Department of Labor under the terms and intent of these laws.

Congress should make plain that the obligation to maintain labor standards includes the payment of prevailing wages to all workers engaged in the construction or operation of mass transit facilities in any program involving Federal financial assistance. Such standards should also guarantee to rail and transit workers the first opportunity for employment on any new transportation system which is built with Federal funds. In addition, we believe that the Federal government should share in the costs of providing worker allowances under employee protective arrangements approved by the Secretary of Labor.

Specifically, significant fuel savings can be accomplished through the continuation and expansion of these existing programs coupled with the implementation of an effective and comprehensive national energy policy.

In line with the above we fully support and urge the Urban Mass Transportation Administration to continue with comprehensive, monitored, tests of no-fare transit, such as those conducted recently in Denver, Colorado, Salt Lake City, Utah and Trenton, New Jersey. It has been estimated that over 1 million barrels of oil, or 10 percent of our foreign oil imports, can be saved daily by the adoption and implementation of such a program on a nationwide basis.

The transit industry must be prepared to respond to the expanded needs of urban travel as the energy crisis builds up. This will require an immediate tripling of our transit vehicle production, and the preparation of personnel to handle the increased ridership.

Even further fuel savings can be accomplished by establishing a program of auto use dis-incentives, and a program of rewarding citizens, for conserving fuel and for using mass transit.

In line with national transportation and energy policies, the Urban Mass Transportation Administration must take whatever action is necessary for transit vehicle manufacturers to operate at full capacity. This action is necessary in order to have the needed number of vehicles to accomplish these goals, and also to have a ready reserve of transit vehicles in order that the Nation may cope with any contrived or actual energy crisis. The Urban Mass Transportation Administration must assure the manufacturers that every transit vehicle manufactured will be purchased by the Federal Government or by an applicant for funding assistance. As part of the national strategy, it is necessary that the Congress include in any effective and comprehensive national energy policy program provisions setting forth priorities and goals in the development of alternative sources of energy including solar, nuclear and coal by the year 2000.

Thank you, Mr. Chairman, and members of the Subcommittee for listening, and thus permitting the ATU to express its views on these important matters.

MASS TRANSIT

Public transportation is the only means of mobility for millions of Americans, especially the poor and the aged. As the energy crisis worsens, millions more will turn to mass transit. However, in many cities the lack of equipment and facilities has seriously undermined the growth and acceptance of transit systems as a viable alternative to the private automobile. And government funding is not sufficient to permit the large-scale improvements necessary to meet the nation's needs—now or in the future.

Congress established a National Transportation Policy Study Commission to examine the needs of mass transit through the year 2000. But that Commission lacked even a single member from the ranks of labor, consumer and environmental groups, so its recently released report lacks the objectivity and balance needed for the purpose of establishing national policy.

Our nation needs a national transportation policy which will provide that at least 14-percent of the transportation needs of our urban areas will be served by mass transit systems by 1980. Presently, only 4 percent of these needs are met; therefore, be it

Resolved, That a national mass transit policy be established that includes these elements:

1—Federal funding of mass transit must be increased as soon as possible through amendment and extension of the Urban Mass Transportation Act to a minimum of $10 billion annually. This must include aid to intercity bus systems and construction of modal terminals authorized in the 1978 Surface Transportation Act.

2—To insure continuation and expansion of existing programs, the formula grant portion for operating assistance in the Urban Mass Transportation Act must be revised to assure more equitable distribution of these funds on a per rider basis. Total funding available for operating assistance must be increased and extended to assure continuation of essential services and the predictability of such assistance for a five-year period.

3—Any program of expanded federal aid for mass transit must assure that each level of government shall preserve and promote the collective bargaining process; that must be left to local self-determination between the industry and the unions representing the workers in the industry.

4—The Labor protection provisions of the Urban Mass Transportation Act must remain the exclusive responsibility of the Department of Labor.

5—Congress should make plain that the obligation to maintain labor standards includes the payment of prevailing wages to all workers engaged in the construction or operation of mass transit facilities in any program involving federal financial assistance. Such standards should also guarantee to rail and transit workers the first opportunity for employment on any new transportation system which is built with federal funds. In addition, we believe that the federal government should share in the costs of providing worker allowances under employee protective arrangements approved by the Secretary of Labor.

6—The Urban Mass Transportation Administration should continue with comprehensive, monitored tests of no-fare transit, such as those conducted earlier this year in Denver, Colorado, and Trenton, New Jersey. It has been estimated that over 1,000,000 barrels of oil, or 10 percent of our foreign oil imports, can be saved daily by the adoption and implementation of such a program on a nation-wide basis.

7—The transit industry must be prepared to respond to the expanded needs of urban travel as the energy crisis builds up. This will require an immediate tripling of our transit vehicle manufacturing capability, as well as the mobilization of other facilities and the preparation of personnel to handle the increased ridership. To stimulate production the Urban Mass Transportation Administration must assure the manufacturers that every transit vehicle they produce will be purchased by the Federal Government or by an applicant for funding assistance.

8—Further fuel savings can be accomplished by establishing a program of rewarding citizens for conserving fuel and for using mass transit.

9—As part of the national strategy it is necessary that Congress include in any effective and comprehensive national energy policy program provisions setting forth priorities and goals in the development of alternative sources of energy including solar, nuclear and coal by the year 2000.

10—The Secretary of the Department of Transportation shall permanently impanel an advisory final design committee empowered to hold hearings and make effective recommendations on bus and car designs. Such a panel shall include, but not be limited to, representatives of labor, consumers—including the handicapped—environmentalists, transit management and government representatives.

Senator WILLIAMS. An excellent statement. Thank you.

Just an observation or two. You did foresee and mention fare-free as one of the ways to stimulate ridership. I can recall when we used to discuss this together. You will recall that when we were starting the program there were those who said you can supply good service trains, buses, but people won't use them, therefore there were those who voted negative on a national program of support for public transportation. We overcame that.

But in order to disprove it, you would suggest, let's try and see whether people can be encouraged to use fare-free. And there were those demonstrations. How did they work out?

Mr. BIERWAGEN. Very well from the point of view of increased ridership. In Salt Lake City, they didn't go to a total no-fare. They reduced their fare to 15 cents. The best way to tell you what happened, in the several years that that experiment was in, our membership grew there from about 150 to 700 in just a few short years. That's a multiple hundred expansion of the transit system in that situation.

In Denver they spoke of 35-, 40- and 50-percent increases in the 1 year that they tried this experiment. We thought that the 1 year was not a complete experiment. It should have been 2 or 3 years.

Trenton had similar experience. We've had complaints about it from our own members, but we have to rise above those kind of complaints. They complain that they're babysitters and they take care of the drunks and so forth. But I think that's a separate problem.

And the authorities in the two cities advised us that that was a temporary problem that lasted for several months.

Senator WILLIAMS. You mentioned that right after Trenton. That's not the only place that has the problems. [Laughter.]

Mr. BIERWAGEN. Oh, no. It happened in both cities, Denver and Trenton.

Senator WILLIAMS. But not Salt Lake?

Mr. BIERWAGEN. Not Salt Lake, because there was an initial 15 cents that they had to put in. They couldn't ride free.

At least reduced fares shows that it can do a lot. Every place that they have tried reduced fares, the systems have grown by leaps and bounds. Atlanta is a specific experience. They have a 40- to 50-percent increase by reducing their fare to, I think it was, 15 cents. They have lately abandoned that and the ridership has dropped, not as much as it did before, but it has dropped.

Senator WILLIAMS. Well, for other reasons, now, we have pressures to use transit if it is available, certainly.

Mr. BIERWAGEN. We're not so far away from it, Mr. Chairman. Some of our transit systems are already subsidized to the extent that 35 to 40 percent and less comes from the fare box. It's not too much of a step to go all the way and really make a big attack on the use of oil in our private automobiles. We could achieve this 10-percent reduction in fuel imports, and if the other sectors of our society could make similar reductions, our OPEC masters at the present time would be glutted with oil and would be more than anxious to lower the price of the fuel that we might need from them.

Senator WILLIAMS. One final question. I wonder whether you have a program and what is your program of training people for the industry?

Mr. BIERWAGEN. Mr. Chairman, I'm glad you asked that. We have a training program under the auspices of UMTA and the Appalachian Council. The labor movement initiated that training program and we have established a series of modules which have become well-accepted in the industry, and the industry tells us it's a great success, it will greatly expedite the training of bus drivers.

We are now undergoing an experiment in the training of mechanics, the training of lower grade people into the higher skills, through the same apparatus. We hope to have that done in the next 12 to 15 months. The program is being funded by UMTA and we're proud of that program, and we think we will be contributing enormously to the success of the mass transit needs of this country.

Senator WILLIAMS. If you could give us a backdrop on what you've done and give us a little statistical analysis of how many you have trained and what your projections are, that would be available for the record.

Mr. BIERWAGEN. I'll supply that.

[The information follows:]

AMALGAMATED TRANSIT UNION,
Washington, D.C., April 10, 1980.

Hon. HARRISON A. WILLIAMS, Jr.,
Chairman, Subcommittees of Housing and Urban Affairs,
U.S. Senate, Washington, D.C.

DEAR SENATOR WILLIAMS: The statement below describing the AFL–CIO Appalachian Council Transit Training Project, is in response to your request to include such a report in the Hearing Record. I respectfully request the statement be included in the appropriate place in the record following my testimony before the Committee.

Also included below is a brief description of a transit union project on Transit Technology and Innovation. This project, funded by UMTA, is being sponsored by the George Meany Labor Studies Center, a not-for-profit institution, on behalf of the three principal unions involved in urban mass transit. The statement includes a brief summary of the purposes and objections of the National Institute for Transit Technology and Innovation. The project will, for the first time, bring together labor, management, government, and academicians into a cooperative effort to help resolve problems plaguing the transit industry. In addition, we include the text of a brochure briefly describing the project.

We appreciate this opportunity to present to your Committee these brief statements, descriptive of projects that are already benefiting the industry, the public, and our members.

Respectfully submitted,

WALTER J. BIERWAGEN,
International Vice-President.

Enclosure.

AFL–CIO APPALACHIAN COUNCIL TRANSIT TRAINING PROJECT

In June 1976, the AFL–CIO Appalachian Council developed and presented to the U.S. Department of Transportation, Urban Mass Transportation Administration a comprehensive proposal for training blue collar transit industry employees. Recognizing the serious extent to which existing industry arrangements failed to provide such training, UMTA proceeded with funding for the Transit Employee Training Project.

When the Project officially began in April 1977 its first priority was to establish the following goals: (1) To raise the levels of competence and professional pride of transit employees through a joint labor-management program concentrating on skills and attitudes; (2) To develop and test comprehensive training programs for transit industry employees, and to make the programs available for on-site training

at bus properties in the Appalachian region; and (3) To evaluate the effectiveness of this training for application at other transit properties and agencies nationwide.

Based on these goals, the Council undertook an intensive needs assessment survey to determine the actual scope of the Project. This survey identified training needs, priorities, topics and resources. It also sought to provide a basis for organization, development, testing and delivery of training programs to transit properties.

Next, and in the light of needs assessment findings, development started on comprehensive training packages. Three courses are now available to transit properties. "Passenger Relations, Emergency and Accident Procedures", and "Bus Maneuvers and Defensive Driving." Course materials include lectures, slides, films, manuals, and posters. A fourth course, "New Employee Orientation," is currently being field tested and will be available shortly. It includes a 22 minute award-winning film entitled "People in Transit."

The courses now in use have been field tested and evaluated by the Council in order to maintain the high quality of the programs and to demonstrate the benefits of training to the transit industry. After they have been delivered to and approved by UMTA, course materials are available to properties in the Appalachian region through the Council and outside the region through the Department of Transportation Safety Institute (TSI).

Transit properties that use Project training materials select their own personnel to serve as course instructors. These instructors are trained in the presentation of the materials and then conduct training courses at their properties using the Project materials.

As of March 1, 1980 the Transit Employee Training Project has trained nearly 2000 individuals—247 instructors and 1739 course participants.

Transit Employee Training Project personnel come from various backgrounds. Project Field Coordinators, located in urban centers throughout the Appalachian region, are all experienced bus operators. All have additional experience as local union officers. The Project's Technial Staff, located in the Council's Washington, D.C. office, come mainly from research and industry backgrounds. Working together as a team, the staff have successfully produced standardized, tested training programs which have received widespread acclaim from the training industry.

Whenever necessary the Tranist Employee Training Project seeks expert input from groups outside its own staff. The following groups have cooperated in the development of the project: A Project Advisory Committee, composed of transit industry management and labor representatives; Amalgamated Transit Union and Transport Workers Union of America, AFL–CIO, and individual transit locals; American Public Transit Association, and its members.

Having developed a range of core programs to cover bus operator training, the Appalachian Council is now working on a program to develop innovative procedures and materials for training maintenance workers in the mass transit industry. Training materials will cover the electrical system of a widely-used bus model, the GMC 5307A series, and will also include a course in fundamentals of electricity, job performance aids, skill instructions, system explanation, instructor and student guides and train-the-trainer materials.

Get Aboard: A Union Project To Improve Mass Transit

The U.S. Department of Transportation (DOT) has enlisted three AFL–CIO unions with members working in the mass transit industry to help ease some of the nation's public transportation problems.

DOT's action is based on the knowledge: That the general public benefits directly from effective labor-management relations in the mass transit industry, and that workers' know-how can be used to devise speedier, more comfortable, and more dependable mass transit systems.

For this project, DOT has commissioned the George Meany Center for Labor Studies to work with the Amalgamated Transit Union (ATU); Transport Workers Union (TWU); and United Transportation Union (UTU).

Under a grant from DOT, the George Meany Center is now programming one-week residential programs at universities in several sections of the country. These classes will train 600 union representatives who are selected for this special training.

Those who participate can expect to get a better understanding of the development of unions in the mass transit industry and the role of unions in American society.

Sharper grievance handling skills and more effective methods of dealing with other on-the-job problems of union members.

A broader knowledge of the economic and political problems facing the mass transit industry.

The second phase of this project will be the development of applied research studies on ways transit unions can help solve some of the overall problems of public transportation.

The project's final phase will involve demonstration experiments in labor-management cooperation in selected cities.

Each of the participating unions has named a coordinator for this project. To determine which union representatives in your local qualify for these training institutes, write or call your coordinator.

Amalgamated Transit Union, Eugene O'Neill, 5025 Wisconsin Avenue, Washington, D.C. 20016. Phone 202/537-1645.

Transport Workers Union, Robert Wechsler, 1980 Broadway, New York, New York 10023. Phone 212/873-6000.

United Transportation Union, Jack C. Berk, 14600 Detroit Avenue, Cleveland, Ohio 44107.

ATU's Dan V. Maroney.

TWU's William G. Lindner.

UTU's Fred Hardin.

Union Presidents serve on the executive board that oversees this DOT-funded project.

Transit Technology and Innovation Project

Objectives for local union representative demonstration training program

Training will be conducted in six-day residential institutes. The objectives will be achieved through lectures, demonstrations, small group discussions, printed materials, film and videotape presentations and role playing practice sessions. The objectives fall in four major categories: History and Background, Grievance Handling, Economics of the Mass Transit Industry, and the Purposes of the National Institute on Transit Technology and Innovation.

A. History and background

1. To increase the participants' knowledge of the history and development of the mass transit industry including the unionization of transit workers.

2. To strengthen the participants' knowledge and understanding of the American trade union movement and the role of unions in American society. In particular to increase their knowledge of the outcomes of inter-union cooperation on working toward specific social, economic and political goals.

B. Grievance handling

1. To build the participants' ability to identify the various roles of the local union representative and develop their understanding of the importance of the representative to the union's effectiveness in representing the members' interests and servicing the members' needs.

2. To broaden the participants' knowledge of contract administration and develop and strengthen their grievance handling capability by having them:

(*a*) identify grievances;

(*b*) distinguish grievances from complaints and other problems which should be handled apart from the grievance procedure;

(*c*) gather facts related to sample grievances;

(*d*) complete grievance forms on sample grievances;

(*e*) analyze sample grievances;

(*f*) develop grievances; and

(*g*) argue sample grievances.

3. To build the participants' knowledge on the purpose and function of a grievance procedure. To this end the participants' knowledge of grievance arbitration will be expanded and the importance of the union representative in the arbitration process will be emphasized. The participants' knowledge of the union's duty of fair representation will also be widened along with their understanding of the criteria used to decide whether to arbitrate.

4. To build the participants' understanding of the necessity of a consistent local union grievance handling policy including the maintenance of a systematic grievance record and filing system.

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C. Economics of the mass transit industry

1. Develop the participants' understanding of the economics of the mass transit industry including the labor relations, fare revenues, government subsidies, amortization and depreciation of properties, and employee health and safety.

2. Broaden the participants' knowledge and understanding of mass transit public policy issues particularly those decisions involving alternative transportation modes such as automobiles, taxis and in some cases airplanes.

D. Purposes of the National Institute on Transit Technology and Innovation (NITTI)

1. To build the participants' understanding of the purposes of the NITTI's expert task forces who will conduct research in specified problem areas of the mass transit industry. This understanding will serve as a basis for local union cooperation with the task forces.

2. To build the participants' understanding of the purposes of the NITTI sponsored demonstration projects in selected cities. This understanding will serve as a basis for local union cooperation with the establishment and implementation of these projects.

3. To build the participants' interest and support for labor education. Their knowledge of labor education resources in their region will be widened in anticipation that the participants local unions will establish (or maintain current) continuing leadership training activities.

Senator WILLIAMS. With that, I thank you very much.

We will recess until 2.

[Whereupon, at 12:45 p.m., the hearing was recessed, to reconvene at 2 p.m. the same day.]

AFTERNOON SESSION

Senator WILLIAMS. I ask your apologies for being a little late. We can now convene again and proceed with our first panel for this afternoon on rural issues.

I welcome Mr. Thomas Downs, Mr. Lary Yud, Ms. Adriana Gianturco, and David D. King. All present, and more, and accounted for.

Mr. Downs.

STATEMENT OF THOMAS M. DOWNS, ASSOCIATE ADMINISTRATOR FOR PLANNING, FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION, ACCOMPANIED BY ROBERT McMANUS, ASSOCIATE ADMINISTRATOR FOR PLANNING, MANAGEMENT AND DEMONSTRATIONS, URBAN MASS TRANSPORTATION ADMINISTRATION

Mr. DOWNS. Thank you, Senator. It is a pleasure to be here today to talk about the section 18 program. With me also is Bob McManus, Associate Administrator for Planning, Management and Demonstrations of the Urban Mass Transportation Administration.

Let me state at the outset that the rural public transportation program is, we feel, a necessary program that is totally supported within both the Department and the Administration. Rural public transportation is a necessary service because that percentage of transportation-deprived people in nonurbanized areas is significant and because this country can no longer afford the luxury of uncoordinated transportation in our nonurbanized communities.

As you know, the Federal Highway Administration, FHWA, and UMTA were given joint responsibility within the Department of Transportation for implementing section 18. While FHWA is the lead agency, the talents, experiences, and resources of both agen-

cies are being effectively utilized, providing, I believe, an excellent example of cooperation.

The Federal Highway Administration was given the lead because the section 18 program is a natural outgrowth of the section 147 rural highway public transportation demonstration program created by the 1973 Federal-Aid Highway Act; and because, coupled with this experience, FHWA can make use of its historical working relationship with the State highway and transportation agencies, since the Federal Highway Administration has a field office in every State.

For too long, public transit has been identified in many individuals' minds with urban environments, and the nonurbanized communities were ignored. Congress redressed the transit plight of nonurbanized America with the passage of the Surface Transportation Assistance Act of 1978, which added section 18 to the Urban Mass Transportation Act of 1964.

After creation of section 18, FHWA and UMTA executed a memorandum of understanding relative to the joint administration of the program.

Specifically, UMTA and FHWA have joint responsibilities for policy development and program review, while the day-to-day implementation rests with the Federal Highway Administration. Regulations were quickly issued with implementing procedures. Since inception of the section 18 program, many of the administrative problems have been resolved at both the Federal and State levels. While some of the problems and issues have been easy, others are still unresolved. Some of the problems are the labor protection provisions, local matching funds, and Federal maintenance of effort.

The labor protection provisions of section 13(c) were applied by statute to the section 18 program. The DOT and DOL developed a 13(c) procedure that would insure the rights of labor while minimizing the impact on small rural systems. In June 1979 a special 13(c) warranty was adopted that offered an expeditious procedure for meeting the 13(c) requirements through a single standard agreement containing the necessary provisions. From our communications with the field, we know that some States and local jurisdictions still have reservations about the special warranty.

Such reservations include apprehension over the financial liability created by 13(c) without assurance that the program will be funded in the future. Accordingly, FHWA is proceeding with an evaluation of the 13(c) process this summer and hopes to have it completed by the fall.

We hope that our experience in the use of the warranty procedure will sugggest ways in which the language or approach might be improved, while meeting the statutory mandate for labor protection. We intend to work closely with Department of Labor and State and local government officials in reviewing the impact of 13(c) requirements.

Since the section 18 program serves some of the poorest counties in the Nation, these communities are experiencing problems in securing the needed funds to satisfy the local matching requirements for section 18 funds. FHWA and the States are cooperating in a number of ways to resolve this issue.

For example, the Federal Highway Administration has identified and disseminated a list of unrestricted Federal funds that can be used for up to one-half of the local match for section 18 funds. State agencies are using this list to help coordinate and assist rural communities in providing funding. In addition, some States are promising to help the rural communities with additional funds, though some of these states have not yet fulfilled their commitment.

While the unrestricted Federal funds list has been useful, FHWA is very concerned about the maintenance of effort on the part of other Federal agencies. We are concerned because the dollars expended by the other Federal agencies in transportation—for example, Health, Education, and Welfare estimates $500 million a year on transportation—cannot be entirely replaced by section 18—currently $85 million.

FHWA has received reports from a number of Community Action agencies and other coordinated transportation providers that their traditional sources of funding are diminishing, and they are seeking section 18 funds to replace them. In addition, while Federal agencies might maintain their funding levels for transportation, the discretionary authority for the use of those funds is often at the State level, and States too are hoping that section 18 funds will replace the transit funds of these other programs.

The Federal Highway Administration is endeavoring to cope with this concern in several ways. First, UMTA has agreed that nonurbanized areas—with a 2-year demonstrated need in excess of their section 18 funds—will continue to be eligible for section 3 funds. Second, through the White House Rural Transportation Initiatives Committee, which I chair, the Federal Highway Administration has been able to raise and discuss the issues with other Federal agencies. Results from this include the Community Service Administration's commitment of existing funds and their set-aside of an additional $1.5 million for rural transportation planning.

The problems and concerns of the section 18 program are being addressed. The section 18 program is becoming a significant factor in State and Federal plans for assisting nonurbanized transportation needs.

President Carter has helped foster the efforts of the section 18 program by specifically recognizing it as a critical program. During June 1979 the White House announced the rural development initiatives to improve transportation in rural America. A major focus of these initiatives is to improve effectiveness and coordination between social services and public transportation programs in rural areas. Fourteen Federal agencies are involved in this effort, and the section 18 program has the pivotal role in the attempt to coordinate over 100 other sources of Federal transportation funds for rural areas.

During this past year a series of 12 regional implementation conferences were held to communicate the White House initiatives to the field. The conferences gave us the opportunity to present and discuss the objectives of section 18 with State and local personnel, and Federal representatives were able to listen to the special problems and experiences of State and local officials. In many cases, these conferences were able to resolve misunderstandings, as

well as gain valuable feedback on the program's administration. These learning experiences have enabled us to refine and improve the implementation of the program.

As chairman of the White House Rural Transportation Initiatives Committee, I am responsible for monitoring the progress of the public and social service transportation initiatives, and for resolving any impediments to them. The first committee status report was completed this month, and I am pleased to report that significant steps have been taken by each Federal agency represented on the committee.

The first calendar year of the section 18 program has been completed. Briefly, the status of implementation is good. Total section 18 obligations through the end of February equaled $25 million, and we have experienced a dramatic increase in the monthly rate of obligations during this fiscal year. Over $8 million have been obligated in the months of January and February alone. The January obligation of project operating and capital assistance was 66 percent higher than in all of fiscal year 1979. While there is still much room for improvement, we have passed the startup phase for this program. As an increasing number of States complete their programs of projects, we expect to reach a monthly obligation rate of over $9 million a month by year's end.

The States have been actively involved in the startup of the section 18 program. Over $6 million of section 18 funds have been used by the States to finance their administrative and technical assistance activities. These startup activities included hiring staff, developing management plans and allocation procedures, and soliciting and reviewing applications. The States are providing the resources necessary to transform the section 147 projects into permanent section 18 projects, and developing other transportation programs.

We are working closely with the States to assure that intercity bus services are considered an integral part of the section 18 program. To date three States have identified intercity bus projects for section 18 funding. Eight other States have either conducted or plan to conduct surveys of intercity bus transportation funding needs, and therefore may come forward with proposals that will use section 18 funding.

Finally, this summer the Transportation Research Board, in cooperation with the Department of Transportation, plans to hold the first national conference on intercity bus transportation. A key component of this conference will be the intercity bus industry's relation to the section 18 program.

As you can see, our first year was a time for gearing up, for removing obstacles, and building a responsible program base. A majority of the preliminary work has now been completed, and we expect greater progress in the next few months.

Numbers and data alone are insufficient in measuring the successes achieved by the section 18 program because the program provides public transportation to the disadvantaged. Without rural public transportation, many Chicano families in Texas would be unable to reach competitively priced grocery stores, a number of factory workers in West Virginia would be paying considerably more for transportation, and a blind worker in Vermont would

have to return to thumbing rides to work. These are but several examples of how the public transportation program is intended to help people in rural areas. As the section 18 program develops, then more transportation can be provided to those in need.

The Department and Secretary Goldschmidt are committed to a strong and effective section 18 program. Two weeks ago the Secretary appeared before this subcommittee and expressed his determination to make this program work. We believe that this program is an essential element of the President's Small Community and Rural Development Policy and that the prospects and potential for public transportation in nonurbanized areas are exciting.

The challenge is to provide effective rural public transportation without imposing urban solutions. The Department believes that it can be done. The administration's proposed transit legislation, for example, would provide additional authorizations for this program and would insure that each State would receive at least one percent of the total section 18 apportionment. Presently, the apportionment received by some States is so small that it is not practical for them to try and make use of it. The 1-percent minimum apportionment would enable every State to plan and implement a meaningful public transportation program for nonurbanized areas.

Thank you, Mr. Chairman. That concludes my prepared statement. I would now be happy to answer any questions you or other members of the subcommittee may have.

[Complete statement of Mr. Downs follows:]

STATEMENT OF THOMAS M. DOWNS, ASSOCIATE ADMINISTRATOR, URBAN MASS TRANSPORTATION ADMINISTRATION

Mr. Chairman, I am very pleased to be here to describe for the members of this Subcommittee the progress we have made in implementing the Section 18 program. With me is Mr. Robert McManus, the Associate Administrator for Planning, Management and Demonstrations, Urban Mass Transportation Administration (UMTA).

Let me state at the outset that the rural public transportation program is a necessary program that is totally supported within the Department and the Administration. Rural public transportation is necessary because that percentage of transportation deprived people in nonurbanized areas is significant and because this country can no longer afford the luxury of uncoordinated transportation in our nonurbanized communities.

As you know, the Federal Highway Administration (FHWA) and UMTA were given joint responsibility within the Department of Transportation (DOT) for implementing Section 18. While FHWA is the lead agency, the talents, experiences, and resources, of both agencies are being effectively utilized; providing, I believe, an excellent example of cooperation. The FHWA was given the lead because the Section 18 program is a natural outgrowth of the Section 147 "Rural Highway Public Transportation Demonstration Program" created by the 1973 Federal-Aid Highway Act; and because coupled with this experience, FHWA can make use of its historical working relationship with the State highway and transportation agencies, since FHWA has a field office in every State.

For too long public transit has been identified in many individual's minds with urban environments, and the nonurbanized communities were ignored. Congress redressed the transit plight of nonurbanized America with the passage of the Surface Transportation Assistance Act of 1978, which added Section 18 to the Urban Mass Transportation Act of 1964.

After creation of Section 18, FHWA and UMTA, executed a memorandum of understanding relative to the joint administration of the program. Specifically, UMTA and FHWA have joint responsibilities for policy development and program review, while the day to day implementation rests with FHWA. Regulations were quickly issued with implementing procedures. Since inception of the Section 18 program many of the administrative problems have been resolved at both the Federal and State levels. While some of the problems and issues have been easy,

others are still unresolved. Some of the problems are the labor protection provisions, local matching funds, and Federal maintenance of effort.

The labor protection provisions of Section 13(c) were applied by statute to the Section 18 program. The DOT and DOL developed a 13(c) procedure that would ensure the rights of labor while minimizing the impact on small rural systems. In June 1979, a special 13(c) warranty was adopted that offered an expeditious procedure for meeting the 13(c) requirements through a single standard agreement containing the necessary provisions. From our communications with the field, we know that some States and local jurisdictions still have reservations about the Special Warranty.

Such reservations include apprehension over the financial liability created by 13(c) without assurances that the program will be funded in the future. Accordingly, FHWA is proceeding with an evaluation of the 13(c) process this summer. We hope that our experience in the use of the warranty procedure will suggest ways in which the language or approach might be improved, while meeting the statutory mandate for labor protection. We intend to work closely with Department of Labor and State and local government officials in reviewing the impact of 13(c) requirements.

Since the Section 18 program serves some of the poorest counties in the Nation these communities are experiencing problems in securing the needed funds to satisfy the local matching requirements for Section 18 funds. FHWA and the States are cooperating in a number of ways to resolve this issue. For example FHWA has identified and disseminated a list of "Unrestricted Federal funds" that can be used for up to one-half of the local match for Section 18 funds. State agencies are using this list to help coordinate and assist rural communities. In addition, some States are promising to help the rural communities with additional funds, though some of these States have not yet fulfilled their commitment.

While the "Unrestricted Federal funds" list has been useful, FHWA is very concerned about the "maintenance of effort" on the part of other Federal agencies. We are concerned because the dollars expended by the other Federal agencies in transportation (e.g., Health, Education, and Welfare estimates $500 million) cannot be entirely replaced by Section 18 (currently $85 million). The FHWA has received reports from an number of community action agencies and other coordinated transportation providers that their traditional sources of funding are diminishing, and they are seeking Section 18 funds to replace them. In addition, while Federal agencies might maintain their funding levels for transportation, the discretionary authority for the use of those funds is often at the State level, and States too are hoping that Section 18 funds will replace the transit funds of these other programs.

The FHWA Is endeavoring to cope with this concern in several ways. First, UMTA has agreed that nonurbanized areas (with a 2-year demonstrated need in excess of their Section 18 funds) will continue to be eligible for Section 3 funds. Secondly, through the "White House Rural Transportation Initiatives Committee," which I chair, the FHWA has been able to raise and discuss the issues with other Federal agencies. Results from this include community service administration's commitment of existing funds and their set aside of an additional $1.5 million for rural transportation planning.

The problems and concerns of the Section 18 program are being addressed. The Section 18 program is becoming a significant factor in State and Federal plans for assisting nonurbanized transportation needs.

President Carter has helped foster the efforts of the Section 18 program by specifically recognizing it as a critical program. During June 1979, the White House announced the "Rural Development Initiatives To Improve Transportation in Rural America." A major focus of these initiatives is to improve effectiveness and coordination between social service and public transportation programs in rural areas. Fourteen Federal agencies are involved in this effort, and the Section 18 program has the pivotal role in the attempt to coordinate over 100 other sources of Federal transportation funds for rural areas.

During this past year, a series of 12 regional implementation conferences were held to communicate the White House Initiatives to the field. The conferences gave DOT officials the opportunity to present and discuss the objectives of Section 18 with State and local personnel, and Federal representatives were able to listen to the special problems and experiences of State and local officials. In many cases these conferences were able to resolve misunderstandings, as well as gain valuable feedback on program administration. These learning experiences have enabled us to refine and improve the implementation of the program.

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The Department and Secretary Goldschmidt are committed to a strong and effective Section 18 program. Two weeks ago the Secretary appeared before this Subcommittee and expressed his determination to make this program work. We believe that this program is an essential element of the President's "Small Community and Rural Development Policy"; and that the prospects and potential for public transportation in nonurbanized areas are exciting.

The challenge is to provide effective rural public transportation without imposing urban solutions. The Department believes that it can be done. The Administration's proposed transit legislation, for example, would provide additional authorizations for this program and would ensure that each State would receive at least one percent of the total Section 18 apportionment. Presently, the apportionment received by some States is so small that it is not practical for them to try and make use of it. The one percent minimum apportionment would enable every State to plan and implement a meaningful public transportation program for nonurbanized areas.

Thank you, Mr. Chairman. That concludes my prepared statement. I would now be happy to answer any questions you or other members of the Subcommittee may have.

Senator WILLIAMS. Thank you. An excellent statement, Mr. Downs.

Our procedure now is to have all the statements from the panel and then proceed with questions.

STATEMENT OF LARY YUD, CHIEF, DIVISION OF EMPLOYEE PROTECTIONS, LABOR-MANAGEMENT SERVICES ADMINISTRATION, DEPARTMENT OF LABOR, ACCOMPANIED BY JAMES PERLMUTTER, INDUSTRIAL RELATIONS SPECIALIST

Mr. YUD. Thank you, Mr. Chairman. I am Lary Yud, chief of the division of employment protection. It is this division located within the Labor Management Services Administration of the U.S. Department of Labor that has responsibility for the day-to-day administration of a number of special employee protection programs, including those in the transportation sector. I am pleased to be here today to discuss the employee protection provisions of section 13(c) of the Urban Mass Transportation Act, as applied to the small urban and rural transportation program. I might add that I have, to my right, Mr. Jim Perlmutter, of my office, who handles the day-to-day section 13(c) processing responsibility.

I from this time forward would like to just highlight my remarks, rather than read them entirely.

Senator WILLIAMS. Fine. Your full statement will be in the record.

Mr. YUD. Thank you.

As you know, section 18(f) provides that the employee protection provisions of section 13(c) of the Urban Mass Transportation Act shall apply to projects approved for funding under section 18. The employee protection provisions were originally included in the Urban Mass Transportation Act because of concern that, notwithstanding the overall positive impact on employment in the industry, Federal financial assistance was expected to have, in individual project situations workers might be adversely affected as the result of the introduction of new equipment, or reorganization of existing systems.

Thus, section 13(c) provides that before the Secretary of Transportation can approve a grant, the Secretary of Labor must certify that fair and equitable arrangements have been made to protect the interests of employees. Section 18(f) applies the provisions of section 13(c) to projects under section 18. Section 18(f) also states that for the purposes of that section, the Secretary of Labor may waive any provisions of section 13(c) of the act.

In introducing the language of the finally enacted law that includes the waiver alternative, Congressman Thompson stated: "My amendment intends no wholesale waiver of the section 13(c) labor standards as applied to small urban programs. These standards must be met under the act whenever there are employees of public transportation service providers already working in the service area of the proposed project who could potentially be affected by the grant." The same principle was expressed in the Senate during the consideration of the bill.

From the outset of our administration of worker protection for the small urban and rural program, there was a real desire to find a way to provide rural and small urban grant applicants with an expedited and administratively uncomplicated procedure for securing the required certification. We held initial discussions in developing a procedure for certification with representatives of the Federal Highway Administration in December of 1978 and January of 1979. As a result of those discussions, we determined that we

should attempt to develop a standardized protective arrangement for application to the new small urban and rural program.

There then followed lengthy negotiations between FHWA and DOL over the content of a standard protective arrangement. Before that arrangement was finalized, DOL and DOT held extensive consultations with labor unions, rural public interest groups, State officials, rural public transportation providers, and others. The special warranty that was developed for this section 18 program differs from the standard application of section 13(c) employee protection requirements. The special warranty constitutes a single guarantee and State certification of acceptance of the section 13(c) requirements as a precondition for the flow of funds in lieu of the traditional prior review of all applications by the Department of Labor.

The special warranty procedures also permit a State or potential recipient to request a waiver of the protections. By concurrently adopting the warranty, project recipients can begin to receive funds during the review of any waiver request by the Department of Labor. The Department of Labor has adopted procedures for the expedited processing of waiver requests. However, we have had little experience under that alternative.

We recognized, during the development of the special warranty, that the employee protection requirements contained in section 13(c) are fairly technical and may be subject to some confusion. We were also aware that we would be dealing with many applicants who would be new to the grant process. Therefore, in announcing the adoption of the warranty and the procedures for its utilization, the Departments of Labor and Transportation pledged hands-on assistance to all parties. Department of Labor personnel, in consultation with FHWA staff, prepared a special guidebook on the small urban and rural transportation employee protections, a copy of which we would be glad to provide for the record.

Senator WILLIAMS. That will be acceptable.

[The guidebook is reprinted as follows:]

Rural Transportation Employee Protection Guidebook

Contents and Use of the
Special Section 13(c) Warranty
for Application to the
Public Transportation Assistance
for Nonurbanized Areas Program

U.S. Department of Labor
Labor-Management Services Administration
Division of Employee Protections
September 1979

This *Guidebook* was prepared under the general direction of James Perlmutter of the Division of Employee Protections. Edward Weiss performed the principal staff development work for its contents. Also contributing to this effort were Karen Carmichael, Jay Flanagan, Lynn Franks, Ann Gailliot, Dorothy Hodge, Serita Jamison, Annie Jackson, Irene Jones, Wilhemina Kinard, Eugenie Lafranchise, Alan Nartic, and Ingrid Wysong.

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I. Introduction

Section 313 of the Surface Transportation Assistance Act of 1978 added a new Section 18 "Public Transportation for Non-urbanized Areas" Program to the Urban Mass Transportation Act of 1964, as amended.

Section 18(f) of the Urban Mass Transportation Act of 1964, as amended, makes Sections 3(e)4 and 13(c) of that Act applicable to assistance authorized under Section 18. Sections 3(e)4 and 13(c) of the Urban Mass Transportation Act provide, in general, that it shall be a condition of any Federal assistance by the Department of Transportation to state or other public bodies in financing mass transportation, that fair and equitable arrangements are made, as determined by the Secretary of Labor, to protect the interests of employees who may be affected by such assistance.

Section 13(c) of the Act reads as follows:

> It shall be a condition of any assistance under section 3[1] of this Act that fair and equitable arrangements are made, as determined by the Secretary of Labor, to protect the interests of employees affected by such assistance. Such protective arrangements shall include, without being limited to, such provisions as may be necessary for (1) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise; (2) the continuation of collective bargaining rights; (3) the protection of individual employees against a worsening of their employment; (4) assurances of employment

1/Section 13(c) is also applicable to assistance granted under Sections 5, 6, 16(b)(1), 17 and 18(f) of the Urban Mass Transportation Act of 1964, as amended. The provisions of Sections 3(e) and 13(c) of the Act are also applicable to Sections 103 and 142 (23 U.S.C 103 and 142) of the Federal Aid Highway Act of 1973, and Section 130(a) of the Demonstration Cities and Metropolitan Development Act of 1966, as amended (11 USC 663).

> to employees of acquired mass transportation systems and priority of reemployment of employees terminated or laid off; and (5) paid training or retraining programs. Such arrangements shall include provisions protecting individual employees against a worsening of their positions with respect to their employment which shall in no event provide benefits less than those established pursuant to section 5(2)(f) of the Act of February 4, 1887 (24 Stat. 379), as amended. The contract for the granting of any such assistance shall specify the terms and conditions of the protective arrangements.

As part of the implementation of the Section 18 Nonurbanized Areas Program the Departments of Labor and Transportation have developed special procedures for the application of the statutorily mandated Section 13(c) labor protective provisions to the Section 18 Program. In an effort to eliminate the administrative unwieldiness of case by case processing, a Special Warranty arrangement has been developed for exclusive application to the Section 18 program. The Special Section 13(c) Warranty is contained in Appendix A. The Warranty is specially designed to meet rural program needs while affording the employee protections required under the UMT Act.

An explanation of the Special Section 13(c) Warranty and the procedures for its implementation developed by the Department of Labor and the Department of Transportation are set forth below.

Training sessions to assist in the implementation of the Section 18 program are being planned throughout the country at which joint DOL/DOT teams will explain the new Warranty procedures and be available to provide "hands on" assistance to interested parties.

II. Special Section 13(c) Warranty Overview

The Special Section 13(c) Warranty is designed to be included in the Federal grant contract between the United States Department of Transportation and the designated State agency/Public Body charged with the allocation and administration of Section 18 funds in each State. The flow of Section 18 funds for a particular Project will be permitted when the Public Body charged with the allocation and administration of funds certifies to the Department of Labor that each Recipient designated to receive transportation assistance for that Project or alternatively the legally responsible party designated by the Public Body, has indicated written acceptance of the terms and conditions of the Warranty, in the absence of a finding of non-compliance.

The Warranty provides that the Public Body agrees, that, absent a waiver, the terms and conditions of the Warranty shall apply for the protection of the transportation related employees of any Recipient and the transportation related employees of any other surface public transportation providers in the transportation service area of the Project.

The Warranty obliges the Public Body to assure that each Project Recipient in the State agrees to be bound by certain specified terms and conditions of the National (Model) Agreement executed July 23, 1975, which are incorporated into the Warranty by reference. Alternative arrangements comparable to those in the Model Agreement terms and conditions incorporated into the Special Warranty by reference may also be utilized if approved and certified by the Secretary of Labor for inclusion in the Warranty.

The Warranty also provides that the Recipient or other legally responsible party designated by the Public Body may request in writing from the Secretary of Labor a waiver of the statutorily required protections. The Secretary can waive these protections only where it is clear that there are no employees of the Recipient or of any other surface public transportation provider in the transportation service area who could be potentially affected by the Project. In order for an individual to be potentially affected, it is not necessary that the anticipated effects upon his or her interests be adverse. The procedures for Department of Labor processing of waiver requests are set forth in detail below.

III. Explanatory Comments

The following comments are designed to provide an explanation of the contents of the Special Section 13(c) Warranty on a section by section basis. The Warranty is set forth in its entirety in Appendix A.

A. General Application

This Section states that the designated State agency agrees that, unless the Department of Labor grants a waiver of employee protections for the Project, the terms and conditions in paragraphs (1) through (10) will apply for the protection of employees of any Project Recipient and the employees of any other surface public transportation provider in the transportation service area of the Project. Protected employees are employees involved in providing transportation and related services for any Recipients and any other surface public transportation providers in the transportation service area of the Project.

The term "surface public transportation provider" means a mass transportation operation engaged in the provision of surface transportation services to the public. The term "surface public transportation provider" is meant to include "mass transportation" services as defined by the Urban Mass Transportation Act.

The term "public transportation" means "any transportation by bus or rail or other conveyance, either publicly or privately owned, which provides to the public general or special service on a regular and continuing basis." Public transportation does not include the following: (1) school bus, charter or sightseeing service; (2) exclusive ride taxi service; (3) and service to individuals or groups which excludes use by the general public.

The term "transportation service area of the Project" is intended to include the geographic area over which the Project is operated and the area whose population is served by the Project, including adjacent areas affected by the Project. If a Project in one county draws passengers away from a system in an adjacent county, and employees of that adjacent county system are affected because of such reduction, that would be considered as included within the scope

of the transportation service area of the Project. Also, if a carrier operates service which passes through the service area of a particular Project and employees of the carrier which passes through the Project area are affected by the Project-assisted services, that would be considered as included within the transportation service area of the Project.

This section also states that the Public Body will provide to DOL and keep up to date during the Project a complete listing of all existing transportation providers which are eligible Recipients of Section 18 assistance in the transportation service area of the Project and any labor organizations representing the employees of the eligible Recipients. The term "eligible Recipients" includes those providers designated to receive Section 18 assistance as well as other surface public transportation providers who are also qualified for grants.

The flow of Section 18 funds will be permitted when the Public Body certifies to the Department of Labor that the Recipients designated to receive Section 18 assistance (or legally responsible party designated by the Public Body) have agreed to the Warranty in writing. Upon receipt of a letter of certification from the Public Body to the Department of Labor (a SAMPLE CERTIFICATION is attached as Appendix B), the Department of Labor will acknowledge to the responsible FHWA Division Office its receipt of the certification. This acknowledgement by the Department of Labor, which may be made by phone to expedite approval, will serve to indicate completion of the certification responsibility under the Warranty and permit the release of Section 18 funding. The Department of Labor will acknowledge the receipt of the certification by letter to the Public Body (designated State agency).

As shown in Appendix B, the required listing of all existing transportation providers, those designated as Recipients, and labor organizations referred to above should accompany the Public Body's letter of certification to the Department of Labor.

B. Standard Terms and Conditions

(1) The first two sentences of this section express the general requirement that employee rights and interests be protected from effects of a Project. Initially, this means

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that Recipients and any other legally responsible party in designing and implementing a Project must consider the effects a Project may have on employees and attempt to minimize any adverse effects. If objectives can be met without adversely affecting employees it is expected that adverse effects will be avoided. In the context of particular Project events, this paragraph is to be read in conjunction with other provisions of the Warranty. It thereby serves to emphasize the specific statutory requirements that employees be protected against a worsening of their employment conditions, and receive offsetting benefits to make them "whole" when unavoidable impacts occur.

This paragraph also indicates that the term "Project" as used in the Warranty includes more than just the particular physical items assisted by the Section 18 grants. In other words, reductions in service or other changes in operations which are a result of the Federal assistance would be included within the scope of the term "Project." Additionally, this paragraph defines the phrase "as a result of the project" and indicates that Project related events that occur before, during, and after the Project are included within that definition. As an example, if an employee were laid off prior to the actual start-up of a Project but for reasons of the Project, the impacted employee could successfully claim coverage and benefits.

In order for any individual to successfully claim monetary allowances under the Warranty, his or her employment conditions must be worsened "as a result of the project." Changes which are not caused by the Project such as seasonal fluctuations in employment, downturns in business, or dismissals for cause would not give rise to a claim for worsening under the Warranty protections. Additionally, the Warranty is not intended to apply to any employee whose dismissal, displacement or worsened position results solely from the termination of the Project or its funding. In other words, if an employee were affected as a result of the exhaustion of funding for a particular Project, that employee would not be able to successfully claim monetary allowances under the Warranty. Additionally, if, for example, a CETA employee were affected by CETA program standards, that would not of itself give rise to claims under the Warranty.

2 (a)

The purpose of this paragraph is to assure that Project assisted services provided by each Recipient are provided

under and in accordance with any collective bargaining agreements that apply to the Recipient's workforce. This paragraph is not intended to limit the provision of transportation services assisted by the Project to a single provider.

2 (b)

This paragraph makes the Recipient or alternative legally responsible party responsible for providing notice to employees who are going to be impacted by intended action which may cause downgrading of jobs, layoffs, or rearrangements of working forces. A notice of 60 days is to be given to employees who are going to be impacted in such a manner. The notice should be posted in a place commonly frequented by employees and where it can be easily seen (e.g., a dispatching area, bulletin board, recreation room).

The notice should include a full explanation of the proposed changes, an estimate of the number of employees who may be affected and the number and job classifications of any vacancies in the Recipient's employment available to be filled.

Where affected employees are represented by a union, the notice is to be sent by certified mail to an appropriate representative of the union.

The notice procedures of this paragraph are not intended to apply to changes which occur as a result of the normal exercise of seniority rights or regular schedule changes.

2 (c)

The purpose of this paragraph is to afford a procedure for the negotiation of the implementation of the Warranty where the notice procedures apply to employees represented by a union. Such negotiations, if invoked, should address, for example, the order and manner of offering employment to employees who stand to be dismissed as a result of an intended action.

This provision sets forth a procedure which calls for the immediate start of negotiations at the request of either the Recipient or the union representative(s). If the parties are not able to reach an agreement within twenty (20) days, either party to the dispute may submit the matter to the dispute settlement procedure of paragraph (4) of the Warranty (See explanation of paragraph (4) below). Under this subparagraph, the intended change which may result in displacements, dismissals, or rearrangements is not to begin until the notice procedure, if invoked, is concluded.

3

The provisions incorporated by reference as part of this Special Warranty under pargaraph (3) are contained in Appendix C. The incorporation of these provisions does not make the Recipient or legally responsible party designated by the Public Body a signatory or party to the National (Model) Agreement of July 23, 1975. It does incorporate certain provisions of that agreement into this Special Warranty.

If a Recipient or legally responsible party designated by the Public Body desires to seek alternative arrangements, which must be comparable to those included in Appendix C, it should write to the Office of Labor-Management Relations Services, Room N-5653, U.S. Department of Labor, Washington, D.C., 20210, Attn: Division of Employee Protections. This letter should be accompanied by two (2) copies of the grant application and should describe the circumstances which support amendment or modification to the Special Warranty to substitute alternate comparable provisions.

Upon receipt of requests for substitute comparable arrangements, the Department of Labor will process such requests on a case by case basis in accordance with its Section 13(c) guidelines, 29 CFR Chapter II, Part 215 (see Appendix D).

The footnote to paragraph (3) quotes two sentences from Section 13(c) of the Urban Mass Transportation Act. The complete Section 13(c) is contained at Appendix E, together with other relevant statutory references.

4

Paragraph (4) is the disputes resolution clause of the Special Warranty. It is intended to serve as a self-governing mechanism under which parties can obtain final and binding resolution to any dispute arising under the terms of the Special Warranty over which they cannot reach agreement.

The paragraph provides that any dispute or controversy arising regarding the application, interpretation, or enforcement of the Special Warranty is subject to this dispute resolution procedure.

If a dispute is not resolved within thirty (30) days after it first arises, then either party may refer such dispute to a final and binding settlement procedure. If the parties can agree upon such a procedure (e.g., an existing arbitration provision), then that agreed upon procedure is to be used. If the parties cannot agree, then either party may contact the Department of Labor, which will itself review the dispute and issue a determination to resolve it or will designate an impartial third party to hear the dispute and issue a final and binding determination.

In the event a party to a dispute wants to contact the Department of Labor, it should write a letter to the Office of Labor-Management Relations Services, Room N-5653, U.S. Department of Labor, Washington, D.C., 20210, Attn: Division of Employee Protections. The letter should specify the nature of the dispute, identify the parties, and describe the procedural steps already taken by the parties to resolve the dispute. Copies of the letter should be provided to all parties to the dispute.

The burden of proof clause which appears at the end of the paragraph (4) recognizes that individual employees will not have access to information required to establish whether a particular effect upon the employee was "as a result of the Project". Thus, in cases where there is a dispute as to whether or not an employee was affected by the Project, the employee must explain how he or she has been affected and how he or she attributes that effect to the Project. The burden of proof then is placed on the Recipient or the legally responsible party under the arrangements, to show that factors other than the Project affected the employee. An employee shall be considered affected by the Project if it is established that the Project had an effect upon the employee, even if other factors may have also affected the employee.

5

Paragraph (5) states that the Recipient shall be financially responsible for the application of the terms and conditions of the Special Warranty. However, it permits the Public Body to designate an alternative legally responsible party, which could be the Public Body itself. For example, if a Project Recipient were a non-profit organization, the legally responsible party for the application of the protections might be that non-profit organization, the City or

County in which it operated, the local major public transportation provider, or the State agency charged with allocating and administering the nonurbanized areas program.

When the Public Body is not designated as the legally responsible party under the Special Warranty, then the Public Body assumes no special obligations under the Special Warranty that are not otherwise part of its normal obligations as a grant administering agency. In such a case the Public Body's status and responsibilities with respect to employee protections are not any different than its status and responsibilities with respect to all other grant requirements.

6

This provision is for the purpose of assuring that any rights and benefits which employees may have under existing agreements or provisions of law are not taken away or in any way waived by the terms and conditions of the Warranty. If an employee has any rights or is entitled to benefits under another protective agreement, collective bargaining agreement or law, this Warranty is not meant to interfere with or take away any of those rights or benefits.

7

The purpose of this paragraph is to afford employees who are laid off as a result of the Project a priority in hiring for any vacant position under the Recipient's control for which the employee is qualified or for which the employee can become qualified through a reasonable training period. Where training is required, it is to be at no cost to the employee. Under this provision the Recipient is afforded wide latitude in absorbing employees laid off as a result of the Project, as vacancies which may be filled include those in areas both within the Recipient's transit operation as well as other departments or places of employment under the control of the Recipient. A dismissed employee who, without good cause, refuses to accept an offer of a comparable job forfeits entitlements to a dismissal allowance.

This provision affords the Recipient an opportunity to reduce potential liabilities for dismissed employees if vacancies should exist within its control and at the same time, affords dismissed employees an opportunity to secure alternative employment.

8

The purpose of this provision is to afford notice to employees covered by the Warranty of their rights and responsibilities under that arrangement. The notice should be posted in a place where employees normally assemble and should be easily visible. It should indicate the Recipient's receipt of Federal assistance and agreement to comply with Section 13(c). A copy of the Warranty conditions should be attached to the notice. A copy of a sample notice is attached as Appendix F.

All pertinent information and records necessary to carrying out the Warranty including the determination of claims are required to be maintained and kept on file by the Recipient. This recognizes that in a claims proceeding the employee would not normally have access to information necessary to establishing his or her claim. It would be expected that these be routine records such as payroll, employment data, job classification, etc.

9

The intent of this paragraph is to afford any labor organization which represents employees covered by the Warranty an opportunity to become a party to the arrangement. Notice of such an interest should be submitted in writing to both the Recipient and the Department of Labor. A sample request to become party to the Warranty is attached as Appendix G.

The Department of Labor will acknowledge the labor organization's request and, by copies to the Public Body and Recipient, indicate that unless objections are received within (30) days of the date of its letter, DOL will consider the labor organization a party to the Warranty. If DOL receives an objection to a requesting union's eligibility to become a party to the Warranty, it will review the objection and take appropriate action to resolve the dispute.

10

This paragraph assures that the Warranty will be separately enforceable (e.g., through filing a court suit) by parties to the grant contract and by any covered employee or his representative. The Warranty is binding upon such parties.

C. Waiver

This Section permits the Recipient, or other legally responsible party designated by the Public Body to request in writing from the Secretary of Labor a waiver of the required Section 13(c) protections. The waiver may be requested either independent of accepting the Warranty or once it has been accepted. However, where the Recipient has not agreed to the Special Warranty, no funds can be released. The Secretary can issue a waiver only where he determines that, at the time of the requested waiver, there are no existing transportation related employees of the Recipient or of any other surface public transportation provider in the transportation service area of the Project who could potentially be affected by the Project. In order for such employees to be affected, it is not necessary that the anticipated effect upon their interests be adverse. Procedures on how to request a waiver are set forth below.

IV. Instructions for Utilization of Warranty

How to Permit Flow of Section 18 Funds Under Warranty

In order to permit the release of Section 18 funds for a Project under the Special Warranty, the Public Body must certify to the Department of Labor that each Recipient designated to receive transportation assistance under the Project has indicated in writing acceptance of the terms and conditions of the Warranty. The letter of certification should be accompanied by a listing of the Recipients designated to receive transportation assistance, the eligible Recipients of transportation assistance in the transportation service area and union representatives, if any, of employees of such providers. A sample certification by a State designated agency with the accompanying listing is set forth in Appendix B. The certification should be addressed to the Office of Labor-Management Relations Services, United States Department of Labor, Attn: Division of Employee Protections, 200 Constitution Avenue, NW, Room N-5653, Washington, D.C., 20210.

