

Winter 1972

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Recommended Citation

Smerk, George M. (1972) "Development of Federal Urban Mass Transportation Policy," *Indiana Law Journal*: Vol. 47: Iss. 2, Article 3.
Available at: <http://www.repository.law.indiana.edu/ilj/vol47/iss2/3>

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COMMENTS

DEVELOPMENT OF FEDERAL URBAN MASS TRANSPORTATION POLICY

GEORGE M. SMERK†

Within the past half century the United States has become a predominantly urbanized nation. As a result, the focus of national interest and the physical site of national problems has become increasingly urban.¹ Because national interest was absorbed by the Depression and World War II, however, it was not until the late 1950's that the people of the United States began to realize what had been developing in the urban areas. Up to that point, serious difficulties had been mounting virtually unchecked.

Life in the troubled metropolitan areas is more tolerable, even if population density is relatively high, if physical movement and access to economic, cultural and social activities is easy, fast and inexpensive. One of the primary concomitants of rapid urbanization, however, is congestion in transportation. This symptom is particularly visible in the crush of automotive traffic at certain times of day. Although construction of expensive highways may relieve automotive congestion, consideration of alternative uses for highway construction funds may lead one to conclude that increased automotive mobility is dearly acquired in terms of foregone opportunity costs.

Other less obvious aspects of immobility may be even more insidious to urban well-being than the traffic jam. In most American cities, public mass transportation service may be described charitably as only fifth rate. Mass transportation currently offers a poor alternative to the automobile in terms of frequency, convenience and general access to the activity of the community. Those who do not have access to an automobile, typically the very young, the elderly, the poor, the handicapped and the suburban housewife in a one-car family, are virtual prisoners, isolated from the opportunities of the urban area. Unemployment, underemployment, frustration, enforced idleness and loneliness are products of this immobility. Such burdens on the human spirit are probably far

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1. In 1900 only forty per cent of the population was considered to be urbanized by the Census Bureau, and by 1920, the fifty per cent mark was passed. In the 1940 census, persons living in urban areas amounted to 56.5 per cent of total population, and the figure soared to over 67 per cent by 1960. The rapid growth in urbanization is expected to continue so that by 1980 the population of the country should exceed 225 million with eighty per cent urbanized.

more serious barriers to urban well-being than the traffic jam.

Congestion, of course, is not new to cities. Rome, for example, had traffic problems of awesome proportion during the period of the Empire. In the past, however, advancing technology seemed to save the day at the critical moment. The horsedrawn streetcar, which could move more people faster than the omnibus, helped alleviate the congestion of omnibus traffic. The electric streetcar was capable of moving even more people with considerably greater dispatch than the horsecars. In certain cities elevated and underground railroads provided a private right-of-way for high capacity rapid transit trains at a time when street traffic threatened to grind to a halt. The developments in public transport managed, however inelegantly, to make relatively intensive use of limited urban space and to provide mobility to the entire city at a comparatively low cost.

Presently, however, automotive congestion seems to be much more difficult to eradicate at a reasonable cost. Since the end of the Second World War, large sums of money have been spent to improve highways in urban areas. At best, these new roads appear to have provided only temporary relief from congestion. At worst, they have added to traffic problems by enticing more cars into already congested areas. In addition, failure to provide adequate parking space in highway construction plans has led to parking problems of great magnitude. Congestion, by stealing vitality, amenity, pure air and time has caused cities to become less attractive and more costly places to which to live and transact business. Thus, congestion is a force which weakens and debilitates the city. In an urbanized society like the United States, whatever weakens the city the economy and society as a whole. Hence, eradicating congestion from American cities is a matter of great concern and importance.

CAUSES OF THE URBAN TRANSPORT PROBLEM

While the urban transport problem of congestion is often blamed solely upon the automobile, a closer evaluation of the situation reveals a more complex chain of factors and events. One of the most critical elements of the transportation congestion problem has been the increasing tendency of the urban population to move away from the core area of the city into suburbia. As a consequence, despite a recent trend toward an increasing number of multiple-family dwellings in the suburbs, density per square mile tends to be quite low in comparison with the central city. The move outward from the city into the suburban or outer ring portion of metropolitan areas has been made possible largely by the automobile. The result has been to gear life to Henry Ford's invention.

This is a particularly critical problem because the shift of population to the outlying areas has reached tidal wave proportions.² When mass movement of the population occurs in a relatively short time period and within a relatively small space, such as the downtown core of a metropolitan area, a traffic jam is inevitable.

That portion of the metropolitan population living in the outer fringe area is difficult to serve by any form of transportation other than the automobile. Population density is so low, relative to the older part of the city, that under conventional procedures it is difficult to establish a bus line that provides efficient and acceptable service at reasonable fares while still providing the operator a profit. Consequently, in the outer part of most metropolitan areas public transportation service, if any exists, is often confined to a few trips per day during peak periods.³

Another major cause of transport problems in urban areas is the decline of public transport as an effective alternative to the use of the automobile. The decline of the transit industry began toward the end of the nineteenth century, primarily as a result of financial chicanery and excess capitalization which seriously weakened the industry. Added to the burden of excess capitalization in the transit industry were the requirements imposed upon street railways by the communities in which they operated. A franchise was usually required for the use of the public streets and among the usual provisions of the franchise were requirements for street and bridge maintenance, sprinkling the streets against dust in the summer and clearing the streets of snow in the winters. Most burdensome, perhaps, was that many franchises set the maximum fare that might be charged at a nickel.⁴

2. POPULATION OF THE UNITED STATES BY TYPE OF RESIDENCE, 1950 AND 1960

Area	1950	1960	Increase, 1950-60, in	
			Number	Per Cent
Total United States	151,326,000	179,323,000	27,997,000	18.5
Standard Metropolitan Areas	89,317,000	112,885,000	23,568,000	26.4
Central Cities	52,371,000	58,004,000	5,633,000	10.8
Outside Central Cities	36,945,000	54,881,000	17,935,000	48.5
Other Territory	62,009,000	66,438,000	4,429,000	7.1

BUREAU OF THE CENSUS, DEP'T OF COMMERCE, CENSUS OF POPULATION: 1960, NUMBER OF INHABITANTS xxvi, 1-3.

3. Some interesting thoughts on urban population shifts and the need for improved mass transportation to meet the needs of rapidly growing suburban areas may be found in Conway, *1950-1960 Population Shift Poses Transportation Problem*, 15 TRAFFIC Q. 62 (1961) and Conway, *Rapid Transit Must be Improved to Alleviate Traffic Congestion*, 16 TRAFFIC Q. 103 (1962).

4. Neither the franchise requirements nor the relatively high debt capitalization were overly troublesome during most of the period of declining prices between the end

During the 1920's, when a great deal of money was spent by all units of government on construction and improvement of highways, the transit industry began to feel the competition from automobiles.

In fact, the dark days of the Depression spelled financial ruin for many transit firms. Replacement of streetcars with buses did ease the burden of fixed costs. However, most transit firms were so weakened by the events of the past that they were unable to provide either the equipment or service that was attractive to the increasing number of Americans who could afford to own and drive a car.