DOL Acknowledgement of Receipt of Certification

Upon receipt of a letter of certification from the Public Body to the Department of Labor, the Department of Labor will acknowledge to the responsible FHWA Division Office its receipt of the certification. This acknowledgement by the Department of Labor, which may be made by phone to expedite approval, will serve to indicate completion of the certification responsibility under the Warranty and permit the release of Section 18 funding. The Department of Labor will subsequently acknowledge the receipt of the certification by letter to the Public Body.

How to Request Alternative Arrangements Comparable to those in Appendix C

Paragraph (3) of the Special Warranty allows for substitute or comparable arrangements for inclusion in the Warranty, if approved and certified by the Secretary of Labor.

If a Recipient or other legally responsible party designated by the Public Body desires to seek alternative arrangements, which must be comparable to those included in Appendix C, it should write to the Office of Labor-Management Relations Services, Room N-5653, United States Department of Labor, Washington, D.C. 20210, Attn: Division of Employee Protections. The letter should be accompanied by two (2) copies of the grant application and should describe the circumstances which support amendment or modification to the Special Warranty to substitute alternate comparable provisions.

DOL Processing of Substitute Comparable Arrangements

Upon receipt of requests for substitute comparable arrangements, the Department of Labor will process such requests on a case by case basis in accordance with its Section 13(c) guidelines, 29 CFR Chapter II, Part 215 (contained in Appendix D.)

How to Request a Waiver

The Warranty provides that either the Recipient or other legally responsible party designated by the Public Body may request a waiver of the protections set forth in the Warranty. In requesting a waiver, the Recipient or other legally responsible party should write a dated letter signed by a responsible official to the designated state agency who shall verify the data and forward it to the FHWA Division Office. The FHWA Division Office shall likewise verify the data before forwarding it to the Department of Labor for processing. The letter should be accompanied by a complete copy of the Project application (which should contain the information required by DOL for processing a waiver request application), indicate a return address and include a telephone number of an appropriate contact person.

The request for waiver should assert that there are no existing employees of the Recipient or of any other transportation service provider eligible for funding in the transportation service area of the Project as of the date of the requested waiver, or that employees of eligible transportation service providers cannot be potentially affected by the Federal assistance. In the latter cases, the waiver

requesting party must explain why employees cannot be potentially affected. In order for such employees to be affected, it is not necessary that the anticipated effect upon their interests be adverse.

Applications should include the following information in cases of waiver requests:

1. The name of the eligible providers in the transportation service area of the Project;

2. A description of the nature of the transportation services provided in the area including the populations served;

3. The frequency of the services;

4. A description of the vehicles used in providing the services;

5. The geographical service areas of the services;

6. The fare structures of the services;

7. The number of employees involved in providing the services;

8. Any labor organization representing such employees;

9. Previous Federal assistance received from the Department of Transportation by any of the providers;

10. Revenue figures, where available, for the previous year attributable to the various categories of transportation services performed by the providers.

11. Names and mailing addresses of any transportation regulatory body in the transportation service area.

12. The name, address and telephone number of a contact person from the waiver requesting party who could respond to questions concerning the information supplied.

The following chart is a recommended format of the reporting of this information.

INFORMATION TO BE INCLUDED IN GRANT APPLICATION FOR WAIVER REQUESTS

Providers	Description of Services	Frequency	Vehicle	Geographical Service Area	Fare
e.g., Faith, Hope and Charity Social Services, Inc.	e.g., Medical and shopping Trips for Elderly Dial-a-ride for the general public	e.g., Monday-Friday 9:00 a.m. to 6:00 p.m.	e.g., 7 passenger van (1)	e.g., Simpson County	e.g., 75¢ per round trip
Franklin Trailways, Inc.	East-West Intercity Service	Monday-Friday with an 11:30 a.m. departure East, and a 6:20 p.m. departure West	48-passenger coach	Arrivals and departures from Sevierton, with closed door operation, along I-42 through remaining Jackson County	Variable with destination East (Lake City) $5.60. Nearest destination West (Cottonwood) $3.10

Number of Employees	Labor Organization	Previous Fed. Assistance	Revenue Figures	Regulatory Bodies	Provider Contact Person
e.g., 2 drivers, 1 clerk/ dispatcher	e.g., none	e.g., 147 Grant to purchase Van in 1975	e.g., $6,000-FY 78 (Fares) $2,000-State Subsidy in FY 78 Tot Rev: $8,000	e.g., NA	e.g., Jill Jeed (717) 777-7777
Franklin Trailways has 28 full-time drivers and 112 full-and part-time support staff statewide. Locally, all clerk, ticketing and package handling is contracted with Walker's I-42 Texaco which has two full-time and one part-time employees.	Franklin Trailways ATU Walker's Texaco None	None	FY 78 total statewide revenues $7.8 million FY 78 state subsidy $48,200	State Department of Highways and Trans-portation	James Reed Associate Director for Operations (919) 999-9999

DOL Processing of Requests for Waiver

The Department of Labor will expeditiously process all applications for waivers or substitute arrangements under the Section 18 program. Special handling procedures have been formulated that will expedite the processing of these types of applications, particularly where necessary information accompanies the waiver request. DOL recognizes the special and distinct nature of many small urban and rural transportation services and will attempt to process requests with due consideration to these special characteristics.

Waiver requests will be presumably based on an assertion that there are no existing providers of transportation in the transportation service area or, in cases where there are existing providers, an assertion that there are no existing employees who could be potentially affected. In such situations, it is not necessary that the anticipated effect upon individuals be adverse for them to be considered potentially affected.

Where DOL determines that there are no employees in the transportation service area who could potentially be affected by the Project, it will publish a notice of proposed waiver in the Federal Register and simultaneously publish notification in local general circulation newspapers in the transportation service area. If no objections are received during the 30-day notice period, the waiver will be granted at the end of the notice period. If, however, timely objections are received, the Department of Labor will review the objections and determine whether a waiver should be granted or denied.

Upon completion of the 30-day notice period and review of any timely objections, DOL will inform by telephone the waiver requesting party, the Federal Highway Administration, and affected parties, if any, of DOL's findings. DOL will then issue its written decision granting or denying the request for waiver to the waiver requesting party, the FHWA, and any other involved parties.

The format to be used by DOL for publication of a notice of proposed waiver in the Federal Register and local general circulation newspapers is contained in Appendix H.

Objections should specify the name of the objecting party, a complete return address, the names of any transit providers in the Project area, the nature of transit services (e.g., service to elderly and handicapped), the number of employees of the providers, if known, the name(s) of any labor organization(s) representing such employees and an explanation of how the Project will affect the rights and interests of employees. The objections should be submitted in writing to the Office of Labor-Management Relations Services, Room N-5653, Attn: Division of Employee Protections, 200 Constitution Avenue, NW, Washington, D.C. 20210. If objections are filed within the 30 day notice period, the Department of Labor will review them to determine whether a waiver will be granted. If no objections are received, the waiver will become final at the end of the 30 day notice period.

V. Further Information

Questions concerning the subject matter covered by these instructions should be addressed to the Division of Employee Protections, Labor-Management Services Administration, U.S. Department of Labor, Room N-5653, 200 Constitution Avenue, N.W., Washington, D.C. 20216; Attn: Division of Employee Protections (Telephone: 202/523-6495).

Appendix A

SPECIAL SECTION 13(c) WARRANTY FOR
APPLICATION TO THE SMALL URBAN AND RURAL PROGRAM

The attached Special Warranty and the procedures incorporated therein represent the understandings of the Department of Labor and the Department of Transportation with respect to the "Formula Grant Program for Areas Other Than Urbanized Areas" (Section 18 of the Urban Mass Transportation Act of 1964, as amended).

The Department of Transportation will make this Special Warranty a part of the contract of assistance between the U.S. Department of Transportation and each state agency designated to receive and administer funds under Section 18 of the Urban Mass Transportation Act of 1964, as amended.

The Secretary of Labor has found that the terms and conditions of the Special Warranty meet the requirements of Section 13(c) of the Urban Mass Transportation Act of 1964, as amended. Accordingly, the Secretary of Labor hereby makes the certification that inclusion of these terms and conditions in formula grant contracts for small urban and rural program grants meets the requirements of Section 18(f) of the Urban Mass Transportation Act of 1964, as amended.

Ray Marshall
Secretary of Labor

Date: MAY 31 1979

Brock Adams
Secretary of Transportation

Date: _____

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Special Section 13(c) Warranty
for Application to the Small Urban
and Rural Program

The following language shall be made part of the contract of assistance with the State or other public body charged with allocation and administration of funds provided under Section 18 of the Act:

A. General Application

The Public Body (" ") agrees that, in the absence of waiver by the Department of Labor, the terms and conditions of this warranty, as set forth below, shall apply for the protection of the transportation related employees of any employer providing transportation services assisted by the Project ("Recipient"), and the transportation related employees of any other surface public transportation providers in the transportation service area of the project.

The Public Body shall provide to the Department of Labor and maintain at all times during the Project an accurate, up-to-date listing of all existing transportation providers which are eligible Recipients of transportation assistance funded by the Project, in the transportation service area of the Project, and any labor organizations representing the employees of such providers.

Certification by the Public Body to the Department of Labor that the designated Recipients have indicated in writing acceptance of the terms and conditions of the warranty arrangement will be sufficient to permit the flow of Section 18 funding in the absence of a finding of non-compliance by the Department of Labor.

B. Standard Terms and Conditions

(1) The Project shall be carried out in such a manner and upon such terms and conditions as will not adversely affect employees of the Recipient and of any other surface public transportation provider in the transportation service area of the Project. It shall be an obligation of the Recipient and any other legally responsible party designated by the Public Body to assure that any and all transportation services assisted by the Project are contracted for and operated in such a manner that they do not impair the rights

and interests of affected employees. The term "Project," as used herein, shall not be limited to the particular facility, service, or operation assisted by Federal funds, but shall include any changes, whether organizational, operational, technological, or otherwise, which are a result of the assistance provided. The phrase "as a result of the Project," shall when used in this arrangement, include events related to the Project occurring in anticipation of, during, and subsequent to the Project and any program of efficiencies or economies related thereto; provided, however, that volume rises and falls of business, or changes in volume and character of employment brought about by causes other than the Project (including any economies or efficiencies unrelated to the Project) are not within the purview of this arrangement.

An employee covered by this arrangement, who is not dismissed, displaced or otherwise worsened in his position with regard to his employment as a result of the Project, but who is dismissed, displaced or otherwise worsened solely because of the total or partial termination of the Project, discontinuance of Project services, or exhaustion of Project funding shall not be deemed eligible for a dismissal or displacement allowance within the meaning of paragraphs (6) and (7) of the Model agreement or applicable provisions of substitute comparable arrangements.

(2)(a) Where employees of a Recipient are represented for collective bargaining purposes, all Project services provided by that Recipient shall be provided under and in accordance with any collective bargaining agreement applicable to such employees which is then in effect.

(2)(b) The Recipient or legally responsible party shall provide to all affected employees sixty (60) days' notice of intended actions which may result in displacements or dismissals or rearrangements of the working forces. In the case of employees represented by a union, such notice shall be provided by certified mail through their representatives. The notice shall contain a full and adequate statement of the proposed changes, and an estimate of the number of employees affected by the intended changes, and the number and classifications of any jobs in the Recipient's employment available to be filled by such affected employees.

(2)(c) The procedures of this subparagraph shall apply to cases where notices involve employees represented by a union for collective bargaining purposes. At the request of either the Recipient or the representatives of such employees negotiations for the purposes of reaching agreement with respect to the application of the terms and conditions of this arrangement shall commence immediately. If no agreement is reached within twenty (20) days from the commencement of negotiations, any party to the dispute may submit the matter to dispute settlement procedures in accordance with paragraph (4) of this warranty. The foregoing procedures shall be complied with and carried out prior to the institution of the intended action.

(3) For the purpose of providing the statutory required protections including those specifically mandated by Section 13(c) of the Act[1], the Public Body will assure as a condition of the release of funds that the Recipient agrees to be bound by the terms and conditions of the National (Model) Section 13(c) Agreement executed July 23, 1975, identified below[2], provided that other comparable arrangements may be substituted therefor, if approved by the Secretary of Labor and certified for inclusion in these conditions.

1/ Such protective arrangements shall include, without being limited to, such provisions as may be necessary for (1) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise; (2) the continuation of collective bargaining rights; (3) the protection of individual employees against a worsening of their positions with respect to their employment; (4) assurances of employment to employees of acquired mass transportation systems and priority of reemployment of employees terminated or laid off; and (5) paid training and retraining programs. Such arrangements shall include provisions protecting individual employees against a worsening of their positions with respect to their employment which shall in no event provide benefits less than those established pursuant to Section 5(2)(f) of the Act of February 4, 1887 (24 Stat. 379), as amended.

2/ For purposes of this warranty arrangement, paragraphs (1); (2); (5); (15); (22); (23); (24); (26); (27); (28); and (29) of the Model Section 13(c) Agreement, executed July 23, 1975 are to be omitted.

(4) Any dispute or controversy arising regarding the application, interpretation, or enforcement of any of the provisions of this arrangement which cannot be settled by and between the parties at interest within thirty (30) days after the dispute or controversy first arises, may be referred by any such party to any final and binding disputes settlement procedure acceptable to the parties, or in the event they cannot agree upon such procedure, to the Department of Labor or an impartial third party designated by the Department of Labor for final and binding determination. The compensation and expenses of the impartial third party, and any other jointly incurred expenses, shall be borne equally by the parties to the proceeding and all other expenses shall be paid by the party incurring them.

In the event of any dispute as to whether or not a particular employee was affected by the Project, it shall be his obligation to identify the Project and specify the pertinent facts of the Project relied upon. It shall then be the burden of either the Recipient or other party legally responsible for the application of these conditions to prove that factors other than the Project affected the employees. The claiming employee shall prevail if it is established that the Project had an effect upon the employee even if other factors may also have affected the employee.

(5) The Recipient or other legally responsible party designated by the Public Body will be financially responsible for the application of these conditions and will make the necessary arrangements so that any employee covered by these arrangements, or the union representative of such employee, may file claim of violation of these arrangements with the Recipient within sixty (60) days of the date he is terminated or laid off as a result of the Project, or within eighteen (18) months of the date his position with respect to his employment is otherwise worsened as a result of the Project. In the latter case, if the events giving rise to the claim have occurred over an extended period, the 18-month limitation shall be measured from the last such event. No benefits shall be payable for any period prior to six (6) months from the date of the filing of any claim.

(6) Nothing in this arrangement shall be construed as depriving any employee of any rights or benefits which such employee may have under existing employment or collective bargaining agreements, nor shall this arrangement be deemed a waiver of any rights of any union or of any represented employee derived from any other agreement or provision of federal, state or local law.

(7) In the event any employee covered by these arrangements is terminated or laid off as a result of the Project, he shall be granted priority of employment or reemployment to fill any vacant position within the control of the Recipient for which he is, or by training or retraining within a reasonable period, can become qualified. In the event training or retraining is required by such employment or reemployment, the Recipient or other legally responsible party designated by the Public Body shall provide or provide for such training or retraining at no cost to the employee.

(8) The Recipient will post, in a prominent and accessible place, a notice stating that the Recipient has received federal assistance under the Urban Mass Transportation Act and has agreed to comply with the provisions of Section 13(c) of the Act. This notice shall also specify the terms and conditions set forth herein for the protection of employees. The Recipient shall maintain and keep on file all relevant books and records in sufficient detail as to provide the basic information necessary to the proper application, administration, and enforcement of these arrangements and to the proper determination of any claims arising thereunder.

(9) Any labor organization which is the collective bargaining representative of employees covered by these arrangements, may become a party to these arrangements by serving written notice of its desire to do so upon the Recipient and the Department of Labor. In the event of any disagreement that such labor organization represents covered employees, or is otherwise eligible to become a party to these arrangements, as applied to the Project, the dispute as to whether such organization shall participate shall be determined by the Secretary of Labor.

(10) In the event the Project is approved for assistance under the Act, the foregoing terms and conditions shall be made part of the contract of assistance between the federal government and the Public Body or Recipient of federal funds; provided, however, that this arrangement shall not merge into the contract of assistance, but shall be independently binding and enforceable by and upon the parties thereto, and by any covered employee or his representative, in accordance with its terms, nor shall any other employee protective agreement merge into this arrangement, but each shall be independently binding and enforceable by and upon the parties thereto, in accordance with its terms.

C. Waiver

As a part of the grant approval process, either the Recipient or other legally responsible party designated by the Public Body may in writing seek from the Secretary of Labor a waiver of the statutory required protections. The Secretary will waive these protections in cases, where at the time of the requested waiver, the Secretary determines that there are no employees of the Recipient or of any other surface public transportation providers in the transportation service area who could be potentially affected by the Project. A 30-day notice of proposed waiver will be given by the Department of Labor and in the absence of timely objection, the waiver will become final at the end of the 30-day notice period. In the event of timely objection, the Department of Labor will review the matter and determine whether a waiver shall be granted. In the absence of waiver, these protections shall apply to the Project.

Appendix B

Sample Certification by the Public Body

Director
Office of Labor-Management Relations Services
United States Department of Labor
200 Constitution Avenue, NW
Room N-5653
Att: Division of Employee Protections
Washington, D.C. 20210

Dear Director:

The Public Body (e.g., Connecticut DOT) has made application to the Federal Highway Administration, pursuant to Section 18 of the Urban Mass Transportation Act of 1964, as amended, for a mass transportation grant to assist in . . . (e.g., the reimbursement of operating expenses for the period covering January 1, 1979 - December 31, 1979).

The Public Body agrees that, in the absence of a waiver by the Department of Labor, the terms and conditions of the Special Section 13(c) Warranty shall apply for the protection of the employees of any employer providing transportation services assisted by the Project ("Recipient"), and the employees of any other surface public transportation providers in the transportation service area of the Project. The Warranty arrangement shall be made part of the contract of assistance and shall be binding and enforceable by and upon the parties thereto, by any covered employee or his representative.

The Public Body (e.g., Connecticut DOT) hereby certifies that the Recipients (any employer providing transportation services assisted by the Project) have indicated in writing acceptance of the terms and conditions of the Special Section 13(c) Warranty. Such acceptance will be sufficient to permit the release of Section 18 funding in the absence of a finding of non-compliance by the Department of Labor. The letters of acceptance are on file at the following address:

Connecticut Department of Transportation
24 Wolcott Hill Road
Wethersfield, Connecticut 06109
Contact Person: _____
Telephone: (203) 566-2600

Additionally, pursuant to Section (A) of the Special 13(c) Warranty, included with this submission is a listing of all transportation providers which are Recipients of transportation assistance funded by the Project, and a listing of other eligible transportation providers in the geographic area of each project, and any labor organizations representing the employees of such providers.

Signed by Public Body

Listing of Recipients, Eligible Surface Public Transportation Providers and Labor Representation

(1) Project	(2) Recipients	(3) Other Surface Public Transportation Providers	(4) Union Representation of Employees, if any
Cite Project by Name, Description	Identify Recipients of Transportation Assistance	Identify Other Eligible Surface Public Transportation Providers	Key to Employees of Providers in Columns 1 and 2
Application for Public Transportation funds under Section 18 Formula Grant Program for "Elton Dial-A-Ride" service into Elton business district and return. Contract purchase of service for carrying elderly to nutrition center. Service Area extends throughout Pearson County.	Pearson County Transportation Coalition, Inc.	A) Western Trailways, Intercity Services. B) Elton Transit, Inc. City Public Transit and Weekend Charter Service	A) Elton Dial-A-Ride no union B) Western Trailways (ATU) C) Elton Transit, Inc. (Elton Transit Drivers Assoc.)

Appendix C

Provisions of the National (Model) Agreement

for

Incorporation in the Special Warranty

(3) All rights, privileges, and benefits (including pension rights and benefits) of employees covered by this agreement(including employees having already retired) under existing collective bargaining agreements or otherwise, or under any revision or renewal thereof, shall be preserved and continued: provided, however, that such rights, privileges and benefits which are not foreclosed from further bargaining under applicable law or contract may be modified by collective bargaining and agreement by the Recipient and the union involved to substitute other rights, privileges and benefits. Unless otherwise provided, nothing in this agreement shall be deemed to restrict any rights the Recipient may otherwise have to direct the working forces and manage its business as it deems best, in accordance with the applicable collective bargaining agreement.

(4) The collective bargaining rights of employees covered by this agreement, including the right to arbitrate labor disputes and to maintain union security and checkoff arrangements, as provided by applicable laws, policies and/or existing collective bargaining agreements, shall be preserved and continued. * Provided, however, that this provision shall not be interpreted so as to require the Recipient to retain any such rights which exist by virtue of a collective bargaining agreement after such agreement is no longer in effect.

The Recipient agrees that it will bargain collectively with the union or otherwise arrange for the continuation of collective bargaining, and that it will enter into agreement with the union or arrange for such agreements to be entered into, relative to all subjects which are or may be proper subjects of collective bargaining. If, at any time, applicable law or contracts permit or grant to employees covered by this agreement the right to utilize any economic measures, nothing in this agreement shall be deemed to foreclose the exercise of such right.

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*As an addendum to this agreement, there shall be attached where applicable the arbitration or other dispute settlement procedures or arrangements provided for in the existing collective bargaining agreements or any other existing agreements betwen the Recipient and the Union, subject to any changes in such agreements as may be agreed upon or determined by interest arbitration proceedings.

(6) (a) Whenever an employee, retained in service, recalled to service, or employed by the Recipient pursuant to paragraphs (5), (7) (e), or (18) hereof is placed in a worse position with respect to compensation as a result of the Project, he shall be considered a "displaced employee", and shall be paid a monthly "displacement allowance" to be determined in accordance with this paragraph. Said displacement allowance shall be paid each displaced employee during the protective period so long as the employee is unable, in the exercise of his seniority rights, to obtain a position producing compensation equal to or exceeding the compensation he received in the position from which he was displaced, adjusted to reflect subsequent general wage adjustments, including cost of living adjustments where provided for.

(b) The displacement allowance shall be a monthly allowance determined by computing the total compensation received by the employee, including vacation allowances and monthly compensation guarantees, and his total time paid for during the last twelve (12) months in which he performed compensated service more than fifty per centum of each such months, based upon his normal work schedule, immediately preceding the date of his displacement as a result of the Project, and by dividing separately the total compensation and the total time paid for by twelve, thereby producing the average monthly compensation and the average monthly time paid for. Such allowance shall be adjusted to reflect subsequent general wage adjustments, including cost of living adjustments where provided for. If the displaced employee's compensation in his current position is less in any month during his protective period than the aforesaid average compensation (adjusted to reflect subsequent general wage adjustments, including cost of living adjustments where provided for), he shall be paid the difference, less compensation for any time lost on account of voluntary absences to the extent that he is not available for service equivalent to his average monthly time, but he shall be compensated in addition thereto at the rate of the current position for any time worked in excess of the average monthly time paid for. If a displaced employee fails to exercise his seniority rights to secure another position to which he is entitled under the then existing collective bargaining agreement, and which carries a wage rate and compensation exceeding that of the position which he elects to retain, he shall thereafter be treated, for the purposes of this paragraph, as occupying the position he elects to decline.

(c) The displacement allowance shall cease prior to the expiration of the protective period in the event of the displaced employee's resignation, death, retirement, or dismissal for cause in accordance with any labor agreement applicable to his employment.

(7)(a) Whenever any employee is laid off or otherwise deprived of employment as a result of the Project, in accordance with any collective bargaining agreement applicable to his employment, he shall be considered a "dismissed employee"

and shall be paid a monthly dismissal allowance to be determined in accordance with this paragraph. Said dismissal allowance shall first be paid each dismissed employee on the thirtieth (30th) day following the day on which he is "dismissed" and shall continue during the protective period, as follows:

Employee's length of service prior to adverse effect	Period of protection
1 day to 6 years	equivalent period
6 years or more	6 years

The monthly dismissal allowance shall be equivalent to one-twelfth (1/12th) of the total compensation received by him in the last twelve (12) months of his employment in which he performed compensation service more than fifty per centum of each such months based on his normal work schedule to the date on which he was first deprived of employment as a result of the Project. Such allowance shall be adjusted to reflect subsequent general wage adjustments, including cost of living adjustments where provided for.

(b) An employee shall be regarded as deprived of employment and entitled to a dismissal allowance when the position he holds is abolished as a result of the Project, or when the position he holds is not abolished but he loses that position as a result of the exercise of seniority rights by an employee whose position is abolished as a result of the Project or as a result of the exercise of seniority rights by other employees brought about as a result of the Project, and he is unable to obtain another position, either by the exercise of his seniority rights, or through the Recipient, in accordance with subparagraph (e). In the absence of proper notice followed by an agreement or decision pursuant to paragraph (5) hereof, no employee who has been deprived of employment as a result of the Project shall be required to exercise his seniority rights to secure another position in order to qualify for a dismissal allowance hereunder.

(c) Each employee receiving a dismissal allowance shall keep the Recipient informed as to his current address and the current name and address of any other person by whom he may be regularly employed, or if he is self-employed.

(d) The dismissal allowance shall be paid to the regularly assigned incumbent of the position abolished. If the position of an employee is abolished when he is absent from service, he will be entitled to the dismissal allowance when he is available for service. The employee temporarily filling said position at the time it was abolished will be given a dismissal allowance on the basis of that position, until the regular employee is available for service, and thereafter shall revert to his previous status and will be given the protections of the agreement in said position, if any are due him.

(e) An employee receiving a dismissal allowance shall be subject to call to return to service by his former employer after being notified in accordance with the terms of the then-existing collective bargaining agreement. Prior to such call to return to work by his employer, he may be required by the Recipient to accept reasonably comparable employment for which he is physically and mentally qualified, or for which he can become qualified after a reasonable training or retraining period, provided it does not require a change in residence or infringe upon the employment rights of other employees under then-existing collective bargaining agreements.

(f) When an employee who is receiving a dismissal allowance again commences employment in accordance with subparagraph (e) above, said allowance shall cease while he is so reemployed, and the period of time during which he is so reemployed shall be deducted from the total period for which he is entitled to receive a dismissal allowance. During the time of such reemployment, he shall be entitled to the protections of this agreement to the extent they are applicable.

(g) The dismissal allowance of any employee who is otherwise employed shall be reduced to the extent that his combined monthly earnings from such other employment or self-employment, any benefits received from any unemployment insurance law, and his dismissal allowance exceed the amount upon which his dismissal allowance is based. Such employee, or his union representative, and the Recipient shall agree upon a procedure by which the Recipient shall be kept currently informed of the earnings of such employee in employment other than with his former employer, including self-employment, and the benefits received.

(h) The dismissal allowance shall cease prior to the expiration of the protective period in the event of the failure of the employee without good cause to return to service in accordance with the applicable labor agreement, or to accept employment as provided under subparagraph (e) above, or in the event of his resignation, death, retirement, or dismissal for cause in accordance with any labor agreement applicable to his employment.

(i) A dismissed employee receiving a dismissal allowance shall actively seek and not refuse other reasonably comparable employment offered him for which he is physically and mentally qualified and does not require a change in his place of residence. Failure of the dismissed employee to comply with this obligation shall be grounds for discontinuance of his allowance; provided that said dismissal allowance shall not be discontinued until final determination is made either by agreement between the Recipient and the employee or his representative, or by final arbitration decision rendered in accordance with paragraph (15) of this agreement that such employee did not comply with this obligation.

(8) In determining length of service of a displaced or dismissed employee for purposes of this agreement, such employee shall be given full service credits in accordance with the records and labor agreements applicable to him and he shall be given additional service credits for each month in which he receives a dismissal or displacement allowance as if he were continuing to perform services in his former position.

(9) No employee shall be entitled to either a displacement or dismissal allowance under paragraphs (6) or (7) hereof because of the abolishment of a position to which, at some future time, he could have bid, been transferred, or promoted.

(10) No employee receiving a dismissal or displacement allowance shall be deprived, during his protected period, of any rights, privileges, or benefits attaching to his employment, including, without limitation, group life insurance, hospitalization and medical care, free transportation for himself and his family, sick leave, continued status and participation under any disability or retirement program, and such other employee benefits as Railroad Retirement, Social Security, Workmen's Compensation, and unemployment compensation, as well as any other benefits to which he may be entitled under the same conditions and so long as such benefits continue to be accorded to other employees of the bargaining unit, in active service or furloughed as the case may be.

(11)(a) Any employee covered by this agreement who is retained in the service of his employer, or who is later restored to service after being entitled to receive a dismissal allowance, and who is required to change the point of his employment in order to retain or secure active employment with the Recipient in accordance with this agreement, and who is required to move his place of residence, shall be reimbursed for all expenses of moving his household and other personal effects, for the travelling expenses for himself and members of his immediate family, including living expenses for himself and his immediate family, and for his own actual wage loss during the time necessary for such transfer and for a reasonable time thereafter, not to exceed five (5) working days. The exact extent of the responsibility of the Recipient under this paragraph, and the ways and means of transportation, shall be agreed upon in advance between the Recipient and the affected employee or his representatives.

(b) If any such employee is laid off within three (3) years after changing his point of employment in accordance with paragraph (a) hereof, and elects to move his place of residence back to his original point of employment, the Recipient shall assume the expenses, losses and costs of moving to the same extent provided in subparagraph (a) of this paragraph (11) and paragraph (12)(a) hereof.

(c) No claim for reimbursement shall be paid under the provisions of this paragraph unless such claim is presented to the Recipient within ninety (90) days after the date on which the expenses were incurred.

(d) Except as otherwise provided in subparagraph (b), changes in place of residence, subsequent to the initial changes as a result of the Project, which are not a result of the Project but grow out of the normal exercise of seniority rights, shall not be considered within the purview of this paragraph.

(12)(a) The following conditions shall apply to the extent they are applicable in each instance to any employee who is retained in the service of the employer (or who is later restored to service after being entitled to receive a dismissal allowance), who is required to change the point of his employment as a result of the Project, and is thereby required to move his place of residence.

If the employee owns his own home in the locality from which he is required to move, he shall, at his option, be reimbursed by the Recipient for any loss suffered in the sale of his home for less than its fair market value, plus conventional fees and closing costs, such loss to be paid within thirty (30) days of settlement or closing on the sale of the home. In each case, the fair market value of the home in question shall be determined as of a date sufficiently prior to the date of the Project, so as to be unaffected thereby. The Recipient shall, in each instance, be afforded an opportunity to purchase the home at such fair market value before it is sold by the employee to any other person and to reimburse the seller for his conventional fees and closing costs.

If the employee is under a contract to purchase his home, the Recipient shall protect him against loss under such contract, and in addition, shall relieve him from any further obligation thereunder.

If the employee holds an unexpired lease of a dwelling occupied by him as his home, the Recipient shall protect him from all loss and cost in securing the cancellation of said lease.

(b) No claim for loss shall be paid under the provisions of this paragraph unless such claim is presented to the Recipient within one year after the effective date of the change in residence.

(c) Should a controversy arise in respect to the value of the home, the loss sustained in its sale, the loss under a contract for purchase, loss and cost in securing termination of a lease, or any other question in connection with these matters, it shall be decided through a joint conference between the employee, or his union, and the Recipient, In the event they are unable to agree, the dispute or controversy may be referred by the Recipient or the union to a board of competent real estate appraisers selected in the following manner: one (1) to be selected by the representatives of the employee, and one (1) by the Recipient, and these two, if unable to agree within thirty (30) days upon the valuation, shall endeavor by agreement with ten (10) days thereafter to select a third appraiser or to agree to a method by which a third appraiser shall be selected, and failing such agreement, either party may request the State or local Board of Real Estate Commissioners to designate within ten (10) days a third appraiser, whose designation will be binding upon the parties and who jurisdiction shall be limited to determination of the issues raised in this paragraph only. A decision of a majority of the appraisers shall be required and said decision shall be final, binding, and conclusive. The compensation and expenses of the neutral appraiser, including expenses of the appraisal board, shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the compensation of the appraiser selected by such party.

(d) Except as otherwise provided in paragraph (11)(b) hereof, changes in place of residence, subsequent to the initial changes as a result of the Project, which are not a result of the Project but grow out of the normal exercise of seniority rights, shall not be considered within the purview of this paragraph.

(e) "Change in residence" means transfer to a work location which is either (A) outside a radius of twenty (20) miles of the employee's former work location and farther from his residence than was his former work location, or (B) is more than thirty (30) normal highway route miles from his residence and also farther from his residence than was his former work location.

(13) A dismissed employee entitled to protection under this agreement may, at his option within twenty-one (21) days of his dismissal, resign and (in lieu of all other benefits and protections provided in this agreement) accept a lump sum payment computed in accordance with section (9) of the Washington Job Protection Agreement of May 1936:

Length of Service	Separation Allowance
1 year and less than 2 years	3 months' pay
2 " " " " 3 "	6 " "
3 " " " " 5 "	9 " "
5 " " " " 10 "	12 " "
10 " " " " 15 "	12 " "
15 " " over	12 " "

In the case of an employee with less than one year's service, five days' pay, computed by multiplying by 5 the normal daily earnings (including regularly scheduled overtime, but excluding other overtime payments) received by the employee in the position last occupied, for each month in which he performed service, will be paid as the lump sum.

(a) Length of service shall be computed as provided in Section 7(b) of the Washington Job Protection Agreement, as follows:

For the purposes of this agreement, the length of service of the employee shall be determined from the date he last acquired an employment status with the employing carrier and he shall be given credit for one month's service for each month in which he performed any service (in any capacity whatsoever) and twelve (12) such months shall be credited as one year's service. The employment status of an employee shall not be interrupted by furlough in instances where the employee has a right to and does return to service when called. In determining length of service of an employee acting as an officer or other official representative of an employee organization, he will be given credit for performing service while so engaged on leave of absence from the service of a carrier.

(b) One month's pay shall be computed by multiplying by 30 the normal daily earnings (including regularly scheduled overtime, but excluding other overtime payments) received by the employee in the position last occupied prior to time of his dismissal as a result of the Project.

(14) Whenever used herein, unless the context requires otherwise, the term "protective period" means that period of time during which a displaced or dismissed employee is to be provided protection hereunder and extends from the date on which an employee is displaced or dismissed to the expiration of six (6) years therefrom, provided, however, that the protective period for any particular employee during which he is entitled to receive the benefits of these provisions shall not continue for a longer period following the date he was displaced or dismissed than the employee's length of service, as shown by the records and labor agreements applicable to his employment prior to the date of his displacement or his dismissal.

(16) Nothing in this agreement shall be construed as depriving any employee of any rights or benefits which such employee may have under any existing job security or other protective conditions or arrangements by collective bargaining agreement or law where applicable, including P. L. 93-236, enacted January 2, 1974; provided that there shall be no duplication of benefits to any employees, and, provided further, that any benefit under the agreement shall be construed to include the conditions, responsibilities, and obligations accompanying such benefit.

(17) The Recipient shall be financially responsible for the application of these conditions and will make the necessary arrangements so that any employee affected as a result of the Project may file a claim through his union representative with the Recipient within sixty (60) days of the date he is terminated or laid off as a result of the Project, or within eighteen (18 months of the date his position with respect to his employment is otherwise worsened as a result of the Project; provided, in the latter case, if the events giving rise to the claim have occurred over an extended period, the 18-month limitation shall be measured from the last such event; provided, further, that no benefits shall be payable for any period prior to six (6) months from the date of the filing of the claim. Unless such claims are filed with the Recipient within said time limitations, the Recipient shall thereafter be relieved of all liabilities and obligations related to said claims. The Recipient will fully honor the claim, making appropriate payments, or will give notice to the claimant and his representative of the basis for denying or modifying such claim, giving reasons therefor. In the event the Recipient fails to honor such claim, the Union may invoke the following procedures for further joint investigation of the claim by giving notice in writing of its desire to pursue such procedures. Within ten (10) days from the receipt of such notice, the parties shall exchange such factual material as may be requested of them relevant to the disposition of the claim and shall jointly take such steps as may be necessary or desirable to obtain from any third party such additional factual material as may be relevant. In the event the claim is so rejected by the Recipient, the claim may be processed to arbitration as hereinabove provided by paragraph (15). Prior to the arbitration hearing, the parties shall exchange a list of intended witnesses. In conjunction with such proceedings, the impartial arbitrator shall have the power to subpoena witnesses upon the request of any party and to compel the production of documents and other information denied in the pre-arbitration period which is relevant to the disposition of the claim.

Nothing included herein as an obligation of the Recipient whall be construed to relieve any other urban mass transportation employer of the employees covered hereby of any obligations which it has under existing collective bargaining agreements, including but not limited to obligations arising from the benefits referred to in paragraph (10) hereof, nor make any such employer a third-party beneficiary of the Recipient's obligations contained herein, nor deprive the Recipient of any right of subrogation.

(18) During the employee's protective period, a dismissed employee shall, if he so requests, in writing, be granted priority of employment to fill any vacant position within the jurisdiction and control of the Recipient, resonably comparable to that which he held when dismissed, for which he is, or by training or retraining can become, qualified; not, however, in contravention of collective bargaining agreements relating thereto. In the event such employee requests such training or re-training to fill such vacant position, the Recipient shall provide for such training or re-training at no cost to the employee. The employee shall be paid their salary or hourly rate provided for in the applicable collective bargaining agreement for such position, plus any displacement allowance to which he may be otherwise entitled. If such dismissed employee who has made such request fails, without good cause, within ten (10) days to accept an offer of a position comparable to that which he held when dismissed for which he is qualified, or for which he has satisfactorily completed such training , he shall, effective at the expiration of such ten-day period, forfeit all rights and benefits under this agreement.

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As between employees who request employment pursuant to this paragrpah, the following order where applicable shall prevail in hiring such employees:

(a) Employees in the craft or class of the vacancy shall be given priority over employees without seniority in such craft or class;

(b) As between employees having seniority in the craft or class of the vacancy, the senior employees, based upon their service in that craft or class, as shown on the appropriate seniority roster, shall prevail over junior employees;

(c) As between employees not having seniority in the craft or class of the vacancy, the senior employees, based upon their service in the crafts or classes in which they do have seniority as shown on the appropriate seniority rosters, shall prevail over junior employees.

(19) This agreement shall be binding upon the successors and assigns of the parties hereto, and no provisions, terms, or obligations herein contained shall be affected, modified, altered or changed in any respect whatsoever by reason of the arrangements made by or for the Recipient to manage and operate the system.

Any such person, enterprise, body, or agency, whether publicly- or privagely-owned, which shall undertake the management or operation of the system, shall agree to be bound by the terms of this agreement and accept the responsibility for full performance of these conditions.

(20) The employees covered by this agreement shall continue to receive any applicable coverage under Social Security, Railroad Retirement, Workmen's Compensation, unemployment compensation, and the like. In no event shall these benefits be worsened as a result of the Project.

(21) In the event any provision of this agreement is held to be invalid, or otherwise unenforceable under the federal, State, or local law, in the context of a particular Project, the remaining provisions of this agreement shall not be affected and the invalid or unenforceable provision shall be renegotiated by the Recipient and the interested union representatives of the employees involved for purpose of adequate replacement under 13(c) of the Act. If such negotiation shall not result in mutually satisfactory agreement, any party may invoke the jurisdiction of the Secretary of Labor to determine substitute fair and equitable employee protective arrangements for application only to the particular Project, which shall be incorporated in this agreement only as applied to that Project, and any other appropriate action, remedy, or relief.

(25) If any employer of the employees covered by this agreement shall have rearranged or adjusted its forces in anticipation of the Project, with the effect of depriving an employee of benefits to which he should be entitled under this agreement, the provisions of this agreement shall apply to such employee as of the date when he was so affected.

[4510-23]

Title 29—Labor

CHAPTER II—OFFICE OF THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS, DEPARTMENT OF LABOR

PART 215—GUIDELINES, SECTION 13(c), URBAN MASS TRANSPORTATION ACT OF 1964, AS AMENDED

Procedures Followed By Secretary For Determining That Fair And Equitable Arrangements Have Been Made For Protection Of Employees Affected By Assistance Under Urban Mass Transportation Act.

AGENCY: Department of Labor.

ACTION: Final Statement of Policy and Procedures.

SUMMARY: The Urban Mass Transportation Act provides, in general, that it shall be a condition of any federal financial assistance by the Department of Transportation to states and local public bodies in financing mass transportation systems, that fair and equitable arrangements must be made, as determined by the Secretary of Labor, to protect the interests of employees affected by assistance. In conjunction with the Secretary of Labor's role in making such determinations, we are adding Part 215 to provide information concerning the Department of Labor's administrative procedure in processing applications for assistance under the Urban Mass Transportation Act, and certification by the Secretary of Labor of acceptable protective arrangements.

EFFECTIVE DATE: This part becomes effective May 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Lary F. Yud, Division of Employee Protections, Labor-Management Services Administration, U.S. Department of Labor, Room N-5641, 200 Constitution Avenue NW., Washington, D.C. 20210; phone number 202-523-6495.

SUPPLEMENTARY INFORMATION: On January 18, 1977 there was published in the FEDERAL REGISTER (42 FR 3319) a notice of proposed guidelines with an amendment to 29 CFR Chapter II by adding a new Part 215. Corrections to the proposed guidelines were published on January 25, 1977 (42 FR 4492). All comments on the proposed guidelines were given due consideration.

DISCUSSION OF MAJOR COMMENTS

During the review of the comments received, certain key issues emerged and the decisions thereon and modifications, if any, to the proposed guidelines were as follows:

DEFINITIONS

A number of respondents recommended that definitions of such terms as "employees" be included in the guidelines. The purpose of the guidelines is to provide information concerning the Department of Labor's procedures in processing UMTA applications for employee protection purposes. As such, the Department has avoided to the extent possible including substantive provisions.

DOL REFERRAL PROCEDURE

A number of comments addressed the Department's practice of referring applications to the international offices of unions representing affected employees in individual project situations. It was proposed that the guidelines provide for referral of applications to local unions. It is a common practice of labor organizations in the transit industry to provide for centralized handling of employee protection arrangements at the international union level or by organizations which are affiliations of unions. Too, the constitutions of some unions require international approval of agreements. The Department of Labor believes that coordination of employee protection arrangements through international unions and affiliations of such unions greatly facilitates the orderly and expeditious processing of UMTA applications. No change has been made from the proposed version in the final guidelines.

PROTECTIVE ARRANGEMENTS WHEN STATE LAW PROHIBITS BARGAINING

Questions were raised concerning the effect of the procedure requiring the "negotiation" of protective arrangements in states where bargaining is prohibited for public employees. A number of respondents stated that under existing state law, they are unable to "bargain" protective terms and conditions and thus they feel they may be unable legally to comply with our guidelines. Although only a small number of applicants fall into this situation, we recognize potential conflict here. Special procedures have been followed in the past in these cases, such as the joint development of terms and conditions by the parties which are then incorporated into a resolution adopted by the appropriate public body. The intent of our guidelines is not to foreclose resort to such special procedures where they are necessary to satisfy the Federal statute in a manner that does not violate State or local law. A new paragraph has been added to § 215.3 to accommodate this practice.

TIME LIMITS ON NEGOTIATIONS

The single provision which received the most comments was § 215.3(d), dealing with the setting of time limitations on negotiations by the Secretary of Labor. Comments received from applicants stressed the need to establish certain fixed time limits by which certification action would be final. Comments from union organizations stressed the strangulation such time limits would place on the negotiating process. The Department of Labor recognizes that the negotiation of employee protective arrangements can seem interminable if there is no effective procedure pressing for their conclusion or alternative action by the Secretary of Labor. At the same time, we are very fearful that a fixed time limit automatically applicable to every case would constrict negotiations and replace a procedure which emphasizes voluntary action by the parties with one dominated by government decision making. This becomes all the more troublesome with the realization that the establishment of fixed time limits would require the accompanying adoption of formal review standards which would delve into such questions as whether the parties had made a "good faith" attempt to reach an agreement during the time alloted. Upon review, and in the face of such concerns and all available evidence we have concluded that fixed time limits should not be adopted. The record of recent case handling does not support the need for a drastic change in current procedures. Therefore, § 215.3(d) of the guidelines as proposed has been rewritten.

As rewritten, § 215.3(d) provides for the establishment of time schedules in appropriate cases. Under this procedure, the Department of Labor will solicit from the Department of Transportation, at the time individual grant applications are referred for certification, information concerning the anticipated funding approval date for the subject project. As part of its initial review of an application, the Department of Labor will determine whether a time schedule should be established for the processing of the application for employee protective arrangement certification purposes. In situations where no action on a project is predictable by the Department of Transportation, it is expected that no specific time schedule will be set. However, when the Department of Transportation advises that it seeks to approve a project by a certain date and absent special circumstances, the Department of Labor will establish a time schedule which to the extent possible conforms to the projected grant

approval date. That time schedule will be included in the Department of Labor's referral letters to the parties or subsequent written communications. The parties will thereby be placed on notice of the Department of Labor's target date for the certification of the project. Prior to that date the Department of Labor will contact the parties to determine what progress is being made and to determine if the Department should become actively involved in the negotiations.

The time schedule will be continually subject to review and modification based on exigencies that arise during the processing. The parties can expect that the negotiating process must be pursued expeditiously and in good faith. If progress toward an agreement becomes stalled or irreconcilable issues are confronted, the Department of Labor will incorporate into the time schedule dates by which the Secretary of Labor will take alternative action, including action to certify or to deny certification of the application.

Section 215.3(f) has been rewritten to make it consistent with § 215.3(d) as rewritten.

AMENDATORY APPLICATIONS

The section of the proposed guidelines dealing with the processing of amendatory applications has been retained without modification. A number of comments were addressed to this section, including one which would have provided interested parties the opportunity to object to the Secretary of Labor's decision prior to its final implementation. We believe that our experience enables us to make the determinations called for in this section without review prior to issuance. The great majority of such cases involve straight-forward factors for review such as cost-overruns resulting from bids higher than anticipated. To open up such determinations to outside review is unnecessary and cumbersome. As we do now, all parties will be notified that we have made these decisions and furnished with copies thereof and the relevant material upon which those decisions were based.

CERTIFICATIONS OF RECURRING OPERATING GRANTS

In addition to the section of the guidelines on time limits, the section entitled "Recertifications based on existing agreements" received a great deal of attention in the comments. The purpose of this section as originally drafted was to provide some stability and longevity to protective arrangements developed for projects which were recurring in nature. Certain categories of such projects were listed and the proposed procedure would have had the Secretary of Labor reapply protective arrangements which existed in each category unless it was determined that other action was more appropriate. A number of comments received raised questions about the specific categories of recurring grants set forth in the proposed guidelines. The existence of a "normal equipment replacement or maintenance cycle" was questioned. During our review it became obvious that the categorization of projects into easily usable groups was fraught with difficulty and conflict.

In an effort to determine the necessity for this proposed procedure, the Department of Labor has reviewed all certification activity for the twelve-month period, January through December, 1977. During that period of time, the Department of Labor issued 748 certification actions. Ninety-nine of those certifications involved non-union situations, where the Department sets forth in its letter of certification all protective terms and conditions that will apply. Another 147 cases involved situations where, after review, the Department on its own initiative determined that a previous certification could be applied to revised or amendatory applications. Another 222 actions involved utilization of the so-called model agreement for operating assistance grants. Of the remaining 280 certification actions, 172 were based on the voluntary agreement of involved parties to apply the terms and conditions of previously developed protective agreements to new projects (referred to as "piggybacking"). That leaves 108 cases, less than 15 percent, in which new agreements were developed. Included in these cases were many specialized projects, including some involving paratransit and cases under the Section 17 grant program.

Further in comments directed to the recurring grant section, a number of respondents recommended inclusion of operating assistance grants as a recurring grant category. Such grants are obviously recurring and further constitute a special case because of the existence of the so-called model agreement for application to operating assistance grants. Moreover, the model agreement has served as the basis for some 450 certification actions on operating assistance applications over the 24 month period from January, 1976 through December, 1977. In view of the statistics cited above and the comments, which provide no support for any major change in current procedures, and the many very valid questions of interpretation raised about the recurring grant categories in the proposed guidelines, this section has been rewritten. As rewritten, the specific categories of recurring grants have been deleted as well as the provision allowing for "other categories to be determined by the Secretary" and the special procedure adopted has been limited to general purpose operating assistance grants.

NEGATIVE DECLARATION

Four respondents recommended adoption of the so-called "negative declaration" procedure for general purpose operating assistance grants. Under this proposal, the applicant would merely warrant that the project would have no adverse impact on employees. This would be in lieu of specific protective terms and conditions. A savings clause would be included in the event of unanticipated effects. The Department of Labor has previously reviewed this proposed procedure in detail and in its view it is contrary to the statute.

Accordingly, 29 CFR Chapter II is amended by adding a new Part 215 to read as follows:

Sec.
215.1 Purpose.
215.2 General.
215.3 Employees Represented by a Labor Organization.
215.4 Employees Not Represented by a Labor Organization.
215.5 Processing of Amandatory Applications.
215.6 Recurring Operating Grants and the Model Agreement.
215.7 Department of Labor contract.

AUTHORITY: Secretary's Order No. 11-72, May 12, 1972.

§ 215.1 Purpose.

(a) The purpose of these guidelines is to provide information concerning the Department of Labor's administrative procedures in processing applications for assistance under the Urban Mass Transportation Act of 1964, as amended (hereinafter "the Act").

(b) Section 13(c) of the Act reads as follows:

It shall be a condition of any assistance under section 3 of this Act that fair and equitable arrangements are made, as determined by the Secretary of Labor, to protect the interests of employees affected by such assistance. Such protective arrangements shall include, without being limited to, such provisions as may be necessary for (1) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise; (2) the continuation of collective bargaining rights; (3) the protection of individual employees against a worsening of their positions with respect to their employment; (4) assurances of employment to employees of acquired mass transportation systems and priority of reemployment of employees terminated or laid off; and (5) paid training or retraining programs. Such arrangements shall include provisions protecting individual employees against a worsening of their positions with respect to their employment which shall in no event provide benefits less than those established pursuant to section 5(2)(f) of the Act of February 4, 1887 (24 Stat. 379), as amended. The contract for the granting of any such assistance shall specify the terms and conditions of the protective arrangements.

§ 215.2 General.

Upon receipt of copies of applications for Federal assistance subject to section 13(c), together with a request for the certification of employee protective arrangements from the Department of Transportation, the Department of Labor will process those applications, which may be in either preliminary or final form. To facilitate review, the section of the application dealing with labor and relocation should estimate the effects on mass transportation employees of urban mass transportation carriers of the contemplated Federal assistance including possible impact of the assistance upon existing collective bargaining agreements, employment rights, privileges and benefits (including pensions) and the continuation of collective bargaining rights. The application should identify the labor organization, if any, representing employees of urban mass transit carriers in the area of the proposed project and describe what steps, if any, have been taken to develop the required employee protections.

§ 215.3 Employees represented by a labor organization.

(a)(1) If affected employees are represented by a labor organization it is expected that protective arrangements shall be the product of negotiation, pursuant to these guidelines.

(2) In instances where states or political subdivisions are subject to legal restrictions on bargaining with employee organizations, the Department of Labor will utilize special procedures to satisfy the Federal statute in a manner which does not contravene state or local law. For example, employee protective terms and conditions, acceptable to both employee and applicant representatives, may be incorporated into a resolution adopted by the involved local government.

(b) Upon receipt of an application involving affected employees represented by a labor organization, the Department of Labor will refer a copy of the application to that organization and notify the applicant of referral.

(c) Following referral and notification under paragraph (b) of this section, and subject to the exceptions defined in §§ 215.5 and 215.6, parties will be expected to engage in good faith efforts to reach mutually acceptable protective arrangements through negotiation.

(d) As part of the Department of Labor's review of an application, a time schedule for case processing will be established by the Department of Labor where appropriate. Absent special circumstances, the time schedule will be established in cases where funding approval is anticipated and will, to the extent possible, conform to the Department of Transportation's projected time frame for funding. In situations where no action on a project by a specific time is predictable by the Department of Transportation, it is expected that no time schedule will be set by the Department of Labor. Any time schedule established by the Department of Labor will be specified in its referral letters under § 215.3(b) or subsequent written communications to the parties. The parties are thereby placed on notice of the Department's target date for the certification of the project. It is expected that negotiations will be pursued expeditiously and in good faith. The Secretary will monitor progress of negotiations and in cases where negotiations break down or irreconcilable issues are present, the Department will incorporate into the time schedule dates by which the Secretary will take alternative action.

(e) The Secretary of Labor will review negotiated protective arrangements. If an arrangement meets the requirements of section 13(c), the Secretary will so certify to the Urban Mass Transportation Administrator. If the arrangement is not in conformity with the provisions of section 13(c), the Secretary may grant parties additional time to negotiate a satisfactory agreement, or he may set forth the provisions of the protective arrangement himself.

(f) If during the processing of an application the Secretary finds that the parties are unable to reach agreement, he will review the positions of the parties to determine appropriate action. Such action may include the Secretary's determination of the terms and conditions upon which he will base his certification or his refusal to certify for specified reasons.

§ 215.4 Employees not represented by a labor organization.

(a) The certification made by the Secretary will afford the same level of protection to those employees who are not represented by labor organizations.

(b) If there is no labor organization representing employees, the Secretary will set forth the protective terms and conditions in his letter of certification.

§ 215.5 Processing of amendatory applications.

When an application is supplemental to or revises or amends in immaterial respects an application for which the Department of Labor has already certified that fair and equitable arrangements have been made to protect the interests of mass transit employees affected by the subject project, and absent unusual circumstances, the Department of Labor will on its own initiative apply to the supplemental or other amendatory application the same terms and conditions as were certified for the subject project as originally constituted. The Department of Labor's processing of these applications will be expedited.

§ 215.6 Recurring Operating Grants and the Model Agreement.

(a) In instances where the Department of Labor receives general purposes operating assistance grant applications and the parties have previously endorsed the Model 13(c) agreement (referred to also as the "National Agreement"), the Department will serve notice to the subject parties that it will certify the project on the basis of the Model Agreement unless informed within two weeks from the issuance of our letter of notice that special circumstances are presented by the project which require changes in the Model Agreement or supplemental arrangements as applied to the particular project involved. In the event the Secretary determines that changes in the Model Agreement or supplemental arrangements are required, the Secretary will direct the parties to negotiate such arrangements in accordance with the case processing procedure described in § 215.3 hereof. If the Secretary determines that no special circumstances exist, he will so advise the parties and certify the project on the basis of the Model Agreement.

(b) The Model (or National) Agreement mentioned in paragraph (a) of this section refers to the agreement executed on July 23, 1975 by representatives of the American Public Transit Association and the Amalgamated Transit Union and Transport Workers Union of America and on July 31, 1975 by representatives of the Railway Labor Executives' Association, Brotherhood of Locomotive Engineers, Brotherhood of Railway and Airline Clerks and International Association of Machinists and Aerospace Workers. The agreement is intended to serve as a ready-made employee protective arrangement for adoption by local parties in specific operating assistance project situations. The Secretary has determined that this agreement provides fair and equitable arrangements to protect the interests of employees in general purpose operating assistance project situations and meets the requirements of Section 13(c).

§ 215.7 Department of Labor contact.

Questions concerning the subject matter covered by these guidelines should be addressed to the Division of Employee Protections, Labor-Management Services Administration, U.S. Department of Labor, Room N-5641, 200 Constitution Avenue NW., Washington, D.C. 20210; phone number 202-523-6495. (Secretary's Order No. 11-72, May 12, 1972.)

Signed at Washington, D.C., this 28th day of March, 1978.

FRANCIS X. BURKHARDT,
Assistant Secretary for Labor-Management Relations.