Another factor aiding the demise of mass transport was the caliber of management in the industry. For a variety of reasons, transit management is, typically, operations oriented. The vital spark of marketing—understanding consumer needs and meeting those needs—is usually missing. The thrust of management efforts is usually marked by a relatively indifferent, unrealistic or impractical attitude toward maintaining or increasing demand. In other words, if revenues decline or profit margins shrink, the usual reaction of management is to cut costs, usually by reducing service, and at the same time raise fares. Neither of these techniques encourage people to use transit systems.⁵

Factors influencing the failure of commuter railroads are slightly different, but the result has been almost the same. Most rail commuter operations started many years ago as by-products of through passenger service offered at specially reduced or commuted fares. As demand for such service grew with the expanding city, however, suburban operations expanded to the extent that they were often a completely separate operation from through train service. Nevertheless the low fares continued and often many years passed before any substantial increase in fares was permitted to bring revenue into some practical relationship with cost. With increasing automotive competition the commuter railways and the local transit companies both were faced with a sharply increased demand for their services at the rush hours with little demand at other times. Expensive, specialized equipment, manpower and plant facilities were fully utilized for only about four hours each weekday. As was the case with transit, many commuter railways curtailed service drastically to cut costs. New equipment purchases were often out of the question.

of the Civil War and the turn of the century. However, around 1900 prices began to move upward with the pyramiding of transit companies into citywide monopolies greatly inflating the debt capital. The five-cent fare proved insufficient. Even before the automobile arrived on the scene, many public transit firms were in shaky financial condition.

5. See L. SCHNEIDER, *MARKETING URBAN MASS TRANSIT* 33-34 (1965); Smerk, *Federal Urban Transport Policy: Where Do We Go From Here?*, 21 *TRAFFIC Q.* 29, 47-50 (1967).

In Philadelphia, for example, commuters on Penn Central suburban lines ride in the same equipment their grandparents rode; the cars are fifty to sixty years old.

Although the tire, gas and auto shortages during the Second World War revived the patronage of all mass transport modes, this demand was to last only until automobiles once again became plentiful. By the middle 1950's the service on most mass transport operations was poor, the equipment often abominable, the convenience minimal, and potential customers were not utilizing the systems.⁶ As the decade wore on and congestion grew worse, it became clear to some observers that the nearly complete dependence upon the automobile for urban transportation was, to say the least, unwise. Less use of private automobiles and increased use of mass transportation began to make a great deal of sense. Such a change was unlikely, however, as long as aid from the federal government was limited to the construction of highways. Without federal aid, public transportation became shabbier, less attractive and generally unable to generate revenues sufficient even to buy new buses.

SEEKING SOLUTIONS TO URBAN PROBLEMS

By the middle of the 1950's a dispersed form of urban development had become quite clear. The growth in the number and use of cars, made almost mandatory in this dispersed city form increased automotive congestion. The American aversion to comprehensive urban planning practically guaranteed that the rosy post-war dream of door-to-door travel convenience upon congestion-free highways would not materialize. The only practical answer in a society whose transport was dominated by the private automobile seemed to lie in the construction of more, bigger and better highways. Real solutions to traffic congestion in the United States, therefore, proved to be most elusive.

Indeed, for ease of solution, problems could find no worse place to focus than in the metropolitan areas. It was becoming painfully obvious that as the problems grew more complex, there was no effective unit of governmental authority at the local level that could deal with metropolitan problems.⁷ As suburban development in areas surrounding

6. For a more complete coverage of this decline see LYLE C. FITCH & ASSOCIATES, *URBAN TRANSPORTATION AND PUBLIC POLICY* 37-54 (1964) [hereinafter cited as FITCH]; W. OWEN, *THE METROPOLITAN TRANSPORTATION PROBLEM*, ch. III (rev. ed. 1956); G. SMERK, *URBAN TRANSPORTATION: THE FEDERAL ROLE*, 43-54 (1965) [hereinafter cited as SMERK].

7. See NEW YORK COMM. FOR ECONOMIC DEVELOPMENT, *MODERNIZING LOCAL GOVERNMENT TO SECURE A BALANCED FEDERALISM* (1966) for a most interesting analysis of

established central cities began to increase, the tendency was for each of the suburban areas to maintain its political and fiscal individuality, even though close social and economic ties with the central city remained. State laws generally made annexation difficult. Moreover, most suburbs, whose residents were anxious to escape the problems of the central city, fiercely resisted any overtures from the central city for political union.

The result of this attitude was the establishment of a vast number of political subdivisions with differing financial needs and resources. Consequently, when a problem such as transportation, which affects an entire metropolitan community without respect to artificial political boundaries, becomes serious, it is difficult to marshal any broad metropolitan approach to its solution.⁸ In such a situation outside help, either from the state or federal government, is the only course of action tolerable to the metropolitan community as a whole. The unwillingness or inability of state governments to take effective action eventually makes the search for solutions of many metropolitan problems the responsibility of the federal government.⁹

THE FEDERAL ROLE IN URBAN TRANSPORT

Federal action for support of urban mass transportation did not come about easily. Initially, there was a lack of broad, grass-roots support. In large part this was due to public apathy throughout much of the country. As is true in most nations, United States citizens must be confronted with a crisis before they demand action from their legislators. Moreover, there must be strong pressure group support, before Congress will overcome its natural hesitance to move into new ground.¹⁰ Additionally, persons in the political world generally must perceive some political advantage in becoming spokesmen for a new cause.

On the other hand, opposition to new fields of federal action is not hard to generate. There are always existing interests and pressure groups,

the problem. This study suggests strengthening county government as a possible means of better serving the needs of the metropolitan areas.

8. Adding to the common difficulty created by the disparity of needs and resources of segmented communities within a given metropolitan area is the fear of each segment that it will pay more than it will benefit from any proposed metropolitan plan. Moreover, there is a general feeling on the part of the various suburban units that the central city is the only real beneficiary of metropolitanwide programs. See, e.g., J. DOIG, METROPOLITAN TRANSPORTATION POLITICS AND THE NEW YORK REGION 42-43, 96, 146-48 (1966) [hereinafter cited as DOIG].

9. For a more complete discussion of fragmentation, see M. DANIELSON, FEDERAL-METROPOLITAN POLITICS AND THE COMMUTER CRISIS, ch. IV (1965) [hereinafter cited as DANIELSON]; FITCH, *supra* note 6, at 15-18; SMERK, *supra* note 6, 82-118.

10. See R. MONSEN & M. CANNON, THE MAKERS OF PUBLIC POLICY: AMERICAN POWER GROUPS AND THEIR IDEOLOGIES 1-23 (1965).

the so-called "highway lobby" in the case of federal aid for transit, that feel threatened by proposed programs. Furthermore, since urban mass transportation seems to be a very local problem, many members of Congress would be reluctant to involve the federal government in such a purely local affair. There is also the usual unhappiness of the public with programs administered by unfeeling bureaucrats far from the actual site of the problem. When combined with public reluctance to support programs in which federal tax dollars seem to be used only to solve others' problems, the antifederal feeling is an inevitable source of opposition.