[FR Doc. 78-8560 Filed 3-30-78; 8:45 am]

FORMULA GRANT PROGRAM FOR NON-URBANIZED AREAS

Sec. 18. (a) The Secretary shall apportion for expenditure in each fiscal year the sum appropriated pursuant to section 4(e) of this Act. Such sums shall be made available for expenditure for public transportation projects in areas other than urbanized areas on the basis of a formula under which the Government of each State will be entitled to receive an amount equal to the total amount so apportioned, multiplied by the ratio which the population of areas other than urbanized areas in such State, as designated by the Bureau of the Census, bears to the total population of areas other than urbanized areas. Appropriations pursuant to the authority of this section may be made in an appropriation Act for a fiscal year preceding the fiscal year in which the appropriation is to be available for obligation.

(b) Funds made available under this section may be used for public transportation projects which are included in a State program of projects for public transportation services in areas other than urbanized areas. Such program shall be submitted annually to the Secretary for his approval. The Secretary shall not approve the program unless he finds that it provides for a fair and equitable distribution of funds within the State, including Indian reservations within the State, and provides for the maximum feasible coordination of public transportation services assisted under this section with transportation services assisted by other Federal sources.

(c) Sums apportioned under this subsection shall be available for obligation by the Governor for a period of three years following the close of the fiscal year for which the sums are apportioned and any amounts remaining unobligated at the end of such period shall be reapportioned among the States for the succeeding fiscal year. States may utilize sums apportioned under this section for any projects eligible under this Act which are appropriate for areas other than urbanized areas, including purchase of service agreements with private providers of public transprotation service, to provide local transportation service, as defined by the Secretary, in areas other than urbanized areas. Eligible recipients may include State agencies, local public bodies and agencies thereof, nonprofit organizations, and operators of public transportation services.

(d) The Secretary may permit an amount, not to exceed 15 per centum of the amount apportioned, to be used by each State for administering this section and for providing technical assistance to recipients of funds under this section. Such technical assistance may include project planning, program development, management development, coordination of public transportation programs (public and private), and such research as the State may deem appropriate to promote effective means of delivering public transportation service in areas other than urbanized areas.

(e) The Federal share under this Act for any construction project under this section shall not exceed 80 per centum of the net cost of such construction project, as determined by the Secretary. The Federal share under this section for operating expenses, as defined by the Secretary, shall not exceed 50 per centum of the net cost of such operating expense project. At least 50 per centum of the remainder shall be provided in cash, from sources other than Federal funds or revenues from the operation of public mass transportation systems. Any public or private transit system funds so provided shall be solely from undistributed cash surpluses, replacement, or depreciation funds or reserves available in cash or new capital.

(f) Grants under this section shall be subject to such terms and conditions (which are appropriate to the special needs of public transportation in areas other than urbanized areas) as the Secretary may prescribe. The provisions of sections 13(c) and 3(e)(4) of this Act shall apply in carrying out projects under this section. For the purposes of this section, the Secretary of Labor may waive any provisions of section 13(c) of this Act. Nothing under this subsection shall affect or discharge any responsibility of the Secretary under any other provision of Federal law.

(g) The Secretary shall, in cooperation with State regulatory commissions, make an evaluation of the escalation of insurance rates for operators of public transportation in rural areas and for providers of special transportation services for elderly and handicapped persons. The Secretary shall, not later than January 1, 1980, report to Congress the results of this evaluation together with his recommendations for necessary legislation.

URBAN MASS TRANSPORTATION ACT OF 1964, AS AMENDED

Section 13(c)

It shall be a condition of any assistance under Section 3 of this Act that fair and equitable arrangements are made, as determined by the Secretary of Labor, to protect the interests of employees affected by such assistance. Such protective arrangements shall include, without being limited to, such provisions as may be necessary for (1) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise; (2) the continuation of collective bargaining rights; (3) the protection of individual employees against a worsening of their positions with respect to their employment; (4) assurances of employment to employees of acquired mass transportation systems and priority of reemployment of employees terminated or laid off; and (5) paid training or retraining programs. Such arrangements shall include provisions protecting individual employees against a worsening of their positions with respect to their employment which shall in no event provide benefits less than those established pursuant to section 5(2)(f) of the Act of February 4, 1887 (24 Stat. 379), as amended. The contract for the granting of any such assistance shall specify the terms and conditions of the protective arrangement.

THE INTERSTATE COMMERCE ACT, AS AMENDED

Section 5(2)(f)

As a condition of its approval, under this paragraph (2), of any transaction involving a carrier or carriers by railroad subject to the provisions of this part, the Commission shall require a fair and equitable arrangement to protect the interests of the railroad employees affected. In its order of approval the Commission shall include terms and conditions providing that during the period of four years from the effective date of such order such transaction will not result in employees of the carrier or carriers by railroad affected by such order being in a worse position with respect to their employment, except that the protection afforded to any employee pursuant to this sentence shall not be required to continue for a longer period, following the effective date of such order, than the period during which such employee was in the employ of such carrier or carriers prior to the effective date of such order. Notwithstanding any other provisions of this Act, an agreement pertaining to the protection of the interests of said employees may hereafter be entered into by any carrier or carriers by railroad and the duly authorized representative or representatives of its or their employees. Such arrangements shall contain provisions no less protective of the interests of employees than those heretofore imposed pursuant to this subdivision and those established pursuant to section 405 of the Rail Passenger Service Act (45 U.S.C. 565).

RAIL PASSENGER SERVICE ACT OF 1970, AS AMENDED

Sec. 405. Protective Arrangements for Employees

(a) A railroad shall provide fair and equitable arrangements to protect the interests of employees, including employees of terminal companies, affected by a discontinuance of intercity rail passenger service whether occurring before, on, or after January 1, 1975. A discontinuance of intercity rail passenger service shall include any discontinuance of service performed by railroad under any facility or service agreement under sections 305 and 402 of this Act pursuant to any modification or termination thereof or an assumption of operations by the Corporation.

(b) Such protective arrangements shall include, without being limited to, such provisions as may be necessary for (1) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) to such employees under existing collective bargaining agreements or otherwise; (2) the continuation of collective bargaining rights; (3) the protection of such individual employees against a worsening of their positions with respect to their employment; (4) assurances of priority of reemployment of employees terminated or laid off; and (5) paid training or retraining programs. Such arrangements shall include provisions protecting individual employees against a worsening of their positions with respect to their employment which shall in no event provide benefits less than those established pursuant to section 5(2)(f) of the Interstate Commerce Act. Any contract entered into pursuant to the provisions of this title shall specify the terms and conditions of such protective arrangements. No contract under section 401(a)(1) of this Act between a railroad and the Corporation may be made unless the Secretary of Labor has certified to the Corporation that the labor protective provisions of such contract afford affected employees, including affected terminal employees, fair and equitable protection by the railroad.

(c) Upon commencement of operations in the basic system, the substantive requirements of subsections (a) and (b) of this section shall apply to the Corporation and its employees in order to insure the maintenance of the protective arrangements specified in such subsections, except that nothing in this subsection shall be construed to impose upon the Corporation any obligation of a railroad with respect to any right, privilege, or benefit earned by any employee as a result of prior service performed for such railroad. The Secretary of Labor shall certify that affected employees of the Corporation have been provided fair and equitable protection as required by this section within one hundred and eighty days after assumption of operations by the Corporation.

(d) The Corporation shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors and subcontractors in the performance of construction work financed with the assistance of funds received under any contract or agreement entered into under this title shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act. The Corporation shall not enter into any such contract or agreement without first obtaining adequate assurance that required labor standards will be maintained on the construction work. Health and safety standards promulgated by the Secretary of Labor pursuant to section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) shall be applicable to all construction work performed by a railroad employee. Wage rates provided for in collective bargaining agreements negotiated under and pursuant to the Railway Labor Act shall be considered as being in compliance with the Davis-Bacon Act.

(e) The Corporation shall not contract out any work normally performed by employees in any bargaining unit covered by a contract between the Corporation or any railroad providing intercity rail passenger service upon the date of enactment of this Act and any labor organization, if such contracting out shall result in the layoff of any employee or employees in such bargaining unit.

(f) The Corporation shall take such action as may be necessary to assure that, to the maximum extent practicable, any railroad employee eligible to receive free or reduced-rate transportation by railroad on April 30, 1971, under the terms of any policy or agreement in effect on such date will be eligible to receive, provided space is available, free or reduced-rate transportation on any intercity rail passenger service provided by the Corporation under this Act, on terms similar to those available on such date to such railroad employee under such policy or agreement. However, the Corporation may apply to all railroad employees eligible to receive free or reduced-rate transportation under such policies or agreements, a single system-wide schedule of terms determined by the Corporation to reflect terms applicable to the majority of such employees under those policies or agreements in effect on April 30, 1971. The Corporation shall be reimbursed by the railroads by way of payment or offset for such costs as may be incurred in providing transportation services to railroad employees under any policy or agreement referred to in the first sentence of this subsection, including the costs of implementing and administering this section. Within ninety days after the enactment of this sentence, each railroad shall enter into an agreement with the Corporation for the payment of such expenses. If the Corporation and a railroad are unable to agree as to the amount of any payment owed by the railraod under this subsection, the matter shall be referred to the Commission for decision. The Commission, upon investigation, shall decide the issue within ninety days following the date of referral, and its decision shall be binding on both parties. If any railroad company which operates intercity passenger service not under contract with the Corporation notifies the Corporation and railroads which have entered into the agreement specifies above that it will accept the terms of the system-wide schedule of terms and the compensation specified in the agreement, such railroad company shall be reimbursed for services to railroad employees in accordance with the agreements. As used in this subsection, the term 'railroad employee' means (1) an active full-time employee, including any such employee during a period of furlough or while on leave of absence, of a railroad or terminal company, (2) a retired employee of a railroad or terminal company, and (3) the dependents of any employee referred to in clause (1) or (2) of this sentence.

Appendix F

NOTICE OF RECEIPT OF FEDERAL ASSISTANCE
AND ACCEPTANCE OF SPECIAL 13(c) WARRANTY

Section 18 - Labor Protections

The name of (Recipient) is a recipient of Federal assistance under the Section 18 Formula Grant Program of the Urban Mass Transportation Act of 1964, as amended. As a condition of receipt of this assistance, the (Recipient) has agreed to be bound by the Special Section 13(c) Warranty for the Public Transportation for Nonurbanized Areas Program. These terms and conditions have been determined by the Secretary of Labor to be fair and equitable in order to protect the interests of employees who may be affected by the Project and are in satisfaction of the requirements of Section 13(c) of the Act. The terms and conditions of the Special 13(c) Warranty for the Nonurbanized and Rural Program have been incorporated into the Federal grant contract between the Federal Highway Administration and the (Public Body or/Recipient). A copy of the Special 13(c) Warranty is attached to this notice.

Paragraph 4 of the Special 13(c) Warranty provides for, among other things, a procedure to resolve disputes or controversies arising over the application, interpretation or enforcement of the Special 13(c) Warranty. In the event a party believes that he has been adversely affected as a result of the assistance and the dispute has not been resolved within 30 days after it first arises, then either party may refer such dispute to a final and binding settlement procedure. If the parties are able to agree upon a procedure, then that agreed upon procedure is to be used. If the parties cannot agree, then either party may contact the Department of Labor, which will itself review the dispute and issue a determination to resolve it or will designate an impartial third party to hear the dispute and issue a final and binding determination.

In the event a party to a dispute wants to contact the Department of Labor, the party should write a letter to the Office of Labor-Management Relations Services, Room N-5653, U. S. Department of Labor, Washington, D. C., 20210, Attn: Division of Employee Protections. The letter should specify the nature of the dispute, identify the parties and describe the steps already taken by the parties to resolve the dispute.

Appendix G

Sample Request for Becoming Party to
the Special Section 13(c) Warranty

Director
Office of Labor-Management Relations
Services
United States Department of Labor
200 Constitution Avenue, NW
Room N-5653
Washington, D.C. 20210

ATTN: Division of Employee Protections

Dear Director:

Pursuant to paragraph (9) of the Special Section 13(c) Warranty for application to the Nonurbanized and Rural Program, we hereby serve notice that we wish to become a party to the Special Section 13(c) Warranty which has been agreed to by (Public Body) for incorportation in the Federal grant contract for a project numbered _____.

We desire to become a party in behalf of our _____ Local, representing employees of (name of employer).

Sincerely,

cc: Recipient
Public Body

Appendix H

DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY FOR
LABOR-MANAGEMENT RELATIONS

DIVISION OF EMPLOYEE PROTECTIONS

Notice of Request for Waiver of Section 13(c)
Requirements for a Grant Under Section 18
of the Urban Mass Transportation Act

Notice is hereby given that (name of Recipient, Public Body or legally responsible party designated by the Public Body) has submitted information that no employees will be affected by a grant application request filed by (name of applicant) under Section 18 of the UMT Act and has requested in writing a waiver of the protections required under Section 13(c) of the Urban Mass Transportation Act of 1964, as amended. The proposed project is for the purpose of providing (brief description of the project).

Sections 3(e)(4) and 13(c) of the Urban Mass Transportation Act provide, in general, that it shall be a condition of any Federal assistance by the Department of Transportation, that fair and equitable arrangements are made, as determined by the Secretary of Labor, to protect the interests of employees who may be affected by such assistance. Such protections include, among other things, the preservation of rights, privileges and benefits including pension rights and collective bargaining rights. Employees may be eligible for monetary allowances if they have been dismissed, displaced or forced to relocate as a result of the Federal assistance. Employees who have been laid off as a result of the Federal assistance are also entitled to priority of reemployment or paid training programs.

Section 18 provides that the Secretary of Labor may waive the provisions of Section 13(c) in carrying out projects under this Section. The provisions of Section 13(c) will be waived only where, at the time of the requested waiver, the Secretary determines that there are no employees of the Recipient or of any other public transportation providers in the transportation service area of the Project who could be potentially affected. In order for an employee to be affected, it is not necessary that the anticipated effect upon his or her interests be adverse.

The Department of Labor has conducted a preliminary investigation and, being aware of no employees who could be potentially affected, hereby serves notice of its intent to waive the provisions of Section 13(c) for the Project unless information to the contrary or objections are filed within 30 days of the date of this notice.

Any person having knowledge that any employees may be potentially affected by this Project should so advise the Department. The information should specify the name of the submitting party, a complete return address, the names of any transit providers in the Project area, the nature of transit services (e.g., service to elderly and handicapped), the number of employees of the providers, if known, the name(s) of any labor organization(s) representing such employees and an explanation of how the Project will affect the rights and privileges of the employees. The information should be submitted in writing to the Office of Labor-Management Relations Services, Room N5653, Attn: Division of Employee Protections, 200 Constitution Avenue, NW, Washington, D.C. 20210. If information on the subject or objections are filed within the 30 day notice period, the Department of Labor will review the information to determine whether a waiver will be granted. If such information is mailed within the last 10 days of the notice period, the submitting party is requested to contact the Division of Employee Protections by telephone ((202) 523-6495) on the day of the mailing so that receipt of the information can be anticipated.

If no showing is made that any employees may be potentially affected, the waiver will become final at the end of the notice procedure. If information is received that employees may be potentially affected by this Project, the Department of Labor will review it and determine whether a waiver will be granted or denied, and inform the interested parties of its determination.

Mr. YUD. The Department of Labor personnel also participated in 12 regional White House conferences on the program, and in every possible instance have accepted invitations to participate in local conferences. We are currently working with FHWA on additional training services for State and FHWA division personnel and rural transit operators.

The Department of Labor believes that the special warranty has shown an excellent early record of successful utilization. A total of 28 States have adopted it. A total of 243 individual projects in those States have been certified. For all projects certified under the small urban and rural program, our average processing time at DOL has been 6 days. This can be contrasted to our targeted goal of 90 days for applications received under the sections 3 and 5 programs. We believe that this early record of certifications demonstrates that the special warranty developed for the small urban and rural program satisfies the statutory requirements in a manner which presents the fewest problems for rural applicants in attaining desired funding.

Before closing, I want to cite a study of the economic impact of section 13(c) which was conducted by the Department of Labor in 1977 and 1978. In that study the Department investigated the frequency and size of all section 13(c) benefit payments for all transit systems that had received UMTA capital grants prior to 1975. Responses were received from 256 of the 267 organizations contacted. Actual protection benefit payouts by those systems reporting was determined to total less than $10,000. This represented less than two ten-thousandths of a percent of the approximately $4.5 billion in grant funds approved for the involved transit systems.

Since the time in which that Department of Labor study was undertaken, total grants under the Urban Mass Transportation Act have risen to $13 billion through fiscal year 1979. Costs for employee protections remain negligible.

When we adopted the special warranty in May of 1979, we stated that we would evaluate its initial operation to determine whether adjustments might prove necessary. The Department of Labor has been working with the Department of Transportation on a DOT-funded contract to obtain an independent review of the operation of the special warranty. We are hopeful that a contract will be let in the near future for a study that will be completed by this fall. We will continue to do everything we can in the Department of Labor to assist DOT in that study.

This concludes my remarks, Mr. Chairman. I will be glad to answer any questions.

[The complete statement follows.]

STATEMENT OF LARY YUD, DIVISION OF EMPLOYEE PROTECTIONS, OFFICE OF LABOR-MANAGEMENT RELATIONS SERVICES, LABOR-MANAGEMENT SERVICES ADMINISTRATION, U.S. DEPARTMENT OF LABOR

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE. I am Lary Yud, Chief of the Division of Employee Protections. It is this Division, located within the Labor-Management Services Administration of the U.S. Department of Labor, that has responsibility for the day-to-day administration of a number of special employee protection programs, including those in the transportation sector.

I am pleased to be here today to discuss the employee protection provisions of Section 13(c) of the Urban Mass Transportation Act, as applied to the Formula

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Grant Program for non-urbanized Areas, also called the Small Urban and Rural Transportation Assistance Program. This program was added as a new Section 18 to the Urban Mass Transportation Act of 1964 by the Surface Transportation Assistance Act of 1978, enacted in November, 1978. Section 18(f) provides that the employee protection provisions of Section 13(c) of the Urban Mass Transportation Act shall apply to projects approved for funding under Section 18.

Before getting into the Section 18 program, I think it might be helpful to review the background of Section 13(c).

In the 1963 Report of the U.S. Senate Committee on Banking and Currency, which accompanied the Urban Mass Transportation Act, the majority expressed the opinion that the assistance to be provided by the bill would save many jobs of workers engaged in transit and also generate new jobs. Nevertheless, the Committee also expressed a concern that in individual communities, workers might be adversely affected as a result of assistance extended under the Act, citing as examples projects which introduced new types of equipment and projects which assisted the acquisition of the facilities of one employer to another. The Committee stated that: Federal funds should not be used in a manner that is directly or indirectly detrimental to other legitimate interests and rights of such workers.

Similar concern was expressed by the House Committee which considered this legislation: The overall impact of the bill should not be permitted to obscure the fact that in certain communities individual workers or groups of workers may be adversely affected as a result of the introduction of new equipment or the reorganization of existing transit operations.

The employee protection provision which was recommended by these Congressional Committees is set forth in Section 13(c) of the Urban Mass Transportation Act of 1964, as amended. Section 13(c) states that it: shall be a condition of any assistance * * * that fair and equitable arrangements are made, as determined by the Secretary of Labor, to protect the interests of employees affected by such assistance. Section 13(c) goes on to require that protective arrangements include certain specified minimum provisions; five areas of protection are referenced. It further states that provisions must be included which protect: individuals against a worsening of their positions with respect to their employment which shall in no event provide benefits less than those established pursuant to (the employee protection clause contained in the Interstate Commerce Act).

Section 13(c) finally states that the: contract for the granting of any such assistance shall specify the terms and conditions of the protective arrangements.

Thus, under the terms of Section 13(c), a grant of assistance can be made only if the Secretary of Labor has certified that protective arrangements have been made. Such arrangements must include certain provisions, without which the Act's requirements are not satisfied. Moreover, benefits provided to employees can be no less than those provided under Section 5(2)(f) of the Interstate Commerce Act.

Now let me turn to the Section 18 program. Section 18(f) provides that the employee protective provisions of Section 13(c) shall apply in carrying out projects under Section 18. It also states: for the purposes of this section, the Secretary of Labor may waive any provisions of Section 13(c) of this Act.

In introducing the language of the finally enacted law that states that "the Secretary of Labor may waive any provisions of Section 13(c) of this Act", Congressman Thompson stated: My amendment intends no wholesale waiver of the Section 13(c) labor standards provisions as applied to the Small Urban Program. These standards must be met under the Act whenever there are employees of public transportation service providers already working in the service area of the proposed project who could potentially be affected by the grant. These employees must be accorded the full protections as set forth in Section 13(c) of the Act. These include appropriate assurances of continued benefits, paid training and retraining programs, and worker reimbursement allowances for any loss of work and earning which may occur as a result of federal assistance, under employee protective arrangements approved by the Secretary of Labor, and specified in the contract of assistance for the project.

In discussing the conference report for the Surface Transportation Assistance Act, Senator Williams, floor manager for the labor portions of the bill stated: The purpose of the provisions granting the Secretary of Labor authority to waive application of Section 13(c) in regard to particular grants of assistance to small urban and rural areas is to eliminate bureaucratic red tape in cases and situations where it is clear that there are no employees who could potentially be affected. It is intended that the small urban and rural areas will be brought into the mass transit programs under the basic standards as set forth in Section 13(c) that now apply whenever there are employees already working for other public transportation

service providers in the vicinity of the proposed project who could potentially be affected by the grant. These employees must be accorded the full protection as set forth in Section 13(c), including appropriate assurances of employment and preservation of employee rights and benefits.

From the outset of our administration of worker protection for the Small Urban and Rural Program there was a real desire to find a way to provide rural and small urban grant applicants with an expedited and administratively uncomplicated procedure for securing the required certification.

Under the ongoing UMTA Section 3 and 5 grant program, every project application is separately reviewed by the Department of Labor and there is at least the potential for project-by-project negotiation of protective arrangements. We believe that these are the correct procedures for the processing of grants under Section 3 and 5 grant programs. They have been time-tested through nearly 5,000 successful certifications.

Although there was some thought given to modeling the Small Urban and Rural Program certification process directly after the already existing process, it was felt that for the small urban and rural applicants some more suitable procedure could be formulated which would, as the legislative history of Section 18(f) stated must be done, apply the existing standards of the Act and accord full protections to affected workers, while minimizing red tape and processing steps.

Initial discussions at developing a procedure for certification were held between representatives of the Federal Highway Administration (FHWA), the agency within the U.S. Department of Transportation assigned responsibility for administering the Section 18 grant Program, and the Department of Labor during December, 1978 and January, 1979. In these discussions, we determined that we should attempt to develop a standardization protective arrangement for application to the new Small Urban and Rural Program. There then followed long negotiations between FHWA and DOL over the content of a standard protective arrangement. Before a standard arrangement was finalized, DOL and DOT held extensive consultations with labor unions, rural public interest groups, state officials, rural public transportation providers, and others. By the end of May, 1979, agreement was reached between the Departments of Labor and Transportation on a special employee protection warranty for the Small Urban and Rural Program and procedures for its utilization.

The special employee protection warranty developed for the Small Urban and Rural Program differs from the standard application of the Section 13(c) employee protection requirements. The special warranty substitutes a single guarantee and State certification of acceptance of the Section 13(c) requirements as a precondition for the flow of funds in lieu of the traditional prior review of all applications by DOL. The Secretary of Labor has certified that the terms and conditions set forth in the special warranty meet the requirements of the Urban Mass Transportation Act for grants under Section 18. The special warranty procedures also permit a state or potential recipient to request a waiver of the protections. By concurrently adopting the warranty, project recipients can begin to receive funds during the review of the waiver request by DOL. The Department has adopted procedures for the expedited processing of waiver requests. To date, we have had little experience under the waiver experience.

We recognized during the development of the special warranty that the employee protection requirements contained in Section 13(c) are fairly technical and may be subject to some confusion. We are also aware that we would be dealing with many applicants who would be new to the grant process. Therefore, in announcing the adoption of the warranty and the procedures for its utilization, the Departments of Labor and Transportation pledge "hands-on" assistance to all parties. Department of Labor personnel in consultation with FHWA staff prepared a special guidebook on the small urban and rural transportation employee protections, a copy of which I would like to submit for the record. Department of Labor personnel also participated in eleven regional White House conferences on the small urban and rural transportation program and in every possible instance have accepted invitations to participate in local conferences on the program. We are currently working with FHWA on additional training services for State and FHWA division personnel and rural transit operators.

The Department of Labor believes that the special warranty has shown an excellent early record of successful utilization. A total of 27 States have adopted it; a total of 243 individual projects in those States have been certified.

Projects are being certified in an increasingly accelerating volume. During the first full quarter following adoption of the special warranty, which was the fourth quarter of fiscal year 1979, 37 projects were certified under the special warranty. Nearly three times that number were certified in the first quarter of fiscal year

1980, and certifications in the second quarter of fiscal year 1980 should exceed the first quarter level.

For all projects certified under the Small Urban and Rural program, our average processing time at DOL has been six days. This can be contrasted to our targeted goal of 90 days for applications received under Section 3 and 5 programs.

We believe that this early record of certifications demonstrates that the special warranty developed for the Small Urban and Rural Program satisfies the statutory requirements in a manner which presents the fewest problems for rural applicants in obtaining desired funding.

Before closing, I want to address some of the comments that you may have heard about the special warranty.

It is sometimes alleged that Section 13(c) labor protections constrain the realization of improvements in transit operating conditions and efficiency, eliminate the possibility of cutting labor costs, or limit the scope and benefits of proposals for new systems. These allegations have been the subject of a number of studies; none of the studies have found the allegations to be valid. To cite just one of the studies, the U.S. Department of Transportation funded a study by the University of North Florida which issued its report in January of 1977. The North Florida researchers looked into the criticisms that Section 13(c) provisions impeded system efficiency, added potentially undefined costs to the provision of transit service, locked communities into greater levels of service, and enhanced unions bargaining power. They found no actual operational problems which would substantiate any of these criticisms. Their report thus supported summary statements issued from a conference hosted by the Urban Mass Transportation Administration in November 1975, which stated that the attention and level of importance assigned to disputes involving Section 13(c) were "misplaced and unwarranted".

One fact the North Florida report did confirm is that the perception of some local public officials that the criticisms directed at Section 13(c) were valid did constitute an operational problem for the program. It remains true that a number of individuals, particularly public officials, still perceive that Section 13(c) causes significant problems in transit system operations. That is one reason we are devoting so much attention to technical assistance in the Small Urban and Rural Program. No formal studies have yet been conducted on the impact of section 13(c) in the section 18 program, but we are currently cooperating with DOT in a study of the special warranty.

In 1977 and 1978, the Department of Labor investigated the frequency and size of all Section 13(c) benefit payments for all transit systems that had received UMTA capital grants prior to 1975. Responses were received from 256 to the 267 organizations contacted. Actual protection benefit payouts by those systems reporting was determined to total less than $10,000.00. This represented less than two ten-thousandths of a percent (0.0002 percent) of the approximately $4.5 billion in grant funds approved for the involved transit systems.

Since the time in which the Department of Labor study was undertaken, total grants under the Urban Mass Transportation Act have risen to $13 billion through FY 1979. Costs of employee protections remain insignificant. This has of course been a time of significant expansion of the transit industry.

Under the UMTA program, we have certified all variety of projects, including agent/broker projects requiring coordination of multiple carrier services, van pooling projects; projects involving the acquisition and consolidation of multiple transit carriers (as many as ten carriers in Nassau County, New York, and four in Washington, D.C.); summer youth transportation projects; and projects involving specialized transportation services for the elderly and handicapped. All of these projects were conditioned on the application of employee protections, and all projects were able to accommodate these requirements.

The final point I want to comment on is the argument that certain States cannot legally or constitutionally accept the liability required by the special warranty. The special warranty was agreed upon as a method whereby grants under Section 18 could be processed without delay. It does not create any new obligations on the public body for enforcing the labor protections of 13(c) which do not exist under the grant contract, any agreements between the public body and the designated recipients or applicable State laws.

When we adopted the special warranty in May, 1979, we stated that we would evaluate its initial operation to determine whether adjustments might prove necessary. The Department of Labor has been working with the Department of Transportation on a DOT funded contract to obtain an independent review of the operation of the special warranty. We are hopeful that a contract can be let in the near future

for a study that would be completed by this fall. We will continue to do everything we can to assist this study.

I would be pleased to answer any questions the Subcommittee may have.

Senator WILLIAMS. Thank you very much, Mr. Yud. We will continue through the panel.

Ms. Gianturco is our next witness, and Senator Cranston is very sorry, but he has an impossible conflict. He can't be here. He wanted to greet you and to hear you, and now he'll just have to read.

STATEMENT OF ADRIANA GIANTURCO, DIRECTOR, CALIFORNIA DEPARTMENT OF TRANSPORTATION ON BEHALF OF THE AMERICAN ASSOCIATION OF STATE HIGHWAY AND TRANSPORTATION OFFICIALS, ACCOMPANIED BY WALTER McFARLANE, DEPUTY ATTORNEY GENERAL, VIRGINIA DEPARTMENT OF HIGHWAYS AND TRANSPORTATION AND VICE CHAIRMAN, LEGAL AFFAIRS COMMITTEE, AASHTO

Ms. GIANTURCO. My name is Adriana Gianturco. I'm Director of the California Department of Transportation. I am not testifying on behalf of our State in particular but rather on behalf of the American Association of State Highway and Transportation Officials, which includes representations of the State departments of highway and transportation in all 50 States. Rather than read my statement, I would like to very briefly summarize the key points, and then, if I might, I would like to have my testimony expanded upon somewhat by somebody who's accompanying me, also from AASHTO.

This is Walter McFarlane, deputy attorney general of the State of Virginia, who has been particularly involved in the 13(C) program, which is one of the problems we see at the State level.

Senator WILLIAMS. Your full statement will appear in the record.

Ms. GIANTURCO. OK.

In terms of the key things we're concerned about, I guess I'd like to start out by saying that the States are very supportive of the section 18 program and the notion of providing transit in rural areas. We have no serious objections with the legislation as it is now written, but rather with the way that legislation is being interpreted and administered by the Federal Government. And that has several points to it.

First, we are concerned that UMTA appears to be interpreting section 18 as constituting a replacement for other transit sections for rural areas. Specifically, they have indicated in a number of different instances to the different States that the States should be encouraging rural areas to fund things that we think should be eligible for section 3 and/or section 8, and in addition, section 22, which is intercity bus, all out of the section 18, and that overburdens section 18. We do not believe it was the intent of Congress when 18 was passed that it replace all these other programs and be the sole source of funding for rural transit.

I've submitted for the record a letter signed by the key members of the House Public Works Committee indicating that, indeed, it was not the intent, as they saw it, of section 18 to replace these other sections. In fact, it seems to be working out that way.

Second, we are concerned about what appears to be an excessive amount of paperwork associated with section 18 projects. On a project-by-project basis, applicants are required to submit an enormous amount of documentation of various things they're doing in connection with the program. We're talking about very small entities of rural areas. They overwhelmed by this type of redtape and requirements in order to get any money flowing, which is generally speaking fairly small sums of money. Yet large amounts of staff time have to go into filling out these applications.

Also along those lines, there is the 13(C) problem. We believe that the interpretation given by the Department of Labor to 13(C) as it applies to section 18 is very onerous, and this is demonstrated in two ways. First of all, from the local perspective—and we at the State level deal with these local entities who will, in fact, implement the program in California—and I know this is true in most other States—the small rural entities, whether its real or perception, believe that the section 13 requirements are going to get them into a situation where they will just not be able to work themselves out. They're extremely concerned about the effects of signing these labor protection agreements—how that would affect transit employees as opposed to other employees potentially in the county—all the kinds of ins and outs that could happen when we sign such a broad document as is being required by the Department of Labor.

Second, there is another issue which I think Mr. McFarlane can deal with. He also has a letter that we're submitting for the record—a series of letters from the State of Washington, which deals with the issue that we do not seem to have been able to clarify with the Department of Labor about the States' liability or responsibility under section 13(C). This has been very unclear. It's a series of letters. I think if you examine them—from the State of Washington, back and forth from the Department of Labor, it's something straight out of Franz Kafka. There doesn't seem to be any solution; it's going around in circles. One thing is said one time, and then when that gets pinned down, it kind of slips away and there's something else that comes in.

It has become a really major concern at the State level. I think a number of States got into this program before they realized that there was a problem. Now they're getting extremely concerned because of the ambiguity in the interpretation or clarification of what 13(C) really means to the States.

I think I'd just like to conclude on a positive note that despite these problems—and they are very real, and they have slowed down the program inordinately, from our view—the States believe that there are some very real pressing transit needs in rural areas. The States themselves are putting, in many instances, large amounts of their own State money into rural transit. In California, we are putting three times as much State money into specifically rural transit as we're getting under section 18, and this is not unique to the larger States. There are a number of small States that are also putting State money in.

I think this demonstrates our commitment to rural transit. Again, we think the problem of section 18 has been the administration, not in the law, and with that, I'd like to conclude my remarks and ask Mr. McFarlane, if he would, to expand a little bit on this

13(C) problem as viewed from the angle of the people that have to deal with it.

[Complete statement of Ms. Gianturco follows:]

PREPARED STATEMENT OF ADRIANA GIANTURCO, DIRECTOR, CALIFORNIA DEPARTMENT OF TRANSPORTATION

Mr. Chairman and members of the committee, my name is Adriana Gianturco, Director of the California Department of Transportation. I am here today on behalf of the American Association of State Highway and Transportation Officials and its Policy Committee on which I serve. Accompanying me is Walter McFarlane, Deputy Attorney General for the Virginia Department of Highways and Transportation who serves as the Vice Chairman of AASHTO's Legal Affairs Committee.

For the record, AASHTO is a 66 year old organization comprised of the 50 state departments of transportation or highways as well as those of the District of Columbia, Puerto Rico and the U.S. Department of Transportation.

We welcome the opportunity to testify before this committee once again and are deeply appreciative of your efforts in support of public transportation. We wholeheartedly endorse the goals for public transportation which the President previously announced and you have echoed in opening these hearings: "To add 15 million passengers a day to our systems, to double the production of buses, to step up the modernization of our rail systems and to expand our fleets and extend our systems."

AASHTO has recommended that 25 percent of the Windfall Profits Tax be used for transportation purposes and has supported the establishment of a Public Transportation Trust Fund. The current target of 15 percent for mass transit and energy is a start, however, identified transportation needs call for more than the entire 15 percent.

I'm sure that you are aware of the strong involvement by the states in support of mass transportation programs. This year, in California alone, over $800 million in State and local sources are committed for use in the public transportation program. This compares with a present Federal investment in California of $149 million for 1979.

With this strong involvement, we feel that it's very important to establish a clearly defined Federal-State-local partnership as we stated in our testimony before this committee two years ago. However, we still feel that State needs and concerns and the active State role are being overlooked as programs, funding levels, implementing regulations, etc., are formulated. In that regard, Mr. Chairman, we are now developing input for some of the important issues addressed in your bill, S. 2296, and will submit these views for your consideration at a later date.

I would like to direct the remainder of my testimony to the Section 18, Rural Transit Program. Secretary Goldschmidt characterized progress on the Section 18 Program as "discouragingly slow" in his appearance before this committee two weeks ago.

We would like to touch on some of the reasons why State participation and the effect of the program may not reach original expectations. While the Congress directed that these funds were to be expedited to the nonurbanized areas, and the interim federal regulations state that they "are designed to accelerate and simplify the delivery of Federal funds made available by this new program," the regulations then mandate the following (among other items) as project supporting information:

(1) Project coordination accomplished including description of efforts to coordinate with other providers including social service agencies capable of purchasing service;

(2) Amount and sources of funds used to purchase and operate vehicles in the two previous years and description of efforts to maximize the integration of these funds with section 18 funds;

(3) Extent of public involvement in preparing the application (i.e., public hearing procedures);

(4) Description of private enterprise involvement in preparing the application such that private operators shall be allowed to participate in the provision of service to the maximum extent feasible—make a good faith effort to notify all private providers of the intended service plan and ascertain whether they could participate and establish a process by which private providers may have disputes or conflicts arising out of this program properly heard and settled.

(5) Provisions for the elderly and handicapped;

(6) Disposition of the labor protection provisions of UMTA section 13(c)—which finally resulted in the special section 18 warranty between D.O.T. and D.O.L. in June of 1979. Concern and uncertainty on the part of some of the public bodies have led to be very cautious about moving too fast in this program. More of this later.

While we generally agree that the above are important considerations, they take time to organize, implement, and submit. In addition to the program's slow start, we submit that the program continues to be viewed as a replacement to previous programs which provided assistance to nonurbanized areas. We would like to include for the record a letter from members of the House which indicates the Congressional intent for the program is being misinterpreted.

Specific programs which we believe are being reduced are the State program's portion of Section 8, the Section 16(b)(2) Elderly and Handicapped Program and access to the Section 3 Program for non-urbanized areas. The fact that the Section 18 program is expected to meet the funding needs of the Section 22, Intercity Bus Program, also contributes to the over-expectations imposed on the program.

A few states have included intercity bus projects in their program of projects, however, we believe many states will face serious obstacles in providing assistance to Intercity Bus Operators. Recent notifications of the current year's apportionments for Section 18, which have been sent to the Governors, place strong emphasis on the inclusion of Intercity Bus Assistance under the Section 18 program. Congress should provide funding under the Section 22 program established for that purpose if the intent is to fund intercity bus operations.

One of the major problems with the program is the way in which 13(c) labor protection provisions are being administered. We do not think legislative changes are necessary, but we do feel changes should be made in the way those provisions are being administered.

We do applaud the Departments of Labor and Transportation for the concept of an agreement which would avoid a lengthy case by case review. However, we believe in trying to insure that every conceivable situation would be fully covered, the warranty developed presents a very onerous and ambiguous picture to local recipients who have had no prior exposure to such agreements. The provision in the warranty that gives D.O.L. the final and binding arbitration responsibility in a situation where an impacted employee and the operator cannot agree on a settlement creates a situation in a county operation where one group of employees are given certain rights of arbitration not applicable to other, non-transit employees.

The special warranty offers a waiver opportunity in the situation where there are no mass transit employees that could be impacted by the project. This is a generally useless provision in that as soon as the project begins operations, there are created a group of employees who could be affected by the use of later section 18 funds. The waiver process takes at least 8 to 12 weeks for D.O.L. approval and is only valid for, at best, one year.

The inclusion of intercity operators as potential applicants for these funds also adds these employees under the protection of Section 13(c). If a county proposed a county-wide transit system and the intercity carrier has at least two stops in the county, a later reduction in intercity carrier service could be interpreted by an impacted intercity employee that the section 18 project caused his position to be worsened. Many counties have related their extreme concern with this potential problem. Not accepting Section 18 relieves them of this responsibility.

Also, there is the situation where the public body uses the section 18 funds to contract for transit services. If, in the future, the current contractor is underbid in a new proposal using section 18 support, there is no guarantee that the former employees cannot claim protection under 13(c). D.O.L has so far refused to offer an opinion as to potential liability in this situation, preferring to wait until an actual case is presented.

One of the early problems with the warranty was the liability incurred by the State for labor protection. Most States cannot assume responsibility for actions over which they do not have direct control. Although the Department of Labor has indicated that the State is not liable, attempts to provide simple clarifications have been rejected. "Hold harmless" agreements such as provided by the warranty are universally condemned across the United States. Consequently, many areas find they cannot agree to an open ended unknown future expense. We would like to submit, for the record, letters received from a few States as examples of problems with the administration of the 13(c) provisions.

We understand an evaluation of the section 13(c) requirements is being planned. We would hope that the States are directly involved in suggesting areas where improvements can be made. Again, we appreciate the opportunity to present our views and would be happy to answer any questions.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION,
Washington, D.C., October 12, 1979.

Hon. NEIL GOLDSCHMIDT,
Secretary of Transportation,
U.S. Department of Transportation, Washington, D.C.

DEAR MR. SECRETARY: It has come to our attention that the Department of Transportation is in the process of implementing a policy to consolidate all public transportation funding for small cities and rural areas under the new section 18 program established in the Surface Transportation Assistance Act of 1978, Public Law 95–599.

If fully implemented, this policy would arbitrarily bar small cities and rural areas from receiving assistance under other UMTA programs, including grants under section 3, section 16(b)(2), and section 8 of the Urban Mass Transportation Act, as amended.

Our purpose in writing is to inform you that we, as Floor Managers of the Conference Report on Public Law 95–599, consider this policy to be contrary to congressional intent and applicable Federal law.

In developing the section 18 program, Congress used the section 5 program for large cities as a model, except where the special needs of small cities and rural areas dictated otherwise. Both programs distribute funds on the basis of a statutory formula, and permit the use of these funds at local discretion for either capital improvements or operating assistance.

Like the section 5 program, the section 18 program is intended to supplement, not replace, other UMTA programs. While Federal law limits the section 5 program to large cities and the section 18 program to small cities and rural areas, there are no comparable statutory limitations on other UMTA programs. It was our intent that small urban and rural areas continue to be eligible for funding under these programs as they had been prior to the enactment of Public Law 95–599.

Consequently, we are of the strong view that any policy which effectively excludes small cities and rural areas from participating in other public transportation programs under the Urban Mass Transportation Act would be arbitrary, capricious, and a clear abuse of Departmental discretion.

Since this policy was conceived before you became Secretary, we suggest that you take a good, hard look at it in light of our concerns. Hopefully you will agree with us that this policy initiative is inconsistent with congressional intent and should, therefore, be withdrawn.

Thank you for giving this matter your attention, and very best wishes.

Sincerely,

WILLIAM H. HARSHA.
BUD SHUSTER.
HAROLD T. (BIZZ) JOHNSON.
JAMES J. HOWARD.

STATE OF NEW YORK,
EXECUTIVE DEPARTMENT,
Albany, N.Y., December 26, 1979.

Hon. NEIL GOLDSCHMIDT,
Secretary, U.S. Department of Transportation,
Washington, D.C.

DEAR MR. SECRETARY: This is in regard to the joint Department of Transportation/Department of Labor Special Warranty and Waiver Procedures for section 13(c) compliance and their application to the section 18 Non-urbanized Area Public Transportation Program sent to my office in a June 12 letter jointly signed by Secretary Marshall and former Secretary Adams.

As we have now had the opportunity to apply these procedures to specific project situations, we can only conclude that they are substantially out of proportion to the scale and scope of public transportation needs and projects in non-urbanized areas. We do not believe that the procedures are consistent with the Administration's often stated goal of reducing red tape.

New York State will not assume the liability under the warranty procedures for local government applicants for section 18 projects. Instead, this liability will be passed along to local governments. The extent to which the mere requirement of the warranty, regardless of its potential for litigation in particular cases, will inhibit or prohibit local governments from applying for section 18 funds is unknown at this

time. This requirement could easily have a chilling effect upon the section 18 program and impede the provision of essential public transportation services to the transportation disadvantaged in our small urban and rural areas.

As to the request for our suggestions on how the process can be further improved, we suggest that the Secretary of Labor exempt all section 18 projects that are for the exclusive purpose of maintaining existing levels of service, from the requirements of Section 13(c). This exemption should include both operating assistance projects which maintain existing service levels, and capital equipment replacement projects that do the same. In both of these types of projects, there is no possibility that employees could be adversely affected, because the services already exist.

Nothing useful is to be gained by forcing States and localities to follow the warranty procedures in such cirumstances. The States or Federal Highway Administration could certify such exemptions in their reviews of project applications and contract agreements; if necessary, the Department of Labor could be sent copies of each such certification, and monitor FHWA and State compliance with the Section 13(c) provisions. The Department of Labor would have the authority to override any such exemption certification if it became aware of facts contrary to the condition of the exemption. This suggestion is in keeping with Section 18(f) of the 1978 Surface Transportation Assistance Act, which states that "* * * the Secretary of Labor may waive any provisions of Section 13(c) of this Act."

We strongly urge you to reconsider the current 13(c) procedures and revise them to be more in keeping with the scale of non-urbanized area public transportation problems.

Additionally, Transportation Commissioner William C. Hennessy has more specific concerns relating to the burdens of administration of this program and Section 16(b)(2) and will be corresponding with your office directly.

Sincerely,

HUGH L. CAREY.

NEW YORK STATE,
DEPARTMENT OF TRANSPORTATION,
Albany, N.Y., January 21, 1980.

Hon. NEIL GOLDSCHMIDT,
Secretary, U.S. Department of Transportation,
Washington, D.C.

DEAR MR. SECRETARY: On December 26, 1979 Governor Carey wrote to you expressing his concerns regarding the joint Department of Transportation/Department of Labor Special Warranty and Waiver Procedures for Section 13(c) as they relate to the new Section 18 Non-Urbanized Area Public Transportation Program. As you recall, the Governor was not particularly pleased with what has to be considered another layer of excessive administrative requirements.

I want to pick up on the Governor's urging that you reconsider and hopefully revise the current 13(c) procedures to make them appropriate to the scale of non-urbanized area public transportation problems. I am sure that New York State is not the only State attempting to have these excessive requirements relaxed. Likewise, I am sure that this is not the first time that your Department has been requested to take those steps necessary to truly make a program meaningful and productive. Let me give you some typical examples, relating both to this Section 18 program and also your 16(b)(2) program.

Section 18 and Section 16(b)(2) have both been saturated with burdensome administrative requirements that take away from the productive program elements that need to be emphasized. The Section 18 13(c) requirement is only one example. the excessive 16(b)(2) reporting requirements are another. I might point out that our letters to UMTA recommending changes in these 16(b)(2) reporting requirements and requesting meetings to discuss this problem have never been acknowledged or answered.

Inadequate funding levels for both of these programs only compound the problem of having to spend precious staff time on unnecessary requirements. The fiscal year 1979 16(b)(2) allocation to New York State is exactly the same as the 1975 fiscal year allocation; vehicle prices in the meantime have increased at approximately 15 percent a year. Likewise, the small amount of Section 18 funding allocated to New York State this year cannot possibly meet all of the needs we have identified. Recent Federal statements on funding rural transportation have emphasized that we should request Section 3 funds to supplement the Section 18 funds already allocated. Conversely your UMTA Region II Office repeatedly has told us that there is no Section 3 money available, even to fund projects that had been pending in

UMTA for several years before the advent of Section 18. This is a perfect example of a "Catch 22" situation.

The final example I will give you deals with the lack of coordination at the federal level to provide public transportation funds. There were, at last count, 114 different federal programs that provide funding for public transportation or para-transit in rural areas. I find that incredible.

The federal approach used during the last few years of creating new programs and having the States administer them is the correct way to go—yet there must be changes made to recognize that each state is slightly different and that the states should be given flexibility in the administration as long as federal goals are met. Finally, more funds are needed. I can't say that any clearer. I hope that your administration will recognize these problems and I would be very appreciative to hear your thoughts on the matters I have outlined.

Sincerely,

W. C. HENNESSY, *Commissioner.*

STATE OF WASHINGTON,
DEPARTMENT OF TRANSPORTATION,
Olympia, Wash., March 14, 1980.

Mr. H. J. RHODES,
Acting Executive Director, American Association of State Highway and Transportation Officials, Washington, D.C.

DEAR MR. RHODES: The purpose of this letter is to provide information that will assist you at the hearings on S. 2296 and H.R. 6417 on March 19, 1980. We are hopeful that you will use some of this information in your general testimony and also make reference to the special situation in Washington State.

As you know, this Department is the agency designated by Governor Ray to administer Section 18 of the Urban Mass Transportation Act of 1964, as amended. Section 18 relates to public transportation assistance for rural and small urban areas. However, in attempting to carry out this responsibility and adhere to Congressional intent as broadly and effectively as possible, our efforts have, in effect, been stalled by provisions of Section 13(c) as interpreted by the U.S. Department of Labor. We think it is important that details of this situation be conveyed to the appropriate Congressional Committees and, so that you can be familiar with our situation, I will take you through the various steps that we have followed in our attempts to administer the Section 18 program.

1. Although this program of assistance began with the Federal Register publication of rules and regulations by the Federal Highway Administration on December 13, 1978, the "Special Section 13(c) Warranty for Application to the Small Urban and Rural Program" was not completed until May 31, 1979. FHWA transmitted it to us on June 12, 1979.

2. We directed the special Section 13(c) Warranty to Mr. T. R. Garlington, Senior Assistant Attorney General on July 18, 1979. On August 24, 1979, we transmitted copies of the Warranty to those applicants whose projects we had already conditionally approved. We had our first direct interaction concerning the Warranty with the U.S. Department of Labor at the White House Conference on Rural Initiatives in Spokane on October 3, 1979 where one of our Assistant Attorney Generals, Mr. Ron Wise, was present and participated in the session dealing with Section 13(c).

3. Due to the complexity and ambiguity of the Warranty, Messrs. Garlington and Wise did not complete their review of the subject until November 8, 1979. This written informal legal opinion, which is attached, suggested that the state might find itself exposed to liabilities, responsibilities and potential risks from third parties. These growing concerns were also being experienced by other states and our contracts with them suggested a real apprehension, on the part of many, regarding possible future litigation.

4. Apparently, since few Section 18 projects were progressing anywhere in the nation, a U.S. Department of Labor representative telephoned us in late November and indicated a willingness to consider amending the language of the Warranty. This resulted in the attached letter from Mr. Garlington, dated November 29, 1979, to Mr. Lynn Franks requesting amending Warranty language so we could carry out the program.

5. We received no response to this request until February 26, 1980, when our request was denied. We had no indication to expect a denial. The February 26, 1980 letter, copy also attached, offered us no recourse. However, that letter contains a U.S. Department of Labor acceptance of the very consideration we had sought in November. It appears as the first sentence of the third paragraph on page two. . . .

"It is not our intent to place the State in the role of the guarantor for protections in instances where a legally and financially responsible Recipient defaults on its obligations."

6. We considered that this language met our objections and we formally applied to the Federal Highway Administration for 13 projects with a value of $721,824. Simultaneously, we forwarded a conditional Section 13(c) certification containing the above cited sentence to the U.S. Department of Labor on March 4, 1980. Copies of these documents are attached.

7. We have now been advised informally by the Department of Labor that our certification is unacceptable because it contains a sentence * * * "that has been taken out of context." It has been suggested that we must quote the entire letter and not the special sentence, and we have requested formal notification from USDOL to that effect. We have also asked for a quicker response than the three months that it took to answer our previous submission.

We believe the U.S. Department of Labor is not completely aware that their interpretation of Section 13(c) in this context is likely to impose severe restrictions on our attempts to administer Section 18. We have accepted applications from appropriate entities willing to provide public transportation service in small urban and rural areas. We have approved projects from colleges and universities, port districts, taxicab companies, intercity bus companies, Indian tribal councils and nonprofit organizations, as well as the traditional city, county, and special transit district providers. We are trying to use the existing resources in the small urban and rural areas without establishing an additional layer of government.

While the vast majority of our projects cover traditional vehicles and operational assistance and are related to specific time periods, we also have park and ride lots and a passenger ferry dock in our program. These are durable projects which are expected to be in operation for several decades. It is difficult to assess liability with a warranty that contains the phrase. * * * "Protected employees may recover from the recipient or the state agency if the project results in any worsening of the employee's position in anticipation of, during, and subsequent to the project and any program of efficiencies or economies related thereto * * *" It is conceivable that 20 years from now this phrase could be applied to changes created by the park and ride lots, or the ferry terminal, with adverse results for the state and a claim could be made some years after the federal grant was expended.

Another consideration is the U.S. Department of Labor's failure to recognize that the public transportation situation in urbanized areas is different from that in small urban and rural areas. The Model Agreement usually applies to an urbanized area public agency and its employees in a monopolistic condition where there are no other surface transportation providers. This is a national situation and it is equally true in this state. There is no competition in the provision of public transportation services left in any of the urbanized areas of Washington State, of which we have six.

On the other hand, there is a high degree of private enterprise activity remaining in small urban and rural areas, and it is not unduly difficult to commence some form of private transportation service in those areas. This situation points up the difficulties in trying to follow the U.S. Department of Labor dictum and an example will indicate what is meant:

(a) In one area of the state, a small organization applied for Section 18 assistance and the application was favorably received.

(b) Following the public hearing associated with the application, another group of individuals created a competing public transportation service long the same route as the Section 18 applicant.

(c) Using the Department of Labor criteria, it appears that if the new operator (b) is unsuccessful, the original company is liable under Section 13(c) and the state may also be liable. This is a rather ludicrous situation but even the Department of Labor individuals will not deny that it is possible and that liability is present.

We believe the special 13(c) Warranty and its application by the U.S. Department of Labor have inhibited extension of the White House Rural Initiatives program and unfairly penalized transportation operators in the small urban and rural areas. We would ask you to make these facts known at the hearings, and may, if you wish, submit this letter for inclusion in the record.

Sincerely,

W. A. BULLEY,
Secretary of Transportation.

Attachments.

ATTORNEY GENERAL OF THE STATE OF WASHINGTON,
November 8, 1979.

Inter-office correspondence to: Robert Nielsen.
From: Thomas R. Garlington/Ron Wise.

Subject: Section 13(c) Warranty as it applies to the section 18 Small Urban and Rural Transportation Program.

You have requested our opinion regarding certain responsibilities and liabilities of the Washington State Department of Transportation as the designated "Public Body", or agency charged with allocating and administering funds under the Small Urban and Rural Transportation Program.

Section 18 of the Urban Mass Transportation Act (UMTAS) authorizes the implementation of a national program known as the Small Urban and Rural Public Transportation Program. One of the conditions for receiving a grant under this program is agreement to protect the interests of employees adversely affected by the project. The federal departments of Labor and Transportation developed a labor protection device in the form of a Warranty which is made a part of Section 18 funding contracts. Protected employees are employees involved in providing transportation and related services for any grant recipients and any other surface public transportation provider (bus, rail, van, ferry) detrimentally affected by the Section 18 project. The affects upon employees relates to adverse economic effects such as layoffs, reductions of pay, loss of pension benefits, and job transfers. For example, a transfer accompanied by a necessary change of residence due to a Section 18 project will result in 13(c) liability to pay comprehensive relocation allowances even though a pay increase accompanies the transfer. (See paragraphs 11 and 12 of the National Model Agreement which are expressly included in the 13(c) warranty for the Small Urban and Rural Public Transportation Program.)Pursuant to 23 C.F.R. Part 825, Appendix A, the Washington State Department of Transportation (hereinafter referred to as WSDOT) has been designated as a pass through agency between the federal government and the grantee, the recipient of the funds. Hence WSDOT become the "Public Body" for purposes of this Act. Before any funds are to be distributed by the federal government, WSDOT must provide certain assurances to the United States Department of Labor and the United States Department of Transportation as to compliance with the Special 13(c) Warranty. First, WSDOT must certify in a letter to the Department of Labor that each recipient designated to receive such funds has indicated written acceptance of the terms and conditions of the Warranty.

Special Section 13(c) Warranty in addition, WSDOT as the designated state agency for administering the program must provide written assurances to FHWA that the applicant for such project has complied, as applicable, with the labor protection provisions of the Urban Mass Transportation Act, as amended. (23 C.F.R. Part 825, Appendix B)

The ambiguity of the special section 13(c) warranty poses a challenge to anyone attempting to ascertain the scope and nature of the obligations that are to be assumed by the state administrative agency, in our case, WSDOT.

In this connection in the "Guidebook on the Contents and Use of the Special Section 13(c) Warranty" distributed by the U.S. Department of Labor (DOL) the explanation of paragraph B–5 of the Warranty which deals with financial responsibility states:

". . . the Recipient shall be financially responsible for the application of the terms and conditions of the Special Warranty. However, it permits the Public Body to designate an alternative legally responsible party, which could be the Public Body itself. For example, if a project recipient were a non-profit organization, the legally responsible party for the application of the protections might be that non-profit organization, the city or county in which it operated, the local major public transportation provider, or the state agency charged with allocating and administering the small urban and rural program.