THE CRISIS OF 1958

Federal activity in behalf of urban mass transportation was the result of a crisis situation in 1958.¹¹ Oddly enough, the crisis arose inadvertent-

11. Prior to 1958 some cities did show interest in the problems of congestion and deteriorating mass transportation and tried to take steps toward a solution. Perhaps most notable were the efforts of Philadelphia and San Francisco. In the mid-fifties Philadelphia sought federal aid for transit capital improvements after being rebuffed in its efforts to secure aid from surrounding suburban counties and state government. Congress likewise failed to respond. DANIELSON, *supra* note 9, presents a valuable and complete source of information on the events leading up to the beginning of federal participation in urban mass transportation programs. Much of what follows is indebted to Danielson's work for its thought and spirit.

Rapid population growth and the automotive explosion after the Second World War made an already troublesome transport problem more abrasive than ever in San Francisco. The California Legislature responded to county pressure by creating the San Francisco Bay Area Rapid Transit Commission in 1951 and granting three-quarters of a million dollars to study the problem. In 1957, again at the request of the Bay Area counties, the state created the San Francisco Bay Area Rapid Transit District to do developmental and planning work, but no effort to obtain federal funds was evident at that time.

Other cities made spasmodic attempts to cope with rising urban transportation problems but did not go much beyond the generation of primarily highway-oriented plans. Those conducting the studies can hardly be blamed. It was simply unimaginable that mass transportation in its derelict state could ever hope to attract an increasing share of patronage.

Furthermore, there was no power or pressure group representing the mass transportation viewpoint, for most cities had no particular position on what should be done about mass transportation. As individual entities their actions had often done more to hinder effective mass transportation service than to help it. Planners, downtown business interests, labor groups, civic interest groups and various academic types were disinterested or unable to take any sort of concerted position on transit—often because all concern was focused on the highway development programs. The position taken by the railroads was to reduce their passenger service losses, usually through discontinuation of unprofitable services. The American Transit Association, the transit industry trade organization, was primarily a statistical and information service for its members rather than a lobbying instrument. The industry lacked the strong power position necessary to secure important measures from Congress.

In short, by the end of 1957 little had been done to interest the federal government in aiding mass transportation, with the exception of Philadelphia's futile effort. If there was any opinion on the matter in Washington, it was that urban mass transportation problems were strictly a local affair and should be handled on the local level.

ly as Congress strove to provide some legislative relief for the nation's railroads. The Depression of the 1930's had hurt the railroads as it had most business, but wartime traffic had greatly stimulated revenues and profits. After the vicissitudes of the preceding fifteen years, the postwar attitude of American railroads was one of optimism. By the early 1950's, however, it was quite evident that although there was a great rise in freight movement and travel, this upsurge was not by rail. Increasing numbers of people traveled by automobile, and the air transportation business began an almost explosive period of growth while passenger traffic on railroads was decreasing. Freight transportation profits had always permitted the railways to maintain passenger operations. However, even freight revenues began to decrease, largely because of the inroads of competing modes of transport, particularly trucking. The spasmodic economy of the fifties also hurt rail earnings because when business is general is bad, it is usually very bad for the railroads. Both the fitful behavior of the economy and shrinking profits spurred the railroads to seek legislative relief. One of the prime needs, from the railroads' viewpoint, was relief from the obligation to carry passengers. In 1957 alone the railroads had considerable reason to be concerned about passenger service. The losses from this service, according to the Interstate Commerce Commission totaled 723.7 million dollars.¹²

Congress finally provided some relief from this distress in the Transportation Act of 1958.¹³ One of the Act's provisions dealt with the problems faced by the railroads in attempting to relieve themselves of the burdens of unremunerative passenger transportation.¹⁴ Under the

12. The exact losses from passenger operations are a debatable issue. The 723.7 million dollar figure represents the result of the ICC's method of fully apportioned costs. On the basis of solely related costs, the deficit for 1957 was in the neighborhood of 114 million dollars. See *Railroad Passenger Train Deficit*, 306 I.C.C. 419-25, 486 (1959); ASS'N OF AMERICAN RAILROADS, BUREAU OF RAILWAY ECONOMICS, STATISTICS OF RAILROAD PASSENGER SERVICE 9 (1966); AERONAUTICAL RESEARCH FOUNDATION, AVOIDABLE COSTS OF PASSENGER TRAIN SERVICE (1957).

13. 49 U.S.C. § 1 (1970). For a brief recapitulation of the contents of this act, see D. LOCKLIN, *ECONOMICS OF TRANSPORTATION* 254-58 (6th ed. 1966).

14. Prior to the passage of this act, discontinuance of passenger train service required action by the state regulatory commission; ICC jurisdiction was involved only upon abandonment of a line. From long experience the railroads had learned that gaining permission from state bodies was typically time consuming and expensive. Sections 13a(1) and (2) of the 1958 act were aimed at remedying the situation.

Under section 13a(1), enacted in 1958, railroads desiring to discontinue or change the operation or service of any train operating between points in two or more States, but whose right to do so is governed by State laws, may elect to file a notice with the Commission of their intent to make the discontinuance or change, and 30 days thereafter, put it into effect regardless of State laws or decision to the contrary, unless, within that time, the Commission enters upon an investigation of the proposal. If it does so, it may order the operation or

terms of the new law, interstate passenger service can be withdrawn quickly after the proper notice is given, unless, of course, the ICC investigates and requires the service to be continued. To discontinue passenger service of an intrastate nature the carrier is first required to seek relief from state agencies. After that course of action has been exhausted under the terms of the law, the carrier can petition the ICC. After passage of the 1958 Act, the railroads were generally in a much better position to remove the passenger millstone from their necks.¹⁵

All commuter service was vulnerable under the Act, but especially that of the New York City region that was interstate in nature. The Transportation Act of 1958 was signed into law by President Eisenhower on August 12, 1958; on that very day the New York Central Railroad posted notices announcing that it would discontinue its West Shore Ferry service linking Manhattan with the New York Central commuter railway operation on the west side of the Hudson River. The Erie Railroad shortly followed suit. The ICC did not investigate the action proposed by the New York Central, and thirty days later the ferry boats stopped running.

Throughout the autumn of 1958, the New York area commuter railroads announced large deficits, and at the beginning of December the Lehigh Valley and Delaware, Lackawanna & Western railroads announced plans for abandonment of commuter service. The Pennsylvania Railroad stated that it would discontinue most off-peak commuter service to Manhattan. Railroads in other parts of the country made

service continued for not exceeding 4 months pending a decision in the investigation, at which time, provided it makes the required statutory findings, the Commission may require continuance (or restoration) of the service for not more than 1 year thereafter. If it decided not to enter upon an investigation, or if the Commission fails to decide the case within the 4-month period, the carrier may discontinue or change the service as proposed. Under section 13a(2), where the proposed discontinuance or change in service of a train operated wholly within a single State is prohibited by the constitution or statutes of that State, or where the State authority having jurisdiction has denied an application or petition or has not acted finally on such application or petition within 120 days from their presentation, the carrier may file an application with the Commission for authority to effect the discontinuance or change. The Commission may authorize it only after notice and hearing and upon prescribed findings.

75 ICC ANN. REP. 72 (1961).

15. See, e.g., Lehigh Valley R.R. Discontinuance of Service, All Passenger Operations, 307 I.C.C. 239 (1959); 307 I.C.C. 257 (1959); 312 I.C.C. 399 (1961); Pennsylvania R.R. Discontinuance of Passenger Service Between Trenton and Red Bank, N.J., 317 I.C.C. 5 (1961); New Jersey & N.Y.R.R. (Horace Banta, Trustee) Discontinuance of Service from Hoboken, N.J., to Spring Valley, N.Y., 307 I.C.C. 532 (1959); New York Cent. R.R. Discontinuance of Service, St. Lawrence Div., 312 I.C.C. 4 (1960); Pennsylvania R.R. Discontinuance of Service Between Camden and Trenton, N.J., 312 I.C.C. 167 (1960).

similar threats. It soon became clear that the legislation that had been aimed at helping the railroads had suddenly become the vehicle by which the urban mass transportation problem reached a critical stage.¹⁶

The threat to commuter service brought alarm from the older and larger cities. In the New York City area attempts were made to join with New Jersey and Connecticut to find some way to retain railway service. In Philadelphia, the city formed a nonprofit corporation, the Passenger Service Improvement Corporation, whose purpose was to lease improved service at reduced fares from the Reading and Pennsylvania railroads.¹⁷

Gradually it became clear to the worried big cities that they must take action to solve their mass transportation problems. The cities had been unable to help themselves, and state governments had proved unable to act effectively. In short, the federal government, which had inadvertently touched off the urban transportation crisis, appeared to be the best place to look for solutions. The atmosphere in Washington, however, could hardly have been more hostile to any increase in the federal presence in metropolitan areas. President Eisenhower wished to keep federal involvement in cities and local areas as low as possible. Moreover, the Administration was fully committed to the highway program. In addition, it was likely that the powerful highway interest groups would take a dim view of any mass transport programs, especially if it appeared that highway money might be diverted.

The position of the Eisenhower Administration in regard to urban transportation problems was clearly set in *Federal Transportation Policy and Program*, issued by the Commerce Department in March, 1960.¹⁸ Beneath the usual bureaucratic language of this policy state-

16. DANIELSON, *supra* note 9, 47-52. See also DOIG, *supra* note 8, ch. 9; A.E. Altshuler, *The Politics of Urban Mass Transportation* 17-21, Sept. 4-7, 1963 (mimeographed speech delivered at the 1963 annual meeting of the American Political Science Ass'n) [hereinafter cited as Altshuler].

17. For more information on the Passenger Service Improvement Corp. of Philadelphia, see Institute for Rapid Transit, *News Letter*, Mar. 30, 1962. For activities in the New Jersey and New York area see DOIG, *supra* note 8, chs. 8-9; J. BEBOUT & R. GRELE, *WHERE CITIES MEET: THE URBANIZATION OF NEW JERSEY*, 73-74 (1964).

18. Metropolitan areas are increasingly congested with mass highway transportation, and are afflicted by rush-hour jams, parking area deficiencies, and commuter and rapid-transit losses.

This is primarily a local problem. But the Federal Government contributes toward the problem with its huge highway program. It also has a deep concern in the railroad commutation passenger losses because of their effects upon the health of the railroad system and upon the extent to which the Nation can secure the benefit of the railroads' capability for mass long-distance transport of freight. Ways and means must also be found to encourage tax relief by local and State jurisdictions in helping solve the problems of commuter or local passenger deficits.

The Federal Government should encourage communities to make broad

ment, it was clear that the Administration felt that the federal government should not involve itself directly in the urban transport problem. This particular position, as well as many others embodied in the report, did not, however, coincide with the thinking of a number of staff members who had performed the background work.¹⁹ Their position on urban transportation is of considerable interest because it pointed to the folly of federal support for highways only and called for federal support of mass transit as well as highways.²⁰

In light of the attitude of the Administration in the late 1950's, it is not surprising that Washington was not prepared to investigate or administer a program to aid mass transport for urban areas. Responsibility was scattered among various agencies and departments. It appeared that the federal government was ill-adapted organizationally to handle the problems of urban transportation through established policies and programs. It was also abundantly clear, at least to some observers, that it was not even well prepared to formulate objectives and policies for nonurban transport. Perhaps the greatest difficulty was that mass transportation problems, particularly when narrowly viewed as mainly a commuter railway problem, had small appeal in Congress. It seemed to

land-use plans with transportation as an essential part. It should consider as a long-run problem means by which such forward planning can be encouraged. It should also consider possible community charges on highway gateways and parking areas to help reduce the highway congestion and help finance the over-all transportation plan. Jointly with communities, the Federal authorities should consider the total urban transport situation so that Federal participation may contribute to the efficiency with which urban transport as a whole is performed.

DEP'T OF COMMERCE, FEDERAL TRANSPORTATION POLICY AND PROGRAM 7 (1960).

19. DEP'T OF COMMERCE, RATIONALE OF FEDERAL TRANSPORTATION POLICY III (1960).

20. Downtown areas were not designed to handle the traffic load which results from . . . (population) dispersion and the accompanying reliance upon the private automobile. The two major past and continuing trends are the resulting decline in business activity in the heart of the central city, and a sharp reduction in the use of public transportation facilities.

From the standpoint of total cost, serious problems are raised by these trends. Mass transportation is clearly much less expensive per passenger-mile than total costs of the private automobile with an average of less than two occupants. From the standpoint of efficiency, there is little doubt that per passenger . . . transit vehicles are far more efficient in terms of space occupied . . . Rail lines are similarly much better space users.

The present highway program has provided substantial sums for improving access to our major metropolitan areas. However, the present program does not require any test to determine the most efficient use of these funds in terms of passenger movement. Merely adding highways which will attract more automobiles which will in turn require more highways is no solution to the problems of urban development.

Id. at 52.

be a problem affecting only a very limited number of larger cities and simply did not seem to promise much political mileage.²¹

REACTION TO THE CRISIS

Despite the infelicity of the atmosphere for federal action on the mass transportation issue in 1958, work was begun almost immediately to rectify the problems created by the threatened discontinuation of commuter railway service. The support for action which eventually led to federal legislative programs came from the central cities, not from the states or the suburban areas. It is not surprising that the dominating force should be the central city. Suburban areas are principally occupied with local problems; therefore, such communities are poorly equipped even to consider action that might include cooperation with bodies outside their jurisdiction. So suspicious are the suburbs of threatened loss of autonomy that the reaction to any proposal to band together with other suburban or central city governmental bodies is almost universally one of hostility.

Suburban efforts in dealing with the federal government tend to be sporadic. Admittedly, from the rather narrow suburban viewpoint, it is difficult to recognize the entire problem that affects metropolitan area. The envisioned programs or federal aid are invariably aimed at short-run solutions to very local aspects of a problem. As a result, outcries from suburban areas in danger of losing their commuter service were limited to pleas for the continuation of service on their particular line.