When the Public Body is not designated as the legally responsible party under the Special Warranty, then the Public Body assumes no special obligations under the Special Warranty that are not otherwise part of its normal obligations as a grant administering party. In such a case, the Public Body's status and responsibilities with respect to employee protection are not any different than its status and reponsibilities with respect to all other grant requirements."

At first blush the second quoted paragraph seems to suggest that the state agency ("Public Body") is not legally liable for the cost of complying with the warranty provisions. But as in the case of the warranty itself, the guidebook explanation is wholly ambiguous. If the draftsman of the guidebook had intended to represent that

the state administrative agency had no financial responsibility under the warranty provisions, a simple statement to that effect would have been appropriate. To say, however, that the Public Body assumes no special obligations under the special warranty that are not otherwise part of its normal obligations as a grant administering party, and to say that the Public Body's responsibilities with respect to employee protection are not any different than its responsibility with respect to other grant requirements, does not constitute a declaration that the state agency is neither responsible as a principal nor a guarantor for the payment of any of the dismissal or displacement allowances and other benefits provided for in the warranty and the "Model Agreement" incorporated therein. For example, compare responsibilities of the state agency with respect to administering federal aid highway grants to cities and counties. The Federal-Aid Highway Program Manual, Vol. 4, ch. 4, sec. 1, subsec. 6 provides in pertinent part:

5. *Supervising Agency.*—a. The State highway agency has responsibility for the construction of all Federal-aid projects, and *is not relieved of such responsibility by authorizing performance of the work by or under the supervision of a county, city, or other local public agency.* . . . (Italics added).

Is this the "normal obligation" of the state transportation agency referred to in the "Guidebook"?

An examination of the special warranty itself for the purpose of ascertaining WSDOT's liability is an exercise in frustration. In our opinion, however, the portions of the warranty quoted below are sufficient to establish that the state administrative agency has either liability as a principal together with the recipient of the grant, or is a guarantor that the local recipient will meet all obligations arising out of the warranty.

A. *General Application.*—The Public Body (" ") agrees that, in the absence of waiver by the Department of Labor, the terms and conditions of this warranty, as set forth below, shall apply for the protection of the transportation related employees of any employer providing transportation services assisted by the Project ("Recipient"), and the transportation related employees of any other surface public transportation providers in the transportation service area of the project.

* * * * * * *

B. *Standard Terms and Conditions.*—(1) The Project shall be carried out in such a manner and upon such terms and conditions as will not adversely affect employees of the Recipient and of any other surface public transportation provider in the transportation service area of the Project. . . .

* * * * * * *

(3) For the purpose of providing the statutory required protections including those specifically mandated by Section 13(c) of the Act, the Public Body will assure as a condition of the release of funds that the Recipient agrees to be bound by the terms and conditions of the National (Model) Section 13(c) agreement executed July 23, 1975, identified below,. . .

* * * * * * *

(10) In the event the Project is approved for assistance under the Act, the foregoing terms and conditions shall be made part of the contract of assistance between the federal government and the Public Body or Recipient of federal funds; provided, however, that this arrangement shall not merge into the contract of assistance, *but shall be independently binding and enforceable by and upon the parties thereto, and by any covered employee or his representative, in accordance with its terms,*. . . (Italics added).

* * * * * * *

The above quoted provisions are relevant to the question of the State's liability under the warranty contract. Other provisions make clear the recipient is financially responsible to make any payments to employees eligible for dismissal or displacement allowances or other benefits under the warranty.

It will be observed that Paragraph A. *General Application* contains an undertaking of the state agency that terms and conditions of the warranty shall apply for the protection of a described class of employees.

Paragraph B(1) contains a declaration that the project shall be carried out in a manner and upon terms and conditions as will not adversely affect the described class of employees.

Paragraph B(3) requires that the state agency will assure that the recipient agrees to be bound by the terms of certain sections of the National (Model) section 13(c) agreement. This provision as such is neutral as to whether or not the state agency itself is liable either as a principal or a guarantor.

Finally, Paragraph B(10) quoted above provides that covered employees or their union may enforce the warranty contract against the parties. Significantly, the State agency is a principal party to the contract of assistance.

Taken together these quoted provisions from the special section 13(c) warranty provide the basis for concluding that the state agency administering the small urban and rural program is financially responsible for the dismissal or displacement allowances and other payments provided for in the warranty and the portions of the "Model" agreement incorporated in the warranty. Because of the pervasive ambiguity of the warranty agreement itself, it is not possible to say with any certainty whether or not the state agency's liability would be that of a principal or a guarantor. As a guarantor the state agency would be liable only in the event of a default by the recipient. If a state agency should be held to be a principal, the protected employees or their union could recover directly against the state agency or jointly against the recipient and the state agency.

In view of the above conclusion, it is appropriate to discuss briefly the scope of the warranty agreement and the exposure to claims from protected employees and their unions.

1. The federally aided "protect" shall be carried out in such a manner and upon such terms and conditions as will not adversely affect employees of the recipient and of any other transportation provider in the transportation service area of the project.

2. Transportation service area of a project includes the geographical area over which the project is operated and the area whose population is served by the project including adjacent areas affected by the project.

3. The term "project" is not limited to the particular facility, service or operation assisted by federal funds, but shall include any changes whether organizational, operational, technological, or otherwise which are a result of the assistance provided.

4. Certain paragraphs of the National "Model" Section 13(c) agreement are incorporated in the warranty. Paragraph (6) provides for displacement allowances for employees of the recipient during a protective period up to six years so long as the employee is unable in the exercise of his seniority rights to obtain a position producing compensation equal to or exceeding the compensation he received in the position from which he was displaced, adjusted to reflect subsequent general wage adjustments, including cost of living adjustments. The displacement allowance essentially is the difference between the compensation which the employee was receiving prior to the project and the reduced compensation which he is receiving as a consequence of the project.

Paragraph (7) of the "Model" agreement provides for a dismissal allowance for any employee deprived of employment as a result of the project for as long as six years at full pay adjusted to reflect subsequent general wage adjustments, including cost of living adjustments.

Other paragraphs of the "Model" agreement provide for fringe benefits for dismissed or displaced employees, moving expenses, and other relocation payments for employees required to move as a result of the project. The "Model" agreement provides for other miscellaneous benefits and rights.

5. Protected employees may recover from the recipient or the state agency if the project results in any worsening of an employee's position in anticipation of, during, and subsequent to the project and any program of efficiencies or economies related thereto. Thus a claim could arise some years after the federal grant has been expended.

The allowances described above are far from inclusive of the full scope the recipient's or state agency's liabilities under the warranty. It is sufficient to say that the potential liability of the recipient and the state agency may be extensive in a given situation.

Section 13(c) of the Urban Mass Transportation Act provides in part that, "It shall be a condition of any assistance under section 13 of this Act that fair and equitable arrangements are made, as determined by the Secretary of Labor, to protect the interests of employees affected by such assistance. . . ."

The special section 13(c) warranty for application to the small urban and rural program is neither fair nor equitable. Illustrative of the inequity of the warranty contract is the following provision found in Paragraph B(4):

In the event of any dispute as to whether or not a particular employee was affected by the Project, it shall be his obligation to identify the Project and specify the pertinent facts of the Project relied upon. *It shall then be the burden of either the Recipient or other party legally responsible for the application of these conditions to prove that factors other than the Project affected the employees. The claiming*

employee shall prevail if it is established that the Project had an effect upon the employee even if other factors may also have affected the employee. (Italics added).

The balance of Paragraph B(4) provides that disputes arising under the warranty shall be settled by binding arbitration and that if the parties are unable to agree upon an arbitrator the dispute shall be resolved by the Department of Labor or an arbitrator designated by the Department of Labor.

In light of the potential financial liabilities for the payment of benefits to protected surface transportation employees affected by a section 18 project, the question arises as to whether WSDOT is vested with statutory authority to assume such obligations. Our search has revealed no statutory authorization for WSDOT to assume such liabilities. By comparison the relocation allowances for persons displaced by highway construction are expressly authorized by the state's Uniform Relocation Assistance Act. Chapter 8.26 RCW. As stated in *State* v. *Pierce,* 11 Wn. App. 577, 523 P. 2d 1201 (1974):

Administrative agencies are creatures of the legislature without inherent or common-law powers and may exercise only those powers conferred either expressly or by necessary implication.

Accord: *State ex rel. Eastvold* v. *Maybury,* 49 Wn. 2d 533, 304 P. 2d 663 (1956).

The State Supreme Court has recently held in *Purse Seine* v. *Moos,* 88 Wn. 2d 799, 567 P. 2d 205 (1977), that not even a federal court can compel the Director of Fisheries to do an act which is beyond the authority granted to him by the legislature which created his office and designated his powers and duties.

It is the conclusion of this office that since the Washington Department of Transportion as the body designated to administer the section 18 funds to small urban and rural recipients would be financially responsible under the 13(c) warranty either as a principal or as a guarantor, it is without statutory authority to execute a section 18 project application.

OFFICE OF THE ATTORNEY GENERAL,
Olympia, Wash., November 29, 1979.

Re Section 13(c) warranty as it applies to section 18, Small Urban and Rural Transportation program.

Mr. LYNN FRANKS,
U.S. Department of Labor,
Washington, D.C.

DEAR MR. FRANKS: In accordance with my telephone conversation with you on November 27, I am forwarding herewith an informal legal opinion of my office addressed to Robert Nielsen, Assistant Secretary for Public Transportation and Planning of the Washington State Department of Transportation. You will note that the opinion concludes that the Washington State Department of Transportation, as the agency designated by the Governor to receive and administer federal funds under the Section 18 Small Urban and Rural Transportation Program, is financially responsible for the dismissal or displacement allowances and other payments provided for in 13(c) warranty, either as a principal or as a guarantor of the recipient's performance of the warranty obligations. The opinion further concludes that the Washington Department of Transportation lacks statutory authority to assume such obligations and therefore may not execute a Section 18 project application.

I may add that in preparing the opinion I have asumed that if the State Department of Transportation became a party to a contract of assistance which detrimentally affected protected employees, the issue of the state agency's liability would most likely arise in a suit by the protected employees as third party beneficiaries of the warranty agreement and that the state's liability would be determined by a court construing the warranty in the same manner that any contract would be construed. Accordingly, the intent or policy of the United States Department of Labor as to the state agency's liability is immaterial except as it may be expressed within the terms of the warranty itself.

It is my understanding from my conversation with you on the telephone that in fact it is not the intention of the Department of Labor that the state agency administering the Section 18 program should be financially responsible to employees protected by the warranty. As I stated to you on the telephone, if this is the case the legal impediment to the Washington Department of Transportation administering the Section 18 program for local transit operators could be resolved by a simple provision in the warranty itself absolving the state department of any financial liability. If the warranty itself contains language expressly absolving the State Department of Transportation from financial liability, it would of course receive that construction by a court, and the state agency would be fully protected. Accord-

ingly, I am suggesting on behalf of the Washington State Department of Transportation that the special Section 13(c) warranty by amended to add a paragraph "D" to read as follows:

D. *Public Body Not to be Financially Liable.*—Notwithstanding any other provision of this special warranty, the Public Body ("Washington State Department of Transportation") shall not be financially liable under any provision of this special warranty.

Inclusion of this additional paragraph in the 13(c) warranty will enable the Washington State Department of Transportation to administer funds provided under Section 18.

The authority of local agencies to accept the terms and conditions of the warranty will be addressed by counsel for the local agencies.

Very truly yours,

THOMAS R. GARLINGTON,
Senior Assistant Attorney General
(For the Attorney General).

U.S. DEPARTMENT OF LABOR,
LABOR-MANAGEMENT SERVICES ADMINISTRATION,
Washington, D.C., February 26, 1980.

Mr. THOMAS R. GARLINGTON,
Senior Assistant Attorney General, Office of the Attorney General, State of Washington, Temple of Justice, Olympia, Wash.

DEAR MR. GARLINGTON: This letter is in response to your November 29, 1979 letter addressed to Mr. Lynn Franks of our staff with which you also enclosed an informal legal opinion addressed to Mr. Robert Nielson, Assistant Secretary of Public Transportation and Planning. You have suggested on behalf of the Washington State Department of Transportation inclusion of additional language into the Special Section 13(c) Warranty which would have the effect of absolving the State of any financial liability under the arrangement.

The informal legal opinion indicates that upon the basis of your examination of the Special Section 13(c) Warranty, you believe that the state administering agency has either liability as a principal, or as a guarantor of the recipient's performance of the Warranty obligations. You also indicate that you have found no express authorization for the State of Washington to undertake such liabilities for payment of benefits to protected surface transportation employees, and you conclude that the State may not execute a Section 18 project application.

A condition for receipt of Federal assistance under the Urban Mass Transportation Act (UMT Act) of 1964, as amended, requires the Secretary of Labor to certify that fair and equitable arrangements have been made to protect the interests of mass transit employees affected by such assistance. To satisfy Section 13(c) labor protections in connection with grants under Section 18 of the UMT Act and to conform with the legislation intent to reduce "red tape", the Secretary of Labor, in consultation with the Federal Highway Administration and other affected interest groups, developed the Special Section 13(c) Warranty. The Secretary of Labor has certified the Special Warranty as providing protections which satisfy the requirements of Section 13(c) of the UMT Act.

Paragraph (5) of the Special Warranty states that "the Recipient or other legally responsible party designated by the Public Body will be financially responsible for the application of these conditions. . . .". As stated in the Guidebook, which explains the contenets and use of the Special Warranty, it is our opinion that when the Public Body is not designated as the legally responsible party, then the Public Body assumes no special obligations that are not otherwise part of its normal obligations as a grant administering agency. This is no different than under the Section 5 operating assistance program where a Public Body acts as a conduit of the funds to a private operator.

The Special Warranty in and of itself does not increase a state's liability. In addition, the fact that a state acts as a conduit in the funding of particular projects in no way adds to its obligations. Any liabilities which a state may have with respect to Section 13(c) protections when it chooses to have a designated legally responsible state or federal contract law.

It is not our intent to place the State in the role of the guarantor for protections in instances where a legally and financially responsible Recipient defaults on its obligations. You and other attorneys for the State are in the best position to assess what impedients, if any, exist under your state law with respect to WSDOT's potential financial liabilities. The Department of Labor cannot, in any event, ab-

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solve the State, as signatory to the contract of assistance, of any potential liability which might exist.

Although other states also have expressed concerns about Section 13(c) liabilities and obligations during their processing of Section 18 grants, in excess of 190 projects have been processed to date in 25 states on the basis of acceptance of the Warranty. In every instance the recipient has accepted Section 13(c) responsibilities. In resolving difficulties over Section 13(c) responsibilities. In resolving difficulties over Section 13(c) some states have used hold harmless clauses while others used specific language defining the financially responsible parties for the projects. You may wish to examine your state laws to determine whether any of these approaches or similar ones are viable in permitting Washington, like a number of other states, to participate in the Section 18 program.

If you have any questions about the contents of this letter or approaches which have been successfully used in adopting the Warranty, please contact Mr. Lynn Franks of our office who is responsible for handling Section 13(c) matters for the State of Washington.

Sincerely,

LARY F. YUD,
Chief, Division of Employee Protections.

STATE OF WASHINGTON,
DEPARTMENT OF TRANSPORTATION,
Olympia, Wash., March 4, 1980.

(Attention: Division of Employee Protections)

DIRECTOR,
Office of Labor-Management Relations Services,
U.S. Department of Labor, Washington, D.C.

DEAR DIRECTOR: The Washington State Department of Transportation has made application to the Federal Highway Administration, pursuant to Section 18 of the Urban Mass Transportation Act of 1964, as amended, for a series of mass transportation grants, as attached.

The Washington State Department of Transportation, as the public body, agrees, that, in the absence of a waiver by the Department of Labor, the terms and conditions of the Special Section 13(c) Warranty shall apply for the protection of the employees of any employer providing transportation services assisted by the Project ("Recipient"), and the employees of any other surface public transportation providers in the transportation service area of the Project. The Warranty arrangement shall be made part of the contract of assistance and shall be binding and enforceable by and upon the parties thereto, by any covered employee or his representative. The Washington State Department of Transportation hereby designates each Recipient as the legally responsible party under the Special Section 13(c) Warranty. It is understood that said Warranty is to be construed in a manner consistent with the first sentence of the third paragraph on page two of a letter from the United States Department of Labor to the Chief Counsel, Washington State Department of Transportation, dated February 25, 1980, a copy of which is attached hereto and by this reference is incorporated herein.

The Washington State Department of Transportation hereby certifies that the Recipients have indicated in writing acceptance of the terms and conditions of the Special Section 13(c) Warranty. Such acceptance will be sufficient to permit the release of Section 18 funding in the absence of a finding of non-compliance by the Department of Labor. The letters of acceptance are on file at the following addresses:

Washington State Department of Transportation,
Highway Administration Building, Olympia, Wash., 98504
Contact Person: Kim Dunn, telephone: 206-754-2850.

Additionally, pursuant to Section (A) of the Special 13(c) Warranty, included with this submission is a listing of all transportation providers which are Recipients of transportation assistance funded by the Project, and a listing of other eligible transportation providers in the geographic area of each project, and any labor organizations representing the employees of such providers.

Sincerely,

W. A. BULLEY,
Secretary of Transportation.

Enclosure.

ARIZONA DEPARTMENT OF TRANSPORTATION,
TRANSPORTATION PLANNING DIVISION,
Phoenix, Ariz., October 25, 1979.

Mr. W. DAVID LEE,
Secretary, Standing Committee on Public Transportation, American Association of State Highway and Transportation Officials, Washington, D.C.

DEAR MR. LEE: We are happy to respond to your request for information on the status of Section 13(c) in Arizona.

As of this date, Arizona has not requested any Section 13(c) waivers or processed any warranties. We are in the "Management Plan preparation" phase and have not yet begun funding Sec. 18 projects.

In respone to your second question on parties to warranties, it does appear that the State of Arizona is prohibited from participating as party to the warranty as currently written.

We fully concur in the concerns expressed by the various states in the letters accompanying your request. The overall effect of UMTA's current approach will reduce federal transportation assistance to the non-urbanized areas, clearly not the intent of the Sec. 18 legislation.

Sincerely,

LOUIS A. SCHMITT,
DEPUTY ASSISTANT DIRECTOR,
Transportation Planning Division.

STATE OF MAINE,
DEPARTMENT OF TRANSPORTATION,
Augusta, Maine, October 15, 1979.

MR. W. DAVID LEE,
Secretary, American Association of State Highway and Transportation Officials, Washington, D.C.

DEAR MR. LEE: This refers to your communication of October 3rd, requesting information on the status of Section 13(c). The Maine Department of Transportation is currently involved in the development of regional operations plans and, therefore, Section 13(c) warranties or requests for waivers have not yet been submitted. I would state however that Section 13 is perceived by most of the small rural operators, particularly those who are attempting to move from a strictly social service type of service to public transportation, as a very serious hindrance to such development.

There is what I believe is an understandable reluctance by these small operators to, in effect, make employment guarantees when the amount of funding from Section 18 constitutes such a small part of their total operating budgets.

Very truly yours,

WILLIAM F. FERNALD,
Director, Transportation Services Division.

THE COMMONWEALTH OF MASSACHUSETTS,
EXECUTIVE OFFICE OF TRANSPORTATION AND CONSTRUCTION,
Boston, Mass., October 17, 1979.

Mr. W. DAVID LEE,
Secretary, American Association of State Highway and Transportation Officials, Washington, D.C.

DEAR MR. LEE: I am writing in response to your letter of October 3, 1979 regarding the status of 13(c) labor protection warranties applicable to the Section 18 program in the Commonwealth of Massachusetts.

Warranties have been signed for all of the rural transit projects proposed by this office and approved by FHWA during FY 79. While system representatives were apprehensive about the warranty, they signed it in order to gain access to the much-needed Federal financial assistance. We had been told informally by the U.S. Department of Labor that warranty waivers would be granted only to recently-initiated systems, and then only for one year. Since all of our projects had been in existence before the passage of Section 18, it was felt the pursual of a waiver would have been fruitless. Because the Commonwealth and this office have no direct control of the administration of a project, we will not become a party to the warranty.

I hope this information is helpful. Please feel free to call on me on my staff at any time.

Sincerely,

BARRY M. LOCKE, *Secretary*

REPORT OF SECTION 18 PROGRAM STATUS IN THE STATE OF GEORGIA

Since its passage in November 1978, the Section 18 Program has had slow progress in the nation and in the State of Georgia. Using Interim Federal Regulations, the State developed the Management Program that outlines the strategy for implementation. A copy of the Management Program, accompanied by a letter from the Commission, went to each county and to each city with more than 5,000 population. Following the Commissioner's letter, numerous contacts were made with County Commissioners and other local officials explaining the Program and giving details as to its implementation.

Reaction from the local areas have uncovered fundamental differences with the Program. The major problem encountered involves the application of Section 13(c) to the Section 18 program. County Commissioners and local officials find the 13(c) Fair Labor Requirements difficult to comprehend and appear to be reluctant to make the warranty certification. Besides being difficult to understand, the warranty developed by the Department of Labor for application to the Section 18 Program ignores the special needs of rural areas. This document is based on standards created for large metropolitan systems receiving large federal grants. The warranty has its foundation in modal agreements developed by the American Public Transit Association, the Amalgamated Transit Union, AFL–CIO and the Transit Workers Union of America on July 23, 1975.

This same agreement was also signed on July 31, 1975 by the Railway Labor Executive Association, the Brotherhood of Locomotive Engineers, Brotherhood of Railway and Airline Clerks and the International Association of Machinist and Aerospace Workers all of which are organizations with constituency in other than small urban or rural areas.

Local reaction indicates that the draft 13(c) warranty is an unworkable document for small urban and rural programs. The warranty serves to discourage participation of small urban and rural entities who balk at signing a document required for award of federal grants that would potentially expose them to liability in excess of the grant.

It is unclear whether the DOL warranty exceeds the legal requirements of Section 13(c). Section 13(c) was adopted to protect individual employees against a worsening of their position with respect to their employment. The DOL warranty has expanded this interpretation of fair labor protection to encompass any impact, positive or negative, resulting from project.

In Georgia all but seven of the States 159 counties can be considered rural. If a county were to opt to request a waiver, the administrative support work necessary to initiate a waiver in 142 counties would be excessive. Georgia has produced only one application for Section 18 monies since November 1978. The single application includes a signed warranty agreement.

STATE OF COLORADO,
STATE DEPARTMENT OF HIGHWAYS,
Denver, Colo., July 17, 1979.

Re Rural and Small Urban Transportation Program.

Mr. BROCK ADAMS,
Secretary, U.S. Department of Transportation,

Mr. RAY MARSHALL,
Secretary, U.S. Department of Labor,
Washington, D.C.

GENTLEMEN: I have received your letter to Governor Lamm of June 12, 1979 transmitting the Special Section 13(c) Warranty for Application to the Small Rural and Urban Program. This document provides the guidelines for application of Section 13(c) labor protection provisions to the Section 18 small urban and rural transit program, funded under the Urban Mass Transportation Act of 1964, as amended by the Surface Transportation Assistance Act of 1978.

Although there has apparently been a great deal of effort expanded by your two agencies in developing the 13(c) provisions for the Section 18 program, the guidelines appear to be unworkable. A copy of the guidelines is currently being reviewed by the Colorado Attorney General's Office to determine whether the 13(c) provisions

are legally implementable in Colorado. Specifically, I am concerned as to whether the Department of Highways as administering agency for the Section 18 program, is liable for financial claims made upon it and whether the Department can avoid expense by requiring local recipients to assume all liability and holding the State harmless. Pending that determination, I wish to provide you with my concerns assuming the 13(c) provisions may be implemented in this State.

First, the congressional intent was for a program for rural areas with streamlined and simplified administrative procedures. The 13(c) provisions, as outlined by your two agencies are cumbersome. The uncertainty alone regarding the potential legal liabilities to local areas and to the State will reduce interest in the program. As you are aware, programs of this nature must be clear and straight forward in order for representatives of rural areas, with limited staff time and expertise, to willingly participate.

Secondly, Colorado is very much interested in strongly pursuing the coordination of transit and paratransit services in small urban and rural areas. I am encouraged by the language in the guidelines calling for coordination. However, the 13(c) labor protection provisions appear to very much limit the opportunity for coordination due to the potential layoffs and job reclassifications resulting from consolidation of transportation services.

In addition, the opportunity for waiver of 13(c) provisions appears to be nonexistent. A draft "Guidebook on the Contents and Use of the Special Section 13(c) Warranty for Application to the Small Urban and Rural Program," prepared by the Department of Labor and dated May 30, 1979 states, "the request for waiver should assert that there are no existing employees of the Recipient or of any other transportation service provider eligible for funding in the transportation service area of the Project as of the date of the requested waiver, or that employees of eligible transportation service providers cannot be potentially affected by the Federal assistance." A waiver would be impossible on the basis of the above criteria.

In general it is my feeling the 13(c) provisions, as applied to the Section 13 program, will be stifling. They present a barrier which many rural Coloradoans will seek to overcome given the available funding. If these barriers cannot be reduced administratively, perhaps a legislative amendment is required.

Thank you for your attention.

Very truly yours,

JACK KINSTLINGER,
Executive Director.

ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT,
Little Rock, Ark., October 8, 1979.

Mr. W. DAVID LEE,
Secretary, AASHTO Standing Committee on Public Transportation,
Washington, D.C.

DEAR MR. LEE: We offer the following comments in reply to your Committee letter dated October 3, 1979.

As of October 1, 1979, no entity in Arkansas has formally requested Section 18 funding for any project, nor has any entity executed the Section 13(c) Warranty. The Arkansas State Highway and Transportation Department is precluded by State law from being a party to the warranty.

Our State similar to other states is extremely concerned about the funding burden being placed upon the Section 18 Program. If Section 18 is expected to provide planning funds in lieu of Section 8, capital assistance in lieu of Section 16(b)(2), operating subsidy to intercity bus operators in lieu of Section 22 funding, and still support an adequate rural and small urban area public transportation program in lieu of Section 3 grants, then we must have significantly increased Section 18 apportionments. Without more Section 18 funding our existing rural and small urban area transportation program will experience a net loss in funding along with a loss of effectiveness in transportation of persons in need of same.

Yours truly,

A. E. JOHNSON, Jr.,
Assistant Chief Engineer,
Planning and Development.

Senator WILLIAMS. Mr. McFarlane, could I have your position again?

Mr. MCFARLANE. I am Walter McFarlane. I am deputy attorney general for the State of Virginia, and I am vice chairman of the Legal Affairs Committee for AASHTO—the lawyers group within all these engineers.

Within this short period of time, it's not going to be possible for me to really give you a great in-depth review of the problems that the States are having. I'm one of those poor souls that happens to represent a State as counsel to that State, which asked how to interpret this 13(C) agreement. If I might, I will try to give you a very cursory review of them.

Like I say, I apologize, because it certainly is not in-depth, and I'd be more than happy to answer any questions that might come up.

The first question, of course, as Ms. Gianturco has pointed out, is the question as to the States' liability. Originally many of the States looked at it, recognized that there might be a potential for liability because they were not the recipients—they were the pass-through. Later, they have reviewed it again and recognized that especially through some of the discussions among themselves that there is this potential for liability.

I think this particular problem has been particularly brought to focus by the problem that the State of Washington has had, as Ms. Gianturco has said. There the question was presented to DOL: Is the State liable?

DOL says, "It was not our intention to make the State liable." Washington came back and said, "Fine. Let's put that in the contract." DOL came back and said, "No. We can't put it in the contract." So that's where it rests right now. So that leaves me as counsel for the Department of Transportation in Virginia with no idea as to what I'm going to be faced with from the Department of Labor.

Another problem that arises is the pervasiveness of these hold-harmless clauses that are inherent in this. They ask the recipient to hold harmless anyone who may in fact be damaged. And the hold-harmless is not just for the present, ongoing project, but it asks for them to be held harmless for times after the project is completed.

Anybody who has represented a State agency or any type of governmental agency recognizes right off the problems with hold-harmless. One of the first things you were told when you started representing governmental agencies is that they cannot enter into hold-harmless clauses, be they State agencies, be they county, or be they Federal.

But problems with hold-harmless clauses are many. First, some States across the Nation still have sovereign immunity, and if they enter into this clause that says that they will hold themselves responsible, they waive that sovereign immunity, and that is very possible—that whatever agreement that they may enter into may be ultra vires, since the legislatures or the general assemblies of the various States are the only parties that can waive this immunity.

The second thing, probably, that causes the most problems is the fact that it's openended. We have no idea how pervasive the financial responsibility may be. There are no limitations on this. You

have no way that you can put your finger on it, and law, across the United States, universally condemns openended contracts such as this.

The third problem which is inherent in this is the fact that it binds future legislative bodies to unknown sums of money. This has also been recognized in times past. As a matter of fact, in recent dealings with the United States Department of Transportation when Secretary Coleman was the Secretary, we had some goings between the State of Virginia and the USDOT on I-66. And one of the things—the problems there—was whether he could bind the Department of Transportation for the United States in perpetuity, and the same thing with our Governor, Governor Godwin—whether he could bind the State of Virginia in perpetuity. And both parties recognized that they could not. But yet this agreement would ask you, in fact, to bind in perpetuity.

There is the problem with binding arbitration. At the present, 13(C) says that you will submit as a recipient to binding arbitration. Many States do not allow binding arbitration. The common law across the United States is—and it's very universally held—that you cannot have binding arbitration period. It asks the court of jurisdiction.

Now the way this is gotten around is by statutory enactments, and this has been—a number of States have enacted statutes which allow binding arbitration. Virginia is one of those. Yet in Virginia we have a particular problem inasmuch as our binding arbitration statutes do not deal directly or specifically with State or governmental or county organizations. So we do not at this point in time know whether a county could, if it were a recipient, could in fact bind itself to this rule.

Another sort of peripheral thing is that the person who is the final arbiter in this is not a court, but it can in fact be the Department of Labor. And many States who have dealt with the Department of Labor in times past are somewhat leery to allow the Department of Labor to be the one to be the final arbiter, especially when it's binding and you do not have any recourse to the courts.

Another problem is the collective bargaining agreement. The way the 13(C) agreement is written, it's ambiguous as to whether, in fact, the recipient would be responsible for taking over and assuring the collective bargaining agreements. If, in fact, that were so, then Virginia would not be allowed to do that because our Supreme Court has ruled that our State employees cannot enter into collective bargaining agreements.

And finally, because of the hold-harmless clause, a number of States across the Nation are running into problems with the constitutional debt limitations. Since there is no guarantee as to how much financial liability they will incur, then they are hesitant to enter into an agreement which may exceed their constitutional debt limitations. Many of the States in the South, because of the debts incurred during the Civil War, have placed this in their constitutions, as so have some of the other States across the Nation, which in fact says that you can only have a certain percentage of debt as based upon your capital assets, et cetera.

And Virginia is one of these. And one of our problems then is if, in fact, this is considered a debt, and it's very arguable that it is a debt. Although it is not existing at this time, it is something that will be incurred in the future—that, in fact, it will be an openended abuse of that constitutional debt limitation.

Thank you very much.

Senator WILLIAMS. You've given us a lot to wonder about. I gather you have some problems. Some people here might have some observations and answers for you.

Mr. YUD. Yes, sir.

Senator WILLIAMS. I hope there will be time, but let us continue now with Mr. David King. Also I want to state the apologies of Senator Morgan, who had to go to another committee meeting. He regrets that he won't be able to hear you.

Senator GARN. Mr. Chairman, while you're saying that, I came in late and will have to leave early. I have two other committee meeting going on at the same time, and I guess I'm dropping into each one of them and will accomplish nothing at any one of the three. [Laughter.]

I just want to say that I apologize.

Senator WILLIAMS. Senator Garn, maybe as a nonlawyer, you can straighten out all of these legal problems. I appreciate the triple demands upon your time.

Mr. King?

STATEMENT OF DAVID D. KING, DIRECTOR, PUBLIC TRANSPORTATION DIVISION, NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

Mr. KING. Thank you, Mr. Chairman. On behalf of Secretary Thomas W. Bradshaw, Jr., and the North Carolina Department of Transportation, I would like to thank the subcommittee for the opportunity for providing some thoughts on our experience in North Carolina in implementing the section 18 program.

Over the last 3 years North Carolina has put a lot of effort into developing rural transportation. On December 6, 1978, just 7 days before the U.S. Department of Transportation issued its Emergency Regulation section 18, North Carolina culminated a 14-month statewide study of rural transportation commissioned by Governor James B. Hunt, Jr. After reviewing the recommendations of the study, Governor Hunt issued executive order 29, which directed his State government to do several things. Among these were help local transportation projects to coordinate all federally and State-assisted transportation programs; two, to provide new opportunities for the private sector, particularly the taxi operators and inner city bus operators to participate in the local transportation provision; and three, to encourage and promote the initiation of transportation services for the general public, not just specific client groups.

Through the Governor's actions, North Carolina fortuitously was in an excellent position to immediately implement the new section 18 program. I might add that North Carolina is the fifth largest nonurbanized State in population in the country, so we get the fifth largest amount of funds out of this program. The success we've had is reflected by a recent FHWA study which would indicate that North Carolina leads the Nation in its obligation of

section 18 funds. I am also pleased to report that last Friday, March 14, in its monthly meeting, the North Carolina Board of Transportation approved a $3.2 million program of projects for fiscal 1980. This brings the State's total commitment of section 18 funds to date to $6.3 million. Added to that is approximately $370,000 for administration and pass-through planning funds.

There are a number of significant features of the section 18 program which have facilitated our implementation of the program.

First, the U.S. DOT decision to assign the administrative responsibility for this program to the Federal Highway Administration and the decision to give the State offices of FHWA most of the decisionmaking responsibility has been advantageous. When questions or conflicts arise in our administration program, we simply call the people who are one block away and meet in our office. It's very convenient.

Second, we applaud the decision to keep program regulation as simple as possible. We strongly recommend that when U.S. DOT issues its final rulemaking on section 18, these rules clearly reflect the congressional mandate to reduce redtape. Parenthetically, we hastily reviewed the draft section 18 regulations today and are pleased to report that they look like they reflect that simplifying mandate to keep redtape at a minimum. We're pleased with what we've seen so far.

Third, the program's flexibility in permitting other unrestricted Federal funds to be used as match has greatly increased the ability of local governments to finance rural public transportation.

Fourth, the setaside of funds for use by the States for administration and technical assistance has been invaluable. We have used those funds to establish technical assistance programs using staff funded by section 18. We have hired transportation planners who are assigned to counties around the State, and we're able to provide technical assistance. It has greatly facilitated our ability to administer the program. We have found that 15 percent of our total apportionment is more than adequate for these purposes. For fiscal year 1980, we are using only 7 percent for administration and planning.

There are, however, several potential problems that can work to reduce our effectiveness in carrying out the objectives of section 18.

First, we do not believe that it was the intent of Congress to utilize section 18 as the sole source of funding for rural transit. Here, I'm very redundant with what Ms. Gianturco said. We've found that in the first year of our section 18 program, it was used to fund section 3 projects that have been dumped on us by UMTA. That completely absorbed all our fiscal year 1979 funding. Programs that had been submitted to the regional office in Atlanta were turned over to us sometimes 6 to 9 months after they'd been applied for, and we were expected to handle those projects out of section 18. That completely depleted our fiscal year 1979 money.

The same kinds of indications have been made about the 16(B)(2) program. We are pleased that recently the U.S. DOT has seemed to reverse that stand and has said that 16(B)(2) programs for elderly and handicapped citizens will be continued as it was before. Still and again, as Ms. Gianturco indicated, there is no funding for

sections 21 and 22, the intercity bus programs. Bus terminal rehabilitation, or any bus routes that we might choose to fund, have to come out of section 18 because there's no money in sections 21 and 22.

Second, we find ourselves caught in the middle of a very serious problem of cash flow. A lot of the projects that are eligible for section 18 funds are small—are shoestring operations. They cannot stand 3, 6, and 9 month delays in getting the money. They simply can't afford to buy gas and pay drivers and sustain that out of their own budget for that length of time without being reimbursed by the Federal Government.

For example, despite the fact that the President signed the appropriations bill in November, we were notified yesterday that fiscal year year 1980 section 18 funds were available for obligations—5½ months into the fiscal year.

As you can imagine, this is posing a significant hardship on established small urban and rural transportation systems which have been incurring operational and administrative costs since October 1, 1979.

Even if the funds were available at the start of the fiscal year, it is difficult for a local project to maintain adequate cash flow because of the time it takes to process an invoice through normal channels as well as the time it takes for a project to seek reimbursement from a social service agency for which it is providing transportation on a contractual basis.

Perhaps some advanced drawdown of funds may alleviate this problem.

Third, although section 18 is often referred to as a rural transportation program, it is, in fact, a rural and smal urban transportation program. In many respects, small urban systems are more similar to our fixed route urban systems than to demand responsive rural systems.

As such, their capital and operating needs are much greater. These systems utilize full-sized diesel transit coaches of the same type that large urban areas utilize costing from $110,000 to $140,000, compared to $25,000 for a typical small bus operated by a rural system.

In North Carolina, we have found it difficult to meet the demands placed upon the section 18 program by these small urban systems while maintaining a fair and equitable distribution of the funds.

For example, in the fiscal year 1980 program of projects just approved, nearly 90 percent of the section 18 funds are programed for small urban areas. While the results of the 1980 census will have an impact on this issue, it is clear that, in the future, in spite of the census, we're going to continue to have substantial small urban requests.

Fourth, we are finding that as we progress toward a rational, annual section 18 administrative cycle, new questions or situations are arising for which no guidance is provided by the existing emergency regulation.

The temptation is to regulate each new situation that comes up. We'd like to caution against doing that. There is simply no set of guidelines that can cover every instance that will arise when

you're dealing with a disparate group of projects and programs that we're going to have in the section 18 program.

Good judgment and careful audits ought to be the rule of the day.

A good deal of our success to date lies in the flexible nature of the program. Our effectiveness would undoubtedly diminish if this were to change. I would like to note that we have an excellent relationship with the Federal Highway Administration both at the State and Federal levels. As I noted earlier, the second draft of the regulation of section 18 does appear to us to incorporate some of the suggestions that have been received from the States by the Federal Highway Administration, and that's a good sign.

Fifth, it is clear that not only has section 13(c) delayed initial startup of the section 18 program by approximately half the year, but this provision will hinder project implementation at the local level.

There's a good deal of misunderstanding of the program about the 13(c) provision, as Mr. Yud indicated. It's natural that the county commissioners are reluctant to enter into uncertain arrangements that they might regret later.

I will stop there by saying that we have some of the same concerns that Mr. McFarlane brought out.

One other comment on 13(c). So far, as near as we can tell, the waiver is a fairly meaningless document. To our knowledge, it's not been widely used, if at all. We feel the reason for that is the narrow interpretation of what is a project-similar service.

We feel that that whole issue ought to be reexamined and re thought. We'd like to be able to participate in that process, if possible, or some representative of the State government should participate. The States must administer this program.

Finally, the costs associated with implementing section 504 of the Rehabilitation Act of 1973 are a concern. We have calculated that over $600,000 has or will be spent during the first 2 years of our section 18 program to implement DOT's 504 regulations.

This is an extremely high figure given the fact that many rural transportation systems were established prior to DOT assistance, and were in business providing transportation services to the very people section 504 is intended to benefit.

We feel that it's ironic that the amount of funds available to provide some of these services is actually being reduced by these regulations. They don't seem to have much commonsense value in rural and small urban systems.

I will note one other item that is not in our written statement; that is, that while the Governor does have the authority to direct his cabinet officers to coordinate and operate their transportation and human service programs in such a way that the funding for those programs is coordinated, we do not have similar control over the Community Services Administration and we have a mixed record there.

Some of our community services programs in the State are very supportive of the concept of coordination and the economies of scale which coordination brings, and some are not. And we have absolutely no leverage there, and I just want to point that out for

the record. In those cases where we are not getting cooperation, we have absolutely no leverage to achieve cooperation.

In concluding, we must state that although we have had some initial success in getting this program moving, the most exciting period is ahead of us. We recognize that never before has a source of Federal assistance for rural public transportation existed.

Now that section 18 is a reality, we foresee a gradual transition process from the existing specialized transportation services—gradually, incrementally, through months and years, to programs that are coordinated to also provide transportation for the general public.

This transition cannot occur overnight. But through such efforts as the White House initiatives on rural transportation and the HEW demonstration designed to simplify the administration of those HEW programs which are utilized in purchase of service agreements, these transitional barriers can be overcome.

The full impact of these initiatives is yet to be felt. We anticipate that when these efforts come to fruition in the next year, many more local governments will look toward section 18 as a welcome source of assistance to provide basic mobility for our nonurbanized area citizens.

Thank you.

[Complete presentation of the North Carolina Department of Transportation follows:]

STATEMENT OF THE
NORTH CAROLINA DEPARTMENT
OF TRANSPORTATION

On behalf of Secretary Thomas W. Bradshaw, Jr., and the North Carolina Department of Transportation, I would like to thank the Subcommittee for providing this opportunity for us to share with you North Carolina's experiences in implementing the Section 18 program.

Over the last three years North Carolina has put a lot of effort into developing rural transportation. On December 6, 1978, just seven days before the U.S. Department of Transportation issued its Emergency Regulation for the Section 18 program, North Carolina culminated a 14 month statewide study of rural transportation commissioned by Governor James B. Hunt, Jr. After reviewing the recommendations of the study, Governor Hunt issued Executive Order 20, which promulgated new state procedures designed to: (1) help local transportation projects coordinate all federally and state assisted transportation programs available at the local level; (2) provide new opportunities for the private sector to participate in local transportation provision; and (3) encourage and promote the initiation of transportation services for the general public.

Through the Governor's actions, North Carolina was in an excellent position to immediately implement the new Section 18 program. This is reflected by a recent statement by Mr. Sheldon Strickland, FHWA's Section 18 program manager, that North Carolina leads the nation in its obligation of Section 18 funds, with authorizations totaling $3.1 million. I am also pleased to report that on March 14 the North Carolina Board of Transportation approved a $3.2 million program of projects for FY 1980. This brings the State's total committment of Section 18 funds to $6.3 million.

There are a number of significant features of the Section 18 program which have facilitated our implementation of the program.

First, the U.S. DOT decision to assign the administrative responsibility for this program to Federal Highway Administration and the decision to give the State (Division) offices most of the decision-making responsibility has been advantageous. When questions or conflicts arise, meetings can be quickly arranged and problems can be resolved.

Second, we applaud the decision to keep program regulation as simple as possible. We strongly recommend that when U.S. DOT issues its final rulemaking on Section 18, these rules clearly reflect the Congressional mandate to reduce red tape.

Third, the program's flexibility in permitting other unrestricted federal funds to be used as "match" has greatly increased the ability of local governments to finance rural public transportation services.

Fourth, the set-aside of funds for us by the states for administration and technical assistance has been invaluable. We have established a regional technical assistance program using staff funded by Section 18. In addition we have made these funds available to local and regional governments for the purpose of producing county-wide transportation development plans. We have found that 15% of our total apportionment is more than adequate for these purposes. For Fiscal Year 1980, we are using only 7% for administration and planning.

There are, however, several potential problems that can work to reduce our effectiveness in carrying out the objectives of Section 18.

First, we do not believe that it was the intent of Congress to utilize Section 18 as the sole source of funding for rural transit. We have already seen efforts to pull back on making UMTA Section 3 and UMTA Section 16(b)(2) funds available. We are pleased that UMTA has reconsidered these decisions. Yet, without any appropriations for Sections 21 and 22, we are still faced with the prospect of funding intercity bus terminal rehabilitations with Section 18.

Second, we find ourselves caught in the middle of a very serious problem--that of cash-flow for small transit operations. For example, despite the fact

that the President signed the appropriation's bill in November, we were just notified yesterday that FY 1980 Section 18 funds are available for obligation. As you can imagine, this is posing a significant hardship on established small urban and rural transportation systems which have been incurring operational and administrative costs since October 1, 1979. Even if the funds were available at the start of the fiscal year, it is difficult for a local project to maintain adequate cash-flow because of the time it takes to process an invoice through normal channels as well as the time it takes for a project to seek reimbursement from a social service agency for which it is providing transportation on a contractual basis. Perhaps some advanced draw down of funds may alleviate this problem.

Third, although Section 18 is often referred to as a rural transportation program, it is, in fact, a rural and small urban transportation program. In many respects, small urban systems are more similar to our fixed-route urban systems than to demand-responsive rural systems. As such, their capital and operating needs are much greater. These systems utilize full-sized diesel transit coaches costing from $110,000 - $140,000 each--compared to $25,000 for a typical small bus operated by a rural system. In North Carolina, we have found it difficult to meet the demands placed upon the Section 18 program by these small urban systems while maintaining a "fair and equitable" distribution of the funds throughout the State. For example, in the FY 1980 program of projects just approved, nearly 90% of the Section 18 funds are programmed for small urban areas ($2,913,136 out of $3,247,081). While the results of the 1980 Census will have an impact on this issue, it is clear that we will continue to have substantial small urban demands on Section 18.

Fourth, we are finding that as we progress toward a rational, annual Section 18 administrative cycle, new questions or situations are arising for which no guidance is provided by the emergency regulation. It is difficult to avoid regulating each new situation, but we must resist this temptation. It is simply impossible to

expect a set of guidelines to cover every situation. Good judgment and careful audits should suffice. A good deal of our success lies in the flexible nature of the program. Our effectiveness would undoubtedly diminish if this were to change. Additionally, the Federal Highway Administration should not look to its existing highway regulations to fit these situations--highway regulations may be neither applicable nor appropriate to a rural public transportation project.

Fifth, it is clear that not only has Section 13(c) delayed initial start-up of the Section 18 program, but this provision will hinder project implementation at the local level. Local elected officials are extremely concerned about committing themselves to labor protection requirements with uncertain implications. We continue to believe that it is entirely inappropriate for 13(c) to apply in situations where no local union exists. This is especially true given the extensive opportunity for the participation of the private sector in Section 18 projects.

Finally, the costs associated with implementing Section 504 of the Rehabilitation Act of 1973 are a concern. We have calculated that over $600,000 has or will be spent during the first two years of our Section 18 program to implement DOT's 504 regulations. This is an extremely high figure given the fact that many rural transportation systems were established prior to DOT assistance to provide transportation services to the very people Section 504 is intended to benefit. It is the supreme irony that the amount of funds available to provide meaningful service to these handicapped citizens is in fact reduced by the very regulation which was designed to help them.

In concluding, we must state that although we have had some initial success in getting this program moving, the most exciting period is ahead of us. We recognize that never before has a source of federal assistance for rural public transportation existed. Now that Section 18 is a reality, we foresee a gradual transition process from the existing specialized transportation services supported by program-specific HEW dollars to transportation systems which are able to serve the general

public as well as human service agency clients. This transition cannot occur overnight. But through such efforts as the White House Initiatives in Rural Transportation and the HEW demonstration designed to simplify the administration of HEW programs utilized in purchase of service arrangements, these transitional barriers can be overcome. The full impact of these initiatives are yet to be felt. We anticipate that when these efforts come to fruition within the next year, many more local governments will look toward Section 18 as a welcome source of assistance to provide basic mobility for our nonurbanized area citizens.

March 19, 1980

Thomas W. Bradshaw, Jr.
Secretary

David D. King
Director, Public Transportation
Division

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Interim State Management Plan

Section 18

Public Transportation for Nonurbanized Areas

INTRODUCTION

The Surface Transportation Assistance Act of 1978 amended the Urban Mass Transportation Act of 1964 to include Section 18, Public Transportation for Nonurbanized Areas. The Section 18 program provides financial assistance for capital and operating expenses to local transportation systems serving the general public. Funds are also available to cover the administrative expenses of the state administering agency as well to provide technical and planning assistance for local systems.

The Governor designated the Public Transportation Division as the state agency to administer the Section 18 program. Although the Federal Highway Administration is the lead federal agency, the Public Transportation Division has prime responsibility for administering the program. This Management Plan details the framework for the implementation of the Section 18 program in North Carolina. This document discusses each phase of the Section 18 program and the methods that the Public Transportation Division will use to carry out the intent of the federal legislation.

The Public Transportation Advisory Council, the state policy body for public transportation, provided the policy guidance for the preparation of this Management Plan.

This Plan has been based on emergency regulations issued by the U.S. Department of Transportation. These regulations call for the development of a management plan. Until such time as the U.S. Department of Transportation issues final regulations, this Plan should be considered as <u>interim</u>.

prepared by:

The Public Transportation Division
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November 1979

State Goals and Objectives

1. Background

The Governor of North Carolina, through Executive Order, appointed the Governor's Committee on Rural Public Transportation. This Committee was charged with the development of a rural transportation policy for the State of North Carolina. This policy was submited to the Governor in December, 1978, and subsequently embodied in Executive Order 29, issued on December 6, 1978.

This policy complements and supports broader state objectives of achieving a balanced growth of the state's economy and population by maintaining a general balance between where jobs and people are located. The policy provides the overall framework for the State's goals and objectives for the Section 18 program.

2. Policy

As a vital part of the process of achieving policy aims, North Carolina is committed to providing sufficient transportation alternatives to allow its citizens to take advantage of the opportunities which balanced growth will bring. Providing greater accessibility to employment opportunities, social and recreational opportunities, and medical facilities requires that North Carolina first, support the development of rural transportation systems, and second, ensure the equitable distribution of transportation service in rural areas and small communities. To achieve the transportation aims of balanced growth, North Carolina shall:

- Provide assistance to local areas in assessing the need for and developing public transportation systems; encourage the involvement of the private sector in the provision of service; coordinate transportation resources at the local and state level; and, plan for the effective utilization of existing resources as well as new resources.

The following objectives, excerpted from the State policy, are necessary to achieve the overall goals of the State:

To encourage the provision of transportation services to the general public, it shall be the policy of North Carolina:

- To provide support, as feasible, to local private and public initiatives to develop public transportation systems, recognizing that these systems may need planning, operation, and capital assistance

- To encourage the use of human service transportation, wherever possible, to serve the general public on a fare-paying basis while ensuring human service clients first priority service

To encourage the participation of private providers, it shall be the policy of North Carolina:

- To foster and promote cooperation and communication among governmental bodies and the private sector for the purpose of affording the private sector the first opportunity to provide rural public transportation services

- To use the private sector, wherever possible, as a base upon which to build rural transportation systems

To better coordinate transportation functions within State Government, it shall be the policy that each state agency shall:

- Examine its present policies to see what barriers exist to the coordination of transportation resources

- Require the elimination, where possible, of all identified barriers to coordination by amending present policies and procedures

- Coordinate transportation resources at the state level and encourage and support the coordination of transportation resources at the local level

.Reaffirm North Carolina's commitment to work closely with all levels of government toward the achievement of more service-effective transportation for all citizens of North Carolina

To obtain transportation program effectiveness and efficiency, it shall be the policy of North Carolina:

.To support and utilize, wherever practical, existing transportation resources, public or private, before new resources will be made available through public funds

.To require that state agencies make every effort to give priority funding to those transportation programs that contain a local transportation coordination mechanism that has been designated by the local public body as the approved transportation coordination program and fully integrates all available human services transportation and willing, able, and cost-effective private providers

To encourage local-state-federal partnerships, it shall be the policy of North Carolina:

.To foster and promote cooperation among the different levels of government through the sharing of responsibilities and decisions in the administration of transportation programs

Program Administration

1. Background

Article 2B of Chapter 136 of the North Carolina General Statutes designates the Department of Transportation as the Agency of the State of North Carolina responsible for administering all federal and/or State programs relating to public transportation. Additionally, the Governor of North Carolina, in accordance with Section 18(a) of the Urban Mass Transportation Act of 1964, as amended, designated the Department of Transportation, Public Transportation Division, as the agency to receive and administer federal funds under the Section 18 program.

2. Program Administration

a. The Public Transportation Division shall administer Section 18 in accordance with prescribed procedures published by the U. S. Department of Transportation (CFR Title 23, Subchapter 1, Part 825)* and in accordance with existing federal and state regulations pertaining to the administration of federal grants by the North Carolina Department of Transportation.

b. The Public Transportation Division shall make these funds available to provide capital and operating assistance to public transportation projects in non-urbanized areas.

1) Nonurbanized areas shall be defined as areas other than urbanized areas, as designated by the U. S. Bureau of the Census.

2) The federal share for non-operating (capital and administration) expenses shall not exceed eighty (80) percent of the net cost.

a) The State may provide financial assistance for allowable non-operating expenses, depending upon the availability of funds.

b) This State financial assistance shall not be in excess of ten (10) percent of the net cost.

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* Published in the Federal Register, Vol 43, No. 240, Wednesday, December 13, 1978 (Appendix A).

3) The federal share for allowable operating expenses shall not exceed fifty (50) percent of the net operating cost (deficit).

4) The non-federal share of operating and non-operating expenses

a) Half of the local share for both non-operating and operating expenses must be provided in cash, from sources other than federal funds or revenues from the operation of the system. Projects may utilize the state share of non-operating expenses as the local cash match for non-operating expenses.

b) The other half of the local share for both non-operating and operating expenses may be made up of other unrestricted federal funds. The Federal Highway Administration shall compile a list of these unrestricted funds and shall have responsibility for determining the eligibility of these funds in Section 18 projects.

c. The Public Transportation Division shall determine the eligibility of applicants as public transportation service providers.

1) Projects may specialize in providing service to a specific user group, such as the elderly or handicapped, but the service must be available to the general public.

2) The Public Transportation Division shall utilize the following guidelines in determining the eligibility of an applicant as a general public service provider:

a) the applicant must annually publish its routes and schedules open to the general public, or at any time a significant change occurs in the routes or schedules;

b) the applicant must post its routes and schedules in public places;

c) the applicant must submit, with the project application, the system's policy for charging fares to the general public and procedures for contracting transportation services to other agencies;

d) the applicant's vehicles must be clearly marked as open to public use; and

e) the applicant's level of service to the public should be based upon the travel demand of the public and public comments and suggestions in regard to service availability. A procedure for receiving these comments should be developed and submitted with the project application.

3) The applicant must submit, with the project application, an assurance substantiating that the transportation system is or would be available to serve the general public.

d. Eligible recipients

1) State and local public agencies are eligible to receive financial assistance. These agencies are defined as:

a) municipalities, or other political subdivisions of the State;

b) public agencies and instrumentalities of one or more municipalities, or of other political subdivisions of the State;

c) public corporations, boards, and commissions established under State law; and

d) public institutions of higher learning.

2) Nonprofit organizations and private operators of public transportation may be eligible recipients providing the request for financial assistance is made through contractual arrangements with an eligible public agency.*

3) Providers of public transportation in urbanized areas who provide service to nonurbanized areas may be eligible recipients.

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* The Department of Transportation is considering an Administrative Code change to permit direct contracting with nonprofit organizations and private operators, provided the request is endorsed by resolution of the local public body. These grants, therefore, may be made directly with the nonprofit organization or private operator, or subcontracted through the eligible public agency. This change could affect the status of potential applicants. Contact the Public Transportation Division for further information.

a) Financial assistance is available only for that portion of the service operated in nonurbanized areas.

b) The applicant must be capable of segregating allowable operating and non-operating expenses incurred in providing service to nonurbanized areas.

e. Transportation development plans

1) Each application for Section 18 funds shall be accompanied or shall reference an existing transportation development plan.

a) The transportation development plan must have the endorsement of the local public body.

b) The transportation development plan must be approved by the North Carolina Department of Transportation, Public Transportation Division.

2) Requests for financial assistance must be consistent and in keeping with the recommendations of the transportation development plan.

3) The Public Transportation Division has prepared a guidebook, "Transportation Development Planning for Nonurbanized Areas," which may be used in preparing a plan.

3. Project Approval

a. Program of projects

1) The Public Transportation Advisory Council shall recommend to the North Carolina Board of Transportation a program of projects, indicating the nature of the project and recommended funding for each proposed project.

2) The Board of Transportation shall be the body empowered to approve and fund all Section 18 projects.

3) Upon approval by the Board of Transportation, the Department of Transportation shall forward the State's program of projects to the Federal Highway Administration for review and concurrence.

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State Coordination

1. Background

The rural and small urban transportation efforts in North Carolina have been interagency in nature since their inception. The Interagency Transportation Coordinating Committee (ITCC) was responsible for examining current state programs, identifying problems, and developing alternatives for addressing these problems. The ITCC began meeting in July, 1977, and was composed of representatives from all state agencies having an interest in transportation.

This Committee, with concurrence from each participating state agency, developed new methods of coordinating state activities by creating a process of interagency review on all state administered programs that fund transportation. These processes were adopted by the State when the Governor of North Carolina issued Executive Order 29, establishing the Interagency Transportation Review Committee (Appendix B).

The goals of the Interagency Transportation Review Committee are to recommend the implementation of administrative policies and procedures that will increase effectiveness of the delivery of transportation services, recognizing that the State departments are in a strategic position to bring about better use of transportation resources.

The Committee reviews all transportation components of applications or plans requesting transportation funding when the funds are administered by a state agency. The Committee provides written notice of their recommendation to the appropriate State agency. Additionally, the Committee is responsible for implementing policies, as applicable, developed by the Public Transportation Advisory Council.

The Section 18 program will be subject to this interagency review process, effectively coordinating this program with other state administered programs, particularly social service programs administered by the Department of Human Resources.

2. Process for Section 18 Coordination Among State Agencies

a. Section 18 interagency review

1) Recommendations for Section 18 funding made by the Public Transportation Division shall be reviewed by the Interagency Transportation Review Committee.

a) Upon the request of the Interagency Transportation Review Committee, Section 18 applicants will submit, as a supplement to the project application, a transportation addendum to determine the degree of coordination among providers in the service area of the applicant.

b) Public Transportation Division staff, as staff support to the Committee, shall provide a preliminary recommendation on funding to the Committee.

c) The Committee shall review each application at a regularly scheduled meeting.

d) The Committee shall provide written notice to the Public Transportation Division as to the finding and recommendations of their review.

e) The Public Transportation Division shall forward the recommendation of the Interagency Transportation Review Committee to the Public Transportation Advisory Council for their consideration.

2) A recommendation for funding shall be required from the Interagency Transportation Review Committee for any further consideration for Section 18 funding.

3) The Public Transportation Division may appeal the decision of the Interagency Transportation Review Committee by submitting written notice of an appeal to the Chairman of the Committee (the Secretary of the North Carolina Department of Transportation).

a) The Secretary shall consult with other appropriate Departmental Secretaries in rendering his decision on the appeal

b) The decision of the Secretary shall be final and conclusive to all parties in the appeal.

Funding Criteria

1. Background

Program applications for Section 18 funds will be evaluated to determine the extent to which the proposed project meets the overall program goals and objectives of the State and the Department of Transportation.

2. Public Transportation Division Evaluation Criteria

a. Each application for Section 18 assistance shall be reviewed and evaluated by the Public Transportation Division.

1) The request for funds must be consistent and in keeping with the recommendations of a transportation development plan endorsed by the local public body and approved by the Public Transportation Division.

2) The application must contain the necessary project supporting documentation required by the Federal Highway Administration, as outlined in the Emergency Regulations and Request for Comments, (Section 3b(1) - 3b(II)). The following documentation shall be required:

(a) a brief project description;

(b) the project coordination accomplished, including

(1) a description of efforts to coordinate with other transportation providers in the service area, both public and private (a list of these providers and any labor organizations representing employees of these providers must be provided);

(2) a description of efforts to coordinate with social service agencies in the service area, particularly those capable of purchasing service; and

(3) the amount and sources of funds used to purchase and operate vehicles in the two previous years and a description of how these funds will integrate with funds being applied for under Section 18;

(c) the extent of public involvement, including a verbatim transcript of a public hearing on the proposed project;

(d) a description on private enterprise involvement in the preparation of the project application, including

(1) the method by which the applicant notified private operators in the service area to ascertain whether they could participate in the provision of service,

(2) a method by which private providers may have disputes or conflicts arising out of the program properly heard and settled;

(e) OMB Circular A-95 clearance;

(f) the disposition of the labor protection provision of Section 13(c) of the Urban Mass Transportation Act of 1964, as amended;

(g) an assurance that the applicant will comply with the provision of Title VI of the Civil Rights of 1964 and a description of how the applicant will insure that minority business enterprises are afforded the maximum practicable opportunity to compete for work under the project;

(h) an environmental assessment for the proposed project (most Section 18 projects are anticipated to be "non-major action");

(i) a project budget, including sources of federal, state, and local funds used in the project;

(j) provisions for meeting the special needs of elderly and handicapped individuals, including an assurance that the applicant will comply with all the provision of the Section 504 of the Rehabilitation Act of 1973; and

(k) the disposition of all requirements relative to school bus and charter operations, including assurances that the applicant will not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators and will not provide charter and sightseeing services outside the project service area other than on an incidental basis, defined as

(1) weekday charters that occur during the non-peak hours,

(2) weekday charters that require vehicles to travel less than fifty (50) miles beyond the service area, and

(3) weekday charters that require the use of a particular vehicle for less than a total of six (6) hours in any day.

b. Priority consideration will be given to projects that:

1) coordinate existing transportation services in the applicant's service area;

2) utilize the private sector in the service design; or

3) specialize in providing service to the general public.

c. Funds made available under Section 18 should augment rather than replace existing sources of transportation funds.

1) Projects that demonstrate a "maintenance of effort" through the continued commitment of other funding sources to the proposed project shall receive priority consideration for funding.

2) An applicant shall not be penalized under this provision if the failure to maintain previous levels of financial support for the project is due to:

a) a federal or state decision that reduces, or has the effect of reducing, available levels of financial support; or

b) local circumstances, as determined by the Public Transportation Advisory Council, beyond the control of the applicant.

d. Each application requesting operating assistance will be evaluated to determine the operational efficiency of the transportation system.

1) The Public Transportation Division shall develop performance measures that reflect the differing operational characteristics of rural and small urban transportation systems.

2) Performance measures will not be utilized by the Public Transportation Division to develop comparative rankings among proposed Section 18 projects until such time as the Public Transportation Advisory Council recommends adoptions of performance standards.

3. Interagency Transportation Review Committee Evaluation Criteria

a. Each application for Section 18 assistance shall be reviewed and evaluated to assure the application is consistent with state goals:

1) the project must coordinate its service with the service of other transportation providers;

2) the project services must be aimed at the elimination of duplication of services among providers, and

3) the project must provide for effective service delivery.

b. Recommendations for project funding shall be given to projects based on criteria set forth by state goals and objectives (Section A):

1) a transportation development plan endorsed by the local public body;

2) the degree of program coordination;

3) the degree of operational efficiency;

4) the degree of private sector participation;

5) the steps taken to assure the safe transportation of passengers;

6) the steps taken to assure the service is accessible to the handicapped; and

7) the degree to which the service is available to the general public.

Method of Distribution of Funds

1. Background

Section 18(a) of the Urban Mass Transportation Act of 1964, as amended, provides that funds be made available for public transportation projects in areas other than urbanized areas on the basis of a formula apportionment to the Governor of each state. Pursuant to this section, the Governor designated the N.C. Department of Transportation, Public Transportation Division, as the administrative agency to receive Section 18 funds.

Projects considered for funding under Section 18 shall be included in a State program of projects. This program, to be submitted annually to the Secretary (U.S. Department of Transportation), shall not be approved "unless he finds that it provides for a fair and equitable distribution of funds within the State, including Indian reservations."

Additionally, Section 18(d) of the Act provides that the State may utilize fifteen (15) percent of the apportioned funds for program administration and to provide technical assistance to recipients of funds under the Section 18 program.

2. Development of Method of Distribution

The Public Transportation Advisory Council considered a variety of approaches to fairly and equitably distribute Section 18 funds within North Carolina. These approaches included: (a) discretionary distribution of all program funds; (b) formula allocation of all program funds to the counties; and (c) a combination of a discretionary and formula allocation of program funds.

The Council formally resolved to adopt a combination of discretionary and formula allocation of funds.

3. Method of Distribution

a. Administrative funds

1) Section 18 funds, not in excess of fifteen (15) percent of the amount apportioned to the State during any year, shall be utilized by the Public

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Transportation Division for administering the Section 18 program and for providing technical assistance. Such technical assistance may include, but not be limited to:

a) project planning;

b) program development;

c) management development;

d) coordination of public transportation programs, both public and private;

e) research; and

f) other activities deemed necessary by the Public Transportation Division to promote the effective delivery of public transportation in nonurbanized areas.

2) The Public Transportation Division may make a portion of these administrative funds available to eligible public agencies to perform these activities for the Division. Federal and State participation for administration and technical assistance grants to local agencies shall not exceed ninety (90) percent of project costs.

b. Project funds

1) Fiscal year 1980

a) Section 18 funds for fiscal year 1980 shall be distributed on a discretionary basis as recommended by the Public Transportation Advisory Council and approved by the Board of Transportation.

b) This discretionary distribution shall be included in the State's total four year allocation of Section 18 funds and shall provide for a fair and equitable distribution of funds, including Indian reservations, over the four year period.

2) Subsequent Years beginning in fiscal year 1981

a) Section 18 funds, not in excess of sixty (60) percent of apportioned Section 18 funds avail-

able to the State, shall be made available to eligible transportation projects on the basis of a formula set-aside of funds to multicounty areas.

(1) Set-aside allocations to each designated multicounty area (Appendix C) shall be based on the ratio of nonurbanized area population of the multicounty area to the nonurbanized area population of the State, as determined by the latest available Federal Census.

(2) The Public Transportation Division shall make public the population counts, ratios, and funding amounts used in determining the set-aside allocations at the time of announcement of program availability.

(3) Eligible transportation projects shall compete with other projects for the available funding that has been set-aside for allocation within the multicounty area.

(4) Funds that are not recommended for programming by the Public Transportation Advisory Council within the multicounty set-asides shall be used to increase the total amount of discretionary funding during the same fiscal year.

b) Section 18 funds, in an amount not less than twenty-five (25) percent of apportioned Section 18 funds available to the State, shall be made available to transportation projects on a discretionary basis. The Public Transportation Advisory Council may recommend discretionary funding for projects, including but not limited to:

(1) projects from Indian reservations;

(2) recommended projects from small urban areas whose greater capital and operating needs require greater levels of expenditures that exceed the available multicounty set-aside;

(3) recommended projects whose project funding exceeds the available multicounty set-aside for that multicounty area.

Fiscal Management

1. Background

As the designated agency to receive and administer federal funds under the Section 18 program, the Public Transportation Division will manage the fiscal elements of the program in accordance with existing procedures of the North Carolina Department of Transportation and the Federal Highway Administration. The reimbursement of allowable project costs will be governed by all applicable state and federal regulations.

2. Fiscal Procedures

a. Request for project authorization

1) The Public Transportation Division, upon the approval by the Board of Transportation of the State's program of projects, shall request federal authorization for each project in the approved program of projects.

2) The Division shall request that the Fiscal Section of the Department establish a work order and establish a federal project number for each project prior to the request for authorization.

3) The Public Transportation Division, upon receipt of federal authorization, shall enter into agreement with the project.

a) Four (4) copies of a "Nonurbanized Area Public Transportation Grant Agreement shall be executed by an authorized official of the project's organization. Each Agreement must be appended with:

(1) an application for state funds (Appendix A of the Project Agreement);

(2) a detailed project budget (Appendix B of the Project Agreement); and

(3) a special Section 13(c) Warranty or other approved disposition of Section 13(c) made by the U.S. Department of Labor (Appendix C of the Project Agreement).

b) The project organization shall submit, if not previously submitted as part of the application, a resolution adopted by the local public body authorizing the project's organization to enter into a contractual arrangement with the Department of Transportation.

b. Pre-award audit

1) The Public Transportation Division, upon receipt of the locally executed Agreement, shall request the Fiscal Section of the North Carolina Department of Transportation to perform a pre-award audit to:

a) determine that the contract conforms to fiscal requirements and existing applicable rules and regulations (Federal-Aid Highway Program Manual Volume 1, Chapter 7, Section 2, shall be used to determine conformance);

b) determine that the Contractor's accounting system is adequate and capable of segregating, accumulating, and maintaining allocable and allowable costs as they apply to the project and/or contract and to document necessary facts that might be needed in post audits;

c) establish that proper record retention will be maintained after project completion in order that a post audit of records can be completed (record retention shall be required for a three (3) year period after payment of final billing or completion of the project, whichever occurs last);

d) establish procedure or issue any necessary special instructions to the project that would help prevent any future misunderstanding;

e) establish that proposed costs are reasonable and in line with those that the contractor is currently incurring, to be determined by an overhead audit, if necessary; and

f) establish that the Contractor has the financial capability to perform the services required (Federal Aid Highway Program Manual, Volume 1, Chapter 7, Section 2, shall be used to determine capabilities), and

g) determine that the applicant has an inventory procedure to ensure that equipment and spare parts purchased with Section 18 funds can be accounted for at any time. Documentation of the inventories should be on file at all times.

c. Project authorization

1) The Secretary of the North Carolina Department of Transportation, based on the receipt and the recommendations of the pre-award audit report, shall execute the Contract for the Department of Transportation.

2) The Public Transportation Division shall return a copy of the executed contract and a letter of authorization indicating project approval and the effective date of the contact for the project.

d. Establishment of accounting records

1) The Contractor shall establish and maintain separate accounts for the project, either independently or within the existing accounting system.

2) All project costs must be documented or supported by:

a) properly executed payrolls;

b) time records;

c) invoices;

d) contracts; and

e) vouchers.

3) All supporting documentation shall detail the nature and the propriety of the charges.

e. Requests for reimbursement of project costs

1) Progress payments, for not less than one (1) month, may be made upon receipt of an itemized invoice, supported by documentation of costs, from the Contractor.

2) The Public Transportation Division shall review the itemized invoice to determine that costs are within the scope of the project.

a) as described in Appendices A and B of the agreement; and

b) as described in the project application.

3) The Fiscal Section shall approve the itemized invoice to determine that costs are allowable under existing federal and state law.

a) Costs must be in conformance with the project description.

b) Costs must be necessary in order to accomplish the project.

c) Costs must be reasonable in amount for the goods and services purchased.

d) Costs must be actual net costs to the contractor, defined as the price paid minus any refunds, rebates, or other items of value received by the contractor that reduce the cost actually incurred.

e) Costs must be incurred and be for work performed after the date of the Agreement.

f) Costs must be in conformance with the standards for allowability of cost set forth in:

(1) Federal Management Circular (FMC) 74-4;

(2) Federal Procurement Regulations (FPR) 1-15;

(3) Federal-Aid Highway Program Manual, Volume 4, Chapter 8, Section 4.

g) Costs must be satisfactorily documented.

h) Costs must be treated uniformly and consistently under accounting principles and procedures approved or prescribed by the Department (the State of North Carolina Administrative Procedures Act 5B-.0200 and 5B-.0300 shall govern uniform accounting principles).

4) A retainage of ten (10) percent of approved payment will be withheld until the Project is completed, accepted, and the final audit has been made.

5) Any cost deemed ineligible for reimbursement by the Department shall be deducted from the retainage before any final payment is made. These rejected or unaccepted costs shall be borne by the contractor.

f. Requests for final payment

1) The Contractor, upon completion of the project, shall submit a request for final payment and request that a final audit be performed.

2) The Public Transportation Division, upon receipt of the request for final payment, shall request the Fiscal Section to perform a final audit.

3) The final audit shall determine whether costs invoiced by the contractor are accurate, reasonable, and allowable under the terms of the contract and that the terms of the contract were fulfilled.

4) The Fiscal Section, on the basis of the final audit, shall determine the accuracy of the final invoice. An accurate final invoice will be forwarded to the Commercial Accounts Section of the North Carolina Department of Transportation for processing and payment.

g. The Contractor shall permit and shall require its subcontractors to permit the Department to inspect all work, materials, payrolls, and other data and records with regard to the project and to the books, records, and accounts of the Contractor pertaining to the project.

Vehicle Procurement

1. Background

Procurement of vehicles and other related equipment necessary to carry out a Section 18 project will be performed in accordance with all applicable state and federal regulations and conducted in such fashion so as not to unduly restrict competitive bidding.

The purchase of vehicles and equipment may be done in two ways: (1) the project may purchase items through a competitive bidding process; or (2) the State may purchase items through requisition to the Purchasing Section of the North Carolina Department of Transportation. In this instance, the Purchase and Contract Division in the Department of Administration has actual procurement responsibility.

2. Local Purchase of Vehicles and Equipment

a. Specifications for vehicles and other project equipment shall be written so as not to unduly restrict competitive bidding.

1) Procurement of vehicles or project equipment costing greater than $2,500 shall be done through formal competitive bidding.

a) The project shall submit vehicle and equipment specifications and the advertisement for bid package to the Public Transportation Division for review by the Division and the Federal Highway Administration prior to submission to prospective bidders to assure:

(1) the project has clearly and accurately described the technical requirements in the bid;

(2) the project has clearly set forth the requirements the bidder must fulfill;

(3) the bid provides for open and free competition; and

(4) the project has made positive efforts to utilize minority and small business enterprises.

b) Bids should be publicly advertised and sent to at least three (3) prospective bidders.

c) Prospective bidders shall have at least thirty (30) days to respond to the bid.

d) The project shall open sealed bids at a public opening.

e) Award of the bid shall be made to the lowest bidder who demonstrates the capability to perform the contract and meets the specifications set forth by the project.

f) The Public Transportation Division and the Federal Highway Administration must concur in the award of the bid prior to the execution of an agreement between the project and any bidder.

b. Procurement of vehicles or project equipment may be purchased through negotiation.

1) Negotiation may take place if:

a) the total cost of the vehicles or equipment is less than $2,500;

b) the equipment must be compatible with existing equipment; or

c) all previous bids received through formal competitive bidding have been rejected.

2) The Public Transportation Division must concur with the project request to negotiate vehicle and equipment procurement prior to negotiation with potential suppliers.

3) At least three (3) potential suppliers shall be contacted to negotiate procurement.

3. State Purchase of Vehicles and Equipment

a. The State may act as the procurement agency for vehicles and equipment under the Section 18 program.

1) Vehicles and equipment may be periodically procured by the Division of Purchase and Contract through an indefinite quantity or term contract, establishing the suppliers and prices for the contracted commodities for a specified period of time.

   a) Indefinite quantity or term contracts are awarded in accordance with competitive bidding procedures prescribed by State statutes.

   b) If Section 18 funds are used to purchase vehicles and equipment, the Federal Highway Administration shall review the bid documents pertaining to the indefinite or term contract to assure that procurement conforms to federal regulations.

   c) The Public Transportation Division may requisition vehicles or equipment included or an indefinite or term contract on behalf of the project.

2) Vehicles and equipment may be procured through a definite quantity contract.

   a) The Public Transportation Division may request bids on behalf of the project for vehicle and equipment not available on a current indefinite or term contract.

   b) The Purchase and Contract Division will procure vehicles and equipment in accordance with competitive bidding procedures prescribed by State statute.

   c) The Public Transportation Division and the Federal Highway Administration shall concur in the award of the bid prior to any requistion made on behalf of a Section 18 project.

4. Replacement of Vehicles

   a. Section 18 funds may be used to replace vehicles currently in the project's fleet that have gone beyond their useful life.

      1) The useful life of a van (9 to 15 passengers) shall be defined as five (5) years or 100,000 miles, whichever comes first.

2) The useful life of a small to medium size bus (16 to 29 passengers) shall be defined as five (5) to seven (7) years.

3) The useful life of a large bus shall be defined as:

a) ten (10) years for vehicles with 30-35 passengers capacity

b) twelve (12) years for vehicles with greater than 35 passenger capacity.

b. The Public Transportation Division shall evaluate vehicle replacement requests that do not conform to established guidelines on a case by case basis.

c. The Public Transportation Division shall evaluate requests for replacement of other rolling stock on a case by case basis.

Construction or Purchase of Facilities

1. Background

The construction or purchase of project facilities may be necessary to undertake some rural or small urban transportation project. These activities will be considered as non-operating expenses.

2. Construction or Purchase of Facilities

a. The project shall submit all preliminary architectual and engineering plans, design specifications, estimates of the costs of the facility or the work to be performed, and the advertisement for bid package to the North Carolina Department of Transportation for review by the Public Transportation Division and the Federal Highway Administration prior to submission to prospective bidders.

b. The Public Transportation Division and the Federal Highway Administration must concur in the award of the bid to construct project facilities made by the project prior to the execution of an agreement between the project and any bidder.

c. The project shall have prime responsibility for engineering supervision on construction of project facilities to assure conformance with approved plans and specifications including, but not limited to the following areas:

1) site inspection;

2) monitoring; and

3) testing.

d. The Public Transportation Division shall request the Division of Highwavs to assign a project engineer to monitor and inspect construction activities pertaining to a Section 18 project.

e. The project shall permit and shall require its subcontractors to permit the Department of Transportation and the Federal Highway Administration to review and

inspect all construction activities pertaining to the project. The project shall maintain construction records and other data necessary for the Department to conduct site inspections.

f. The Department shall conduct a final site inspection of all construction pertaining to the project to ensure conformance with approved plans and specifications prior to the Department undertaking a final audit or authorizing final payment.

Assurances

1. Background

The federal regulations for Section 18 require that applicants comply with the provisions of Title VI, Minority Business Enterprise (MBE), Equal Employment Opportunity (EEO), 13(c) Labor Protection and Section 504 Nondiscrimination on the Basis of Handicap.

2. Title VI

a. Each project will contractually assure compliance with the requirements imposed by Title VI of 1964, (42 U.S.C. 2000 d) and the regulations of the U.S. Department of Transportation issued thereunder. No persons or minority business enterprise shall on the grounds of race, color, sex, or national origin, be excluded from the participation in, be denied the benefits of, or be otherwise subjected to discrimination under the Section 18 program.

b. All Section 18 projects shall pay particular attention to the existence, composition, and distribution of minority population groups in the service area of the project and shall ensure that the rationale for providing transportation to these groups will reflect affirmative compliance with Title VI.

3. Minority Business Enterprise

a. Each project will contractually assure that the project will contribute to the North Carolina Department of Transportation goals with respect to the utilization of minority business enterprises.

b. Each project shall make its best efforts to ensure that the maximum practicable opportunity to compete for subcontract work under the project is provided.

4. Equal Employment Opportunity

a. Each project will contractually assure that job applicants are employed and that employees are treated during employment without regard to race religion, sex, color, or national origin.

b. Employment practices subject to this provision shall include, but not be limited to:

1) employment;

2) upgrading, demotion, or transfer;

3) recruitment or advertising;

4) layoff or termination;

5) rates of pay or other forms of compensation; and

6) selection for training programs, including apprenticeships.

5. Labor Protection

a. Each project will contractually assure compliance with the provisions of Section 13(c) of the Urban Mass Transportation Act of 1964, as amended, indicating that the project will be carried out in such a manner and upon such terms and conditions as will not adversely affect employees of the Section 18 grant recipient and of any other surface public transportation provider in the service area of the project.

b. The project shall be financially responsible for the application of the conditions of Section 13(c).

6. Section 504 - Rehabilitation Act of 1973

a. Each project will contractually assure compliance with the requirements of Section 504 of the Rehabilitation Act of 1973 and the regulations of the U.S. Department of Transportation issued thereunder. As a condition to the approval of federal financial assistance under Section 18, each applicant will assure that no otherwise qualified handicapped person shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under the Section 18 program.

b. Each project shall submit to the North Carolina Department of Transportation and the Federal Highway Administration information regarding compliance.

1) Within 90 days of application approval the project should submit:

a) the names, addresses, and telephone numbers of the persons responsible for evaluating the project's compliance with Section 504;

b) the name, address, and telephone number of at least one person designated to coordinate compliance activity (only for projects with greater than 15 employees); and

c) a description of a continuing process to notify participants, beneficiaries, applicants, employees, and others that the project does not discriminate on the basis of handicap.

2) Within 180 days of application approval, the project shall submit or complete:

a) an adopted set of procedures that incorporate due process standards and provide for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504 (only for projects with greater than 15 employees);

b) a description, based on consultation with interested persons including handicapped persons and organizations representing the handicapped,

(1) an evaluation of the project's current policies and practices for implementing Section 504 regulations,

(2) an identification of shortcomings in compliance and methods to remedy them,

(3) initiate the modification of existing policy practices that do not meet the requirements of Section 504,

(4) initiate remedial steps to eliminate the effects of discrimination that have resulted from previous practices, and

(5) establish a system for periodically reviewing and updating the evaluation of policy and practices.

3) Within one year of application approval, the project shall submit or complete:

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a) a transition plan, including

(1) the identification of vehicles, facilities, and services that do meet program accessibility standards,

(2) the identification of necessary changes and improvements necessary to achieve program accessibility,

(3) the establishment of schedules, priorities, and benchmarks to be used in making the necessary improvements,

(4) the assignment of responsibility for making the necessary improvements,

(5) the estimation of costs and identification of intended funding sources to implement necessary changes,

(6) a description of community participation in the development of the transition plan, and

(7) the identification of responses to substantive concerns raised during public hearings held on the plan.

4) Each project shall submit an annual report outlining the progress toward plan accomplishment until such time as full accessibility is achieved.

5) Each recipient must keep on file, for a period of at least one (1) year, all complaints of noncompliance. A record of such compliants shall be maintained for a period of five (5) years.

Monitoring and Evaluation

1. Background

The Public Transportation Division plans to implement an on-going program of project monitoring and performance evaluation for the Section 18 program. The Public Transportation Advisory Council has recommended that the Public Transportation Division study the applicability of various performance measures to rural and small urban transportation systems so that the Council may consider the adoption of performance standards at some future date.

2. Project Monitoring

a. Each Section 18 project shall submit all operating data required by the Public Transportation Division to perform project monitoring.

b. Each Section 18 project shall submit, at the end of each month, the following operating statistics for that month:

1) total passenger trips;

2) total number of passenger transfers;

3) total number of vehicle-miles;

4) total revenues; and

5) total expenses.

Technical and Management Assistance

1. Background

The Public Transportation Division's Rural and Small Urban Program includes a staff of professional planners who are available to provide technical assistance to local areas upon request. These individuals have regional assignments and the appropriate staff members are the prime contact persons within a geographic area. Additionally, the Division's Management Assistance Program includes professional program consultants who are available to provide management and operations assistance to Section 18 projects.

2. Technical and Management Assistance

a. Public Transportation Division staff will be available to provide technical and management assistance to potential applicants and authorized projects in, but not limited to, the following areas:

1) assistance in the preparation of transportation development plans;

2) participation on local planning steering committees;

3) review of transportation development plans;

4) development and review of vehicle specifications;

5) assistance in grant preparation;

6) development of local system design;

7) development of monitoring and evaluation methodoligies;

8) evaluation of existing routes and schedules;

9) development of driver's training programs; and

10) information sharing.

Public Input

1. Background

Public input has been sought throughout the development of the State's rural and small urban transportation program and will continue to be sought during the implementation of the program. A number of public bodies have been and will continue to be involved in these efforts and a variety of procedures will allow for meaningful and timely public input in all appropriate phases of program development and implementation.

2. Policy and Procedure Development

a. Initial development

1) The Governor's Committee on Rural Public Transportation was responsible for the examination of existing transportation policies, programs, legislation, and authorities to determine the extent to which they contribute to a desirable policy for meeting public transportation needs in rural areas.

2) The Committee, composed of representatives from the North Carolina General Assembly, local governments, private sector transportation systems, private non-profit human resource organizations, private citizens, and state government agencies, recommended a State Policy for Rural and Small Urban Public Transportation.

b. Current development

1) The Public Transportation Advisory Council is responsible for addressing policy issues relating to public transportation, the administration of state and federal programs, and the funding decision process. The Council members are appointed from each multi-county region by the Governor of North Carolina and represent a diversity of transportation interests.

2) Upon publication of final regulations for the Section 18 program by the U.S. Department of Transportation, this Interim State Management

Plan will be subject to public hearings before becoming permanent administrative procedures.

3. Project Solicitation

a. Transportation Improvement Program

1) Public meetings are held once a year in each of the State's fourteen (14) highway districts to receive comments on public transportation in the State and requests for public transportation funds.

2) Notice of the Transportation Improvement Program Public Meetings is mailed to 1500 agencies and local officials statewide. The notice includes a description of the programs available, the funding levels, the eligible use of funds and the eligible applicants.

b. Individual notice of the availability of Section 18 funds will be mailed to:

1) existing public transportation providers;

2) human service agencies;

3) private sector transportation providers, including taxicab operators and intercity bus firms;

4) boards of county commissioners;

5) county managers;

6) town managers; and

7) other individuals with an interest in public transportation for rural and small urban areas.

c. Public Transportation Advisory Council members can provide information regarding funding availability or other issues relating to public transportation.

d. A Rural Transportation Newsletter is mailed quarterly to over 500 agencies and transportation operators and provides information concerning program availability and matters relating to rural transportation.

4. Individual Projects

a. Each Section 18 applicant must conduct a public hearing on the proposed project.

b. Local steering committees are strongly encouraged to be established to oversee the planning and implementation of Section 18 projects. Suggested membership on these committees includes human service agency representatives, taxi operators, other transportation operators, local elected officials, and consumers.

Appendix A

federal register

WEDNESDAY, DECEMBER 13, 1978
PART IV



DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

■

PUBLIC TRANSPORTATION FOR NONURBANIZED AREAS

Emergency Regulation and Request for Comments

portation agency with public transportation responsibility, that agency be the designee.

b. Upon notification of Section 18 fund apportionment, the State may apply immediately to the Federal Highway Administration (FHWA) Division Administrator for the obligation of up to 15 percent of available funds, for administering this program and for providing technical assistance to recipients of these funds. Such technical assistance may include project planning, program development, management development, coordination of public transportation programs (public and private), and such research as the State may deem appropriate to promote effective means of delivering public transportation service in nonurbanized areas. The Federal share for administration and technical assistance expenses shall be 100 percent. Eligible expenses are computed from the date of the Governor's designation.

c. States may receive approval of the request for administration and technical assistance funds (up to 15 percent of State's Section 18 allocation) by submitting Forms PR-2" and PR-37" to FHWA Division Administrator.

d. Eligible recipients may include State agencies, local public bodies and agencies thereof, nonprofit organizations, and operators of public transportation services in areas other than urbanized areas.

2. *Annual Program of Projects.*

a. The State shall submit for FHWA Division Administrator approval an annual program of projects which conforms to the instructions issued under 23 CFR 630 Subpart A (Federal Highway Program Manual" (FHPM) 6-3-2-2) for the annual program of highway projects. Each Section 18 project should be identified as a separate line item in the annual program submission.

b. At the State's option, the annual program may contain complete project applications, and the State may request FHWA Division Administrator approval of the annual program and authorization of funds for individual projects that contain the supporting information described in paragraph 3.

c. Amendments to the annual program may occur as needed and submitted to the FHWA Division Administrator for approval.

d. To show compliance with paragraph (b) of Section 18, the State's first annual program of projects submission shall also contain a brief description of/and rationale for the following:

(1) Method of distribution of funds within the State. It is not required that the distribution of funds during this interim period be strictly "fair and equitable." However, over the 4-year period of the legislation, a fair and equitable distribution within the State, including Indian reservations, must be achieved.

(2) Description of how the State designated agency will coodinate the implementation of this program with other appropriate State agencies, particularly social service agencies.

3. *Project Supporting Information.*

a. For each project submitted for FHWA Division Administrator approval, the "Assurances" (Appendix B) shall be executed and included. One executed "Assurances" may be submitted for more than one project, as long as the applicable project numbers are identified on the top of the page.

b. In addition, each project submitted shall contain the following:

(1) Brief project description, including type of public transportation service to be provided and/or assisted and the geographic area of service.

(2) Project coordination accomplished, including:

(a) Description of efforts to coordinate with other transportation providers in the service area, both public and private. A list of all providers must be included.

(b) Description of efforts to coordinate with social service agencies in service area, especially those agencies capable of purchasing service.

(c) Amount and sources of funds used to purchase and operate vehicles in the two previous years, if applicable, and description of efforts to maximize the integration of these funds with funds being applied for under the Section 18 program.

(3) Extent of public involvement in preparing the application as governed by Section 3(d)(1) of the Urban Mass Transportation Act of 1964, as amended, and 23 CFR 820.9(b)(2) (paragraph 8b(2) of FHPM 4-8-4). State "Action Plan" procedures could apply. See 3.c. below.

(4) Description of private enterprise involvement in preparing the application. See paragraph 4.

(5) OMB Circular A-95 clearance or disposition.

(6) Disposition of the labor protection provisions of Section 13(c) of the Urban Mass Transportation Act of 1964, as applicable.

(7) Description of Title VI, Civil Rights Act of 1964, 42 U.S.C. 2000d, and Minority Business Enterprise (MBE) activities. See paragraph 7.

(8) Environmental assessment in accord with 23 CFR 771 (FHPM 7-7-2). It is anticipated that the typical Section 18 project could be considered a "non-major action," and processed accordingly.

(9) Project budget, including sources of Federal, State, and local funds.

(10) Provisions for the elderly and handicapped. See paragraph 5.

(11) Disposition of 49 CFR 604 and 605 requirements relative to charter and school bus operations, as applicable. See paragraph 6.

c. If any of the above requirements are dealt with in accordance with FHWA approved State procedures, such as Environmental Action Plans 23 CFR 795 (FHPM 7-7-1) and Affirmative Action Plans 23 CFR 200 (Title VI, MBE, FHPM 2-1-2, etc.), then a reference to the approved procedure followed will be satisfactory project documentation.

d. Furthermore, if any of the above support information was previously submitted to FHWA or UMTA for a subsequently approved Section 3 (Urban Mass Transportation Act of 1964) UMTA project or Section 147 (Federal-Aid Highway Act of 1973, P.L. 93-87) FHWA project 23 CFR 820 (FHPM 4-8-4), resubmission of the information, if still current, for a Section 18 application is not required. Project applications should refer to previous submissions for supporting information when at all possible.

4. *Participation of Private Enterprise.* Private transit and paratransit operators shall be allowed to participate in the provision of service to the maximum extent feasible. In order to insure this process, each local project shall fulfill the following requirements.

a. Make a good faith effort to notify all private providers in the service area to inform them of the intended service plan and ascertain whether they could participate in the provision of service.

b. Establish a process by which private providers may have disputes or conflicts arising out of this program properly heard and settled.

5. *Elderly and Handicapped Provisions.*

a. Until the U.S. Department of Transportation (DOT) finalizes its regulations relative to nondiscrimination on the basis of handicap (implementation of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794)), the applicant must show progress in accomplishing the following requirement from existing elderly and handicapped regulations.

b. The needs of elderly and handicapped persons, especially wheelchair users and semi-ambulatory persons, must be addressed by each applicant. Service must be provided to these persons which is reasonable by comparison with the service provided to the general public and which meets a significant fraction of the actual transportation needs of such persons within a reasonable time period.

6. *Charter Bus and School Bus Provisions (49 CFR 604 and 605).*

a. Local projects may not provide charter or sightseeing services outside their service area. Within the service area, charter and sightseeing services can only be provided on an incidental basis. "Incidental" is defined as those operations which do not interfere with regular service as proposed in the project application. The following uses are presumed not to be incidental:

(1) Weekday charters which occur during peak morning and evening rush hours.

(2) Weekday charters which require vehicles to travel more than 50 miles beyond the service area.

(3) Weekday charters which require the use of a particular vehicle for more than a total of 5 hours in any 1 day.

b. Local projects may not engage in school bus operations, exclusively for the transportation of students and school personnel in competition with private school bus operators. Vehicles must remain open to the public at all times and be clearly marked for public use.

7. *Title VI and Minority Business Enterprise Provisions.*

a. The Section 18 program shall be administered in such a manner as to assure that no persons, or minority business enterprise, in the State shall, on the grounds of race, color, sex, or national origin, be excluded from the participation in, be denied the benefits of, or be otherwise subjected to discrimination under this program.

b. The FHWA Division Administrator shall assure that all projects pay particular attention to the existence, composition, and distribution of minority population groups, including minority business enterprises, in the project area and shall ensure that the rationale for providing transportation in the project area is such that service to these groups will reflect affirmative compliance with Title VI of the Civil Rights Act of 1964.

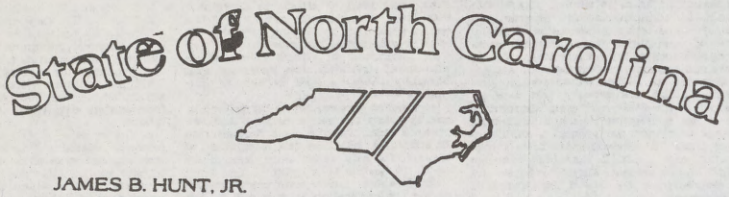
8. *Other Applicable Regulations and Instructions.* By reference, the provisions of the following existing regulations and instructions are also applicable to this program:

a. Procedures for Project Applicants.

(1) 23 CFR 820 (FHPM 4-8-4, Rural Highway Public Transportation Program, paragraphs 3b, 5a, 12c(3)(a), 12c(3)(c), and 13c).

Appendix B

Executive Order No. 29



JAMES B. HUNT, JR.
GOVERNOR

EXECUTIVE ORDER NUMBER 29

WHEREAS, the Departments of Human Resources, Education, Natural Resources and Community Development, and Transportation administer state and federally funded programs, many of which may be used directly or indirectly to provide needed transportation for the recipients of human services; and

WHEREAS, these programs incorporate varying amounts of public funds furnished by federal, state, and local governmental units; and

WHEREAS, it is known that at the local level, there sometimes occurs a duplication of effort as well as identification of gaps in the delivery of human services transportation; and

WHEREAS, human services vehicles in some cases are not being used as efficiently or effectively as possible and, therefore, are unable to provide the transportation needs of their clients; and

WHEREAS, the administrative policies and procedures of these several State government agencies greatly impact on vehicle usage and the delivery of transportation services at the local level; and

WHEREAS, there is a need for a statement on coordination of resources and these State departments and agencies are in a strategic position to bring about better use of transportation resources; and

WHEREAS, there are forms of public transportation, such as buses and taxicabs, available to provide transportation service; and

(3) To advise and make recommendations to the Board of Transportation concerning public transportation policy; and

(4) To develop transportation policies which are consistent with balanced growth.

Section 3. There is hereby created the North Carolina Interagency Transportation Review Committee. The Review Committee will be composed of Representatives from the Departments of Education, Human Resources, Natural Resources and Community Development, and Transportation. The Secretaries of the respective departments shall appoint the representative(s) from their departments who shall represent each funding agency. The Secretary of Transportation shall chair the Review Committee.

Section 4. The Review Committee shall have the following duties:

(1) To implement policy and apply criteria as developed by the Advisory Council.

(2) To provide written notice of recommendations based upon review of applications or plans to the appropriate state agency; and

(3) To review all transportation components of applications or plans requesting transportation funding when the funds are administered by a state agency.

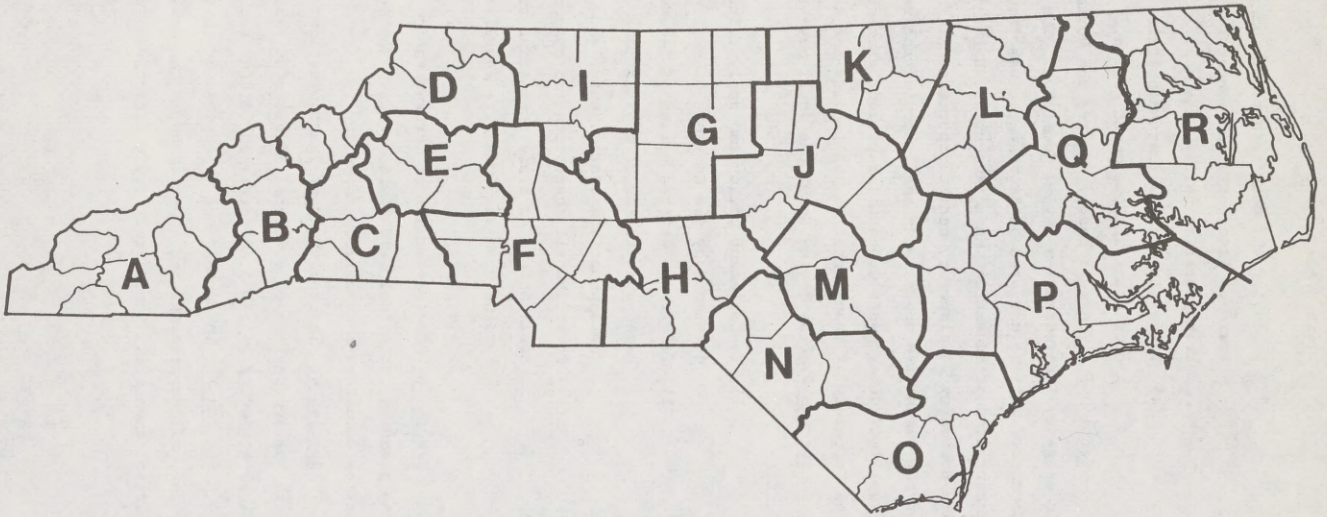
Section 5. The Department of Transportation shall provide the planning, technical, and administrative support for the Review Committee and Advisory Council.

Section 6. The Secretary of Transportation, after conferring with the appropriate departmental Secretaries, shall have the final authority on all transportation funding decisions.

Section 7. To further the objectives of this Executive Order, all departments and agencies under the Governor's Jurisdiction shall immediately draft directives and procedures

Appendix C

Multicounty Areas for Formula
Set aside of Section IV Funds



Appendix D

STATE OF NORTH CAROLINA
COUNTY OF WAKE

Nonurbanized Area
Public Transportation
Grant Agreement

DEPARTMENT OF TRANSPORTATION)
and)
_____)

Work Order _____

Project _____

****

THIS AGREEMENT made this the _____ day of _____, 19__, by and between the Department of Transportation (hereinafter referred to as "Department" an agency of the State of North Carolina) and _____ _____ (hereinafter referred to as the "Contractor").

WHEREAS, Section 18 of the Urban Mass Transportation Act of 1964 (CFR Title 23, Subchapter 1 Part 825), as amended, provides federal capital and operating assistance for public transportation in rural and small urban areas by way of a formula grant program to be administered by the State; and

WHEREAS, the purposes of Section 18 are to enhance access of people in nonurbanized areas for purposes such as health care, shopping, education, recreation, public services, and employment by encouraging the maintenance, development, improvement, and use of passenger transportation systems; and

WHEREAS, Article 2B of Chapter 136 of the North Carolina General Statutes designated the Department of Transportation as the agency of the State of North Carolina responsible for administering all federal and/or State programs relating to public transportation, and granted the Department authority to do all things required under applicable federal and/or state legislation to administer properly the public transportation programs within the State of North Carolina; and

WHEREAS, the Governor of North Carolina, in accordance with Section 18(a) of the Urban Mass Transportation Act of 1964, as amended, has designated the North Carolina Department of Transportation as the agency to receive and administer federal funds under this program:

. NOW, THEREFORE, in consideration of the mutual covenants herein set forth, the Department and the Contractor agree as follows:

Section 1. Purpose of Agreement. The purpose of this Agreement is to provide for the undertaking of a nonurbanized area public transportation project (hereinafter referred to as "Project" and described in Appendix A and the project application) by the Contractor and to state the terms, conditions, and mutual undertakings of the parties as to the manner in which the Project will be undertaken and completed.

Section 2. Scope of Project. The Contractor shall undertake and complete the Project as described in its Application, herewith incorporated by reference, filed with and approved by the Department and in accordance with the terms and conditions of the Contract. (See Appendix A)

Section 3. Period of Performance. The Contractor shall commence, carry on, and complete the Project with all practicable dispatch, in a sound, economical, and efficient manner.

(a) Nonoperating Expenditures. The period of performance for all nonoperating expenditures under the Project shall be _____ from the date of this contract, unless specific authorization from the Department to the contrary is received.

(b) Operating Expenditures. The period of performance for all operating expenditures under the Project shall extend from _____ to _____, unless specific authorization from the Department to the contrary is received.

Section 4. Cost of Project. The Contractor shall initiate and prosecute to completion all actions necessary to enable the Contractor to provide its share of the Project costs at or prior to the time that such funds are needed to meet Project costs.

(a) Nonoperating Expenditures. In order to assist the Contractor in financing the nonoperating costs of the Project, the Department will reimburse the Contractor

for _____ percent of allowable nonoperating costs of the Project not in excess of _____.

(b) Operating Expenditures. In order to assist the Contractor in financing the operating costs of the Project, the Department will reimburse the Contractor for _____ percent of allowable net operating cost of the Project, not in excess of _____.

Section 5. Contracts Under This Agreement. Unless otherwise authorized in writing by the Department, the Contractor shall not assign any portion of the work to be performed under this Agreement, or execute any contract, amendment or change order thereto, or obligate itself in any manner with any third party with respect to its rights and responsibilities under this Agreement without the prior written concurrence of the Department.

Section 6. Accounts, Records, and Reports.

(a) Establishment and Maintenance of Accounting Records. The Contractor shall establish and maintain separate accounts for the Project, either independently or within the existing accounting system, to be known as the Project Account. The accounts shall be capable of segregating, identifying and accumulating the allocable Project costs.

(b) Documentation of Project Costs. All costs charged to the Project including any approved services performed by the Contractor or others, shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers evidencing in detail the nature and propriety of the charges.

(c) Allowable Costs. Expenditures made by the Contractor shall be reimbursed as allowable costs to the extent they meet all of the requirements set forth below. They must:

(1) be made in conformance with the Project Description and the Project Budget and all other provisions of this Agreement;

(2) be necessary in order to accomplish the Project;

(3) be reasonable in amount for the goods or services purchased;

(4) be actual net costs to the Contractor (i.e., the price paid minus any refunds, rebates, or other items of value received by the Contractor which have the effect of reducing the cost actually incurred);

(5) be incurred (and be for work performed) after the date of this contract, unless specific authorization from the Department to the contrary is received;

(6) be in conformance with the standards for allowability of costs set forth in Federal Management Circular (FMC) 74-4, Federal Procurement Regulations (FPR) 1-15.2, and Federal Highway Administration Federal-Aid Highway Program Manual, Volume 4, Chapter 8, Section 4.

(7) be satisfactorily documented; and

(8) be treated uniformly and consistently under accounting principles and procedures approved or prescribed by the Department, and set forth in the State of North Carolina Administrative Procedures Act 5B-.0200 and .0300, for the Contractor for its sub-contractors.

(d) Reports. The Contractor shall advise the Department regarding the progress of the Project at such time and in such manner as the Department may require, including, but not limited to meetings and interim reports.

The Contractor shall collect and submit to the Department at such time as it may require, such financial statements, data, records, contracts, and other documents related to the Project as may be deemed necessary by the Department and the Contractor and its third party contractors shall retain all records pertaining to this project for a period of three (3) years from the date of final payment to the Contractor.

(e) Payment. Progress payments, based upon actual allowable costs, for not less than one (1) month may be made upon receipt of an itemized invoice, supported by documentation of costs, from the Contractor. The itemized invoice shall be

approved by the Public Transportation Division and the Department's Fiscal Section prior to payment. A retainage of ten (10) percent of the approved payment will be withheld until the Project is completed, accepted, and the final audit has been made. Any costs deemed ineligible for reimbursement by the Department in accordance with the terms of this agreement shall be deducted from the retainage before final payment is made. Any rejected or unaccepted costs shall be borne by the Contractor.

Section 7. Audit and Inspection. The Contractor shall permit and shall require its contractors to permit the Department to inspect all work, materials, payrolls, and other data and records with regard to the Project and to audit the books, records, and accounts of the Contractor pertaining to the Project.

Section 8. Contract Changes. Any proposed major changes in this Agreement that would result in changes in the scope, character, or complexity of the Agreement, as determined by the Department, shall require a supplemental agreement. Any proposed minor changes in this Agreement shall be submitted to the Department for prior approval.

Section 9. Purchase of Project Equipment. Specifications for vehicles and other equipment for the Project shall be written so as not to unduly restrict competitive bidding.

(a) Specifications and Bid Advertisements. Vehicle and equipment specifications and advertisement for bid packages shall be approved by the Department and the Federal Highway Administration prior to submission to perspective bidders.

(b) Award of Bids. The Department and the Federal Highway Administration must concur in the award of the bid to procure vehicles and equipment for the Project made by the Contractor prior to the execution of an agreement between the Contractor and any bidder.

Section 10. Construction or Purchase of Facilities.

(a) Review of Preliminary Engineering Plans or Specifications. The Contractor shall submit all preliminary architectual and engineering plans, design specifica-

tions, estimates of the costs of the facility or work to be performed, and the advertisement for bid package to the Department and the Federal Highway Administration for approval prior to being submitted to perspective bidders.

(b) Award of Bids. The Department and the Federal Highway Administration must concur in the award of the bid to construct Project facilities made by the Contractor prior to the execution of an agreement between the Contractor and any bidder.

(c) Construction Supervision. The Contractor shall be responsible for engineering supervision for the construction of Project facilities including, but not limited to, inspection, monitoring, and testing to assure conformance with approved plans and specifications.

(d) Inspections and Records. The Contractor shall permit and shall require its contractors to permit the Department and the Federal Highway Administration to inspect all construction activities pertaining to the Project. The Contractor and its contractors shall maintain construction records and all other data necessary for the Department to conduct site inspections. The Department shall conduct a final site inspection upon completion of all construction activities pertaining to the Project to ensure conformance with the approved plans and specifications prior to the Department undertaking a final audit or authorizing final payment to the Contractor.

Section 11. Disposition of Property. The Contractor will comply with all provisions of Office of Management and Budget Circular A-102, Attachment N, relative to the disposition of all nonexpendable personal propoerty purchased with federal funding as part of the Project.

Section 12. Interest of Members of or Delegates to Congress. No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.

Section 13. Prohibited Interest. No member, officer, or employee of the Department or of the Contractor shall have any interest, direct or indirect, in this Agreement or the proceeds therefrom.

Section 14. Equal Employment Opportunity. In connection with the execution of this contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. Such actions shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or advertising; layoff, or termination; rates of pay, or other forms of compensation; and selection for training including apprenticeship.

Section 15. Title VI - Civil Rights Act of 1964. The Contractor will comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (78 State. 252), the Regulations of the U.S. Department of Transportation issued thereunder (CFR Title 49, Subtitle A, Part 21), and the assurance by the Contractor pursuant thereto.

Section 16. Minority Business Enterprise. In connection with the performance of this contract, the Contractor will cooperate with the Department in meeting its commitments and goals with regard to the maximum utilization of minority business enterprises and will use its best efforts to insure that maximum practicable opportunity to compete for subcontract work under this contract is provided.

Section 17. Section 504 - Rehabilitation Act of 1973. The Contractor will comply with all the requirements imposed by Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112, 29 U.S.C. 790 et seq), the Regulations of U.S. DOT issued thereunder (CRF Title 49, Part 27), and the assurance by the Contractor pursuant thereto.

Section 18. Section 13(c) - Labor Standards. In connection with the execution of this contract, the Contractor shall protect the interest of employees affected by Federal assistance as part of the Project, as provided by Section 13(c) of the

Urban Mass Transportation Act of 1964, as amended, and the assurance by the Contractor pursuant thereto (Appendix C). The Contractor shall be financially responsible for the application of the conditions of Section 13(c).

Section 19. Termination of Agreement. This agreement may be terminated at any time by mutual consent of both parties. The Contractor may terminate its participation in the Project by notifying and receiving the concurrence of the Department thirty days in advance of the termination. The Department may terminate the agreement by giving the Contractor thirty days advance notice in the event of nonperformance of the terms of the agreement by the Contractor. The Department, before issuing notice of agreement termination, shall allow the Contractor a reasonable opportunity to correct for nonperformance.

Section 20. Resolution of Disputes. In any dispute concerning a question of fact in connection with the Project, the decision of the Secretary of the North Carolina Department of Transportation, with the concurrence of the Federal Highway Division Administrator shall be final and conclusive for all parties.

IN WITNESS WHEREOF, this Agreement has been executed by the Department, an agency of the State of North Carolina, and the Public Body, by and through a duly authorized representative, and is effective the date and year first above written.

_____ OF _____

BY: _____

(SEAL)

ATTEST: _____

Title: _____

DEPARTMENT OF TRANSPORTATION

BY: _____
Secretary
N.C. Department of Transportation

ATTEST: _____

Title: _____

Senator WILLIAMS. Thank you very much.

Let me clarify something here. You said just yesterday, draft regulations came to you?

Mr. KING. They are not—they are still being circulated within the Department. But we did have the opportunity to read them.

Senator WILLIAMS. What did they deal with?

Mr. KING. They dealt with the section 18 program, how it is to be administered.

Mr. DOWNS. Senator, the program is now operating under a set of emergency interim regulations. We have promised that we would, after a year's program experience, finalize the regulations. The final draft regulations go into the Federal Register in May and we want to have them completely finalized by September of this year.

Senator WILLIAMS. You're encouraged by what you saw in the still early form or in the early processes—the regulations are in an early process?

Mr. KING. Yes, sir. Of course, in a cursory review of the draft document, as I said earlier, we noticed several things that seemed to speak to problems that were brought up by the States to the Federal Highway Administration.

Senator WILLIAMS. I wonder, can you, Mr. Downs, tell me what UMTA's role is in the development and operation of the 18 program?

Mr. DOWNS. The process of both developing the regulations and the operating procedures for the 18 program were carried out jointly between Bob McManus and myself, he being at the time the Associate Administrator for Policy. We were both cosigners on the policy and planning structural memorandums that set up the program.

Right now, the agreement between the two administrations is that the Federal Highway Administration has the day-to-day operating responsibilities for the program. The policy and planning functions are still jointly shared between FHWA and UMTA on the 18 program.

Out of that has come the agreement, as I mentioned, on the funding procedures on 16(b)(2) and on the section 3 construction funds period for rural funding. UMTA would continue those programs, and a number of other agreements dealing with the 18 program.

But UMTA's role now is primarily in policy and planning of the program, and ours is carrying it out.

Senator WILLIAMS. Now you described how UMTA dumped upon your section 18 program a responsibility that soaked up all of your 1979–80 money?

Mr. KING. 1979 money.

Senator WILLIAMS. 1979 money. Is this the sort of thing that somehow it seems as though somebody's being caught in the switches or being led down the wrong track?

How is that possible?

Mr. DOWNS. Let me have Bob McManus, the associate administrator for UMTA, answer that.

Mr. MCMANUS. That was a problem, Senator, at the start of the administration of section 18 because it was felt without any experi-

ence on demand, that section 18 probably would be able to pick up from what was being spent under section 3 from those small urban places.