The attitude of the states in regard to expand federal programs in urban areas is often negative. It is not unusual for the rural elements in state legislatures to harbor resentment and antipathy for urbanites.²² There is, moreover, considerable fear that any sort of regional authority or federally sponsored regional action may not only be harmful to state prestige and sovereignty, but may cause the state government to become financially entangled. In short, states often view direct federal aid programs as a threat, and therefore give little or no support to plans for federal action in urban areas. This attitude may soften, however, if the state is given the role of an intermediary in parceling out federal aid.

It is the central city, therefore, with its onerous burdens of slums, crime, eroding tax base, rape by highway, upperclass diaspora and lower class in-migration that carries the message to Washington. In undertaking the task of gaining federal support for urban programs, the

21. See DANIELSON, *supra* note 9, at 25-27.

22. See SMERK, *supra* note 6, at 99-113.

big cities had certain invaluable resources, including prominent, powerful and practical men in politics and business and national urban lobbying groups, like the American Municipal Association (now called the National League of Cities) and the United States Conference of Mayors. The large metropolitan newspapers which often include nationally syndicated columnists on their staffs, provided another resource, not to be discounted lightly. Added to these resources was the superior perspective of the central city as the focus of regional problems and strengths. While events or problems might be felt only subtly in the suburban ring, each tug of the metropolitan spider web was felt at the center.

As urban problems mounted on various issues, an alliance of interest groups was formed. In the initial stages this alliance usually consisted of Democratic politicians, the downtown economic interests and some of the large metropolitan dailies. Regional civic groups were soon added to this force, along with labor groups, planners and even college professors who saw the light outside their towers. In the transportation area, the commuter railroads and transit operators were added to this group.²³

Every movement needs a champion. In the early stages of the development of the federal policy for urban mass transportation, that man was Richardson Dilworth, Democratic mayor of Philadelphia. Not daunted by the earlier failure to gain federal aid, Dilworth and other representatives of the central cities and the railroads met in Chicago in January, 1959 to assess the situation in the wake of the Transportation Act of 1958.²⁴ Among the city representatives and the eastern commuter railroads there soon developed a consensus that the federal government had a role to play. The western commuter roads, perhaps less desperate than their eastern brethren, were coy about any federal intervention. The bugaboo of subsidy leading eventually to a federal takeover of the railroads was raised.²⁵ The meeting was not a failure, however, and a smaller working committee headed by Dilworth began developing a plan that all interests could support.

The working committee met in Philadelphia in March, 1959. In

23. For a more detailed treatment of this analysis, see DANIELSON, *supra* note 9, at 183-89.

24. Attending the conference were representatives of Allentown, Pa., Baltimore, Boston, Chicago, Cleveland, Detroit, Kansas City, Milwaukee, New York, Philadelphia, St. Louis and Washington, D.C. The railroads represented were the Baltimore & Ohio, Boston & Maine, Burlington, Milwaukee Road, Chicago & North Western, Pennsylvania, New York Central, Jersey Central, Rock Island, Southern Pacific, Reading, Erie, Lackawanna, Long Island, Missouri Pacific and New Haven.

25. DANIELSON, *supra* note 9, at 101-03.

order to gain more time for agreement, as well as to put together some factual basis for their case, a study was undertaken. The work was completed by the committee and a report entitled *The Collapse of Commuter Service* was issued by the American Municipal Association near the end of 1959. The report was based on a study of five cities with commuter rail or rapid transit systems: New York, Philadelphia, Boston, Cleveland and Chicago. National alarm was raised over the following finding of the report:

The vast importance of the problem of mass transportation is indicated by the fact that more than 60% of the total U.S. population is contained in the Standard Metropolitan Areas, and by the end of the next decade, almost 80% of the U.S. population will be located in these areas.

The need for continuation of commuter rail and rapid transit service was sharply pointed out to the cost-conscious:

If only twenty-five per cent of those now riding mass transportation lines were to be forced onto the highways . . . it would cost these five cities \$4.4 billion to provide the highway capacity to move a comparable number of people. . . . If the commuter lines were to suspend operations completely, it would cost \$17.4 billion to build highways to serve a comparable number of people in these five cities. This does not include the additional costs of constructing parking facilities, the loss in taxes or the cost of traffic engineering. . . .²⁶

In addition, a suggestion that a federal lending corporation be established to provide funds for urban transportation programs was also included.²⁷

The Collapse of Commuter Service and persistent efforts by Dilworth and his commuter rail allies at the American Municipal Association Congress in December, 1959, brought full AMA recognition of the problem. The association adopted a resolution calling on Congress to establish a policy that would promote coordinated transport on all levels. Congress was also asked to provide long-term, low interest loans for the purchase of new equipment or the upgrading of facilities. The issue of federal grants-in-aid was more problematic. Therefore, only a recommendation was made that a study of such a program be undertaken.²⁸

It was, however, difficult to muster a great deal of general enthusi-

26. AMERICAN MUNICIPAL ASS'N, *THE COLLAPSE OF COMMUTER SERVICE* 2 (1959).

27. *Id.* at 3.

28. DANIELSON, *supra* note 9, at 104-05.

asm for a program that was narrowly focused on rail commuter and rapid transit problems. The number of concerned cities with such facilities were but a handful.²⁹ In any event, the point was made and an influential pressure group had its attention drawn to the issue of the federal role in urban transportation.

A firmer coalition had also been established between the central cities and the railroads, although many of the carriers still viewed federal participation with suspicion. Dilworth and James Symes, President of the Pennsylvania Railroad, worked together in drafting legislation to be presented to Congress under the auspices of the AMA. Their aim was to meet immediate needs and at the same time to evolve a legislative program agreeable to both the AMA and the embattled commuter railroads. The legislation called for low-interest loans to be made by the Department of Commerce to states, local governments and authorities for the acquisition, maintenance and improvement of mass transport equipment and facilities.

Although it was expected that the legislation would get a warm reception from neither the Eisenhower Administration nor the 86th Congress, the bill had been constructed to quell possible displeasure from potentially hostile pressure groups with the hope that perhaps the next Congress would be more receptive. The mistake usually made by the railroads of trying, through legislation, to deny benefits of government largesse to other modes was avoided; they merely requested benefits for themselves.³⁰ Moreover, the legislation's appeal was broadened by the provision for aid to urban mass transportation in general, not to big city commuter railroads and rapid transit in particular. Thus, it was hoped that general support from traffic beleaguered cities throughout the country would be forthcoming. The major error, however, was in placing the administration of the proposed bill in the hands of the highway-oriented Department of Commerce. As a matter of policy, the Department was opposed to any federal involvement in local transit problems.

In February, 1960 a delegation of mayors and railroad representatives presented their case to the Secretary of Commerce, representatives of the Budget Bureau, congressional leaders and representatives of the congressional committees that would consider the measure. The reception was noncommittal at best. On the brighter side, however,

29. For example, the panel discussion on transport problems in large cities moderated by Dilworth, despite his efforts, constantly strayed from the rail issue. See generally AMERICAN MUNICIPAL ASS'N, PROCEEDINGS OF THE AMERICAN MUNICIPAL CONGRESS (1959) [hereinafter cited as PROCEEDINGS].