When we were told about the problem and grievances were registered, the Administrator and the Deputy withdrew that policy and agreed that section 3 funds would be available, so there would be no problem in resource availability or capital in these small places.

Our experience with section 3 in small urban places has been that the demand has been relatively low. We've spent about $20 million out of the total section 3 program for places below 50,000 population.

So we'll continue to provide the section 3 resources and see how the demand works out in the next several years.

Senator WILLIAMS. Who would be the applicant where Section 3 was to be used in small urban places?

Mr. MCMANUS. It would be the same. It would be whatever agencies may be established now that this new program is on the books. It could be counties, municipal corporations, the same types of public agencies that are eligible for the larger places.

Senator WILLIAMS. I wonder who it was in your situation Mr. King?

Mr. KING. It was municipalities, towns, cities.

Senator WILLIAMS. That's history.

Mr. KING. Yes, sir.

Senator WILLIAMS. But can you learn anything from that for the future?

Mr. MCMANUS. I think we have. I think that's been the constructive thing that's happened. We've responded to that grievance and have said that we will back up section 18 with section 3 until we see how the experiment goes out for the next several years.

Now I think it's interesting, if I may add a point, with respect to the planning money, we had the same problem. And it's interesting to me that Ms. Gianturco mentioned the section 8 planning program and we did withdraw some money there.

Mr. King also pointed out that the 15 percent set-aside in the law for administrative expenses and program planning and so on was more than sufficient in North Carolina.

So we have the same situation there of trying to reconcile the uses of resources that overlap and may be used commonly for these small places.

In the case of the planning program, we have withdrawn a small amount, about $3½ million a year, and we really don't think that there's going to be a problem there. We'll continue to make grants direct to the States, though, for State planning, using the planning program.

So all I mean to say is that this problem of the use of these several resources that may legally be used in the same places is going to have to be one that we work with for a few years and see what the best result is.

In fact, we're doing a special in-house policy study on this whole subject.

Senator WILLIAMS. I don't know if anybody wants to take on this burden of answering the question. And I think only one of you is in

a position to address it now that our friend from California, Ms. Gianturco, has left.

A suggestion was made by Senator Leahy this morning that the states be required to put up an amount equal to 10 percent of the State's section 18 allocation. Or if they don't, they would lose 10 of the 15 percent section 18 funds that are available for administrative expenses.

This is part of that earnest money that we find now and again in programs. You have to get something of your own in there to prove that you're really going to work at it.

What do you think of that idea?

Mr. KING. Well, in fact, we already contribute 10 percent of the capital costs, which makes up probably 70 to 80 percent of our program.

So the State of North Carolina matches the Federal funds with probably 7 or 8 percent State funds for capital planning projects. We do not match any for the operational projects.

So Senator Leahy's suggestion would not harm us, I believe. I can't speak for the rest of the states.

Mr. DOWNS. Senator, if I could. The experience that I've had personally in talking to a number of rural program operators is that because they are rural and they are small, and they are having, as most local jurisdictions are, financial problems. The first programs that get cut at the local level are what are perceived to be the softer social programs. Transportation for the disadvantaged in rural areas is often the first on the cut list.

They're having severe financial problems with the ability to match unrestricted Federal funds. Although this is not reflected in the Administration position, I think we could probably endorse that concept, having the States participate in a program.

I think the funding of small rural transportation programs, the matching requirement, is onerous. A number of local jurisdictions find that there's no State help. They have a very difficult time getting funds from, say, the counties that are involved in it because of the financial crunch that they're involved in at the local level.

Senator WILLIAMS. Are there any replies, Mr. Yud, that you might have, that can be described as a brief but complete reply?

Mr. YUD. Well, I would like to make some reply, Senator. I don't know whether I will be as complete so as to go over and cover every point you may have referred to.

Senator WILLIAMS. You two can go out in the hall and come back after Congressman Peyser. [Laughter.]

Mr. YUD. I'd be glad to meet with Mr. McFarlane.

Senator WILLIAMS. You have met with him before?

Mr. YUD. I have not met with him before.

Senator WILLIAMS. Could you talk things over for a little bit while we take a couple of witnesses who I know are here and have been waiting a long time?

Mr. YUD. Certainly.

Senator WILLIAMS. And maybe we could have some distillation of disagreement or agreement.

Mr. YUD. I can only speak for myself.

Senator WILLIAMS. I would like to personally hear replies to a lot of questions that we have prepared, but the time is running against us.

Now, Congressman Peter Peyser of New York has been patiently waiting in the audience.

Welcome, Peter.

STATEMENT OF PETER PEYSER, REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. PEYSER. Mr. Chairman, thank you very much for the opportunity of appearing before your committee. And knowing how pressed you are for time, I would ask to have my written statement printed in the record.

I would simply like to talk very briefly on something that is a great concern of mine dealing with mass transit, primarily the commuter situation and how UMTA will address it, and the effect that UMTA will ultimately have on this problem I'm going to speak of.

Mr. Chairman, the area I represent is in Westchester County and New York City, which, as you well know, relies tremendously on commuter mass transit.

The three main lines that we utilize are the Harlem, Hudson, and the New Haven divisions of ConRail on which thousands and thousands of commuters desperately try to travel every day to and from New York.

If it were possible in one single sweep of legislation here to end ConRail's confusion, contempt, and lack of concern for the commuters that has been demonstrated so aptly by them over the years, I would think that it would be one of the outstanding pieces of legislation that your committee has ever turned out.

I hope that something can happen in a constructive manner that will affect this type of problem that we have had for a good many years now, ever since ConRail took over the operation of these commuter lines.

Mr. Chairman, we have seen what I would term as nothing short of disgraceful, a type of management that has allowed a complete deterioration of the lines involved, an absolute elimination of anything you could call competent service, and a situation whereby men and women are daily faced with getting into cars that are ill repaired, dirty, and, in my opinion, in many cases unsafe.

One of the most recent developments over the last year is a continued shortage of these trains, so that by the time a commuter gets on the train in the morning—and I'm talking about the early ones who get on the train—there are no seats left.

In other words, the trains have all been shortened appreciably so that you basically have people standing 30 or 40 minutes in and out of New York City.

For those of us who have also traveled the subway in New York, that is an accepted way of travel—to stand in a subway and hang on a strap.

But we don't have any straps on the commuter trains. All we have are the aisles to stand in, and I have personally, Mr. Chairman, in the last several months, been on ConRail trains in that area where I boarded at the second or third stop from the starting point and there were no available seats. And by the time we had gone another couple of stops, the crowd would just keep building up until we got to the point where the conductor, who would normally be collecting fares, wouldn't even come through for two reasons:

First, in some of the trains, it was so packed, that it was physically impossible for the conductor to walk through the car. The second reason is the conductors have no intention of asking people to pay money for a ride that is so unpleasasant because of the harassment and abuse that conductors have been subjected to.

We recognize that it is not the conductor's fault, but nevertheless, people get so fed up, that anybody that's standing around in an official position bears the brunt of the riders' outrage.

I can testify that in riding in on the trains, as I have on several occasions, when people have recognized me as their Representative in Congress, I have also borne the brunt of their dissatisfaction.

The only satisfaction they had is that I was standing. [Laughter.]

Senator WILLIAMS. You ought to have reprints made of what you say here and have them hand it out.

Mr. PEYSER. I think they're pretty well aware of what I'm saying on this issue. I guess the frustration, Mr. Chairman, is that I've been saying it and other Members have been saying it, for some time now. And we do not seem to be able to reach a conclusion to this. I have requested, and I have given the report to your staff already, that the U.S. Railway Association make a study of the Hudson and Harlem division, which was concluded last December.

The study, which was done by an independent group, said very specifically, that unless major changes were made, these entire two ConRail divisions that we're now talking about would absolutely grind to a halt within the next 2 to 3 years. This condition was so bad.

And the lack of direction as to what they were going to do to correct it was so bad, that it just would not continue.

Now, I have felt, after having read these studies and having looked at this thing personally, and I have been through maintenance yards and seen what is actually happening, that an answer to this problem would be to end ConRail's relationship with the commuter lines and turn the commuter lines over to Amtrak. Amtrak's main concern is passenger travel—ConRail's main concern is freight travel.

I met with Stewart Reed, president of ConRail, a couple of months ago in Philadelphia, and after the meeting I was very convinced that freight was really what they were concerned about. They certainly didn't want to do anything harmful to commuters, but nothing was going to happen that was going to be very helpful. I've also met recently with Alan Boyd, who, as you know, is president of Amtrak, and I have discussed this with him—the possibilities and what Amtrak would require if they were to take over the ConRail operation.

Amtrak is preparing a report now, which Mr. Boyd tells me we will have available in the next couple of weeks to see just what would be involved in Amtrak taking over the ConRail operation.

So, Mr. Chairman, basically that is what I wanted to say. The message I wanted to give you and your committee is that I believe sincerely that everything should be done within the authority of your committee that can help bring about a change in the situation facing the commuters in the New York metropolitan area today. And to a large degree, this falls on management, it falls on the concern and the interest of the railroads that are involved.

So with that, Mr. Chairman, I thank you very much for this opportunity. If there are any questions, I would welcome them. Other than that, I thank you.

[The complete statement follows:]

STATEMENT OF CONGRESSMAN PETER A. PEYSER

Mr. Chairman, Members of the committee, I am here today to speak about commuter rail service in suburban New York City, specifically the Westchester suburbs. I represent the 23rd Congressional District of New York through which run both the Harlem and Hudson lines of the Conrail operation.

And I can say in all honesty that hardly a week goes by that I do not hear from my constituents about the inadequacy of the service on these lines. Constituents are constantly contacting me about the poor condition of the cars, the laughable "on-time" record, and the complete disregard Conrail has for the public it is supposed to be servicing.

Allow me to illustrate the situation facing Westchester commuters. Last November, I asked a friend to chronicle the track record of morning and evening trains between Irvington, New York, and Grand Central Station. For a period of 22 work days, including 39 individual trips, the train arrived on schedule only seven times. On seven other occasions the train was over 20 minutes late.

Moreover, on numerous occasions there were other problems ranging from faulty lights to unannounced delays. There are almost always standees. There have been holes in car walls and the toilet facilities rarely work. Cars are frequently so crowded that conducters cannot collect fares.

Conrail is aware of these shortcomings and does nothing. In fact, when one of my constituents complained about the lack of seats, Conrail responded with what I can only call impertinence. I quote:

"Allowing passengers to stand in the aisles and in the vestibules . . . is not optimal in terms of comfort and safety, some passengers would prefer to ride under these conditions rather than wait for the next train."

Mr. Chairman, why would anybody wait for the next train when the likelihood is that the next train will be every bit as crowded and unpleasant as the first. In fact, my constituents have learned the hard way that the next train might not even show up.

One reason there are so many standees is that trains are constantly being shortened. Just last week, I was told by a constituent that his train from Crestwood on the Harlem line to New York City had been reduced from ten to five cars. The other cars are in the repair yards.

I have visited these repair yards and they are a major part of the problem. Not only are there not enough people to handle the large number of inoperable cars, but Conrail's system of ordering parts could only have been designed by Rube Goldberg. The situation is so chaotic that, although Conrail officials deny it, personnel in the repair yards told me that they routinely engage in taking parts from one car to put in another car—a practice I believe is called "cannibalizing."

My suspicions about Conrail's lack of efficiency were recently confirmed by a study done, at my request, by the United States Railway Association. This study concluded the following:

1. The Rolling Stock Fleet of the Harlem & Hudson Divisions of the Metropolitan Region of Conrail is suffering from lack of a realistic, timely and technically adequate over-haul, remanufacture and/or replacement program.

2. That this lack of program has a very detrimental effect on train performance and equipment availability.

3. That unless corrected immediately, the situation regarding on-time performance, equipment availability and passenger comfort will get worse and will get worse at an ever increasing rate.

4. That the resources to correct the situation in the form of shops, material and skilled men and managers is not present on the Region at the present time to haut or turn-around the situation in time to avert what could approach total collapse of service.

In conclusion, Mr. Chairman, I can only describe the service presently provided by Conrail on the Harlem and Hudson lines as a disgrace. I would like to see this committee explore other means of providing commuter service to Westchester County, including the possibility of AMTRAK, rather than Conrail, being the operating authority. Commuter service is not an easy operation to run under the best of circumstances. With a freight-oriented company like Conrail, we are getting what we might expect. If AMTRAK, which is more skilled in passenger service, were to take over the service, I have to think that there will be an improvement.

I might add at this point that I have met with Alan Boyd and I have been told that AMTRAK is considering the possibility of taking over the Conrail lines.

My constituents have endured bad service for years. They deserve better. And, I am sure, that if there is a commitment to improved service and improved conditions, then my constituents, the riders of the Harlem and Hudson lines, would be willing to pay higher fares. But they want action, not words. And after years of suffering, I think they deserve it.

Senator WILLIAMS. Has your suggestion of this transfer of this responsibility been raised by any others, sir, by ConRail?

Mr. PEYSER. Not specifically, perhaps, with Amtrak, but ConRail has been divested of a number of its commuter lines over the last 2 to 3 years, where the service has been so bad in some of the areas that ConRail has literally been moved out. In Boston, for instance, and Chicago, this has happened.

But my thought was that Amtrak would be the one that would be most likely to move on this type of thing.

Senator WILLIAMS. Who came in to pick up that service?

Mr. PEYSER. I can't remember the lines—I am not sure whether Amtrak came in in Chicago or not, but in Boston it was one of the lines up there that basically took over for ConRail.

Senator WILLIAMS. Boston & Maine, probably.

Mr. PEYSER. Yes; I think it was Boston & Maine, but it was a situation where ConRail now has less and less of the commuter travel, but what they have is honestly disastrous.

I would wish—and that's one of the things I tried to get other members to do—really, to get on the station platform some morning and simply take a train into New York, whether it's from Pleasantville, N.Y., or Tarrytown or Bronxville or wherever, and to see the conditions that exist on those trains, and in the summer months this last year, I can't tell you, Mr. Chairman, the numbers of calls and letters—literally by the hundreds, air-conditioning wasn't working, the ontime schedules were laughable.

We've had people in our district that take them every day for a month at a time, business executives who are traveling on these trains, and out of 22 days or something, there may be 7 days the train will be on time. And you're talking 20-and 30-minute delays, and in some cases longer.

You know, by this type of service we're forcing people back into cars at a time we're saying, "Let's use mass transit."

Senator WILLIAMS. Well, you've certainly raised the issue dramatically, and we will, if we have time before we mark up here, explore this. I had gotten the impression that in the area of Con-

Rail commuter service in the State of New Jersey the situation is improving.

Mr. PEYSER. I'm glad to hear that for you, Senator, and for the commuters in that area.

Senator WILLIAMS. But, at any rate, we're greatly appreciative that you came here to describe this to us. Your full statement will be in the record, and thank you.

Mr. PEYSER. Thank you, sir.

Senator WILLIAMS. We welcome Mr. Alan Boyd, president and chief executive officer of the National Railroad Passenger Corporation, Amtrak, and Mr. Ralph Mueller, assistant vice president, subsidized services and public policy of ConRail.

You gentlemen were both mentioned here. Well, Mr. Boyd, you weren't mentioned personally. But your institutions were both mentioned by Congressman Peyser. You heard it.

STATEMENT OF ALAN BOYD, PRESIDENT AND CHIEF EXECUTIVE OFFICER, NATIONAL RAILROAD TRANSPORTATION PASSENGER CORPORATION (AMTRAK), ACCOMPANIED BY ROBERT A. HERMAN, VICE PRESIDENT FOR OPERATIONS, AND LARRY GILSON, VICE PRESIDENT FOR GOVERNMENT AFFAIRS

Mr. BOYD. Thank you, Mr. Chairman. It's a pleasure to appear for the first time before this committee to address Amtrak's interests and concerns relating to rail commuter service in this Nation.

At a time of serious uncertainties regarding future energy supplies as well as the impact of dependence on foreign oil in this Nation's economy, it is appropriate that we should be exploring together every potential means to provide public transportation alternatives to the private automobile.

It was only because of the then-perceived need to preserve a traditional mode of intercity travel that Congress established Amtrak in 1970. In 1978, the Rail Passenger Service Act was amended to provide us with authority to operate commuter service so long as a State or local or regional agency reimbursed us for the avoidable cost of that service.

The amendment defined commuter service as "service operated in metropolitan and suburban areas, usually characterized by reduced fare, multipleride, and commutation tickets and by morning and evening peak period operations": Section 403(d) of the Rail Passenger Service Act.

That amendment led to the problem I wish to emphasize today, a problem that is addressed in section 10 of S. 2296.

During the preparation of the January 1979 Amtrak Route Restructuring Report, the Department of Transportation identified several Amtrak services which appeared to fit the section 403(d) definition of "commuter service." The report called for discontinuance of these services unless State or other agencies provided full funding of the avoidable cost. The report also called for Amtrak to discontinue acceptance of commuter-fare tickets on our intercity trains, for example, our acceptance of ConRail commuter tickets on our intercity trains between Baltimore and Washington.

Since it was not possible to address the complex funding problems in the short time between the issuance of the January report

and the October 1 date on which the report was to be implemented, Congress mandated, in the 1979 Amtrak Reorganization Act, continuation of the commuter trains and acceptance of commuter-based fares for 18 months, until April 1, 1981.

These routes represent an important segment of our intercity system. Collectively, they carried 2.5 million passengers in fiscal year 1978. This compares to 2.8 million riders forecast for fiscal year 1980, not including an additional 244,000 projected for the Chicago-Valparaiso service which began in October 1979.

The Clockers in New Jersey alone are expected to carry 1.5 million passengers this fiscal year. We fear that discontinuance of these trains would substantially increase pressures for us to increase the number of stops on intercity trains to accommodate these commuters, to the detriment of the speed and efficiency we seek for our longer distance passengers.

In the case of the New Haven-Springfield trains, a requirement that Amtrak not operate this service unless someone else pays is in direct conflict with a formal agreement we reached with the State of Connecticut prior to the DOT report. Under our agreement, the State of Connecticut is purchasing 12 SPV-2000 cars with 100 percent State funds and Amtrak is committed to operating these cars on our New Haven-Springfield line in place of the 30-year-old RDC cars which belong in a museum.

Section 10 of S. 2296 would amend section 403(d) of our Act to continue these current Amtrak services and to extend our authority to accept commuter-based fares on intercity trains through fiscal year 1985. We support this approach.

As owner and operator of the Northeast corridor, we have some concerns going beyond our current rail commuter services.

ConRail operates the large majority of all commuter rail service in the Northeast corridor. Because Amtrak is owner and operator of the bulk of NEC and in the passenger rail business, it is reasonable to look at the possibility of some day accepting a transfer of ConRail responsibilities for commuter service. We think that is preferable to a separate operation of commuter rail service by each transit authority, which would further complicate an already difficult problem of trying to manage the corridor as a whole; would make more difficult the reasonable allocation of cost, rights and responsibilities among all the corridor users; and would exacerbate scheduling/operating trains in accordance with all the parties' needs and priorities. As an alternative to this unwieldy arrangement, Amtrak might in the future find it preferable to assume the operation of ConRail's commuter service.

There are some attractions to Amtrak in becoming the operator of commuter rail service in the corridor and elsewhere, but frankly, there are also serious problems in doing so. Accordingly, we have begun to take a serious look at the problems we would encounter and the conditions we would need met if we were to expand our activities in this area. While that analysis is not yet complete, it is clear that the list of issues requiring attention prior to any larger Amtrak commuter rail role is a long one. Let me explain some of our concerns.

The most direct and obvious concern is the question of covering both operating and capital costs. As we understand it, the total

annual operating expense of all ConRail-provided service in the Northeast corridor and offcorridor is about $481 million, with a current deficit of about $262 million. This service involves nearly 100 million passengers a year, not including Boston or Maryland service.

In no event could Amtrak subsidize this service with revenues derived from intercity service. Funding sufficient to cover all costs would be required. Further, given the magnitude and the growth in such costs, any change in the responsibility for operation of commuter service should be undertaken only if it holds the prospect of significant cost moderation for the States, local agencies, and for the Federal Government. Otherwise, few parties involved would be agreeable—certainly not Amtrak.

Capital requirements for equipment, stations, and maintenance facilities would have to be met. It makes no sense to us to change operators—with the resultant heightened expectation of the riders—without addressing this problem. While we know that these costs are very significant, they are at present unquantified. ConRail took over assets of the Penn Central, which had suffered years of deferred maintenance. While ConRail and the transit authorities and affected States have made capital investments, the problem is still severe and the condition of much of the facilities and rolling stock is highly problematical.

A third aspect of funding requires resolution in this context. Long before Amtrak acquired ownership of the Northeast corridor, use of the property by intercity passenger, commuter, and freight rail service caused disputes over scheduling, priorities within and between railroads and methods of allocating the costs of maintaining the physcial facilities—track, signals, fixed plant.

Although we have been able to rationalize many of the scheduling/operating problems since we assumed responsibility for the corridor in 1976, regrettably, there has been no similar progress in settling the longstanding disputes over methods of costing.

The irony is, of course, that all of the parties to the dispute—Amtrak, ConRail, and the various State and regional transit authorities—depend heavily on Federal support. This means that in a real sense this is a dispute over whose Federal dollars shall cover the cost, which no one disputes, of maintaining a jointly used corridor.

As you may know, the corridor continues to be operated under a series of interim agreements which have merely put off the final determination of an equitable cost-sharing agreement. Because no resolution has been possible, disputed costs have continued to build up. From April 1976 projected to September 30, 1980, these disputed costs amount to $91 million for freight usage and $93 million for commuter usage.

The commuter problem is largely with the State of New Jersey and the Southeastern Pennsylvania Transportation Authority. The accumulated and current dispute claims are significant enough, and represent an important enough element of total operating costs of commuter service, that we feel it is critical to resolve the problem in the context of any adjustments in roles.

If Amtrak were to assume commuter operations, a series of labor issues would have to be resolved. We would have to have trans-

ferred from ConRail as employees, agreement and nonagreement personnel dedicated to such service. Amtrak would need the opportunity and the time to carefully negotiate the terms of transfer of necessary employees from ConRail and terms of employment by Amtrak following the transition.

Finally, a number of transition procedures would have to be developed. We would need, for example, a procedure to avoid the lag time in cash flow which occurs because UMTA operating funds flow through local agencies before reaching the operator. A basis for inventorying, assessing, and acquiring relevant ConRail property would have to be worked out. Other issues of this type would need to be identified and addressed.

Beyond our concerns relating to our existing commuter trains and the serious uncertainties surrounding the future of ConRail commuter service, I would like to mention one final possibility.

We have been approached informally by State and local officials who are exploring all options for addressing future public transit needs in their communities. We believe there are several areas where new commuter rail service could be instituted on existing rail rights-of-way to meet the very significant needs to expand our Nation's public transportation capacity.

In many urban areas where Amtrak currently has intercity service, it might prove economical to develop local commuter service utilizing existing stations, personnel, maintenance facilities, and other resources, so long as we can develop an acceptable cost-sharing arrangement to prevent any cross subsidization of intercity and commuter operations.

We would be pleased to explore the potential for this type of commuter rail service as you continue to study appropriate means to meet our Nation's future public transit needs.

I would be pleased to answer any questions you may have regarding any issues affecting our commuter service.

[Complete statement follows:]

TESTIMONY OF ALAN S. BOYD, PRESIDENT, NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK) ON COMMUTER RAIL SERVICE

It is a pleasure to appear for the first time before this Committee to address Amtrak's interests and concerns relating to rail commuter service in this nation. At a time of serious uncertainties regarding future energy supplies, as well as the impact of dependence on foreign oil on this nation's economy, it is appropriate that we should be exploring together every potential means to provide public transportation alternatives to the private automobile.

It was only because of the then-perceived need to preserve a traditional mode of intercity travel that Congress established Amtrak in 1970. In 1978, the Rail Passenger Service Act was amended to provide us with authority to operate commuter service so long as a state or local or regional agency reimbursed us for the avoidable cost of that service. The amendment defined commuter service as "service operated in metropolitan and suburban areas, usually characterized by reduced fare, multiple-ride, and commutation tickets and by morning and evening peak period operations" (Section 403(d) of the Rail Passenger Service Act).

That amendment led to the problem I wish to emphasize today, a problem that is addressed in Section 10 of S. 2296.

During the preparation of the January 1979 Amtrak Route Restructuring Report, the Department of Transportation identified several Amtrak services which appeared to fit the Section 403(d) definition of commuter service. (See list attached.) The Report called for discontinuance of these services unless state or other agencies provided full funding of the avoidable cost. The Report also called for Amtrak to discontinue acceptance of commuter-fare tickets on our intercity trains, for exam-

ple, our acceptance of ConRail commuter tickets on our intercity trains between Baltimore and Washington.

Since it was not possible to address the complex funding problems in the short time between the issuance of the January report and the October 1st date on which the report was to be implemented, Congress mandated (in the 1979 Amtrak Reorganization Act) continuation of the commuter trains and acceptance of commuter-based fares for 18 months, until April 1, 1981.

These routes represent an important segment to our intercity system. Collectively, they carried 2.5 million passengers in fiscal year 1978. This compares to 2.8 million riders forecast for fiscal year 1980, not including an additional 244,000 projected for the Chicago-Valparaiso service which began in October, 1979. The Clockers in New Jersey alone are expected to carry 1.5 million passengers this fiscal year. We fear that discontinuance of these trains would substantially increase pressures for us to increase the number of stops on intercity trains to accommodate these commuters, to the detriment of the speed and efficiency we seek for our longer distance passengers.

In the case of the New Haven-Springfield trains, a requirement that Amtrak not operate this service unless someone else pays is in direct conflict with a formal agreement we reached with the State of Connecticut prior to the DOT Report. Under our agreement, the State of Connecticut is purchasing 12 SPV-2000 cars with 100 percent state funds and Amtrak is committed to operating these cars on our New Haven-Springfield line in place of the 30-year-old RDC cars which belong in a museum.

Section 10 of S. 2296 would amend Section 403(d) or our Act to continue these current Amtrak services and to extend our authority to accept commuter-based fares on intercity trains through fiscal year 1985. We support this approach.

As owner and operator of the Northeast Corridor, we have some concerns going beyond our current rail commuter services.

ConRail operates the large majority of all commuter rail service in the Northeast Corridor. Because Amtrak is owner and operator of the bulk of NEC and in the passenger rail business, it is reasonable to look at the possibility of some day accepting a transfer of ConRail responsibilities for commuter service. We think that is preferable to a separate operation of commuter rail service by each transit authority (SEPTA, NJDOT, MTA and CONNDOT) which would further complicate an already difficult problem of trying to manage the Corridor as a whole; would make more difficult the reasonable allocation of cost, rights and responsibilities among all the Corridor users; and would exacerbate scheduling/operating trains in accordance with all the parties' needs and priorities. As an alternative to this unwieldy arrangement, Amtrak might in the future find it preferable to assume the operation of ConRail's commuter services.

There are some attractions to Amtrak in becoming the operator of commuter rail service in the Corridor and elsewhere but, frankly, there are also serious problems in doing so. Accordingly, we have begun to take a serious look at the problems we would encounter and the conditions we would need met if we were to expand our activities in this area. While that analysis is not yet complete, it is clear that the list of issues requiring attention prior to any larger Amtrak commuter rail role is a long one. Let me explain some of our concerns:

The most direct and obvious concern is the question of covering both operating and capital costs. As we understand it, the total annual operating expense of ConRail-provided service is about $481 million with a current deficit of about $262 million. This service involves nearly 100 million passengers a year (not including Boston or Maryland service). In no event could Amtrak subsidize this service with revenues derived from intercity service. Funding sufficient to cover all costs would be required. Further, given the magnitude and the growth in such costs, any change in the responsibility for operation of commuter service should be undertaken only if it holds the prospect of significant cost moderation for the states, local agencies, and for the Federal Government. Otherwise few parties involved would be agreeable—certainly not Amtrak.

Capital requirements for equipment, stations, and maintenance facilities would have to be met. It makes no sense to us to change operators—with the resultant heightened expectation of the riders—without addressing this problem. While we know that these costs are very signifiant, they are at present unquantified. ConRail took over assets of the Penn Central which had suffered years of deferred maintenance. While ConRail and the transit authorities and affected states have made capital investments, the problem is still severe and the condition of much of the facilities and rolling stock is highly problematical.

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A third aspect of funding requires resolution in this context. Long before Amtrak acquired ownership of the Northeast Corridor, use of the property by intercity passenger, commuter, and freight rail service caused disputes over scheduling, priorities within and between railroads, and methods of allocating the costs of maintaining the physical facilities (track, signals, fixed plant). Although we have been able to rationalize many of the scheduling/operating problems since we assumed responsibility for the corridor in 1976, regrettably, there has been no similar progress in settling the longstanding disputes over methods of costing. The irony is, of course, that all of the parties to the dispute—Amtrak, ConRail, and the various state and regional transit authorities—depend heavily on federal support. This means that in a real sense this is a dispute over whose federal dollars shall cover the cost (which no one disputes) of maintaining a jointly used corridor.

As you may know, the corridor continues to be operated under a series of interim agreements which have merely put off the final determination of an equitable cost sharing agreement. Because no resolution has been possible, disputed costs have continued to build up. From April 1976 projected to September 30, 1980, these disputed costs amount to $91.3 million for freight usage and $93.4 million for commuter usage. The commuter problem is largely with the State of New Jersey and the Southeastern Pennsylvania Transportation Authority (SEPTA). The accumulated and current disputed claims are significant enough, and represent an important enough element of total operating costs of commuter service, that we feel it is critical to resolve the problem in the context of any adjustments in roles.

If Amtrak were to assume commuter operations, a series of labor issues would have to be resolved. We would have to have transferred from ConRail as employees, agreement and nonagreement personnel dedicated to such service. Amtrak would need the opportunity and the time to carefully negotiate the tems of transfer of necessary employees from ConRail and terms of employment by Amtrak following the transition.

Finally, a number of transition procedures would have to be developed. We would need, for example, a procedure to avoid the lag time in cash flow which occurs because UMTA operating funds flow through local agencies before reaching the operator. A basis for inventorying, assessing and acquiring relevant ConRail property would have to be worked out. Other issues of this type would need to be identified and addressed.

Beyond our concerns relating to our existing commuter trains and the serious uncertainties surrounding the future of ConRail commuter service, I would like to mention one final possibility.

We have been approached informally by state and local officials who are exploring all options for addressing future public transit needs in their communities. We believe there are several areas where new commuter rail service could be instituted on existing rail rights-of-way to meet the very significant needs to expand our nation's public transportation capacity. In many urban areas where Amtrak currently has intercity service, it might prove economical to develop local commuter service utilizing existing stations, personnel, maintenance facilities and other resources so long as we can develop an acceptable cost-sharing arrangement to prevent any cross subsidization of intercity and commuter operations.

We would be pleased to explore the potential for this type of commuter rail service as you continue to study appropriate means to meet our nation's future public transit needs.

I would be pleased to answer any questions you may have regarding any issues affecting our commuter services.

DOT REPORT COMMUTER RIDERSHIP 1978

Train name/number	Daily riders per train	Annual riders
NEC:		
Boston-New Haven, Beacon Hill—(151, 152)	61	28,746
New York-Hartford, Valley Forge—(42, 43)	402	202,130
New Haven-Springfield, 400 series—(400–411)	74	38,143
Philadelphia-Harrisburg, 600 series—(600, 1, 2, 3, 4, 15, 17)	222	386,419
New York City-Philadelphia, 200 series—(200, 19, 21, 23, 25, 37, 54)	737	1,513, 524
Non-NEC:		
Detroit-Jackson, Michigan Executive—(373, 374)	172	89,800
Washington-Martinsburg, Blue Ridge—(701, 702)	457	262,000

Senator WILLIAMS. Thank you very much, Mr. Boyd.

Let us go to you, Mr. Mueller, and then we will see, if time permits, we will ask you some questions.

STATEMENT OF RALPH R. MUELLER, ASSISTANT VICE PRESIDENT, SUBSIDIZED SERVICES AND PUBLIC POLICY, CONSOLIDATED RAIL CORPORATION

Mr. MUELLER. Thank you, Mr. Chairman.

Mr. Chairman, with your permission, I would like to summarize my testimony. I would like the whole testimony submitted for the record.

I am pleased to have this opportunity to discuss ConRail's role and responsibilities as a designated contract operator of commuter rail service in the Northeast and to explain the relationship among ConRail, Amtrak, and the local agencies in providing that service. My testimony today is limited to these subjects and the existing corporate policies for executing ConRail's current responsibilities.

ConRail is the largest operator of rail passenger service in the Nation. ConRail operates approximately 1,800 daily commuter trains under contract to 5 regional transportation agencies, carrying some 455,000 one-way riders each day. The Regional Rail Reorganization Act of 1973, as amended, called the Rail Act, provides that ConRail, upon its activation on April 1, 1976, was to continue operating all commuter rail service provided by ConRail's bankrupt predecessor railroads; namely, the Penn Central, Reading, Erie-Lackawanna, and Central of New Jersey.

ConRail, however was established primarily as a freight railroad to provide efficient freight service to the Northeast at the lowest cost to the public. To enable ConRail to achieve that goal, the Rail Act prohibited ConRail from cross-subsidizing passenger deficits from its freight revenues. Therefore, ConRail, under Federal law, operates commuter service only if it is fully compensated for all services.

The Rail Act further directed the Rail Services Planning Office of the Interstate Commerce Commission to issue Standards For Determining Commuter Rail Service Continuation Subsidies, commonly referred to as the "RSPO standards". The RSPO standards provide a federally developed methodology for computing the costs which commuter agencies must pay the railroad to provide commuter service. Under the Rail Act, each local subsidizing agency must pay ConRail in full for the difference between the service costs as defined by the RSPO standards and the revenues from passenger operations. If no offer of subsidy is made by a responsible agency, or if a subsidy offer is inadequate, or a subsidy is not paid when due, the Rail Act provides for ConRail to discontinue operation of that service on 60-day notice.

The Rail Act also provides that any subsidizing agency may choose an operator other than ConRail to provide commuter service.

The services currently operated by ConRail under contract are as follows: For the New York Metropolitan Transportation Authority and Connecticut Department of Transportation, ConRail operates 527 daily trains carrying 170,000 one-way riders over 3 lines serving New York City from New York and Connecticut.

The New Jersey Transit Corp. sponsors 475 trains carrying 160,000 weekday riders. Most of this service radiates from New York City, Newark, or Hoboken, into northern New Jersey suburbs. Ten weekday trains serve the southern New Jersey shore points from the Camden, N.J., area.

In the Philadelphia area, the Southeastern Pennsylvania Transportation Authority subsidizes 791 weekday trains with approximately 125,000 one-way riders. This service is provided over 13 lines radiating from the center-city Philadelphia area. Four trains carrying 1,200 riders are operated between Baltimore and Washington for the Maryland Department of Transporation on weekdays.

The services described above collected approximately $196 million in fares from passengers in 1979. However, the costs of providing the services was $387 million; thus necessitating subsidy payments of $191 million. Passenger revenues, which includes both fares and subsidies, accounted for approximately 14 percent of ConRail's total revenues in 1979.

ConRail recognizes the enormous responsibility with which it has been charged; namely, the safe transportation of nearly one-half million riders each weekday. Moreover, as long as the subsidizing agencies contract with ConRail for the provision of services, we will continue to operate the trains to the best of our ability as experienced railroad professionals.

ConRail recently took several major initiatives to improve service on all of the existing services that we provide. Perhaps the fact by which the commuting public most often judges the quality of service is on-time performance. ConRail's performance consistently has been in the high 80-percent range—by that, I mean in the 80–90 percent range—and this year has shown marked improvement versus the same period in 1979.

ConRail continues to work closely with each agency to develop and implement programs for upgrading facilities and improving the efficiency of operations. However, major improvements are contingent, in most cases, on capital additions to fixed facilities and rolling stock. Thus, ConRail is constrained by the amount of funds available through each agency. Nevertheless, ConRail will continue to operate a safe and reliable service at the lowest possible cost.

Mr. Chairman, the present tripartite relationship between ConRail, Amtrak, and the various commuter agencies for providing commuter service in the northeast is extraordinarily complex, often cumbersome, and confusing to the taxpayer in general and the riding public in particular. ConRail functions as the designated contract operator for the service. As I said earlier, this is a choice made independently by each of the commuter agencies. If we are designated, under the Rail Act, ConRail must operate the service.

Hence, ConRail provides the crews for the trains, maintains most of the rolling stock, provides a portion of the train-dispatching functions, provides a portion of the tracks and the facilities with which the service operates, and maintains a larger portion of these tracks and facilities, collects the farebox revenues, provides the final cost and revenue accounting to the agencies, and acts as the agency representative in contracting for services provided by Amtrak.

In summary, ConRail is responsible for the daily operation of train service in a safe, reliable, and efficient manner. Amtrak, by virtue of its ownership of the Northeast corridor, is also heavily involved in the operation of commuter rail service in many of these same areas. Amtrak provides a significant portion of the facilities over which the service operates, maintains those facilities as well as a portion of the adjacent ConRail and agency-owned facilities, maintains a portion of the rolling stock, controls the operation of commuter trains as it dispatches all trains on its owned facilities as well as on a portion of the adjacent ConRail and agency-owned facilities, and provides cost accounting for those services and facilities.

Finally, the commuter agencies determine policies for fares, frequency of train service, schedules, station stops, track and equipment maintenance levels, and marketing programs. The commuter agencies provide the rolling stock and own a large portion of the track and facilities over which the service is operated. They subsidize the gap between the revenues and costs of the service from Federal, State, and local tax revenues.

This divided responsibility between ConRail, Amtrak, and the commuter agencies often causes delays in making decisions and implementing these decisions. For example, the need to fix a leaking roof at the equipment maintenance shops at Paoli, Pa., demonstrates this point.

Senator WILLIAMS. We have that in the record. We've read it. We're authorities on problems of the leaky roof. And I can see it certainly makes your point.

Mr. MUELLER. Given this maze of joint responsibilities, it is not surprising that the decisionmaking process is long and cumbersome, that the public is confused as to who is responsible and accountable, and that on occasion the needs of the riding public are not well served.

Federal legislation is ambiguous on how costs should be determined for commuter service and how common costs should be shared by the parties. Each party has its own interpretation of Federal intent and the meaning of the RSPO standards. However, after nearly 4 years of operation and attempts at negotiation, no final agreement has been reached which is acceptable to all involved. Effective cooperation among all parties is severely hampered when significant differences exist on how much of the costs should be charged to the commuter agencies.

Next, the commuter agencies believe that the present work rules must be modified in order to reduce costs. Existing passenger agreements require ConRail to operate the service in an efficient and economic manner, but, at the same time, obligate the agencies to recognize ConRail's existing labor agreements and practices. This has created problems when agencies request implementation of labor-related efficiencies to reduce costs when existing labor agreements prohibit such action by ConRail.

Labor negotiations are difficult, at best. But when ConRail management must negotiate work rule changes as an agent of the commuter agencies, ConRail is in a very difficult negotiating position.

Next, Mr. Chairman, much of the rail passenger service equipment is past its economic life, and given present and projected ridership levels, equipment shortages are likely. MTA, the Connecticut Department of Transportation, SEPTA, New Jersey Transit, and Maryland DOT are all facing serious equipment problems. Many of the commuter cars should be retired since the equipment has been in operation for over 50 years and, in some areas, as much as 70 years. Parts are unobtainable, and the frequent shopping of these cars is expensive.

But new equipment is not the only problem. Modern, efficient maintenance facilities are also needed to properly and efficiently maintain and repair the equipment. Most of the shops are antiquated and have insufficient capacity. The operation of old equipment and the use of inefficient maintenance facilities increases the cost of rail passenger services, while at the same time it decreases the quality of that service.

Significant increases in capital resources for equipment and facilities are required promptly if ConRail is to insure safe and reliable service in the future.

A final point, Mr. Chairman, is that the current funding crisis pervading mass transit nationally raises serious issues about whether ConRail will be fully compensated for the services that it provides. The Rail Act and the System Plan contemplated that ConRail would be primarily a freight railroad and would operate passenger service only when fully subsidized for that service.

When it became apparent that most commuter rail services would be terminated on April 1, 1976, under that arrangement, Congress provided an interim funding for the commuter authorities and additional authority to the Rail Services Planning Office in order to continue these vital transportation services. However, this temporary funding was for only a short term: 100 percent during the initial year, with a rather short 90-percent and 80-percent phase to a 50-percent funding level which terminated on September 30, 1978.

This has now been replaced with an amended section 5 UMTA provision which is not reimbursing the commuter agencies sufficiently for the increasing costs being incurred annually. Fares have increased in almost every area, but these have failed to cover the increased costs due to inflation. Federal funds have been withheld or paid on a delayed basis.

As a result, ConRail has not been paid for services it has provided. It is becoming increasingly clear that the commuter authorities are encountering significantly difficult problems in raising the funds necessary to maintain existing service levels, to say nothing about their capital needs.

Subsidy offers to ConRail are falling short of what is required under the RSPO standards. Since ConRail is prohibited by law from cross-subsidizing rail passenger service, we are rapidly approaching a crisis situation. Without increasing funding, commuter agencies will be forced to choose between very high fare increases, significant service reductions, or, in the extreme, cessation of service. These are not easy choices.

While ConRail is hopeful that such choices need not be made, it would be irresponsible on our part not to point out that, without

more funds, it would appear that the commuter agencies will have to make some hard and difficult decisions. Freight service cannot subsidize passenger service. ConRail was created as a self-sustaining, for-profit corporation. Therefore, to divert freight revenues to subsidize passenger service would not only be a violation of the explicit provisions of the Rail Act, but would threaten ConRail's financial viability.

Mr. Chairman, commuter rail service has been an integral element of the metropolitan transportation systems of the mature cities along the Northeast Corridor for decades. In today's energy-constrained environment, it is a nonreplaceable asset which must be permitted to fulfill an even larger role.

In my testimony today I have raised five policy issues which need to be addressed at the highest public policy levels of this Nation to insure the continued operation of these vital systems.

First, the Congress, in enacting the Rail Act which created ConRail, established bold policies for the preservation of rail freight service in the Northeast and Midwest. The wisdom of those policies is evident in the stabilization of freight service in the region, the rehabilitation of the physical plant, the improvement in service to the shippers, and the improvement in the financial performance of ConRail.

Congress may wish to reconsider whether the present tripartite relationship in the provision of commuter service in the Northeast is making similar progress in meeting the intended goals of the Rail Act for commuter service.

Second, a speedy resolution is needed on the costs which commuter agencies must pay to both ConRail and Amtrak for the provision of commuter service. Negotiations are underway, but if the parties are unable to agree, a procedure must be found to resolve the issue. A clear understanding of what costs are to be reimbursed is hampering effective decisionmaking by all concerned. If the intended institutions cannot resolve the issue, Congress will have to consider the matter.

Third, in the view of the commuter agencies, present labor work rules do not conform to the efficient use of labor and the provision of commuter service. If the cost of commuter rail service is to be substantially reduced, we believe that new work rules are required. Congress may wish to consider whether the present institutional relations are conducive to effective bargaining on this issue.

Fourth, equipment and facilities sufficient to meet current ridership demands is becoming an urgent issue. Additional capital funding is needed promptly. Congress should recognize the urgency of this need and insure sufficient resources to meet the requirements of projected ridership.

Finally, given the general inflationary pressures in the economy, the cost of providing commuter service is increasing. The increased costs, however, are not being matched by corresponding funding commitments by the Federal, State, and local agencies involved. Either fares will have to be increased substantially or services reduced to insure that resources are sufficient to cover the cost of the services. Congress may wish to reconsider the appropriate level of Federal funding for maintaining these vital public services.

Mr. Chairman, in summary, ConRail is committed to executing our statutorily imposed responsibilities to the best of our abilities. We do, however, see a series of public policy issues which are overriding and deserve the attention of the Congress. I hope my testimony has been helpful in identifying those issues.

Thank you.

[The complete statement follows:]

TESTIMONY OF RALPH R. MUELLER, ASSISTANT VICE PRESIDENT, SUBSIDIZED SERVICES AND PUBLIC POLICY, CONSOLIDATED RAIL CORPORATION

Mr. Chairman, Members of the Committee, I am Ralph R. Mueller, Assistant Vice President—Subsidized Services and Public Policy for Consolidated Rail Corporation. In this position, I am responsible for recommending corporate policy with respect to the operation of commuter rail service, negotiating contracts with the respective public agencies for that service, and broadly monitoring Conrail's execution of its contractual obligations.

I am pleased to have the opportunity to discuss Conrail's role and responsibilities as a designated contract operator of commuter rail service in the Northeast and to explain the relationship among Conrail, Amtrack, and the local agencies in proving that service. My testimony today is limited to these subjects and the existing corporate policy for executing Conrail's responsibilities.

I.—COMMUTER SERVICES OPERATED BY CONRAIL

Conrail is the nation's largest operator of rail passenger service. Conrail operates approximately 1,800 daily commuter trains under contract to five regional transportation agencies, carrying some 455,000 one-way riders each weekday.

The Regional Rail Reorganization Act of 1973, as amended (the Rail Act), provides that Conrail, upon its activation on April 1, 1976, was to continue operating all commuter rail services provided by Conrail's bankrupt predecessor railroads, namely the Penn Central, Reading, Erie-Lackawanna and Central of New Jersey. Conrail was established primarily as a freight railroad, to provide efficient service to the Northeast at the lowest cost to the public. To enable Conrail to achieve that goal, the Rail Act prohibited Conrail from cross-subsidizing passenger deficits from its freight revenues. Therefore, Conrail, under Federal law, operates commuter services only if it is fully compensated for all services.

The Rail Act further directed the Rail Services Planning Office of the Interstate Commerce Commission to issue Standards for Determining Commuter Rail Service Continuation Subsidies, commonly referred to as the RSPO Standards. The RSPO Standards provide a Federally developed methodology for computing the costs which commuter agencies must pay the railroad to provide commuter services. Under the Rail Act, each local subsidizing agency must pay ConRail in full for the difference between (a) the service costs as defined by the RSPO Standards, and (b) the revenue from passenger operations. If no offer of subsidy is made by a responsible agency, or if a subsidy offer is inadequate, or a subsidy is not paid when due, the Rail Act provides for Conrail to discontinue operation of the service upon 60 days' notice. The Rail Act also provides that any subsidizing agency may choose an operator other than Conrail to provide commuter service.

The services currently operated by Conrial under contract are as follows:

For the New York Metropolitan Transportation Authority and the Connecticut Department of Transportation, Conrail operates 527 daily trains, carrying approximately 170,000 one-way riders, over three lines serving New York City from New York and Connecticut.

The New Jersey Transit Corporation sponsors 475 trains carrying approximately 160,000 weekday riders. Most of this service radiates from New York City, Newark or Hoboken into Northern New Jersey suburbs. Ten weekday trains serve the Southern New Jersey shore points from the Camden, New Jersey area.

In the Philadelpha area, the southeastern Pennsylvania Transportation Authority subsidizes 791 weekly trains with approximately 125,000 one-way riders. This service is provided over 13 lines radiating from center city Philadelphia.

Four trains carrying 1,200 rides are operated between Baltimore and Washington for the Maryland Department of Transportation on weekdays.

The services described above collected $196 million in fares from passengers in 1979. However, the costs of providing the services was $387 million, thus necessitating subsidy payments of $191 million. Passenger revenues, which includes both fares

and subsidies, accounted for approximately 14 percent of Conrail's total revenue in 1979.

Conrail recognizes the enormous responsibility with which it has been charged: the safe transport of nearly a half-million riders each weekday. Moreover, as long as the subsidizing agencies contract with Conrail for the provision of services, we will continue to operate the trains to the best of our ability as experienced railroad professionals.

Conrail recently took several initiatives to improve service to the subsidizing agencies and the commuting public.

Equipment plans.—Conrail has developed, for the MTA, SEPTA, and NJ Transit, separate Five Year Master Plans for the overhaul, retirement, and acquisition of each agency's rolling stock. The plans were developed by Conrail's Mechanical Engineering Department, in conjunction with forecasts for each agency on ridership growth, with the objective of reducing what is becoming a chronic standee problem in many areas due to unprecedented ridership growth.

Car shop task forces.—Conrail's Quality Control Department instituted a task force last year to study, and find ways to improve, the car and locomotive maintenance shops at Harmon, the primary maintenance facility for MTA equipment. As a result of that program, a similar task force was established to improve operations at the Paoli, Wayne Junction and Powelton Avenue shops of the SEPTA system.

Improved services for commuters.—In Northern New Jersey, Conrail established a consolidated commuter information center. Commuters can now call one number and receive information and status reports on all of NJ Transit's rail operations. The communications center also broadcasts announcements to passengers waiting on train platforms.

During the peak of the 1979 fuel shortage, Conrail recheduled certain of the trains operated for MTA and CDOT, thus allowing greater utilization of equipment. With the same number of cars, therefore, the MTA/CDOT trains were able to provide some 4,00 additional seats each day and reduce the standees by nearly 70 percent.

Capital projects.—Conrail is working with New Jersey on the design, construction, and operation of two major electrification projects. The first, on the Hoboken Division, will convert the present, antiquated power system to one which is compatible with other electrified rail lines in that area. The conversion will permit NJ Transit to replace its 50 year old rooling stock with the new cars being used elsewhere in New Jersey.

The second project is an extension of electrification on the North Jersey Coast Line, which will also permit new electric powered cars to replace old diesel-hauled equipment.

On time performance.—Perhaps the factor by which the commuting public most often judges the quality of the service is on-time performance. Conrail's performance consistently has been in the high 80 percent range and has shown a marked improvement in 1980 versus 1979.

Conrail continues to work closely with each agency to develop and implement programs for upgrading facilities and improving the efficiency of operations. However, major improvements are contingent in most cases on capital additions to fixed facilities and rolling stock. Thus, Conrail is constrained by the amount of funds available through each agency. Nevertheless, Conrail will continue to operate a safe and reliable service at the lowest possible cost.

II.—EXISTING RESPONSIBILITIES AND ROLES

1. The present tri-partite relationship among Conrail, Amtrak, and the various commuter agencies in providing commuter service in the Northeast is extraordinarily complex, often cumbersome, and confusing to the taxpayer in general and the riding public in particular.

Conrail functions as the designated contract operator of commuter rail service. This is a choice made independently by each of the commuter agencies. If designated Conrail, under the Rail Act must operate the service. Hence Conrail provides crews for the trains, maintains most of the rolling stock, provides a portion of the train dispatching functions, provides a portion of the tracks and facilities over which the service operates, and maintains a larger portion of tracks and facilities, collects the farebox revenues, provides the final cost and revenue accounting to the agencies, and acts as the agencies' representative in contracting for service provided by Amtrak. In summary, Conrail is responsible for the daily operation of train service in safe, reliable, and efficient manner.

Amtrak, by virtue of its ownership of the Northeast Corridor, is also heavily involved in the operation of commuter rail service in many of these same areas.

Amtrak provides a significant portion of the facilities over which the service operates, maintains those facilities as well as a portion of the adjacent Conrail and agency-owned facilities, maintains a portion of the rolling stock, controls the operation of commuter trains as it dispatches all trains, on its own freight passenger facilities as well as on a portion of the adjacent Conrail and agency-owned facilities, and provides a cost accounting for those services and facilities.

The commuter agencies determine policy for fares, frequency of train service, schedules, station stops, track and equipment maintenance levels, and marketing programs. The agencies provide the rolling stock and own a large portion of the track, and facilities over which the service is operated. They subsidize the gap between the revenues and costs of the service from federal, state and local tax revenues.

This divided responsibility often causes delays in making and implementing decisions. For example, the need to fix a leaking roof at the equipment maintenance shops at Paoli, Pa. demonstrates this point. Mr. Chairman, permit me to describe the steps required to fix this leak. Amtrak owns and maintains the buildings and the tracks leading to it. SEPTA owns most of the machinery inside the buildings. The rolling stock maintained at the facility is also owned by SEPTA but maintained by Conrail employees. When it became apparent to Conrail management that the roof needed repair, it was necessary for Conrail to seek an estimate of the cost from Amtrak. Once the estimate was recived, it was presented to SEPTA which in turn had to develop the funding necessary to accomplish the work. Once this was done SEPTA gave Conrail authorization to proceed with the repair. Conrail then authorized Amtrak to repair the roof. When the work was completed Amtrak billed Conrail. Conrail in turn billed SEPTA and after collecting from SEPTA, paid Amtrak. Similar scenarios are repeated all too often.

Given this maze it is not suprising that the decision making is long and cumbersone, that the public is confused as to who is responsible and accountable, and that on occasion the needs of the riding public are not well served.

2. Federal legislation is ambiguous on how costs should be determined for commuter service and how common costs should be shared by the parties.

Each party has its own interpretation of federal intent and the meaning of the RSPO Standards. However, after nearly four years of operation no final agreement has been reached which is acceptable to all involved. Effective cooperation among all parties is severely hampered when significantly different positions exist on how much of the costs are chargeable to commuter service.

The commuter agencies believe that present work rules must be modified in order to reduce costs.

The various passenger agreements (both with Amtrak and the commuter agencies) require Conrail to operate the service in an efficient and economic manner but at the same time obligate the agency to recognize Conrail's existing labor agreements and practices. This has created problems when agencies request implementation of labor related efficiencies to reduce costs when existing labor agreements prohibit such action by Conrail. Labor negotiations are difficult at best, but when Conrail management must negotiate work rule changes as an agent of the commuter agencies Conrail is in a difficult negotiating position.

4. Much rail passenger service equipment is past its economic-life and given present and projected ridership levels equipment shortages are likely.

MTA, C-DOT, SEPTA, NJ Transit and Md-DOT are all facing serious equipment problems. Many of the commuter cars should be retired since the equipment has been in operation for over 50 and some as much as 70 years. Parts are unobtainable and the frequent shopping of these cars is expensive—but new equipment is not the only problem—modern efficient maintenance facilities are also needed to properly and efficiently maintain and repair the equipment. Most of the shops are antiquated and have insufficient capacity.

The operation of old equipment and the use of inefficient maintenance facilities increases the cost of rail passenger services while at the same time it decreases the quality of that service.

Significant increases in capital resources for equipment and facilities are required promptly if Conrail is to ensure a safe and reliable service in the future.

5. The current funding crisis pervading mass transit nationally raises serious issues about whether Conrail will be fully compensated for the services it provides.

The Rail Act and the Final System Plan contemplated that Conrail would be primarily a freight railroad and would operate passenger service only when fully subsidized for the service. When it became apparent that most commuter rail services would be terminated on April 1, 1976, under that arrangement, Congress provided an interim funding for the commuter authorities and additional authority

to the Rail Services Planning Office in order to continue these vital transportation services. However, the funding was only for the short term—100 percent during the initial year with rather short 90 percent and 80 percent phases to a 50 percent funding level which terminated on September 30, 1978. This has now been replaced with an amended Section 5 UMTA provision which is not reimbursing the agencies sufficiently for the increasing costs being incurred annually.

Fares have been increased in almost every area, but these have failed to cover the increased costs due to inflation. Federal funds have been withheld or paid on a delayed schedule. As a result Conrail has not been paid for services it has provided. It is becoming increasingly clear that the commuter authorities are encountering significant difficulty in raising the funds necessary to maintain existing service levels, to say nothing about their capital needs. Subsidy offers to Conrail are falling short of what is required under RSPO Standards. Since Conrail is prohibited by law from cross-subsidizing rail passenger service, we are rapidly approaching a crisis situation. Without increased funding, commuter agencies will be forced to choose between very high fare increases, significant service reductions, or in the extreme cessation of service. These are not easy choices.