30. See Altshuler, *supra* note 16, at 27-28.

both Senate Majority Leader Lyndon Johnson and House Speaker Sam Rayburn pledged their support for the proposed legislation.³¹ Nevertheless, the situation continued to look bleak until Senator Harrison Williams (D.-N.J.) came upon the scene.

If within their own ranks the city interests found a champion on the transit issue in Mayor Dilworth, they found an equally needed champion in the Congress in Senator Williams. Williams, as a freshman in the Senate was seeking an issue that would aid his New Jersey constituents and yet would have relatively broad national interest. He found his opportunity in the mass transportation issue.

As a senator, Williams was in an excellent position to produce results. The six year term of a senator permits more time to be spent on important matters of legislation. A senator is also blessed with greater resources for vital staff work. Since a senator's constituency is statewide, his viewpoint is also broader. Moreover, the Senate has, in recent years, been far more interested than the House in needed innovations in government and more intent that the federal government exercise its leadership function.³²

Williams and his staff went to work to make needed changes in the legislative proposals prepared by Dilworth and Symes. The initial step was to shift the bill from the hostile Department of Commerce by promoting the legislation as a measure for urban areas. The implementation, therefore, would be under the jurisdiction of the Housing and Home Finance Agency, which at that time was the closest thing to a Department of Urban Affairs. The change would also place consideration of the legislation in the hands of the Senate Committee on Banking and Currency, of which Williams was a member. This committee was likely to be far friendlier to the legislation than the Commerce Committee would be. To add to the bill's palatability, the original proposal for 500 million dollars in loan authorizations was reduced to 100 million dollars. Backed by the AMA and the commuter railroad interests, Williams introduced his bill on March 24, 1960.³³

The Senate was friendly to the legislation, and Williams' bill³⁴ was passed by that body on June 27, 1960. In the House, however, the bill never got out of committee. However, with a national election in the near future, Democrats and others with an urban stake wished to go

31. DANIELSON, *supra* note 9, at 111-13.

32. *Id.* at 116.

33. *Id.* at 129-33.

34. S.3278, 86th Cong., 2d Sess. (1960).

on record in support of an urban measure. Additional support, therefore, was expected in the next session of Congress.

While the Democrats did not sweep Congress in the 1960 election, they did manage to elect a President who was firmly convinced of the importance of urban issues and of the need for the federal government to cope with the staggering problems that faced metropolitan areas. John Kennedy was the first man to run for President with a major thrust of his campaign aimed at the problems of urban areas. In contrast, Richard Nixon virtually ignored the urban issue. Kennedy's election, therefore, marked a critical turning point in the attitude of the national government toward urban problems. When campaigning for the nomination, Kennedy spoke to the 1959 American Municipal Association Congress. In his speech he said:

Our national defense posture, our Federal budget, our schools, highways, interest rates, race relations, reclamation, juvenile delinquency and the steel strike will be great issues in the 1960 election. But I would like to stress perhaps the greatest issue in a sense but the issue which is going to be talked about probably the least based on my own experience of traveling around the United States in the past year. I am asked what I think on the subject of birth control for India and what we should do in outer space, but hardly ever am I asked what we should do about the cities of the United States. I would say this is the greatest unspoken issue in the 1960 election and I think therefore we should address ourselves to it.³⁵

THE RATIONALE OF FEDERAL URBAN TRANSPORT POLICY

As the Kennedy Administration took office, the path seemed relatively clear for federal participation in urban mass transportation programs. There was still, however, no major support from the general public. Except for some highly vocal concern expressed about the loss of commuter service immediately after the passage of the Transportation Act of 1958, there had been no substantial pressure either organized or unorganized from any significant segment of the public. As a happier note, however, no major opposition group outside of Congress had formed. It might have been reasonably expected that a coalition of highway interests would have aroused themselves into opposition. However, for the most part, at that time the highway interests appeared unworried about the programs for urban mass transportation, since the

35. PROCEEDINGS, *supra* note 29, at 24.

promoters of mass transport legislation had been careful to put the bill in terms of highways and mass transport.

The opposition which did develop against the program stemmed from those who disfavored further federal involvement in local affairs, regardless of the nature of the proposed legislation. The opponents of increased federal urban action were still a strong force in Congress, although by no means a majority. Their effectiveness lay in being able to get others to join them as part of the political logrolling in which Congress indulges. Therefore, since the proposed mass transit program had no loud murmur of grassroots public support, it appeared to have little political attraction. Even to many persons in Washington who were not adverse to federal action, it still seemed that urban transportation was a local issue to be handled on the local level.

Washington was, however, in the process of reevaluating the federal approach to many urban problems. Even prior to the 1960 election there had been a rising dismay over the rapidly deteriorating urban situation in many parts of the country. It had become obvious that urban highway policy, as carried out by the federal government in the 1950's, was not a solution to all urban transport problems. Despite the vital need for urban highways and the tremendous increase in highway construction expenditures in the postwar era, the visible blight of congestion continued to increase. As the new, more urban-oriented administration took office, there was evidence of concern for the entire urban situation. Transport was only one element of a broader attack to be made on the urban problems.

Even though many federal programs had been aimed at helping cities, federal programs had actually aided in the devitalization of the city. For example, beyond their stated functions, the Federal Housing Administration and Veterans' Administration loan programs were the guardian angels of ticky-tacky suburban developments. Urban renewal projects had displaced many poor people, while the renewal project itself provided housing for only medium- and upper-income groups. The highway program did not relieve congestion; indeed, in many instances it made it worse.

THE AIMS OF FEDERAL POLICY

The objectives of federal urban transportation policy were shaped both by the short-run needs of big cities in danger of losing vital commuter railway and mass transit services and the long-run needs of providing for less chaotic development in rapidly growing metropolitan areas. While the big city mayors had looked toward the federal govern-

ment to help preserve existing services as reasonable alternatives to the private automobile, the policy of the federal government had been more comprehensive. The general aim of federal policy was to treat mass transport as an integral part of urban development.⁸⁶

The federal goals were three in number: (1) to preserve and enhance urban values; (2) to serve population at lowest cost and (3) to help shape cities. These goals were to be accomplished in a coordinated manner by achieving a balance between the use of private and public vehicles. The objectives are interesting since they treated the urban mass transportation issue in a far broader perspective than had hitherto been the case. While the old "save the commuter trains" notion can be seen within these three objectives, something larger and of a higher spirit was envisioned.

Beneath the goal of preservation and enhancement of urban values rested a realization that the central city was too often a rotting core. There is considerable truth in the comment that the metropolitan area could be compared with the doughnut—nothing in the middle and the dough all around the edges. Statistics indicated that central cities were growing financially weaker while becoming increasingly overburdened by social problems. The city had become a place to work in and to get away from.

As an objective, preservation of the city was not a completely unselfish motive. Economic interests were vitally concerned with property values. Continuing deterioration endangered the values of property located in the central city. Various federal renewal programs, coupled with transportation programs that would provide easier access to central business district property, seemed, therefore, most appealing. Retail establishments also had a vital concern since improved access to down-

36. Federal policy aims were perhaps most clearly stated by Pres. Kennedy's transportation message of 1962 which read in part:

To conserve and enhance values in existing urban areas is essential. But at least as important are steps to promote economic efficiency and livability in areas of future development. In less than 20 years we can expect well over half of our expanded population to be living in 40 great urban complexes. Many smaller places will also experience phenomenal growth. The ways that people and goods can be moved in these areas will have a major influence on their structure, on the efficiency of their economy, and on the availability for social and cultural opportunities they can offer their citizens. Our national welfare therefore requires the provision of good urban transportation, with the properly balanced use of private vehicles and modern mass transport to help shape as well as serve urban growth.

J. F. Kennedy, THE TRANSPORTATION SYSTEM OF OUR NATION, H.R. Doc. No. 384, 87th Cong. 2d Sess. 9-10 (1962) [hereinafter cited as KENNEDY].

town shopping districts by public transportation would doubtless help to boost sales.

The values to be preserved and enhanced in the urban areas are, however, not merely economic values. Social interests and needs are also to be met by the urban transportation program. If improved mass transportation would help reduce congestion and make mobility easier, communications between people and places could be greatly enhanced. Ease of movement through at least partial removal of the congestion barrier could make city life more interesting and vital.

In the shaping of cities as a goal for mass transportation policy, one can see an attempt to regain some of the lost opportunities of the New Deal. In the 1930's, however, failure of proper control by the federal government had encouraged sprawling metropolitan development and resultant fragmentation. Proper urban transportation planning, including both highways and mass transportation, and greater emphasis on comprehensive planning could help prevent further suburban sprawl. There was a very obvious need for shaping, reshaping and rationalizing development on the urban scene, and a properly geared mass transportation policy could help in such programs.

The goal of serving urban populations at the lowest cost had significant attraction. First, it had a short-range appeal in that it pointed to savings in highway investment. It soon became obvious that attractive and well-planned mass transportation systems could help relieve pressure on all levels of government for increased highway expenditures. On a long-run basis, the appeal of mass transportation was even greater. Estimates of future urban populations were most frightening. Looking ahead to the end of the twentieth century, even the most unsophisticated observer could note that near exclusive dependence upon the automobile in urban areas was unthinkable; there would simply be too many people, too many cars and too little room.

Possibly having a far greater role in shaping urban transport policy was an unpublicized shift in attitude on the part of the Bureau of the Budget. The increasing power of the Budget Bureau pervaded the policy of all federal departments and agencies. The Bureau seemed increasingly unwilling to put all of the federal government's financial power behind any one program in a given field. A mix of alternative programs, therefore, was usually sought. Much of recent federal transport policy seems to reflect this position. In any event, as the 1960's wore on it was increasingly clear that the policy of highway construction was no longer to have a monopoly in the federal funds for urban transportation.

THE HOUSING ACT OF 1961

The advent of the Kennedy Administration seemed to promise fulfillment of the aims of Senator Williams and the central city-railroad interests. Adding to the air of hope were two reports which had viewed federal aid to mass transportation in a most favorable manner. James Landis, in the so-called "Landis Report" on the federal regulatory agencies, had recommended to President Kennedy that the federal government guarantee loans for commuter railroads.³⁷ The Doyle Report, a study made for the Senate Commerce Committee, also recommended a program of federal aid. This latter study concerned itself with many aspects of federal policy toward railways and had grown out of the senatorial investigations which culminated in the passage of the Transportation Act of 1958. The panicked reaction of the eastern commuter roads had caused a discussion of urban mass transportation to be included in this report. As a means of solving the commuter problem, a loan program administered by the ICC was suggested.³⁸

The Urban Mass Transportation Bill of 1961, introduced shortly before the inauguration of President Kennedy, called for a program of loan authorization and demonstration grants. The demonstration grant idea was a new dimension that had been added to the legislative package by Senator Williams and his chief legislative assistant, ArDee Ames. To the dismay of its principal supporters, however, the reaction given the legislation by the Administration was unreceptive. The new President was burdened by many other problems, and transit seemed a minor issue. The Bay of Pigs disaster had made the Administration reluctant to put its prestige behind legislation that might not fare well in Congress. Moreover, the President was advised by a number of his closest aides that he should wait for a complete study of the urban mass transportation situation before taking an Administration position. Transit, apparently, was to be ignored by the White House. A strong and most definite Administration position, the one outlined earlier, was finally taken when urban mass transportation was given a position of considerable importance in the President's Transportation Message of April 5, 1962. However, in early 1961 it was clear that an urban mass transportation act stood virtually no chance of passage by itself. Accord-

37. J. LANDIS, REPORT ON REGULATORY AGENCIES TO THE PRESIDENT-ELECT 78 (1960).

38. SENATE COMM. ON INTERSTATE AND FOREIGN COMMERCE, SPECIAL STUDY GROUP ON TRANSPORTATION POLICY 87TH CONG., 1ST SESS., NATIONAL TRANSPORTATION POLICY 552-635 (1961).

ingly, the urban transportation program was included as a part of the omnibus housing act of 1961.³⁹

There were three primary provisions in the Housing Act of 1961 concerning urban mass transportation. First, 25 million dollars was authorized for mass transportation demonstration projects. This was to prove the most important part of the Act. Second, the Act specified that mass transportation planning should be included as an integral part of comprehensive urban planning under the § 701 program of planning grants. Finally, loans were authorized under the Act. Recognizing the difficulty of raising funds for mass transport undertakings, the Housing and Home Finance Agency was authorized to loan money at low rates where repayment was reasonably certain.⁴⁰ While a total of fifty million dollars was authorized for the loan purpose, this portion of the Act and subsequent loan programs included in mass transport legislation have been little used. Nonuse was caused by local governments and agencies which hoped eventually to receive grants that would not have to be repaid.

Urban mass transportation provisions contained in the Housing Act of 1961 were modest indeed, especially when compared to the original aims and programs of the legislation initially supported by the central city-railroad group. Only 42.5 million dollars was appropriated for loans and demonstrations. Since it was largely a demonstration program, the Act had some of the flavor of many governmental actions which are the fruits of compromise; that is, it was a matter of "doing something, but not too much." There is little doubt, however, that the legislation was a victory for the mass transportation interests.

Despite the limited funds devoted to it, the program was one that would draw attention to itself. The transit demonstrations that would be conducted, being novel in the field of public mass transportation, would naturally interest the mass media. There probably was no other way a similar amount of money could have helped arouse interest in mass transportation on a broad national scale.⁴¹ Successful results from

39. For a highly interesting account of the fortunes of the mass transportation program in the early days of the New Frontier, see DANIELSON, *supra* note 9, at 155-74.

40. Weaver, *The Federal Interest in Urban Mass Transportation*, 17 *TRAFFIC Q.* 25, 29 (1963).

41. The 1961 act alone did little to help the sagging fortunes of urban commuter railways or mass transit systems. But the question of whether people will ride transit if it is improved to some degree was answered in the affirmative by the act, partly as a result of the work of Mayor Richardson Dilworth of Philadelphia at various hearings conducted in connection with mass transportation legislation introduced before the Congress. Dilworth pointed with great pride to the success of Philadelphia's Passenger

a number of demonstration studies would be powerful ammunition in prodding the federal government to play an even larger role in the urban mass transportation situation.