While Conrail is hopeful that such choices need not be made, it would be irresponsible on our part not to point out that without more funds, it would appear that the commuter agencies will have to make some hard and difficult decisions.

Freight service cannot subsidize passenger service. Conrail was created to be a self-sustaining, for-profit corporation. Therefore, to divert freight revenues to subsidize passenger service would not only be a violation of the explicit provisions of the Rail Act but would threaten Conrail's financial viability.

III.—ISSUES REQUIRING ATTENTION

Mr. Chairman, commuter rail service has been an integral element of the metropolitan transportation systems of the mature cities along the Northeast Corridor for decades. In today's energy-constrained environment, it is a nonreplaceable asset which must be permitted to fulfill an even larger role.

In my testimony today, I have raised five policy issues which need to be addressed at the highest public policy levels to ensure the continued operation of these vital systems.

First, the Congress, in enacting the Rail Act which created Conrail, established bold policies for the preservation of rail freight service in the Northeast and Midwest. The wisdom of those policies is evident in the stabilization of freight service in the region, the rehabilitation in the physical plant, the improvement in service to shippers and the improvement in the financial performance of Conrail. Congress may wish to reconsider whether the present tri-partite relationship in the provision of commuter service in the Northeast is making similar progress in meeting the intended goals of the Rail Act for commuter service.

Second, a speedy resolution is needed on the cost which commuter agencies must pay to both Conrail and Amtrak for the provision of commuter service. Negotiations are underway but if the parties are unable to agree, a procedure must be found to resolve the issue. A clear understanding of what costs are to be reimbursed is hampering effective decision making by all concerned. If the intended institutions cannot resolve the issue, Congress will have to consider the matter.

Third, in view of the commuter agencies present labor work rules do not conform to the efficient use of labor in the provision of commuter service. If the cost of commuter rail service is to be subtantially reduced, they believe new work rules are required. Congress may wish to consider whether the present institutional arrangements are conducive to effective bargaining on this issue.

Fourth, equipment and facilities sufficient to meet current ridership demands is becoming an urgent issue. Additional capital funding is needed promptly. Congress should recognize the urgency of this need and insure sufficient resources to meet the requirements of projected ridership.

Finally, given the general inflationary pressures in the economy, the cost of providing commuter service is increasing. The increasing costs, however, are not being matched by corresponding funding commitments by Federal, state and local agencies. Either fares will have to be increased substantially, or services reduced to insure that resources are sufficient to cover the cost of the services. Congress may wish to reconsider the appropriate level of Federal funding for maintaining these vital public services.

Mr. Chairman, in summary, Conrail is committed to executing our statutorily imposed responsibilities to the best of our abilities. We do, however, see a series of public policy issues which are overriding and deserve the attention of the Congress. I hope my testimony has been helpful in identifying these issues.

Senator WILLIAMS. You certainly have identified the problems, I hope completely. I would say that we will try to generate on our level what it takes to try to bring some new thinking, new explorations. Obviously, many things must be understood by a lot of people so that somehow, out of all of this, we can get order and efficiency. The system doesn't lend itself to it as it is now, the way you've described it.

Mr. MUELLER. That's correct.

Senator WILLIAMS. We're very, very much appreciative of the time and thought you've given to us this afternoon.

Mr. BOYD. Thank you.

Mr. MUELLER. Thank you, Mr. Chairman.

Senator WILLIAMS. We'd like to call our next witnesses, but there will be a 5-minute break, a recess, then Mr. Goldstein and Ms. Cooper. Before we listen to them, we'll get a report from the hall conference from Mr. Yud and Mr. McFarlane. I'll be back in 5 minutes.

[Brief recess.]

Senator WILLIAMS. All right, gentlemen. How did your conference go?

Mr. YUD. Senator, as you directed, we did confer in the hallway. I thought we had an excellent brief meeting. We obviously didn't have a chance to go over all points. I'd just like to make some brief comments.

I think my formal remarks that were submitted for the record do address some of the issues that were raised. One point in particular is the perception that there are a lot of problems and a lot of costs and a lot of liabilities involved in section 13(c), but that that perception has not been borne out with actual events and problems in the implementation of the projects. Certainly, it would disturb us a great deal if the perceptions were allowed to lead to the dilution of rights which we think workers should have against adverse effects resulting from Federal assistance.

That is the reason that we will continue to provide every possible avenue of technical assistance to assist States and counties and other potential recipients to qualify for the financial assistance by satisfying the requirements of section 13(c), but in a way which is manageable for them, which they can accommodate, and which will not lead to prohibitive costs for them.

Let me just cover a few of the specific points that were raised. With respect to the question of State liability, during our negotiations in the early part of last year this really wasn't an issue that was brought up. It may be that the primary cause of that is the operation of State law in combination with Federal requirements. We have had it addressed by a number of States. We have had a number of those States come onto the special warranty. We have been able to give them letters of interpretation which satisfied some of their concerns, and we'll continue to do all we can in that regard.

With respect to the issue of what does a public body have to do with respect to existing collective bargaining rights and agreements, the statute provides that there must be a continuation of collective bargaining rights and a protection and preservation of rights under collective bargaining agreements.

The primary impact of these specific requirements is in a takeover situation where a public body is acquiring a private system that had a collective bargaining agreement. The statute I think is clear on the requirement. I don't think we're going to confront that under the section 18 program.

If we do, we've had a history of working those arrangements out under the ongoing program. We've had a history of 10 or 15 years of substantial takeover of previously private systems, and we have certified virtually every single situation, including many in the State of Virginia.

With respect to the issue of arbitration, we believe that there is a minimum requirement in the statute that an employee who believes that he or she has a valid claim to a protected benefit or to priority employment, and who feels that that claim has not been honored, must have the ability to submit that to a procedure for a final binding decision.

Our purpose in putting the Secretary of Labor in there as an alternative reflects an understanding that we've gotten over the years, that in many cases public bodies would have preferred that that dispute go to the Secretary of Labor as a public official, as opposed to some outside private arbitrator. I have learned today that that may not be the desire of the State of Virginia. But this is another situation where I think we can work it out.

The warranty provides that the Secretary may hear the dispute and issue a decision, or that he may designate someone to do that. I would hope that it is possible that we could, in conference with the State of Virginia, agree upon a procedure which would lead to an arbitrator or a decider of the issue who would be acceptable to the State of Virginia.

We of course are prepared to continue to work with the State and to do whatever we can to assist them to accommodate the requirements and to comply with the statute. And I think we have an excellent history of working these matters out.

[The following letter was received for the record:]

U.S. DEPARTMENT OF LABOR,
LABOR-MANAGEMENT SERVICES ADMINISTRATION,
Washington, D.C., March 26, 1980.

Mr. WALTER A. MCFARLANE,
Deputy Attorney General, State of Virginia,
Richmond, Va.

DEAR MR. MCFARLANE: This will follow up on our appearance before the Senate Subcommittee on Housing and Urban Affairs on March 19, 1980. Let me reaffirm my commitment to meet with you in an effort to resolve the issues you raised concerning the Special Section 13(c) Warranty. Please let me know when you would like to get together. I can be reached at (202) 523-6495.

Sincerely,

LARRY F. YUD, *Chief,*
Division of Employee Protections.

Senator WILLIAMS. Excellent.

Mr. McFarlane, do you have anything to say?

Mr. MCFARLANE. I don't want to add too much more, because I know you're pressed for time. We have, in the very short period of time, come to an understanding that perhaps working together we may be able to come to some further method of solving these problems. I would not want to leave here with any promise to this committee that we will guarantee that these problems can be

solved within the present statutory language that now exists as has been interpreted by DOL and DOT.

I brought these to your attention not just merely for the State of Virginia, but as a number of States across the Nation, and our obligation as attorneys is to try to protect our clients. And in fact, if we do not bring this type of matter to our clients' attention, then we have not performed our obligation.

There is a certain amount of risk factor that the client may want, indeed, to go ahead and accept. That's an administrative decision, not a legal decision. In some situations, though, it is a legal decision, if they are prevented by the constitution or the statutes of the State from doing what in fact they would like to do to accept these funds.

I don't know that we can say that there is an answer to all these problems, but I would hope that we could at least sit down and try to discuss these. I had mentioned in the hallway that perhaps some of you should be made aware of the present language of the statute. If in fact it's being interpreted properly by the DOL and DOT, then perhaps we need to look at some type of amendment to the statute, to try to allow all the States to have the opportunity to take advantage of this.

I think in times past the States have been advised that if you cannot take advantage of this, since it is Federal funds, it is voluntary, then amend your statute or amend your constitution as States. That's not always the best answer. We would hope that some kind of consideration could be given to us without having to do that.

And I thank you for your time.

Senator WILLIAMS. Thank you very much, gentlemen.

Now we call on the panel that I had announced earlier. We welcome you, the final witnesses for today. Mr. Goldstein?

STATEMENT OF NEIL GOLDSTEIN, NATIONAL CONSERVATION REPRESENTATIVE, SIERRA CLUB, ACCOMPANIED BY CHRIS MYER, NATIONAL WILDLIFE FOUNDATION

Mr. GOLDSTEIN. Senator, in the interest of saving time, what I'd like to do is spend 5 minutes summarizing my testimony, and I would like to ask that my full statement be incorporated into the record, and that Mr. Myer's statement be incorporated as well.

Senator WILLIAMS. They will be.

Mr. GOLDSTEIN. Thank you.

My name is Neil Goldstein. I'm here today representing the Sierra Club. Accompanying me is Christopher Myer of the National Wildlife Federation. Also on our panel today are Maudine Cooper of the National Urban League, accompanied by Dr. Garland Christopher of the National Urban Coalition.

While each of the panel members here certainly wants to stress different matters while considering the issues addressed in S. 2296—and our written testimony has made these distinctions—as groups whose millions of members use and care about mass transit, there is one matter on which we all agree: adequate Federal funding for mass transit is a necessity.

On behalf of the over 4 million people for whom together the Sierra Club and the National Wildlife Federation speak, I would

like to stress that mass transit is important to every area of the country, whether urban or rural, because mass transit saves energy. There have been many attempts to estimate how much petroleum can be saved by lowering transit fares or by improving service to induce auto drivers to leave their cars at home and take transit. But the petroleum savings I speak of today, and that I quantify in my written testimony, are not these. Let me explain.

Transit ridership has increased by nearly 7 percent in 1979 because of rising gasoline prices. The biggest problem policymakers confront in the face of this phenomenon is no longer, how can we induce increased transit ridership to save energy, but how can we meet the already existing new transit demand.

Failure to provide adequate funds to meet this gasoline price-induced transit demand will have a greater impact upon energy conservation per dollar of transit denied than if we are spending to induce demand. That is because every rider who is denied space on transit will be forced back into a car. This enormous waste of energy can be avoided by providing transit. It is this savings which we wish to emphasize and which I addresss in detail in my written testimony.

In addition, there are four basic principles which the Sierra Club and the National Wildlife Federation hope that this committee will follow:

No. 1, in order to most effectively use limited funds to save money, national mass transit apportionment formulas should reward local efforts to increase ridership. We believe that the administration's section 5 formula proposals are a step in that direction.

We are aware of some difficulties that this formula might create in the short run for certain localities, but these same localities in the long run will benefit from the formula change, since the change will make possible system expansion and service level improvements in these locations that would otherwise be penalized.

We believe that increases in tier 3 funding, for example, might be used to mitigate any short-term negative impacts that specific cities might face under the formula change. In addition, the National Wildlife Federation has proposed a special set-aside to target funding into areas of high air pollution. This might have a further mitigating impact.

No. 2, any Federal program for transit should place value upon existing infrastructure and vehicles, as well as aiding new starts.

No. 3, both capital assistance and operating assistance should be treated equitably, since failure to provide adequate operating assistance leads to waste of capital funds. In the past operating assistance has sometimes been considered a stepchild of the program. We believe that the administration's proposal for an incentive grant, plus the formula change to tie the apportionment of funds to service levels, helps insure that operating funds won't be wasted. With these safeguards in place, it is most important that operating assistance be set at a high enough level to prevent wasteful capital decisions.

In this context, we support a section 5 level even higher than that contained in S. 2296.

No. 4, it is important for the Federal Government to provide stability and predictability in funding. To this end we support section 2 of S. 2296 to improve the appropriations process.

Thank you.

[The complete statement follows:]

TESTIMONY OF NEIL B. GOLDSTEIN ON BEHALF OF THE SIERRA CLUB, ACCOMPANIED BY CHRISTOPHER MEYER OF THE NATIONAL WILDLIFE FEDERATION

The Sierra Club is pleased to testify today in favor of the proposed programmatic changes and increases in authorization levels for mass transit contained in S. 2296, the Federal Public Transportation Act of 1980. We believe that proposals in the bill such as those contained in Section 7 are a step toward increasing efficiency in the use of federal transit funding while the proposed authorization increases in sections 3 and 5 reflect a growing awareness of the importance of mass transit at a time when our nation faces energy problems. We favor, in fact, steps even stronger than those contained in S. 2296 to increase both capital and operating assistance and to target funds (including steps, such as those included in the bill which Secretary Goldschmidt transmitted to Congress two weeks ago, which would improve efficiency of the section 5 program by targeting funds to areas providing higher levels of service and by providing incentives for operating efficiency).

TRANSIT FARES AND THE COST OF LIVING

How can increased mass transit funding beyond that contained in S. 2296, be justified at a time when the President has suggested paring the budget by billions to reduce inflation? With proper incentives to assure that increases in federal section 5 operating assistance to localities do not merely lead to commensurate operating cost increases, such increased assistance could help offset deficits which would otherwise have to be made up by fare revenues. In short, unlike some other federal programs, because sec. 5 operating assistance can offset portions of the fare, sec. 5 provides a direct monetary benefit to consumers. The anti-inflationary impact of this transit fare offset often is significant, because of the significant portion of the Consumer Price Index that public transportation constitutes in many cities.

For example, we can compare the impact of transit fare changes with the reduction of $20 billion of the federal budget, since Alice Rivlin, of the Congressional Budget Office provided this latter figure just last week, during Budget testimony. According to Ms. Rivlin, this massive $20 billion cut would cause a .325 percent drop of the CPI below the value it would otherwise reach after 3 years, based upon econometric modelling (using historical trends). This .325 percent would amount to a first year decrease in inflation of about .1 percent. By comparison, nationwide, mass transit spending is equal to .385 percent of the CPI. We could not disaggregate U.S. figures to develop a city by city analysis of the transit share of local CPI values, but we can provide a listing in representative cities for "Public Transportation" of which, nationally, mass transit costs represent 36 percent. If we apply this nationwide to individual cities, we find that mass transit has the following impact on the CPI in the following cities:

TABLE 1.—IMPACT ON THE CPI IN THE FOLLOWING CITIES

[In percent]

	Mass transit as percent of CPI [1]	Inflationary impact of 25 cents transit fare increase [2]
Chicago	0.62	0.26
Boston	.58	.58
San Francisco	.40	.20
Houston	.39	.19
Baltimore	.37	.23
Detroit	.37	.18
Denver	.32	.16
Milwaukee	.31	.15

[1] Estimate.

[2] This assumes that ridership remains constant.

Note.—In other words, in every one of the cities above, a 25-cent fare increase would have more of an impact on the cost of living that a $20 billion decrease in the Federal budget.

OPERATING ASSISTANCE USED FOR MAINTENANCE AND REPAIR DRASTICALLY REDUCES CAPITAL EXPENDITURES

Section 5 operating assistance can be used in still other anti-inflationary ways beyond lowering local transportation costs. Operating assistance, when used for maintenance and repairs, can extend the useful life of equipment and thus reduce capital expenditures. For example, UMTA's accepted policy for bus replacement indicates that a bus should last for 12 years. Actually, because of the inavailability of sufficient funds to purchase new buses, the average bus in use in the nation's cities is retained for 17 years, or 1⅓ of the UMTA-anticipated lifetime. Since each new bus currently costs $125,000 and, stretching its lifetime out to 17 years instead of 12 will allow an average 5 years of use without capital expenditure that would otherwise be required, the effective capital saving per bus is $52,083. However, to accomplish this saving requires higher annual maintenance and repair costs than would be possible with a new bus, since older buses break down more frequently and are more difficult to repair. A maintenance and repair cost function developed for the city of Seattle by Rodney Armour of "Metro" (Seattle's Transit Agency) indicates that:

Annual Cost of Maintenance & Repair=(.1035 N + 1.22) M (C)

[where N is the age of a bus
M is the number of miles this average bus travels annually; and
C is the direct cost per mile for operating a new bus coach.]

If we install values for M and C in this equation to reflect the distance an average bus travels (approx. 40,000 miles) anywhere in the U.S. and apply the Seattle figure of 6 cents/mile for C (Seattle bus operating costs are similar to those in other major cities), we can calculate that the cumulative increase in operating costs for running a bus 17 years rather than operating it for 12 is $621 per bus per year or $10,557 over the 17 year life of the average bus.

In sum, to save $52,083 of capital costs per bus, an operator must be willing to spend $10,557 extra per bus on repairs and maintenance. Certainly, federal operating assistance to enable cities that face operating deficits to make the necessary operating expenditure is very cost effective. Each federal dollar spent this way can save over 5 dollars of federal capital funding.

Our conclusions regarding the importance of maintaining a mix between capital assistance and operating assistance are supported by a Feb. 26, 1973 Joint Economic Committee Report entitled "The Economics of Federal Subsidy Programs." That study quantifies the losses that were incurred by limiting federal transit assistance to capital assistance. Amongst the study's conclusions is the following conclusion which parallels our own and goes one step further toward the conclusion that inadequate operating assistance increases wasteful capital expenditures:

Enterprises are also strongly encouraged to neglect maintenance and accelerate equipment deterioration with age. Ever-increasing capital intensity, as exampled by the Bay Area Rapid Transit District's choice of technology in San Francisco, can be expected to push the operating cost savings to the point where the Federal Government's entire two-thirds contribution is wasted on marginal investment projects. In short, it is not likely that transit firms will be content to achieve cost savings with underutilization of current technology; instead they will choose very highly capitalized technology that will shift substantial sums of local operating costs to federally shared capital costs regardless of the inefficiency. The ultimate consequence will be the development of "throwaway buses" which, like paper cups, have no maintenance costs.

THE FAILURE TO PROVIDE TRANSIT CAPACITY TO MEET DEMAND COULD WASTE MILLIONS OF GALLONS OF GASOLINE

While our argument to this point has focussed upon section 5 assistance, we feel equally strongly that adequate and well-targetted capital assistance is timely as well. Expenditures which make it possible to accommodate an increasing nationwide passenger load make possible gasoline savings (as people switch from autos to mass transit) and have the ancillary benefit of helping to clean the nation's air.

According to UMTA's office of Transit Assistance, from the beginning of the UMTA program in 1965 to the end of this last fiscal year (1979), approximately $1.7 billion, or 20 percent of all rail transit capital expenditures resulted in direct additions to the nation's rail transit car fleet (including commuter rail, light, and

rapid transit). 70 percent of bus and related money has gone for purchase of buses. Applying APTA estimates of $125,000 for purchasing each bus; rail car costs of $800,000; annual average passenger trips of 97,260 per bus and 239,000 per passenger rail car; and U.S. DOT's 1974 National Transportation Report figures for average trip length of 3.7 miles by bus and 6.6 miles by rail, we can estimate the energy and air pollution impact of reduced capital expenditures for mass transit. For example, an expenditure of $2 billion for rail transit and $500 million for buses and related equipment, permits equipment purchases of 500 rail cars and 2,800 buses. These vehicles accommodate passengers that, if otherwise forced by the inavailability of mass transit to travel by automobile, would travel a total of 1.5 billion passenger miles by car (this assumes trip length would remain the same despite the change in travel mode and that all cancelled transit trips would divert to auto).

This 1.5 billion passenger miles of urban auto travel, at 14 miles per gallon, and average vehicle occupancy of 1.6 people (this urban occupancy probably understates our case since it includes non-commuter travel whereas transit inavailability would likely occur at peak, commuter times) would consume 70 million gallons of gasoline per year. If people had travelled by transit instead, the savings would amount to 58 million gallons of gasoline equivalent or over 1 million barrels of petroleum.

One caution must be made regarding this matter of auto diversion to mass transit if there existed insufficient capital to finance rolling stock and purchases. Many past statements and studies have correctly indicated that increased transit service or reduced fares do not directly translate into reductions in auto use. Providing a service increase such as the capacity to accommodate one extra mass transit rider will not at most times induce one auto driver to switch to mass transit. In the past, increases in transit service or reduction in fares have often resulted in diversions to transit of auto passengers, walkers, users of other transit systems, and people who formerly stayed home. Only reductions in auto drivers and their diversion to transit will save energy and reduce pollution. In fact less than half the diversions historically have been former drivers. For example, a study for FEA entitled Energy Conservation Potential of Urban Mass Transit illustrated how a 25¢ reduction in Atlanta's transit fare caused a transit ridership increase, of which former auto drivers constituted only 42 percent.

Our figures above however, are not intended to quantify this phenomenon of diversions caused or "induced" by instituting reduced fares or services. Rather, our figures are based on the 1980 reality that many drivers, faced with the option of high gasoline prices, have already chosen mass transit but are precluded from this option. In short, conditions in 1980 have significantly changed to the point where transit expenditures must respond to supply capacity to meet the new demand rather than induce ridership. Failure to fully supply this adquate capacity, or any decreases in capital assistance which would reduce capacity, will obviously, preclude the use of mass transit beyond capacity constraints and will force auto use as an alternative. It is the energy and pollution impact of this process that we have attempted to quantify above.

Actual transit ridership increases this year have been occurring at a 7 percent rate. From the current base of over 7.8 billion (unlinked) passenger trips per year, this increased ridership, if current densities of riders in vehicles remains constant, will require the purchase of thousands of extra vehicles to accommodate the load. APTA has estimated that 36,700 buses will be required just to meet this increased passenger load in the next ten years, over and above an estimated 44,500 buses which will be needed to replace the current fleet as buses are retired.

In other words, the demand already exists at levels which require increased expenditures for new equipment purchases at the levels in our illustrative example above. Failure to meet this demand will have energy consequences which will adversely affect every region whether urban or rural.

AIR POLLUTION

The use of mass transit prevents air pollution. Every driver diverted from auto to bus or rail transit means a reduction in emissions of harmful carbon monoxide, hydrocarbons, nitrogen oxides and particulate matter. Because of the uncertainty in calculating what level of diversion to mass transit will occur as a result of transit expenditures (elasticity figures are especially unreliable now because of the added factor of rapidly rising gasoline prices), we have not attempted to quantify the air pollution impact of mass transit spending. We have, however, estimated the air pollution impact on shortages in funds in the face of existing demand. For example, using the figures just described in our discussion of gasoline consumption, we can calculate that the inavailability of the 500 rail cars and 2,800 buses discussed in that example would lead to the following otherwise unnecessary pollution emissions:

TABLE 2.—TONS OF EMISSIONS

[Annual rate]

	Hydrocarbons	Carbon monoxide	Oxides of nitrogen	Particulate matter
568		5,629	1,344	192

RECOMMENDATIONS

Our arguments above provide a basis for our belief that mass transit funding makes economic, energy, and environmental sense and that both capital and operating assistance expenditures are required for the most cost-effective mix of federal transit funding. From these general conclusions we have proceeded to the following specific considerations and conclusions as well:

The Sierra Club supports changes in the UMTA program that will assure that operating assistance is used in the most efficient and effective manner possible. Section 5 allocation formula changes which lead in this direction will accomplish two important goals. First, a greater share of funds will be available where they will do the most good in offsetting inflationary fare increases and in making possible vehicle maintenance which would otherwise be deferred and create concomittant increases in capital costs. Second, changes such as incentives for service level improvements and for financial efficiencies in operations would help assure Congress and the public that section 5 increases will be employed in productive ways, rather than offset inflationary cost increases.

The Sierra Club therefore urges as amendments to S. 2296, the adoption of several provisions of the administration's mass transit proposal: We support Sec. 104(a) of that proposal; changes prescribed by Sec. 104(b) regarding sections 5(a)(1)(A) and 5(a)(1)(B) of the Urban Mass Transportation act; section 104(c); and section 104(f).

Adoption of provisions in 104 (a), (b), and (c) will target money where it is most needed. Although it has sometimes been argued that a formula based upon revenue vehicle miles encourages increased vehicle purchases and lower per vehicle passenger density, because such a formula change also targets money to areas of high vehicle revenue miles these service level increases appear to be appropriate and productive. Further, targetting funding to areas of high vehicle revenue miles itself puts the money where it is needed most. In other words, on balance, the formula change would help to put federal transit funds to more effective use.

Equally important for our support of this provision, this formula change will encourage greater operating efficiency, since an operator who spends money for increasing vehicle revenue miles rather than for non-productive purposes will, under the proposed change, receive more assistance. Section 104(f), further, encourages operator efficiency, directly, by providing an incentive grant to those who reduce the denominator (operating expenses) of the ratio between operating revenue and operating expenses.

The Sierra Club also supports changes contained in section 7 of S. 2296 and in the administration bill to apportion grants for the purchase of buses and related equipment on a revenue vehicle miles basis for these same reasons.

OTHER PROPOSED CHANGES IN THE APPORTIONMENT FORMULA

While we support these changes in the apportionment formula for section 5 funding, we believe that further worthwhile changes are possible. We support the change in the section 5 apportionment formula to incorporate air quality criteria and set-asides of section 3 and section 8 planning assistance funds to meet air quality considerations, recommended in testimony submitted today by the National Wildlife Federation (NWF). As the NWF points out in their testimony, the Surface Transportation Act of 1978 requires the Secretary of Transportation to recommend measures for incorporating air quality criteria into UMTA allocation formulas.

RECOMMENDATIONS REGARDING AUTHORIZATION LEVELS FOR SECTION 3 AND SECTION 5

While we support the administration's apportionment formula changes described above, we cannot concur with their authorization recommendations. For the period fiscal year 1981–fiscal year 1985 we believe that S. 2296 more accurately reflects transit needs. In fact, even the S. 2296 proposals reduce some categories of transit

assistance to dangerously low levels when viewed on a real dollar, per-passenger basis. For example, starting with fiscal year 1981 as the base year, annual increases in the section 5 authorization level are likely insufficient to maintain current real dollar authorization levels in the face of double digit inflation and clearly are insufficient to additionally accommodate increasing transit ridership.

Specifically, although the average inflation rate for transit operating costs these past two years has been 10 percent, the fiscal year 1981 inflation rate will likely more than offset the 13.2 percent increase in authorization for Sec. 5, fiscal year 1982 funding prescribed by S. 2296. In addition, with current transit ridership increases of 7 percent per year, total nation-wide operating costs will further mount beyond fiscal year 1981 levels by fiscal year 1982. Together, these two figures indicate that the S. 2296 recommended levels for section 5 funding for 1982 will fall below the fiscal year 1981 authorized per-passenger levels for federal operating assistance. If inflation and ridership increases continue at current levels, this real dollar, per-passenger diminution of section 5 funding will persist in fiscal year 1983 and subsequent years as well.

We recommend that, at a minimum, section 5 funding be increased beyond the levels in S. 2296 to more realistically reflect the current rate of inflation and to reflect projected increases in ridership which were unanticipated just a few short months ago.

These unanticipated ridership increases have resulted, in part, from increases in energy costs. Happily, these same increases in cost will provide unanticipated tax revenue which can be used to fund the necessary transit funding increases (These revenue increases were unanticipated when the administration framed its initial windfall tax transit proposals and amount to over $200 billion over the lifetime of the windfall profits tax. If we were to maintain the share of this sum at the same percentage for mass transit initially envisioned when the tax was proposed, authorization levels in S. 2296 would have to be raised; they fall far below the percentage originally envisioned).

We recommend, further, that if the administration's proposed changes in the section 5 apportionment formula are unacceptable, that other measures to achieve equity for high ridership areas be pursued. For example, if the Committee believes that changes in the allocation formula are inadvisable, we would recommend that the authorization level be increased for those tiers of the current formula which favor areas of high ridership.

It must be stressed that changes in the apprortionment formula, as has been recommended by Secretary Goldschmidt, to achieve equity for areas of high ridership will require less funding than this latter proposal.

Finally, we support the authorization levels for section 3 funding in S. 2296. We believe that these funding levels are needed to accommodate increasing ridership. As we have stated previously in our testimony, failure to provide adequate rolling stock and support facilities to meet increases in ridership demand will force reliance upon energy-wasteful and polluting alternatives.

Senator WILLIAMS. Thank you. I will read this full statement. It's a thoughtful statement.

Ms. Cooper?

STATEMENT OF MAUDINE COOPER, ACTING VICE PRESIDENT FOR WASHINGTON OPERATIONS, NATIONAL URBAN LEAGUE, INC., ACCOMPANIED BY DR. GARLAND CHRISTOPHER, NATIONAL URBAN COALITION

Ms. COOPER. I'm Maudine Cooper. I'm accompanied by Dr. Garland Christopher of the National Urban Coalition.

First of all, I want to thank you for the opportunity to present this statement before this committee. I understand that they are holding simultaneous hearings.

Needless to say, we for the first time are presenting our joint position, that is, the National Urban League and the National Urban Coalition, to a very complex and complicated issue, mass transportation.

Though inflation and energy conservation are major factors which contribute to the need for mass transit revitalization, for a

substantial segment of our population the necessity for revitalized systems is found in much simpler terms. That is, most black people and low-income people in our central city areas have no alternative. And while this committee has heard a lot from those who implement and execute carrying out those systems, very little attention has thus far been given to the people and of this issue.

A recent report said that nearly half or 47 percent of all black households in the Nation's central cities do not have cars. The total percentage for the total central city households is 25 percent. Black central city dwellers depend heavily on public transportation, and 43 percent of black poverty area residents use public transit to get back and forth to work.

In a study reported earlier in 1979 in the Washington metropolitan area, over half or 52 percent of low-income residents did not have cars; 48 percent used bus transportation as a means to get to work. And similar studies were carried out in other central cities.

The point is that for many Americans, especially poor black people, public transportation is the only means to get about in the city. While present systems are under stress due to over-utilization and inadequate funding, Federal appropriations for the modernization and rehabilitation of public transportation are a major necessity.

Transit ridership has steadily increased over the past 4 years. In 1979 ridership was increasing at an annual rate of 7 percent.

The general costs of transit capital equipment increase far more rapidly than inflation. For example, the cost of motor buses increased more than 200 percent from 1972 to 1980—$40,500 for a bus in 1972 and $125,000 in 1980. But rising equipment costs cannot be summarily passed on to transit customers. Their costs are established by governing bodies that must, and we believe rightly so, take into account the welfare of communities as a whole, including the provision of reasonable fares to encourage transit ridership.

In our view, increased predictable Federal funding to mass transportation is necessary to allow transit expansion to accommodate steadily increasing ridership.

Energy conservation is a national priority these days and, as stated by Mr. Goldschmidt, we too are concerned about that issue. The high cost of energy due to our heavy dependence on foreign petroleum products is no longer a remote difficulty, but a major problem that impacts on almost every facet of our day-to-day existence.

We submit that an improved transit system is a necessary step toward conserving energy and reducing inflation. Utilization of mass transportation will also reduce pollution. This is particularly pertinent to low-income black and minority residents, who are disproportionately concentrated in central cities. In recent years it has been shown that blacks suffer excessive rates of disease, including cancer known to be caused by toxic pollutants.

We support S. 2296, but we also have some recommendations for change and for consideration. No. 1, the proposed sections of S. 2296 provisions for the construction and operating assistance should be increased in order to adequately accommodate increases in transit utilization and expansion.

No. 2, capital and operating assistance funds under section 5 should be more properly targeted on a formula basis to areas of greatest need.

We support the administration's proposed provision for population revenue vehicle miles formula, because the formula is specifically based on the aggregate number of miles traveled by transit vehicles directly serving urbanized areas, and we do know of your concerns relative to that change.

No. 3, we support the administration's $15 million appropriation for purposes of section 20 of the Urban Mass Transit Act, human resource needs, including training and assistance to minority businesses.

In addition, we would like to give you some additional food for thought. We believe that a more appropriate provision might include something patterned after the 10-percent set-aside that Congressman Mitchell has pushed on the House relative to minority businesses.

We support, No. 4, a uniform ID card for one-half fare reductions for the low-income and elderly people who are utilizing these systems. As you know and as we've said before, on occasion low-income people heavily depend on mass transportation. This provision is necessary to offset fare costs.

And finally, No. 5, we advocate increased citizen participation in metropolitan planning organizations, including provision of staff and technical assistance.

Finally, urban labor and environmental organizations can agree that a modernized and rehabilitated transit system is the answer to many of our Nation's problems. Programmatic changes and increased appropriations for equipment purchases and upgrading costs are a must.

The administration's targeted formula of apportionment should be implemented in order to get the operating funds to the most needy areas. Also, moneys under section 5 should be increased beyond S. 2296 authorization levels. Without this needed legislation and the additions we suggest, America will continue to suffer the effects of inadequate systems and unhealthy alternatives.

Thank you, Senator.

[The complete statement follows:]

TESTIMONY OF MAUDINE R. COOPER, ACTING VICE PRESIDENT FOR WASHINGTON OPERATIONS, NATIONAL URBAN LEAGUE, INC.

Mr. Chairman and members of the Committee, I am Maudine R. Cooper, Acting Vice President for Washington Operations of the National Urban League, Inc. The National Urban League is a non-profit community service organization dedicated to securing equal opportunities for the poor and minorities in all sectors of our society. Through our network of 116 affiliates in more than 35 states nationwide, we provide social services to disadvantaged individuals in this nation's cities. It is because of this commitment to the underprivileged in our urban area that we welcome this opportunity to testify before your Committee on mass transportation programs.

Accompanying me today is Dr. Garland Christopher, Policy Analyst, from the National Urban Coalition. The National Urban Coalition is an urban action, advocacy, and information organization which brings together representatives of business, labor, minorities, mayors, and leaders of civic, community, and religious organizations to improve the lives of urban residents and stabilize and revitalize central cities.

We support the increased funding and programmtic changes proposed by S. 2296. We need an improved mass transportation system and we believe it is possible only through increased levels of authorization as proposed in the new legislation.

THE NEED FOR MODERNIZATION AND REHABILITATION

Though inflation and energy conservation are major factors which contribute to the need for mass transit revitalization, for a substantial segment of our population the necessity for revitalized systems is founded on much simpler terms; that is that for most Black and low-income people in our central city areas, there is no alternative.

A recent study reports that nearly half (47 percent) of all Black households in the nation's central cities do not have cars, while the percentage for the total number of central city households is 25 percent. Black central city dwellers depend heavily on public transportation and 43 percent of Black poverty area residents use public transit to work.[1]

In a study reported early in 1979 on the Washington metropolitan area, over half (52 percent) low-income residents did not own cars. Forty-eight percent used bus transportation as a means to get to work. In similar studies conducted in Milwaukee, San Diego, Miami, Portland, Philadelphia, Chicago, San Francisco, and Atlanta, Blacks were shown to have a higher incidence of using public transportation.

The point is that for many Americans, especially poor, Black people, public transportation is the only means of transportation. And while present systems are under stress due to over-utilization and inadequate funding, federal appropriations for the modernization and rehabilitation of public transportation is a major necessity.

Transit ridership has steadily increased over the past four years. In 1979, ridership was increasing at an annual rate of seven percent. On the other hand, APTA estimates that the purchase of 36,700 buses will be necessary to accommodate increases in the next ten years. The general cost of transit capital equipment increases more rapidly than inflation.[2] For example, the cost of motor buses increased more than 200 percent from 1972 to 1980 ($40,500 to $125,000). But rising equipment costs cannot be summarily passed onto transit customers. Fare costs are established by government bodies that must, rightfully, take into account the welfare of communities as a whole, including the provision of reasonable fares to encourage transit ridership. In our view, increased, predictable federal funding to mass transportation is necessary to allow transit expansion to accommodate steadily increasing ridership and rising equipment costs and we support S. 2296 in this regard.

In addition, rail modernization and transit rehabilitation will increase job opportunities. Increased employment is especially needed in central city areas where mass transportation is most utilizied, where rehabilitation is most needed, and where unemployed people are most concentrated.

ENERGY AND ENVIRONMENTAL ADVANTAGES

Energy conservation is a national priority these days. The high cost of energy due to our heavy dependence on foreign petroleum products is no longer a remote difficulty, but a major problem that impacts on almost every facet of day-to-day existence. The lack of energy and resulting rise in inflation have especially impacted on low-income Americans who cannot cope with ever rising costs of food and utilities. We submit that an improved transit system is a necessary step toward conserving energy and reducing inflation.

In 1978, transit systems used only 15 of one hundredths of one percent (.15) of the total U.S. demand for refined petroleum products per day (28,500 barrels), while the same distance and number of trips made by automobiles used four times as much (130,000 barrels). The American Public Transit Association reports that each person who switched from automobile to transit use in 1978 saved 0.15 gallons of gasoline per trip.[3] Because transit ridership is increasing, the potential for energy saving is tremendous. Effective and efficient mass transportation then, should be an integral part of an energy conservation plan.

Utilization of mass transportation will also reduce pollution. This is particularly pertinent to low-income Black and minority residents who are disproportionately concentrated in central city areas where pollution is most prevalent. In recent

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[1] Dr. Robert Hill, Director, NUL Research, Journey to Work, prepared for DOT, December, 1973.

[2] APTA, Transit Fact Book, 1979.

[3] APTA, Ibid.

years, it has been shown that Blacks suffer excessive rates of disease, including cancer, known to be caused by toxic pollutants.

Most buses use diesel fuel designed to reduce fuel emissions and rail transit generally utilizes power generator plants situated outside central city areas. Also, mass transportation serves a large group of people with fewer numbers of vehicles. Mass transport will significantly reduce pollution and, consequently, reduce pollutant-related diseases.

LEGISLATION

We support S. 2296 consistent with the following changes:

1. The proposed sections of S. 2296, provisions for construction and operating assistance should be increased in order to adequately accommodate foreseeable increases in transit utilization and expansion.

2. Capital and operating assistance funds under Section 5 should be more properly targeted on a formula basis to areas of greatest need. We support the Administration's proposed provision for a population-revenue vehicle miles formula (Section 104(b)). Because the formula is specifically based on the aggregate number of miles travelled by transit vehicles while available to passengers (revenue vehicle miles), it will not only direct money where it is most needed, but it will reduce fare increases and insure effective and productive use of operating assistance funds, i.e., more funds will be allocated to those areas that expand revenue vehicle miles.

3. We support the Administration's $15 million appropriation for purposes of Section 20 of the Urban Mass Transportation Act, human resources needs including training and assistance to minority business.

4. We support a uniform I.D. card for one-half fare reductions (H.R. 6417, Rep. Howard Baker, D–NJ, Section 208). Because low-income people heavily depend on mass transportation, this provision is necessary to off-set fare costs.

5. We advocate increased citizen participation in metropolitan planning organizations, including the provision of staff and technical assistance.

Urban, labor, and environmental organizations can agree that a modernized and rehabilitated transit system is the answer to many of our nation's problems. Programmatic changes and increased appropriations for equipment purchase and upgrading costs are a must. The Administration's targeted formula of apportionment should be implemented in order to get the operating funds to the most needy areas. Also monies under Section 5 should be increased beyond S. 2296 authorizations. Without this needed legislation and the additions we suggest, America will continue to suffer the effects of an inadequate system and unhealthy alternatives.

Senator WILLIAMS. Thank you very much, Ms. Cooper.

Anything further from you or those who accompany you?

Dr. CHRISTOPHER. No, I have nothing.

Mr. MYER. We would just like to commend you for your support of increased authorizations. We think that S. 2296 is a strong step in the right direction. We have made some specific recommendations for changes in the allocation formula, but I will leave that to you and your staff in your review of the written statement which I'll be supplying.

Senator WILLIAMS. Thank you very much.

And if anything occurs to us that might be helpful later on, could we call you?

VOICES. Yes.

Senator WILLIAMS. Good. Thank you very, very much.

[Whereupon, at 4:25 p.m., the hearing was adjourned.]

APPENDIX

hispano american corporation
madrid · · · washington d.c.
P.O. Box 7295 Alexandria, Virginia 22307 (703) 768-4155

March 12, 1980

The Honorable Lillian Liburdi
Deputy Administrator
Urban Mass Transportation Administration
Washington, D.C. 20590

Mr. Neil Peterson, Executive Director
Municipality of Metropolitan Seattle
821 Second Avenue
Seattle, Washington 98104

Mr. J. E. Cowen, Executive Director
TRI-MET
4012 SE 17th Avenue
Portland, Oregon 97202

Re: WA-03-0032 and WA-05-0011
OR-03-0022 and OR-05-0004
Procurement of Articulated Buses

Dear Ms. Liburdi, Mr. Peterson, Mr. Cowen,

At 3:00 PM Pacific, February 15, 1980, at a joint public bid opening in Portland TRI-MET, we became the apparent low bidder for supplying articulated buses to Seattle Metro and Portland TRI-MET, approximate value is $ 60 million. This is the largest minority small business participation in United States history and a first in DOT funded equipment procurements.

Both IFB's contained a requirement for bid proposal and 100% performance bonds. Prior to bid opening we gave you notice of the difficulty in obtaining bonding at a reasonable price, and the Small Business Administration stated in a letter to UMTA of February 14th, " The bonding requirements mitigate against participation by small or disadvantaged contractors." In fact, UMTA replied February 13 to my February 7 letter, in part, "UMTA does not require bid or performance bonds for equipment purchases." We had asked for a waiver of IFB requirements for bonding, meeting all material specifications of the IFB.

We are now almost 30 days beyond bid opening in the pre-award process, with only a total of 60 days for validity of all bids.

representing

Pegaso

We have received no written responses from either authority to proposals and questions raised in: our January 18 ltr to SBA; Technical Explanation to IFB received Feb 8 Portland, and Feb 11 Seattle; SBA ltr to UMTA Feb 14; UMTA ltr to HAC Feb 13; HAC to UMTA FEB 15; telegram HAC to Portland/Seattle Feb 15; UMTA ltr to Seattle/Portland Feb 22, and letters from GWIACofC.

No formal notice to HAC has been sent by either authority, that deprives us of rights as apparent low bidders, not the least of which is to be in a better position to provide bonding. Note in 1976 Seattle sent on the same day of bid opening Apr 26, 1976, the announcement to all who participated, that AM General was apparent low bidder, see enclosure. The determination of responsiveness and responsibility comes later.

In a telecon with Dick Woods, TRI-Met, Monday March 10, he stated the staff was presenting to the TRI-MET Board its position of leaning toward IKARUS. Notwithstanding the fact we are almost $ 1 million under, and in a year we as national policy, will not send our boys and girls to Moscow to play games, are considering sending $ 11 million to communist dominated Hungary, a bit ludicrous. Information has reached us indicating that IKARUS has placed an order for engines with Cummins, Columbus, Indiana on March 7, even we as low bidder are not that bold, for August delivery citing Portland specs.

On the same day we spoke with Mike Voris, Seattle Metro, who stated no position had been taken yet, that UMTA Feb 22 ltr was prepared and that M.A.N. was cc'd. We asked, since we were the subject by name, were we receiving a copy? The answer, no.

To put it mildly we are shocked, embarrassed, and in a state of mild alarm over the inactions of UMTA and the actions of Seattle/Portland. Look to OMB Circular A-102 for your guidance, the copies within UMTA are printing-press new indicating little study or perusal of the matrix for all grant aid procurement binding on grantor, grantees, and contractors alike. As a minimum we cite as clear violations: and doctrine:

Attachment O of OMB Circular A-102

The clear influence of Article VI, U.S. Constitution and the Supremacy Clause in compelling federal matters is in wording such as: "in compliance with applicable Federal law and Executive orders.", "unless specifically required by Federal law or Executive orders or authorized by the Administrator for Federal ProcurementPolicy(OFPP).","unless approved by OFPP.", " unless the matter is primarily a Federal concern.", "provided that procurements for Federal Assistance Programs conform to the standards set forth in this attachment and applicable Federal law", etc.

3

Using Attachment O OMB Circular A-102, please follow:

Procurement Standards

2.a. Clear violation by both authorities in not following good administrative practice and sound business judgement in not settling our appeals, protests, and disputes set forth in p.2.

2b. local bonding requirements do not follow Federal law and practice.

3. UMTA has not assisted recipients improve their procurement capabilities by providing them technical assistance, training, etc.

4. It is not known whether Procurement reviews have been conducted and results thereof, if any.

5.a.(ii) Violation of grantee's protest procedures or failure to review a protest or complaint.

6. UMTA approved the IFB with bonding requirements and knowledge that award would be over $ 10,000 specifying many brand name products.

9.Violation by Seattle Metro of national policy to award a fair share of contracts to small and minority firms by not taking affirmative actions steps as:

a.(1) Including qualified small and minority businesses on solicitation lists, John Aurelius contacted on Dec 26, 1979, stated when we asked why we did not receive an IFB, " Anyone can have one who plunks down $ 10 and orders one from my secretary Gail, call her on another number and order them. We ordered three, two for Spain, later another for Spain, we paid for all. As participants in the 1975 round of articulated bus procurements, we are well known to Seattle, visited there with a team of six and were snubbed by Dick Page, General Manager for two days even though some had traveled 6000 miles.

(2) above applies.

Kudos to Bill Allen, TRI-Met for seeking out bidders from CALTRANS, and mailing us an IFB unsolicited, that's affirmative action!

(5) SBA was snubbed by UMTA for the period January 18 thru Feb 14, agreed to a meeting day of bid opening Feb 15, and SBA and HAC two persons fended off seven UMTA. HAC has also used Dept. of Commerce funded OMBE Greater Washington Ibero American Chamber of Commerce and National Economic Development Association, in attempt at equal treatment under the law.

(6) c. certainly the 100% M.A.N. German product is not coming from a labor surplus area. Our Cummins engine, Columbus, Indiana; GM Allison Transmission, Indianapolis, Indiana; Seattle's own Lift-U wheelchair lift; Gulton Luminator lighting from Texas; Firestone Help Bumpers, Washington, Michigan, etc. wil provide work for UAW and Rubber workers for 51% of the contract. Doug Fraser, UAW travelled to Japan for two weeks to convince the Japanese, in vain, here it is pro bono.

10.a. These procurements have not been conducted in a manner to provide free and open competition, even though by sealed bid. The procedures used are restrictive in that:

(1) Seattle procedures required response to specications that were received by us Jan 4 and response 28 days prior to bid opening, Jan 18. My turnaround time for letters to Spain may alone meet that but this is a $ 60 million procurement. Amendments of a substantive nature were still issued Feb 8 by Portland, with bid opening Feb 15 and Bids on the way. In fact the entire Portland IFB was reissued Feb 1, to incorporate changes!

(2) the non competitive aspects and (3) organizational conflicts of interest are a difficult time consuming area to document . We offer; The Portland bid favors and contains drawings of the IKARUS bus, while the Seattle IFB favors and contains drawings of the M.A.N. bus. IKARUS bid not bid Seattle, as in Portland, had they bid they would have been next lowest. M.A.N. bid both cities and offered a lower price in Portland for a more expensive bus, ie. three doors vs two, tires included,(option Seattle),more expensive lift, electronic signs, etc. It is obvious they wanted both cities as they are already in Seattle via AM General . We protest that award in 1976, in that one manufacturer received a change to specs that were not performable, one year later AM General said the same in writing and in delivery delivered non-conforming buses to Seattle and CALTRANS consortium cities 500 buses at excessive costs of more than $ 39 million. Our protest still not adjudicated is now 4 years old, and the buses delivered and on the street.

(a) UMTA approved specifications contained in both procurements are rife with " Engine shall be brand X or equal" such equality not clearly stated and determined by the same individual who selected brand X in the first place. The specific features are rarely if ever clearly stated, resulting in a sole source situation in seating by American Seating Co. 6464T seats, consisting of a metal frame, 4 serpentine springs, a ½ inch neoprene by one yard, and 1½ yards of vinyl covering for $ 189 per bottom.. fantastic! These individuals took some 91 days to quote us in 1976 and this time their quote was extracted two days before bid opening, only after a public confrontation at the recent Mass Transit Show here in Washington.

(b) among the factors not clearly set forth are the numerous items left for "design review" stage after award and" subject to approval of authority", then we still have first article that can obviate all that has gone before. Though ostensibly a sealed bid the specifications are obviously negotiable and invited in prebid mating dances and postaward design reviews, further each bidder is provided with copies of objections by all bidders, amassing pounds of paper. In this procurement, we have received none, have they?

(2) Aside from my submissions and letters to the authorities, not one preaward inquiry has been made, to date, to demonstrate my potential ability to perform successfully under terms and conditions. I have suggested again and again investigation into my integrity, compliance with public policy, record of past performance, and my financial and technical resources. In all modesty our technical explanation is quite complete, but a preaward survey could help.

11.b. In these competitive sealed bids (formal advertising) sealed bids have been more or less publicly solicited(Seattle still advertised in Public Transport Jan 18) and a firm-fixed-price contract should be awarded to to the resposible contractor or bidder whose offer or bid , conforming to all material terms and conditions of the IFB's is lowest in price.

b. in the interest of brevity see (1) through (2) of the cirular.

Add to p.4 10 (a) (3)

(3) we can appreciate the desire of Seattle Metro to achieve a modicum of standardization, since they have M.A.N. (AM General) artics in house, and its difficult to overturn a relationship ongoing between Seattle and M.AN. for the last four years. Metro has at least three brands of standard buses and the artic they currently have may not be the best base for standardization, engine and other parts supply have been a continuing problem for them since they must be purchased thru AM General ? Our price brings additional benefits in that the $ 9 million plus we are under in Seattle has the effect of giving them their option quantity of 40 buses FREE.

(4) unnecessary experience and bonding requirements, that the bonding is not required by UMTA is a fact. That the bonding required by the authorities(1) mitigates against participation by small and disadvantaged businesses is attested to by SBA(even their SBA loan guarantee or bonding program cannot touch the $ 60 million), the fact that normal companies pay $ 1.56 per 1,000 or $ 96,500 on $ 60 million, hardly compares with the best of seven bids : 2½ fee or $ 2 million and 10% unencumbered collateral or $ 6 million(and their limit is $ 12 million, higher cost for balance), we have been asked to pay.

(2)When the Congress appropriated $ 10 billion over the last ten years for equipment purchases, no prevision was made for bonding. Taking the light figure of $ 1.56 per 1,000 , $ 15,000,000 has been misspent on bonding that should have resulted in buses or other equipment.(3) should the cities still desire bonding for whatever interest, let it be for their 20% share. That share can if necessary, be accomodated by having my subcontractors bond their efforts thru bonds or letters of credit, and HAC will umbrella the total on a revdving diminishing share.(4) bonding has been waived in the past for Flxible when they were being sold from Rohr to Grumman. WMATA would not waive, UMTA gave them the Hobson's choice of not waiving and purchasing with their own funds, or the opportunity of participating in the Federal program and receive 80% Federal funding.

14. is much more pertinent to the,non conforming buses purchased under the first artic buy, further deponeth sayeth not.

15. preceeding applies.

In preparing for these procurements, we advised the DOT we would save them $ 15 million by our third contractor participation. We achieved that and more in that we are $ 10 million under the next lowest bidders, for a total saving of $ 25,000,000.

The Buy American Clause was inserted recently into the UMTA act at a time when compe tition in artics was down from seven to two. We are the only American in Seattle, at 51% and climbing since International Harvester Has purchased 35% of one of our subcontractors Pegaso. In Portland, if need be, we are ready to challenge under third party interests that certificate based on 51% that has requested and received under Change 2, dtd Feb 8 1980, a progress payments clause entitling them to 75% progress payment, when engine, transmission, running gear, chassis, and not necessarily body or structure is placed on carrier for delivery to the U.S. At that point is only 25% left to be completed? That coincides with our 50% point.

Our Hispano American Corporation team embodies all the elements of America that have paid our dues. As an immigrant, son of an immigrant, I owe a great personal debt to our country hardly fulfilled by 25 years of Federal military service. There is much work to be done in rebuilding our cities, our national pride, and national confidence. Let us collectively roll up our sleeves and get the job going and done. When your present SecDot was being sneaked out of Selma in the trunk of a car, I stood my ground and integrated the Army Procurement District in Birmingham.

In Conclusion, we are the apparent low bidder, prepared to offer accelerated delivery schedules, for <u>this year</u> delivery, ready, willing, and able to sign a contract we have won in the American way with tough belly to belly competition.

God Bless America!

HISPANO AMERICAN CORPORATION
Sincerely yours,

Joseph N. Lopez
President

CC: Amb ETorres, Hispanic Adv
to the President
SecDot
Congressional Subcommittees
UAW
American Legion
Viêtnam Vets of A
Paralyzed Vets
DAV
Special Distribution A

hispano american corporation madrid . . . washington d.c.
P.O. Box 7295 Alexandria, Virginia tel (703) 768-4155

February 15, 1980

Mr. Peter Benjamin, Acting Director
Office of Transit Assistance
Urban Mass Transit Adminstration
U.S. Department of Transportation
400 7th Street, S.W.
Washington, D.C. 20590

Re: WA-03-0032, WA-05-0011
OR-03-0022, OR-05-0004

Dear Mr. Benjamin,

We are proud to announce the results of the Articulated Bus procurements, received a few moments ago by telephone from Mr. Richard S. Woods, Project Manager, Portland Tri-Met.

SEATTLE

MAN	$ 239,400	X 228=	$ 54,583,200	580 days 1st bus	915 last	
IKARUS	NO BID					
HAC	203,560		46,411,680	450	1095	

PORTLAND

MAN	236,400	X 49=	$ 11,583,600	450 (per spec)	540
IKARUS	231,250		11,331,250	450	540
HAC	212,000		10,388,000	450	540

Hispano American Corporation (HAC) is the apparent low bidder in both bid openings. No options nor offers were announced.

From a procurement analysis, it is evident that the entry of a third offeror has had a distinct, salutory effect on the competitive stance of the two active bidders. MAN bid $ 270,000, in San Mateo just 60 days ago in December, now down $ 30,600 per bus or $ 6,975,800 in the Seattle bid. If HAC is awarded this contract it will have the effect of receiving its option quantity of 40 buses free. Ikarus did not bid, had it bid its Portland price it would have been under MAN, certainly production time is not the reason as delivery time in Seattle was at contractors option, to result in lowest price within a three year period.

In Portland, with more expensive accessories required such as Electric signs, Vapor lift, and tires included, whereas Seattle was an additional cost option; MAN offer was lower than Seattle. Ikarus reduced its offer from San Mateo at $ 247,000, down some $ 15,750 or a total of $ 771,750. The overall savings available

representing

Pegaso

to the Government is $ 9,114,770 or 13.8%, well above President Carter's goal of cost savings of 7% in Federal procurement, upon award to HAC.

At our meeting Friday February 15, prior to bid opening, we discussed our request, supported by Small Business Administration, to waive the requirement for bid proposal and performance bonds. SBA pointed out that even though they themselves are in the bond guarantee business, the size and nature of the bonding excludes small and minority business participation. This is contrary to Federal law, Executive Orders, and policy whereby minority small business shall have the maximum opportunity to participate in Federally supported programs.

UMTA advised that it was not a requirement for bonding for equipment purchases, however grantees may require them in accordance with local practice. We pointed out it was rarely, if ever, a practice in Federal supply type contracts. Further, it came to our attention that in previous bus purchases Flxible Corporation had been granted such a waiver in a similar situation of not being able to obtain bonding at Washington Metro, when Flxible was in process of sale from Rohr to Grumman.

At the meeting Mr.Munter stated it was UMTA that persuaded WMATA to waive the bonding. You agreed that if the grantees refused our request for waiver, you extend the same courtesy to HAC as you provided for Flxible and others. Mr. Woods in advising me of the bidding results further advised the Tri-Met Board was to deny the request, Seattle was silent on the matter and had already departed for Seattle.

We respectfully request you, as the third party contractor, and 30% fundor, persuade the prudent contracting officers to do all possible to qualify the low bidder in consonance with Federal Procurement Regulations. We specifically request you assist in obtaining waivers from both grantees on bonding requirements. We have met our promise to you of saving more than $ 15,000,000 on this bid opening, with the best still to come.

cc:AmbE.Torres,Hispanic Adv
to the President
Spec Asst to SecDOT
DepAdmin UMTA
Special Distribution A

Sincerely yours,

Joseph N. Lopez
President

Mr. Neil Peterson
Executive Director
Municipality of Metropolitan
Seattle
METRO
821 Second Avenue
Seattle, Washington 98104

Re: Project No. WA-03-0032 and
WA-05-0011
Articulated Buses

Dear Mr. Peterson:

This is in response to your letter of March 4, concerning METRO's evaluation of the bids received for the purchase of articulated buses.

In the event METRO determines the bid of Hispano American Corporation (HAC), the apparent low bidder, to be non-responsive and/or non-responsible, UMTA's prior concurrence in the proposed award to M.A.N. Truck and Bus Corporation is required; the information forwarded with your letter appears to justify this determination. However, you should refer to Section IIIC-20 of the External Operating Manual (3-11-74) for information regarding the documentation to be submitted in order to obtain our concurrence.

If there are any further questions, please contact Mr. James P. McCullagh at (202) 426-2053.

Sincerely,

for Al Baumann
Wilbur E. Hare
Chief
Division of Program Support

METRO
Municipality of Metropolitan Seattle

Exchange Bldg. • 821 Second Ave., Seattle, Washington 98104

March 4, 1980

Mr. Wilbur E. Hare
Chief, Program Support Division
Urban Mass Transportation Administration
400 Seventh Street, S. W.
Washington, D. C. 20590

Dear Mr. Hare:

Bids on Metro Contract T4A-79
Manufacture and Delivery of Articulated Buses
UMTA Project Nos. WA-03-0032 and WA-05-0011

We received two bids on the above contract, one from Hispano-American Corporation, and one from M.A.N. Truck and Bus Corporation. Our position is that M.A.N. Truck and Bus Corporation is the lower responsive and responsible bidder.

The bid of Hispano-American Corporation is lower than that of M.A.N. Truck and Bus Corporation, but Metro considers that the bid of Hispano-American Corporation is non-responsive and that this firm has failed to show that is is responsible.

Hispano-American Corporation has not complied with the requirements of the specifications. They have not shown that the bus they are offering meets U.S. legal requirements or specification requirements. They have not shown that they will satisfactorily complete the project, either to Metro or to the firms that issue performance and bid bonds. They did not even request that Metro waive the bid/performance bond requirements.

Enclosed are copies of the internal memos regarding the responsiveness and responsibility of the bidders, and a legal opinion from our counsel regarding the legality of awarding to Hispano-American Corporation. These documents support the conclusions above.

In your letter of February 22, you requested copies of any correspondence we have had with bidders regarding the bonding issue. None if the other bidders or potential bidders has expressed any concern with the bonding issue. We have had no direct correspondence with Hispano-American Corporation on this issue. We have received copies of correspondence sent to other agencies on this issue; these are listed below and copies are enclosed. We have not replied to these, since none are addressed to us.

The items are:

1. Letter to Small Business Administration Office of Advocacy, dated January 18, 1980; copy received at Metro February 11, 1980.

2. Letter to UMTA Director, Office of Program Support, dated February 7, 1980; copy received at Metro February 11, 1980.

3. Letter to UMTA Acting Director, Office of Transit Assistance, dated February 15, 1980; copy received at Metro February 25, 1980.

4. Telegram to Dick Woods, Tri-Met, dated February 15, 1980; copy received February 15, 1980.

In short, Metro believes that an award to Hispano-American Corporation would be illegal and would represent an unwarranted risk of UMTA and local public funds.

Metro has sixty days from date of bid opening to award the contract. We remain in a bid evaluation period and have not notified either bidder as to our decision. If UMTA concurs in our decision that Hispano-American Corporation is not a responsive and responsible bidder, we would proceed to put an "award" resolution on the April 3, 1980, Metropolitan Council agenda. This resolution would be for an award of contract to M.A.N. Truck and Bus Corporation. If you need further information, or if we must obtain UMTA concurrence in our award to M.A.N. as well as our rejection of Hispano-American Corporation's bid, please advise us immediately.

Very truly yours,

Neil Peterson
Executive Director

NP:pl
Enclosure
cc: Aubrey Davis, UMTA Region 10
Ervin Poka, UMTA Region 9
John Aurelius
Bob Gunter
Ted Mallory
Mike Voris

MEMO

March 3, 1980

TO: Memo For Record

FROM: J.P. Aurelius, MS-51
Project Engineer, Transit Technology

SUBJECT: Responsiveness and Responsibility of
M.A.N. Truck and Bus Corporation

Re: Contract T4A-79, Manufacture and Delivery of Articulated Buses with Wheelchair Lifts UMTA Project Nos. WA-03-0032 and WA-05-0011

Responsiveness - I have examined the material submitted by M.A.N. Truck and Bus Corporation and its parent firm, Maschinenfabrik Augsberg-Nuernberg Aktiengesellschaft (M.A.N. Ag), before bid and with their bid on the subject contract. I have also participated in extensive discussions and analysis about the articulated buses previously built for Metro by M.A.N. Ag, and have considerable first hand experience with these buses.

1. A Technical Explanation was submitted, as required in Subsection A3.01. Subheadings include: Introduction, Vehicle Overall Requirements, Engine, Transmission, Steering, Air Suspension, Brakes, Body and Underframing, Seating and Wheelchair Restraints, Windows-Sash-Windshield, Heating-Ventilation, Driver's Station, Radio Installation, Options, Wheelchair Lift, Quality Assurance Program, Road Test Plans, and Warranty-Technical Assistance-Repair Parts. As required in Subsection A3.02, this material was received 28 days before bid opening.

2. Technical details of certain features of the proposed bus were submitted for approval 28 days before bid opening. A request was made to defer some of these submissions until sometime after bid; the request was considered by Metro per Subsections A3.02 and A3.03 and was allowed. The technical items that were submitted for approval were either approved or resolved in subsequent technical discussions with M.A.N. personnel.

3. The M.A.N. articulated bus has undergone extensive modification from its European version in order to meet U.S. legal/regulatory requirements and the needs of U.S. transit operators. Over 150 articulated buses built by M.A.N. Ag, in conjunction with AM General, are now in service on the Metro system. These buses have been very successful. Buses to be supplied under this contract are of the same basic model.

4. Several meetings were held between Metro personnel and M.A.N. Ag's engineering and commercial representatives. Quite a few technical details of the M.A.N. bus were discussed, and there is good understanding on the part of M.A.N. regarding Metro's needs, and on the part of Metro regarding the bus M.A.N. is prepared to build.

5. The proposal execution documents are properly filled out, with no exceptions taken. The Buy America Certificate indicates that the M.A.N. bus will qualify as a 'domestic end product'.

Responsibility - I have analyzed available evidence relating to the ability of M.A.N. Truck and Bus Corporation to provide the equipment and services called for in the subject contract.

1. This firm is newly incorporated and there is no evidence that it has substantial assets in its own name at present. The firm has provided a letter stating that it is owned and controlled by M.A.N. Ag of West Germany, a large and established manufacturer of trucks, buses, rail equipment and other heavy machinery.

2. M.A.N. is an established supplier of trucks and buses all over Europe, according to brochures provided by M.A.N. and my own observations in Europe. M.A.N. has a large and well equipped factory for bus manufacture, which I have personally inspected in 1973 and 1977.

3. M.A.N. was the principal builder of 399 articulated buses for eleven properties in the U.S. 151 of these buses were supplied to Metro, and they have been very satisfactory.

4. M.A.N. Truck and Bus Corporation submitted a bid bond which was provided by Federal Insurance Company, as required in Subsection A4.07. This bond is forfeit to Metro if M.A.N. Truck and Bus Corporation can not obtain a performance bond, if a contract is awarded. Thus, the sum of $2,729,160 is on the line for the responsibility of this firm.

5. An annual report and other financial data were submitted.

Conclusions - Based on the information I have reviewed, my finding is that the bid of M.A.N. Truck and Bus Corporation is a responsive bid of a responsible bidder.

JPA:pkd

MEMO

March 3, 1980

TO: Memo For Record

FROM: J. P. Aurelius, MS-51
Project Engineer, Transit Technology

SUBJECT: Responsiveness and Responsibility of HISPANO-AMERICAN CORPORATION re Contract No. T4A-79: Manufacture and Delivery of Articulated Buses with Wheelchair Lifts (UMTA Project Nos. WA-03-0032 and WA-05-0011)

Responsiveness -- I have examined the material submitted by Hispano-American Corporation, before bid and with their bid on the subject contract.

1. A Technical Explanation was submitted four days before bid opening. Subsection A3.01 of the Contract Documents requires this submittal and calls out its minimum content; Subsection A3.02 requires that it be in Metro's hands 28 days before bid opening. The material submitted does not contain required information on: wheelchair restraints, windows/sash/windshield heating/ventilation, radio installation, wheelchair lift, quality assurance program, road test plans or warranty/technical assistance/repair parts. In general, the information submitted does not adequately describe the equipment and services offered.

2. The specification requires that certain technical details of the bus be submitted for approval (approximately 30 items); Subsection A3.02 requires that these items be submitted at least 28 days before bid opening. No such requests for approval were ever received. Further, the Technical Explanation states that seats will be by Fainsa -- the specification requires American Seating Model 6464 or approved equal. No request for equal was received.

3. The bus being offered is the Pegaso, a Spanish make. There is no evidence that any substantial engineering has been done to the Pegaso articulated bus to adapt it to the legal and regulatory requirements of the U.S. or to the needs of U.S. transit operators. No prototype vehicle has been exhibited in Seattle, or to my knowledge, anywhere in the United States.

4. Metro has never been contacted by anyone from Pegaso in connection with this procurement -- there has been no opportunity to discuss the technical features of the Pegaso bus or to discuss our requirements. Very little is known by Metro about this vehicle.

5. Hispano-American Corporation did not submit a proposal guaranty bond, required in Subsection A4.07. This will be discussed further below under "Responsibility." Portions of the proposal form (the part dealing with the bid bond) were crossed out. The Buy America Certificate is filled out and signed; however, it appears that the buses offered will not meet the requirements to qualify as a 'domestic end product'.

Responsibility -- I have analyzed available evidence relating to the ability of Hispano-American Corporation to provide the equipment and services called for in the subject contract.

1. This firm states that it was incorporated in July 1978. There is no evidence that it has substantial assets in its own name at present. Except for a printed "representing Pegaso" on the letterhead, there is no affirmation in their submissions of a relationship between Hispano-American Corporation and Empresa Nacional de Autocamiones, S.A., the makers of Pegaso buses.

2. Brochures were submitted which indicate that Pegaso has a full line of trucks and buses, from light to very heavy. From this and other information we have received, it can be inferred that Pegaso is well established in the Spanish vehicle market. This is not true of Hispano-American Corporation, nor is there an affirmation that accepting this bid would bind Pegaso to perform.

3. Neither Pegaso nor Hispano-American Corporation has supplied a major order of buses built to U.S. requirements. In addition, they have not made any visible effort to meet the engineering and commercial challenges inherent to such a project. This bidder has not shown that "he has performed satisfactoril other contracts of like nature, magnitude and comparable difficulty and at comparable rates of progress" (quotation from Subsection A5.01c).

4. The lack of a bid bond is a serious evidence of lack of respon sibility. For a firm to get a bid bond, it must be eligible for a performance bond in the event a contract is awarded. Performance bonds are issued to firms that have "the requisite experience and ability, sufficient capital, facilities, personnel and plant to enable (them) to prosecute the work successfully and properly, and to complete it within the time named in (their) proposal" (quotation from Subsection A5.01c).

5. No financial data for either Hispano-American Corporation or Empresa Nacional de Autocamiones, S.A. was provided.

Conclusion -- Based on the information I have reviewed, my finding is that the bid of Hispano-American Corporation is not a responsive bid, nor has this firm shown itself to be a responsible bidder.

JPA:gam

Statement by George M. Smerk, Professor of Transportation and Director of the Institute for Urban Transportation, Indiana University, Bloomington, Indiana.

Over the years since 1961, the various federal programs in urban mass transportation have helped to direct federal urban transportation policy toward a more even balance between private automobile transportation and mass transit. Currently, the rising cost of energy is apt to have an important impact on the needs of the American public and their use of urban mass transportation in our cities and various forms of public transportation for intercity travel. In the past year, significant increases in transit use were registered all across the nation in reaction to spot gasoline shortages in the spring of 1979 and sharply higher gasoline prices as the year went on. Between now and the end of the century there will probably be a major reshuffling and restructuring of the roles that the different forms of transportation play in providing mobility for Americans. For these changes to occur successfully, and with the greatest effectiveness in meeting the needs of the American public, there is no escaping the requirement for substantial increases in federal money for mass transportation capital and operating aid as well as increased funds from sources on the state and local levels.

The question of the amount of money needed for mass transportation from the federal government is a difficult one to handle. The proper amount of federal funding depends upon what needs to be done in mass transit. That need is related to what the capital and service requirements are on the local levels and the future role the federal government wants urban mass transportation to play in the best interests of the nation.

The job that mass transportation will be called upon to perform between the present and the turn of the century, is apt to be much larger than in the past. More auto drivers will be examining their budgets and, reacting to

startling high gasoline prices, choose to use transit. Moreover, it is in the national interest that large numbers of persons using automobiles for all trips shift many of those trips to other, more energy saving means of transportation. To meet the demands of new patrons, more equipment and facilities will be needed to operate more service; and more and better managerial talent will be needed to understand the new market for transit and to meet the challenge of handling a substantial increase in patronage.

There are now broad federal goals for mass transit; there are no precise, measurable objectives which clearly state target dates and identify those responsible for results. Clear objectives would enable mass transportation programs to be carried out on a results-oriented basis, greatly easing program administration and evaluation. What is needed now is for the Congress and the Administration to work together to develop a series of long-range, workable goals and objectives for mass transportation. But this setting of goals and objectives cannot take place in a vacuum; it must be integrated with policy and programs related to many other aspects of our society. The goals and objectives developed must relate to our energy policy, urban policy, environmental policy, economic policy, and intercity transport policy.

Once goals and objectives are clearly established it would then be possible to determine the level of federal funding and the kinds of programs that should be developed to carry out the various tasks. Whether the Congress provides $50 billion, a $100 billion or $200 billion for capital improvements and a $100 billion for operating aid for mass transportation during the decade of the 1980s is dependent upon the job to be done in meeting established goals and objectives.

Along with the generation of the rational long-range goals and objectives for mass transportation is a second important factor: the development of human resources. The rising tide of transit patronage will probably be dominated

in the near future primarily by those who are now using automobiles. This presents an enormous challenge to transit management. The new riders, as recent demographic studies show, have higher income, better education, own more cars and may have different travel patterns than the riders transit has carried in the recent past. Potential customers must have their needs assessed through market research, information provided on the service and how to use it, and well-trained employees to deal with a new and different public.

Management of mass transit, as in any other field, is especially important because of the need for skill in making the most effective and efficient use of the resources entrusted to it. The rising ride of ridership and a larger overall role in our society for mass transportation is problem enough; add to that the strong likelihood that 70% of present transit managers will have retired by the mid-1980s puts the question of the adequacy of transit management in a crisis situation. There is very simply a need to attract more people into the transit field and to educate those people to do the job that is required.

In order to develop the human resources, programs carried out under Section 10 of the Urban Mass Transportation Act need to be enlarged. A regular program of upgrading the skills of present managerial and supervisory staff should be provided to give managers the proper frame of reference for the services that must be offered in the future.

The present Section 11 program of University Research and Training needs to be expanded, particularly on the education side. Educational institutions should gear up to help produce the people who will be required to handle transit planning and transit management in the future.

Human resources and talent are called for to give technical assistance to small transit properties. Technical assistance means lending a helping hand on management, grant administration and other staff functions. Many transit

properties in cities under 200,000 in population have suffered for years from inadequate staff and unprofessional management; they need help in making the best use of material resources. There is an important role for the states in meeting this need. Here in Indiana we have developed a specialized sort of urban extension program carried out under contract to the state by Indiana University's Institute for Urban Transportation. Other states, such as Iowa, have performed much the same function using state employees. Whatever the method, there is definite need for states to become involved in such work. A small staff of qualified persons can offer their services to many small transit properties unable to provide their own skilled staff people. The federal government can stimulate local technical assistance on the state level by providing more funds for such purposes under Section 8 of the Urban Mass Transportation Act.

Summing up, the mass transit programs of the United States should be structured and funded in line with the goals and objectives that should be formulated to meet the needs of the nation and the American urban public. The establishment of these aims for the program should be carried out in conjunction with the development of policy in the areas of energy, the environment, the economy, intercity transportation, and urban development. To make best use of what should be considerably increased funds from the federal government, there is a need to develop more and more skillful management personnel for the mass transportation field. There is also a need to provide local technical assistance to smaller transit properties around the nation to make sure that their local populations are served most effectively and that the federal, state and local resources are used to the utmost effectiveness and efficiency.

By

J. David White
Director of Materials
Massachusetts Bay Transportation
Authority

Congress has recognized the need for a more effective procurement of transit buses. The Department of Transportation Appropriations Act for FY 1980 states that grants awarded for contracts for the acquisition of rolling stock, including buses, which will result in the expenditure of federal financial assistance, shall be awarded based on consideration of performance, standardization, life-cycle costs, and other factors the Secretary may deem relevant, in addition to the consideration of initial capital costs.

I suggest that a simple and effective program that will accomplish these features is the multi-year procurement of buses. Simply stated, this would allow a transit property, such as Boston, to submit a grant application for its bus requirements for a four-year period.

Upon UMTA approval of a grant application for a specified number of buses, proposals would be prepared, advertised, and solicited, a contract would then be executed allowing for the delivery of buses over a five-year period at a specified rate of buses per quarter after the initial start-up time (approximately 12 months).

The strengths of the program are as follows:

1) Quarterly bus deliveries would allow for improved fleet maintainability, particularly as the requirement for major overhauls increases with the age of the vehicles.

2) Transit properties would be able to standardize a predetermined percentage of their fleet for a certain model of bus.

3) Bus Manufacturers would be able to project their production schedules over a 4-5 year period.

In order for this program to be effective three contractual considerations should be reviewed:

1) Multi-year commitments would have to be approved by Congress in order to allow a transit property to enter into a multi-year agreement with a bus manufacturer.

2) An escalation formula should be established which would develop federal indices for the bus industry.

3) A change order formula would have to be developed which would allow for the acceptance of any new innovations in materials or system that occur in the transit bus industry.

Escalation formulas based on increases and decreases in the cost of material and labor have been used effectively since 1973 in the procurement of transit cars throughout the United States. These indices have been based on both the Employment and Earnings Statistics and The Monthly Labor Review as issued by the United States Department of Labor.

Exhibit A is a sample of an escalation clause used by the MBTA in the procurement of 190 rapid transit vehicles.

Exhibit B is a copy of the indices used in the purchase of locomotives used by General Motors of Canada.

The electrical industry has effectively used escalation clauses based on a predescribed formula for many years for the purchase of large power equipment.

Multi-year bus procurement will be advantageous to transit properties as it will allow for more standardization of revenue fleets in addition, it will allow for an orderly procurement of buses over a number of years which will simplify the scheduling of maintenance programs for both major and minor repair and overhaul programs based on the delivery of a known quantity of buses. This is opposed to past bus procurement practices which resulted in a series of peaks and valleys within the industry; an unsatisfactory condition for operating properties and manufacturers alike.

This standardization of buses should allow transit properties to reduce spare parts inventories and will enable each property to develop meaningful statistics and measurements that can be used in future procurements using life-cycle cost techniques.

The need for additional public transportation will be critical in the near future. This method of multi-year procurement should be of valuable assistance in arriving at a satisfactory program that will provide for the procurement of equipment in an effective and efficient manner.

RTICLE 29 -- Price Adjustments (Labor & Material):

(a) The provisions of this Article shall be for the sole and exclusive measure of adjustments in compensation for inflation r deflation, without regard to actual changes in the cost of labor or materials, or use thereof, during the performance of this Contract.

(b) For the purpose of computing the amount of adjustment in compensation, the amount of Adjusted Cost set forth in Sub-Article , subparagraphs (a), (b), and (c), shall be revised only in the ollowing events:

(1) That this Contract is partially terminated in which event the parties shall negotiate a modification of the portions of the second columns of Sub-Article I, Tables 1, 2, 3, or all, applicable to quarterly periods subsequent to such partial termination (but not the total percentage in the second column). Such revised Tables shall be deemed to have been in effect from the effective date of this Contract, and shall be set forth in a modification to this Contract.

(2) If this Contract is terminated in whole, for any reason, no adjustment shall be made under the Sub-Article I for any quarterly period subsequent to the quarterly period during which the Contract is terminated.

(3) In the event that any of the indices specified in Sub-Article I are discontinued or their bases are modified or changed prior to implementation of this Contract, other suitable indices shall be selected by mutual agreement.

(4) If the delivery schedule is changed pursuant to the Contract Documents, then equitable adjustments shall be made on account of these delivery changes by mutual agreement.

(5) In the event that the Total Price (as defined below) is changed pursuant to any of the provisions of this Contract, or as a result of the MBTA's exercising any of its options under Article 41, the appropriate equitable adjustment shall be made to Tables 1, 2, and 3 by mutual agreement in order that the said changes in the Total Price shall be adjusted for inflation or deflation on the basis described under this Article 29, and the adjustments to compensation for inflation or deflation payable under this Article 29 shall be increased or decreased accordingly.

(c) For the purpose of Sub-Article I, the following definitions shall apply:

(1) "Total Price" shall be the Total Contract Price as set forth in Article 39.

(2) "Apportioned Cost" shall be that portion of the Total Price attributable to labor or materials.

(3) "Adjusted Cost" shall be the amount of adjustment in compensation for a given quarterly period, as set forth in Sub-Article I, subparagraphs a, b, and c.

(4) The "Base Labor Index" shall be the average of the Labor Indices for the months of April, May, and June, 1976.

(5) The "Base Materials and Component Parts Index" shall be the average of the Material and Component Parts Indices for the months of April, May, and June, 1976.

(6) The "Total Car Price" shall be the Total Car Contract Price as set forth in Article 39.

(7) The "Total Components Parts Price" shall be the Total Component Parts Contract Price as set forth in Article 39.

SUB-ARTICLE I

(a) During the performance of this Contract and until the Contractor has delivered the last unit of supplies and completed the services identified and described in the Contract Documents, adjustments in compensation based upon changes in labor costs and material costs shall be made as provided in this Sub-Article I.

Said adjustments are based solely on the changes in the Labor Index and the Material and Components Index identified in paragraphs (b) and (c) of this Sub-Article I. For the purposes of this Sub-Article I, 30% of the Total Car Price shall be deemed to constitute the labor cost subject to adjustment and shall be apportioned

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on a quarterly basis as shown in the second column of Table 1. Similarly, 60% of the Total Car Price shall be deemed to constitute the material cost subject to adjustment and shall be apportioned as shown in the second column of Table 2.

The Total Component Parts Price shall be subject to adjustment and shall be apportioned as shown in the second column of Table 3.

For the purposes of Tables 1, 2, and 3, the quarterly periods shall consist of consecutive three-month periods commencing September 1, 1976.

(b) Adjustments in compensation on account of changes in labor cost shall be computed as follows for each quarterly period shown in the first column of Table 1, based on the changes in the "Average Hourly Earnings" in the Railroad Equipment Group of the Transportation Equipment Industry (SIC-374) herein called the "Labor Index", as determined and reported by the Bureau of Labor Statistics of the United States Department of Labor in "Employment and Earnings."

1. The Base Labor Index shall be subtracted from the actual final published Labor Index for the third month of the quarter involved and the difference computed as a plus or minus figure.

2. The remainder from subpart (1) shall be divided by the Base Labor Index and the resulting quotient carried to four decimal places.

3. The quotient from subpart (2) shall be multiplied by the "Dollar Amount of Total Car Price Apportioned to Labor" set forth in column 3 of Table 1. The resulting dollar amount, which shall be a plus or minus figure, shall constitute the adjustment in compensation for that period as it pertains to Labor.

TABLE #1

LABOR ADJUSTMENT CALCULATION -- BASED ON 30% OF TOTAL CAR PRICE

Quarter	Percentage of Apportioned Cost	Dollar Amount of Total Car Price Apportioned to Labor	Index From Sub-Article I(b)	Percentage of Difference Between Current Index and Base Index	Amount of Adjustment
1	2.1%	$ 544,429.00			
2	2.5	648,130.00			
3	1.0	259,252.00			
4	1.7	440,728.00			
5	2.2	570,354.00			
6	5.4	1,399,960.00			
7	8.8	2,281,416.00			
8	11.8	3,059,172.00			
9	14.6	3,785,077.00			
10	14.4	3,733,227.00			
11	13.7	3,551,751.00			
12	8.6	2,229,566.00			
13	8.1	2,099,940.00			
14	4.8	1,244,409.00			
15	.3	77,776.00			
	100.0%	$ 25,925,187.00			

TABLE #2

MATERIAL ADJUSTMENT CALCULATION -- BASED ON 60% OF TOTAL CAR PRICE

Quarter	Percentage of Apportioned Cost	Dollar Amount of Total Car Price Apportioned to Material	Index From Sub-Article I(c)	Percentage of Difference Between Current Index and Base Index	Amount of Adjustment
1	2.9%	$ 1,503,661.00			
2	2.3	1,192,559.00			
3	.1	51,850.00			
4	1.5	777,755.00			
5	1.0	518,504.00			
6	4.2	2,177,716.00			
7	8.5	4,407,282.00			
8	12.9	6,688,698.00			
9	13.8	7,155,352.00			
10	17.3	8,970,115.00			
11	17.1	8,866,414.00			
12	11.7	6,066,494.00			
13	5.5	2,851,770.00			
14	1.2	622,204.00			
	100.0%	$ 51,850,374.00			

TABLE #3

COMPONENT PARTS ADJUSTMENT CALCULATION -- BASED ON TOTAL COMPONENT PARTS PRICE

Quarter	Percentage of Total Price	Dollar Amount of Total Price for Component Parts	Index From Sub-Article I(c)	Percentage of Difference Between Current Index and Base Index	Amount of Adjustment
1					
2					
3					
4					
5					
6					
7					
8	7.8%	$ 310,349.00			
9	10.7	425,734.00			
10	10.5	417,777.00			
11	16.4	652,527.00			
12	17.0	676,400.00			
13	18.9	751,998.00			
14	18.7	744,040.00			
	100.0%	$ 3,978,825.00			

(c) Adjustments in compensation on account of changes in material costs and Component Parts shall be computed as follows for each quarterly period shown in the second column of Table 2, and Table 3, respectively, based on the changes in the following Wholesale Price Indices, quoted from "Wholesale Prices and Price Indexes," Bureau of Labor Statistics, Department of Labor: Metals and Metal Products (Code 10), herein called "Material and Component Parts Index."

1. The Base Material and Component Parts Index shall be subtracted from the actual final published Material and Component Parts Index for the third month of the quarter involved, and the difference computed as a plus or minus figure.

2. The remainder from subpart (1) shall be divided by the Base Material and Component Parts Index and the resulting quotient carried to four decimal places.

3. The quotient from subpart (2) shall be multiplied by the "Dollar Amount of Total Car Price Apportioned to Material" set forth in column 3 of Table 2 and by the "Dollar Amount of the Total Price for Component Parts" set forth in column 3 of Table 3. The resulting Dollar amount, which shall be a plus or minus figure, shall constitute the adjustment in compensation for that period as it pertains to Material and Component Parts.

SE = 6.57

Indices for Months

April	1976	6.52
May	1976	6.63
June	1976	6.57

Average = Base

MASSACHUSETTS BAY TRANSPORTATION AUTHORITY
HAWKER SIDDELEY CANADA LTD., CANADIAN CAR DIVISION
RAPID TRANSIT CAR PROCUREMENT CONTRACT AUGUST 19, 1976

PRICE ESCALATION

TABLE #1
LABOR ADJUSTMENT CALCULATION

Total Car Price = $ 86,417,290.00

Labor Calculation Based on 30% = $25,925,187.00

Column →		(a)	(b)	(c)	(d)	(e)
Quarter	Period Ending Month of	Published Index per Contract	Point Difference Between Current & Base Index Col. (a) less Base	% of Difference Between Current & Base Index Col. (b) ÷ Base	$ Amt. of Car Contract Price Apportioned to LABOR (from Contract)	AMOUNT OF LABOR ADJUSTMENT Col. (c) x Col. (d)
1	Nov. 1976	6.98	.41	.0624	$ 544,429.00	33,972
2	Feb. 1977	6.94	.37	.0563	648,130.00	36,490
3	May 1977	7.19	.62	.0944	259,252.00	24,473
4	Aug. 1977	7.43	.86	.1309	440,728.00	57,691
5	Nov. 1977	7.67	1.10	.1674	570,354.00	95,477
6	Feb. 1978	7.75	1.18	.1796	1,399,960.00	251,433
7	May 1978	7.79	1.22	.1857	2,281,416.00	423,659
8	Aug. 1978	8.03	1.46	.2222	3,059,172.00	679,748
9	Nov. 1978	8.43	1.86	.2831	3,785,077.00	1,071,555
10	Feb. 1979	8.60	2.03	.3090	3,733,227.00	1,153,567
11	May 1979	8.91	2.34	.3562	3,551,751.00	1,265,134
12	Aug. 1979	9.05	2.48	.3775	2,229,566.00	841,661
13	Nov. 1979	9.53	2.96	.4505	2,099,940.00	946,023
14	Feb. 1980				1,244,409.00	
15	May 1980				77,776.00	
					$25,925,187.00	

BASE 194.4

Indices for Months

April	1976	192.9	Average = Base
May	1976	194.0	
June	1976	196.4	

MASSACHUSETTS B. TRANSPORTATION AUTHORITY
HAWKER SIDDELEY CANADA LTD., CANADIAN CAR DIVISION
RAPID TRANSIT CAR PROCUREMENT CONTRACT AUGUST 19, 1976

PRICE ESCALATION

TABLE #2
MATERIAL ADJUSTMENT CALCULATION

Total Car Price = $86,417,290.00

Material Calculation Based on 60% = $51,850,374.00

Column →		(a)	(b)	(c)	(d)	(e)
Quarter	Period Ending Month of	Published Index per Contract	Point Difference Between Current & Base Index Col. (a) less Base	% of Difference Between Current & Base Index Col. (b) ÷ Base	$ Amt. of Car Contract Price Apportioned to MATERIAL (from Contract)	AMOUNT OF MATERIAL ADJUSTMENT Col. (c) x Col. (d)
1	Nov. 1976	199.9	5.5	.0283	$ 1,503,661.00	42,554
2	Feb. 1977	203.0	8.6	.0442	1,192,559.00	52,711
3	May 1977	208.6	14.2	.0730	51,850.00	3,785
4	Aug. 1977	211.7	17.3	.0890	777,755.00	69,220
5	Nov. 1977	212.0	17.6	.0905	518,504.00	46,925
6	Feb. 1978	219.1	24.7	.1271	2,177,716.00	276,788
7	May 1978	224.4	30.0	.1543	4,407,282.00	680,044
8	Aug. 1978	231.0	36.6	.1883	6,688,698.00	1,259,482
9	Nov. 1978	235.4	41.0	.2109	7,155,352.00	1,509,064
10	Feb. 1979	247.3	52.9	.2721	8,970,115.00	2,440,768
11	May 1979	255.7	61.3	.3153	8,866,414.00	2,795,580
12	Aug. 1979	261.6	67.2	.3457	6,066,494.00	2,097,187
13	Nov. 1979	270.9	76.5	.3935	2,851,770.00	1,122,171
14	Feb. 1980				622,204.00	
					$51,850,374.00	

THE PROPERTIES OF THE GENERAL MOTORS LOCOMOTIVE PRICE ADJUSTMENT FORMULA

OCTOBER 1974

A. THE GENERAL MOTORS RECOMMENDATION

(a) Objective

The objective of Diesel Division has been to submit the best price adjustment formula for the mutual protection of the buyer and the seller.

(b) Method

In relation to the objective, the following three-stage procedure was used:

Stage I

The examination of published measures of Canadian price movements to generate a set of potentially feasible indices for inclusion in the formula.

Stage II

The determination of the most satisfactory weighted combination of the selected price indices (i.e., the formula).

Stage III

The development of special conditions required to achieve the stated objective.

To select potentially feasible price indices, contact was made with Statistics Canada staff members. During the course of our discussions a variety of indices were examined in relation to composition, method of calculation, weight determination, adjustments for technological change and shifting spending patterns, stability, the frequency of data revision, occurence-publication time lags, expected base period changes and the implications thereof, etc.

Using the set of potentially feasible price indices, a number of probabilistic and econometric models were constructed and tested.

Finally, considerable thought went into the administration of the formula.

GM selected and recommended the following formula insofar as it best satisfied the objective.

(c) Price Adjustment Clause

Prices will be determined in the following manner:

$$P^* = P_b \times (1 + k)$$

$$k = .71G + .39C$$

where, P^* = the final delivered price of the locomotive after the price adjustment factor has been applied

P_b = original unit bid price

k = the percentage adjustment factor

G = the percentage increase in the quarterly GNE Implicit Price Index (Stat. Can. 11-003), over the period defined by the quarter of delivery and the quarter corresponding to the base price effective date

C = the percentage increase in the Consumer Price Index, excluding food (Stat. Can. 11-003), over the period defined by the month of delivery and the month corresponding to the base price effective date

(1) At the end of each month, the latest indices published by Statistics Canada will be used for invoicing locomotives delivered during the month; that is to say, the known accumulated inflation rates will be substituted in the formula, and the resulting price will be invoiced for all vehicles delivered during the month.

(2) When all indices for each delivery period are published, an adjustment will be made by Diesel Division. Revisions and changes made by Statistics Canada to the price indices in question will be followed by appropriate invoice adjustments up to one year following delivery. Invoice adjustments will occur on a quarterly basis encompassing the actual data for deliveries during the previous quarter, and any data revisions affecting invoices for the period before the previous quarter.

(3) If one or more of the indices used in the formula are changed by Statistics Canada due to a change in the composition of the indices, the formula will be subject to recomputation.

(4) The price adjustment formula will be applied after any price increases resulting from product improvement or customer requested specification changes. The procedure for incorporating added value is summarized as follows:

(a) Given the current dollar added value due to product improvement or customer requested specification changes, divide this amount by (1 + k) to derive the constant dollar value consistent with the original base price.

(b) The revised base price becomes the original unit bid price plus the constant dollar added value.

(c) The full price is then derived by applying the price adjustment factor to the revised base price.

(5) The price adjustment formula will be applied commencing with the first locomotive. The formula will be applied using the original bid price, the GNE Implicit Price Index, and the Consumer Price Index (excluding food) as of September, 1974. All future escalation will be applied as stated.

Note: The "Force Majeure" Clause (included in the General Terms and Conditions) will also apply re circumstances beyond the control of Diesel Division.

B. ECONOMIC IMPLICATIONS: ADVANTAGES OF THE PROPOSED GM ESCALATION FORMULA

The research conducted by Diesel Division indicates that the proposed price adjustment formula provides the most practical approach for ensuring a "fair" product price, for the buyer and the seller, during very uncertain times.

From the standpoint of a railway, three important advantages are inherent in the formula:

(1) The price adjustment mechanism uses published data, reflecting official inflation measurements. Protection for data revision and changes in index composition are also provided.

(2) Insofar as stability is a significant property of the formula -- which is of special concern for effective financial planning -- it is very unlikely that substantial fluctuation in price increments will occur.

(3) Locomotive specification changes can be easily introduced into the pricing framework, using the de-escalation capability of the formula, to make such changes consistent with the original bid price.



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RICHARD C. HARTMAN, Executive Director

STATEMENT

NARC appreciates the opportunity to submit this statement on our views of the Section 18 rural transportation program.

The National Association of Regional Councils (NARC) was initiated in 1967 to assist local government elected officials in organizing a rapidly growing number of regional councils. Regional councils are areawide organizations of general purpose local governments which encompass a total regional community. They exist in both metropolitan and rural areas. Prime purposes of regional councils are to increase cooperative decision-making and coordination among local and state governments; to review and comment on certain federal grant applications; to develop policies and programs to meet mutual problems; and guide orderly development.

More than 600 regional councils have been established to deal with areawide problems in rural and urban regions.

When the Section 18 program was enacted in the Surface Transportation Assistance Act of 1978, NARC strongly supported its inception since we were convinced that a rural transportation program was long overdue. However, we believed then, as we do today, that there are glaring shortcomings to this program which we hope your Subcommittee will seek to rectify.

First, as an essentially State-run program, Section 18 has no explicit role for regional councils or local governments in the development of the State program of projects, pass through of funds or consultation on setting transportation priorities. When the Department of Transportation issued its initial regulations for Section 18, it required the State to submit an annual program of

projects for FHWA Division Administrator's approval. No language which describes the process by which these projects are selected or the local input into this process has been added.

Regional councils in rural areas have been planning for housing and community development, economic development, rural development, social services and, in many cases, transportation. The local elected officials in these regional councils have already developed a set of priorities, policies, and development plans for their area. We believe that there should be a process established in Section 18 that requires States to utilize these local plans in preparing their program of projects. States should be encouraged to use regional councils as coordinators in developing the local public transportation programs, and be required not to propose projects that are inconsistent with local and regional development plans.

Sixty-six regional councils in rural areas have been responsible for special transportation programs for the elderly under the Older Americans Act. Furthermore, 99 regional councils have been involved in transportation programs under CETA. These ongoing activities should be recognized in the DOT regulations. States should be required to illustrate how the various transportation programs among the federal departments are being coordinated.

Under the present law, States can apply up to 15 percent of Section 18 funds for administrative costs and planning which may be passed through to regional councils and local governments. According to a survey presently being conducted by NARC, many States have used these dollars, which are 100 percent federally funded, for State administrative and technical assistance costs, but

have not made any efforts to pass through funds for planning and coordinating purposes. Nor have some States made an effort to disseminate information down to the local level concerning ways in which these funds will be made available.

Regional councils are required under law to provide an A-95 review process for Section 18 projects. In addition, in some States, the technical assistance staff of the regional council is asked by their local governments which do not have staff capability to assist in preparing a Section 18 application before it is submitted to the State for approval. However, in certain cases, these services provided by the regional council have not been reimbursed by the State.

These problems do not, however, exist in every State. In some States such as Missouri and South Carolina, the States have contracts with each regional council to work with the rural local governments in establishing their rural transportation priorities for their area which in turn are considered for inclusion in the State program of projects.

The discrepancies among the States as to how they are spending the Section 18 funds (if they are spending them at all) are a concern to us. Congress must evaluate the success of the Section 18 program and provide a more standardized operating procedure to reduce the disparities among the States' administration of the program.

We believe that Congress should amend the program to encourage States to pass through a portion of their 15 percent administrative/planning funds to regional councils which could use this money, for example, to hire a services coordinator. This staff person could coordinate the various transportation programs within DOT, CETA, HEW, and USDA. This would allow better integration among

the various programs, eliminate overlapping and duplication of services and programs, and reduce costs and red tape. A service coordinator could also provide substate transportation planning and technical assistance to small rural communities which do not have the manpower or resources necessary for transportation planning and/or programming.

Furthermore, we believe that there must be better coordination within a major urban area of both the rural areas and metropolitan centers. We have found that many of our large metropolitan regional councils, which have been designated as Metropolitan Planning Organizations for highway and transit planning, have significant rural communities within their boundaries. Thus, there must be better coordination between the Section 5 and Section 18 programs within such diversified urban regions.

Another problem with Section 18 is that some States have received so few dollars that it is almost impossible for them to realistically get a rural transportation program enacted. Thus, NARC would support amending the present law to require that a State receive no less than 1 percent of Section 18 funds in a fiscal year.

Finally, NARC is especially concerned about the impact of Section 504 regulations on rural areas. We support the concept that the handicapped and elderly should have comparable accessibility to public transportation. However, rural areas, in particular, may find it increasingly cost-effective by providing alternative transportation services to the elderly and handicapped rather than applying the same rigid Section 504 standards aimed at an urban area to a rural region.

NARC would be glad to provide the Subcommittee with any additional information if necessary.

STATEMENT

of

ROBERT RITTMASTER, CHAIRMAN AND PRESIDENT
QONAAR CORPORATION

before the

SUBCOMMITTEE ON HOUSING & URBAN AFFAIRS
of the
SENATE COMMITTEE ON BANKING, HOUSING & URBAN AFFAIRS

Duncan Industries Mass Transit Systems, a manufacturer of fare collection systems and related equipment, and a Division of QONAAR Corporation, is a strong supporter of efforts to expand and rehabilitate our nation's public transit systems.

Public transit is an excellent strategy to approach the problems of energy conservation, air pollution, auto congestion, and is an important component of a national effort to improve mobility.

Duncan applauds the efforts of this committee to provide a level of funding which will expand bus fleets, taking into account the disproportionate inflation in the transit industry. In many communities, a public transit bus is the only alternative to the single-occupant automobile. As the price of gasoline rises (and a well-known energy newsletter this week predicted $2 per gallon gasoline by the end of the year), our citizens will have an incentive to give public transit a chance where it is convenient and accessible.

Unfortunately, Mr. Chairman, public transit today has only a limited capacity. It is good rhetoric to ask our commuters to take the bus to work, but it is empty rhetoric when those commuters find that those buses are filled to capacity.

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Mr. Chairman, Duncan Industries plays only a small role in providing our nation with the public transit equipment it requires. We have been suppliers to both large and small transit properties, and we have listened closely to their problems. Within just the last year, we have seen a new attitude, not only in the urban areas, but even in rural areas, concerning the value of public transit programs. A gallon saved in New York City, for example, leaves one more gallon for use in the small towns and villages where public transit is not yet a viable public investment.

I am pleased that this committee has once again committed itself to rolling up its sleeves and addressing the problems of public transit, and I am confident that under your leadership, Mr. Chairman, S. 2296, when reported, will make a significant contribution to improving public transit in our nation.

Every gallon of gasoline we can conserve is one less gallon which needs to be imported. Our national security is poorly served by our dependence on OPEC oil. Over seven million barrels of gasoline each day fuel our vehicles, and it is perhaps this segment of our fuel use which can be sharply reduced without serious damage to personal lifestyles.

Mr. Chairman, the Administration planned to send to the Congress a request for $331 million for bus and bus facilities -- Section 3 grants, financed from the windfall profits tax. I understand that this request will be pared by the Administration.

I urge you to consider retaining funds in this category. It would be unwise to sacrifice public transit programs on the altar of fighting inflation when it is unquestionably clear that public transit programs assist in the fight against inflation.

Mr. Chairman, according to the American Public Transit Association, there are 14,000 obsolete buses on our streets which need replacement. It will take $16 billion to build and rehabilitate bus facilities and buses over the next 10 years. Each year we delay in providing for these capital needs, we delay maximizing the value of the billions of dollars we have already invested in providing our citizens with the transit alternative.

I am concerned that the large productive capacity of domestic bus manufacturers, as described in the March 19 testimony before your committee, will remain fallow at a time when it is in the national interest to produce these vehicles. In this regard, Duncan Industries supports a production guarantee for buses as opposed to the direct purchase of buses by the Federal government with a subsequent "draw down" on this reserve by the nation's transit systems.

Southeastern Pennsylvania Transportation Authority

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April 23, 1980

Honorable Harrison A. Williams, Jr.
Chairman, Subcommittee on Housing
and Urban Affairs
Senate Banking, Housing and Urban
Affairs Committee
United States Senate
Russell Senate Office Building
Washington, D. C. 20510

Dear Senator Williams:

Enclosed you will find written testimony submitted by the Southeastern Pennsylvania Transportation Authority to the Subcommittee on Housing and Urban Affairs of the Senate Banking, Housing and Urban Affairs Committee. The testimony addresses revisions to the Urban Mass Transportation Act of 1964, as amended, contained in S.2296, H.R. 6417 and H.R. 6890/S.2479, the Administration proposal.

I appreciate the opportunity to present SEPTA's views and hope you will take them into consideration in developing authorizing legislation for the Urban Mass Transportation Administration.

Sincerely,

David F. Girard-diCarlo
Chairman

Enclosure

During the past decade, our country has seen gasoline prices almost triple, our balance of trade tip heavily in favor of foreign interests and pollution revealed as a major hazard to the health of our population. During the 1980's the United States must change its habits if we are to retain a tolerable life style. We must learn to conserve fuel, to depend more heavily on our nation's own resources and to preserve society's air and water. Improved mass transit must, necessarily, play a large role in these efforts.

The Southeastern Pennsylvania Transportation Authority serves a five county area, covering Philadelphia, Bucks, Chester, Delaware, and Montgomery Counties. SEPTA was incorporated in 1964, after the years of efforts by local leaders to find solutions to post-World War II transportation needs.

Over 267 million people used the system last fiscal year. They were carried on over 1,400 buses, 262 trolleys, 95 trackless trolleys, 414 high speed rail cars and 421 commuter cars. The SEPTA system, including its contract service, employs over 8,000 people.

SEPTA's existence is vital to the community. If SEPTA's service did not exist regional gasoline consumption would increase, using conservative estimates, by approximately 186,000 gallons per day. Each 5% increase in transit usage in the Philadelphia region would decrease daily consumption by approximately 34,000 gallons per day.

As a result of the above, SEPTA is obviously concerned with the legislation proposed by the Senate Subcommittee on Housing and Urban Affairs.

S.2296 represents a significant step forward in federal support for transit.

In the past, major transit systems have suffered from the adverse effects of the Section 5 population/population density formula. This has occurred even while the level of transit service in major cities has far exceeded that in smaller cities. While smaller urbanized areas have been unable to draw down all available Section 5 operating funds due to the limitation of Federal subsidy to 50% of their deficit, systems such as SEPTA have been unable to approach funding at the maximum level due to limited funds. S.2296 recognizes this inequity by placing major increases in Tiers II and III. Further, S.2296 acknowledges that Tier III has, in the past, proven insufficient to accommodate the loss of Section 17 funds for commuter rail. SEPTA supports the emphasis on these two Tiers.

The approach proposed in S.2296 to alleviating this inequity is substantially preferable to the Administration's proposed revision of the formula for Tiers I and II. The population/revenue vehicle mile formula which the Administration proposes does not favor compact urbanized areas where transit carries a greater number of passengers in shorter distances than in a spread out, lower density area. If a formula revision is adopted it should reflect levels of service and/or percentage of population served. SEPTA supports the concept of providing Section 5 subsidies on the basis of overall operating costs, e.g., providing federal subsidy at a level equal to 25% of operating costs while

allowing local decisions to distribute the balance of the costs among fares and other subsidies.

Before the Tier IV, bus capital, formula is revised to reflect bus revenue vehicle miles, an analysis of the impact of this revision should be undertaken. On the surface, this formula appears to favor lower density areas where transit vehicles can achieve higher average speeds. For example, a bus route which circulates in a low density suburban area then makes a trip to the CBD on freeway, will give a transit system credit for more revenue vehicle miles each hour of operation than will a bus route operated in a densely populated, heavy traffic area. This may not reflect the heavy wear and tear a bus receives in heavy traffic, operating under stop and go circumstances which may mandate bus replacement or rehabilitation at shorter intervals. Vehicle mileage and age are not the only criteria upon which a decision to undertake capital investment should be based.

S.2296 substantially increases capital funding. The proposed levels, when taken in conjunction with revenues from the Windfall Profits Tax tentatively allocated to transit, will allow for major improvements in the nation's transit industry. Philadelphia, along with other cities having major existing transit systems, would benefit from increased emphasis on rehabilitating existing systems rather than expansion and creation of new systems. While we recognize the importance of providing transit networks to meet new needs, we must emphasize the importance of retaining and improving current facilities.

It is commendable that S.2296 requires the Department of Transportation to develop an allocation plan for rail modernization and rehabilitation funds. However, certain steps should be mandated in this process in order to prevent the final result from being arbitrary. The DOT should be required to establish priority criteria against which it will measure projects and should be required to obtain comparable data from all cities with existing fixed guideway and rail services. In addition, input from these cities should be included in the decision-making process. Finally, allocations should take into account the level of support previously provided by the UMTA program to the rehabilitation efforts in each city. In the past, certain cities, with UMTA assistance, have been able to provide substantially greater improvements to existing systems than others. Although no city's system can be said to have received sufficient funds, a greater percentage of overall needs have been met in some places than in others. Not all systems are starting from the same state of deterioration in 1980.

Authorization of the Federal Government to purchase public transit equipment directly removes one more area of control from the hands of the operator. Although the move is designed to assure stability in the bus manufacturing industry, the same end could be accomplished by providing adequate funds and a simplified grant and procurement process to the operators. It would perhaps be more appropriate to limit Federal involvement to assisting in the creation of consortiums of small purchasers. This would provide the cost advantage of volume purchasing to small purchasers but would not impose greater Federal control on what are legitimately the decisions of operators.

I would like to comment on the importance of Section 8 of S.2296 to SEPTA, and to suggest a technical change which would make the intent of the Section less ambiguous. Section 8 changes the definition of the term "fixed guideway" so that it is clear that trolley cars operating on non-exclusive rights-of-way are factored into the Tier III formula. It is clear to me that the Congress intended these trolley cars to be included when it enacted the Surface Transportation Assistance Act of 1978, P.L. 95-599.

When FY 79 Tier III apportionments were finally announced by UMTA last September, SEPTA received approximately $2 million less than its fair share because streetcar operations in mixed traffic were excluded. Considering the financial status of the system, the loss of this money was a severe shock.

I appreciate your statemanship, Mr. Chairman, in recognizing that the present definition is placing an unfair burden on the Philadelphia public transit system.

I am concerned, however, about the actual statutory language which you have selected to address the problem of the "fixed guideway" definition. Section 8 of S.2296 is an improvement on the old definition in that the definition is changed to "...any public transportation facility which utilizes and occupies a separate right-of-way or rails for the exclusive use of public transportation service..." However, the fact that the proposed new definition includes "for the exclusive use of public transportation service" leaves the same ambiguity which caused the

problem in the first place. Although trolley cars operating in mixed traffic have a fixed guideway, it could be interpreted that the rails used by these trolleys are not for the exclusive use of public transportation service.

Since the word "exclusive" as it appears for the first time in the Section 8 definition does not add anything or clarify the meaning of the term, I respectfully request that it be deleted.

The disagreement I have with the Section 8 definition change in S.2296 which you have proposed, is almost inconsequential compared to the mischief which would be achieved by enactment of either the definition proposed recently by the Administration or by the definition proposed by H.R. 6417. The latest Administration proposal to revise the definition is unclear. It is uncertain how its language will be interpreted should it ever be enacted. Although SEPTA would receive a lower Tier III apportionment under the "fixed guideway" definition of H.R. 6417 compared to S.2296, the House bill's definition is preferable to the Administration's definition because at least it clears up the ambiguity which caused all of the problems in the first place.

In conclusion, I urge you to delete the word "exclusive" the first time it appears in the Section 8 definition.

SEPTA supports the continuation of AMTRAK responsibility for those trains which have been reclassified as commuter trains. We also support the inclusion in S.2296 of increased funds specifically for this

purpose. Consolidation of these funds with Section 5, as proposed by H.R. 6417, will serve to dilute funding for other needed services. Further, the decreasing federal share concept included in H.R. 6417 will present the same problem created by the former Section 17 funding for commuter rail. At the end of the special funding period the local areas are required to either finance the service locally or eliminate other services to free sufficient Section 5 funds.

On March 19, 1980, representatives of AMTRAK and ConRail testified before your committee. One issue which was raised concerns eventual takeover by AMTRAK of commuter services currently operated by ConRail. SEPTA is opposed to this step unless it will result in improvements. The following steps on the part of AMTRAK are essential if SEPTA is to be able to support such a move:

1) Aggressive handling of labor negotiation and changes in existing outdated and unproductive work rules.

2) Simplification of the financial accounting and statistical procedures;

3) Development of a sensitive, responsive management;

4) Attainment of performance that should be expected in rail operations; and,

5) Achievement of predictable and manageable revenue and cost relationships.

In addition, SEPTA opposes the Administration's proposal to repeal the discretionary grant authority that currently exists in Sections 3(a)(1)(E) and 4(c)(3)(C) of the Act. These sections authorize $45 Million for the Secretary of Transportation to give 100%

grants to finance "the modification of equipment and fixed facilities (other than stations) which the Secretary determines to be necessary to avoid any adverse effects resulting from the implementation of the Northeast Corridor project pursuant to Title VII of Public Law 94-210." The Administration justifies the elimination of this authority on the basis that the authority has never been used and will never be used because of revisions to the scope of the Northeast Corridor Rail Project.

The modifications required by the project as defined at the time the Section passed are no longer necessary. Originally, power on the corridor was to have been changed from twenty-five to sixty cycle, a project for which $45 Million was insufficient. This change is no longer planned. However, the project currently includes changes to the signal system. Necessary modifications to SEPTA equipment will cost $12.5 Million. New Jersey DOT will require $3.4 Million. In addition, there are minimal costs for modifications in Maryland and undetermined costs for the Mass Transit Administration in New York.

UMTA has given SEPTA the option of obtaining 80% funding for these costs at the expense of other projects. While we are not opposed to modifying our equipment to accommodate the Northeast Corridor Rail Project, we are opposed to substituting these modifications for other badly needed projects. These modifications are by no means our greatest need or highest priority, yet they must be accomplished.

Therefore, SEPTA requests that the authority established in Section 3(a)(1)(E) be retained and Section 4(c)(3)(C) be reversed to reflect the costs of the modifications now required by the project.

SEPTA supports the Administration's proposal to fund provisions of Section 20 of the Act, including bonding and venture capital funds for minority and female firms who would otherwise be qualified for participation in UMTA-assisted construction contracts. Such a program would assist SEPTA's efforts to encourage minority and female participation in contracts. Particularly important is the proposal that these grants be made to transit agencies to support existing minority business enterprise centers which are authorized and engaged in the business of assisting local minority and female firms in securing bonding and venture capital. This mechanism provides transit agencies with a measure of control but does not require that they directly operate a program which is beyond their current expertise. However, this program should provide 100% bonding and loan guarantees rather than the 90% currently provided under Small Business Administration (SBA) guidelines. Banks are currently reluctant to participate for amounts under $100,000 since their profit is insufficient to justify their risk.

In addition, SEPTA supports the concept of efficiency incentive funding proposed by the Administration. However, any such program should assure that systems which currently operate efficiently or at capacity are eligible to receive this funding.

Currently efficient systems cannot be expected to show gains in efficiency equal to those realizable by currently inefficient systems. Nor can systems which currently operate at capacity be expected to show, or for that matter seek, ridership increases similar to those shown by systems with excess capacity.

Thank you for the opportunity to present SEPTA's views. I hope you will take them into consideration in developing authorizing legislation for the Urban Mass Transportation Administration.

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