THE HIGHWAY ACT OF 1962

The Highway Act of 1962, a first blush, may not seem a part of an urban mass transportation program. Yet, it is a vital portion of the overall package of legislation required for an intelligent approach to the urban transportation problem. The aim of the legislation was to fill a gap in planning which had existed for many years, and it had grown out of a realization by the federal government of the enormous impact highway construction had on cities. The Act and its planning provision may, therefore, be viewed as an example of federal efforts, however belated, to reexamine past programs which had inadvertently gone astray.

The problems of noncomprehensive planning could be solved by tying strings to federal money. Under the terms of § 9 of the 1962 Act, approval of funds for federal aid to highway programs in urban areas with populations of 50,000 or more could only be given upon a finding by the Secretary of Commerce that proposed highway projects were based on a comprehensive and continuing planning process, carried on in cooperation with state and local levels of government. In requiring comprehensive and continuing planning, the Act guaranteed that urban areas would at least give consideration to transport alternatives other than highways. As may be expected, cities were hard pressed to find talent to do their planning within the deadline time, and the Bureau of Public Roads was equally hard pressed to find qualified people to evaluate the planning programs submitted by the municipalities.⁴² Whether high standards and truly comprehensive planning, in the short run, will result from this legislation is questionable. However, the long-run benefits of such a program are undeniable. The Act permits the federal government to correct the mistakes made through misinterpretation of model planning legislation passed in the late 1920's.⁴³

Service Improvement Corp. and its city-sponsored experiments. Philadelphia's experience showed that patrons could indeed be wooed back to mass transportation.

42. The author is acquainted with a graduate city-planner who was unable to find a good job in his profession just before the Highway Act of 1962 was enacted. Shortly thereafter he had a half dozen excellent offers, including one from the Bureau of Public Roads.

43. At the direction of Herbert Hoover, then Secretary of Commerce, a nine-man committee prepared the Standard City Planning Enabling Act of 1928. The aim of this action was to insure more orderly urban development, and the 1928 act became the model adopted by most municipalities throughout the United States. "The 1928 Act

There were many weaknesses in the model legislation. The most glaring problem was that planning commissions, as the legislation was interpreted, might adopt the urban general plan either as a whole or in separate parts. As a result, plans were frequently developed in a non-comprehensive and piecemeal fashion; this obstructed the planning process more than it aided it. Eventually, planners began to quibble over zoning and other microaspects of city planning rather than devoting time and talent to overall comprehensive planning. It is hardly surprising, therefore, that there was a general failure to understand how highways could carve up a city, the proper role for urban mass transportation or how urban sprawl and suburban blight could be prevented.⁴⁴

URBAN MASS TRANSPORTATION ACT OF 1964

A followup measure was needed to complement the legislation already enacted. Specifically, capital funds were needed to provide the necessary financial transfusion for urban mass transportation. Such funds were available through the loan provisions of the 1961 Act, but this approach was open only in the neediest cases.⁴⁵ Any sanguine hopes that new legislation would soon be enacted to provide capital funds were soon dispelled. The congressional hurdle was located in the House of Representatives. With its strong rural and conservative predilections, the House was the main force which caused the urban mass transportation program to falter in the three years after 1961. Even though growing support was discernible from the smaller cities and suburban

Standard specifies as the principal duty of the City Planning Commission the preparation, adoption, and maintenance of a long-range comprehensive, general plan for the physical development of a city." T. KENT, *THE URBAN GENERAL PLAN* 33 (1964).

44. *Id.* at 40-43. The Highway Act of 1962 belatedly put some muscle behind federal pressures for intelligent planning that could have occurred as a result of New Deal programs almost thirty years earlier. Had such action been taken in the middle '30's, perhaps some of the regional sprawl and fragmentized local government might have been prevented.

45. Moreover, the Housing Act of 1961 was most specific in providing that the money not be used for capital projects. This point was noted by the HHFA Assistant Administrator in charge of the Office of Transportation:

[T]he prohibition of the use of demonstration grants for "major long-term capital improvement" has been conscientiously applied because the principal and sometimes, sole objective of some proposals was the construction of a permanent transit facility for which regular financing had proved impossible. Rentals and other recognized charges for the use of capital equipment or facilities during the term of a demonstration was, however, recognized as a proper use of funds insofar as the particular items could be shown to be essential to the attainment of project objectives. Provision for crediting the project with any remaining capital value at its conclusion has been a mandatory requirement in these cases.

Kohl, *The Federal Urban Transportation Demonstration Program*, 18 *TRAFFIC Q.* 303 (1964).

areas,⁴⁶ House opposition, along with the lack of either strong grassroots support or a well-organized group, enabled opponents of the program to stall it.

Nevertheless, in the early months of 1962 it looked as if new and far more comprehensive mass transportation legislation would soon be forthcoming. In his transportation message, President Kennedy recommended:

that the Congress authorize the first installment of a long-range program of Federal aid to our urban regions for the revitalization and needed expansion of public mass transportation . . . [through] a capital grant authorization of \$500 million to be made available over a 3-year period with \$100 million to be made available in fiscal 1963. . . .⁴⁷

Continuation of the demonstration and loan provisions of the Act of 1961 was also recommended. The President's message focused considerable attention on the need for comprehensive planning, calling for the provision in highway legislation that was soon to be a critical part of the Highway Act of 1962. Thus, in one message, the President had given a tremendous boost to the profession of land-use planning, and recommended a far stronger and larger capital grant program than supporters of mass transportation had hoped.⁴⁸ The prospects seemed good for quick passage of a mass transport bill.

Immediately following the President's message, Senator Williams introduced legislation containing a capital grant program. Subsequent congressional hearings were generally successful in demonstrating the need for federal aid and gave evidence of strong support for the measure from various urban interest groups.⁴⁹ Both the House and Senate banking committees reported the legislation favorably. Senator Frank Lausche (D.-Ohio), a major foe of the mass transportation program, insisted that since some commuters cross state lines, the Senate Commerce Committee should also hold a hearing. In September, the Senator held a one-day hearing and the Commerce Committee reported the bill without recommendation.⁵⁰ Regardless of the expected favorable Senate

46. DANIELSON, *supra* note 9 at 175-79.

47. KENNEDY, *supra* note 36, at 10. The President's recommendations were based on a program of action advocated by Secretary of Commerce Hodges and HHFA Administrator Weaver as a result of a study prepared for them by the Institute of Public Administration. See FITCH, *supra* note 6, chs. 6-7; DANIELSON, *supra* note 9, at 174-75.

48. See Altshuler, *supra* note 16, at 38-39.

49. See Altshuler, *supra* note 16, at 39-40; DANIELSON, *supra* note 9, at 177.

50. See *Hearings on S.3615 Before the Senate Comm. on Commerce*, 87th Cong. 2d

action, it soon became clear that the House Rules Committee was not going to allow the bill to reach the floor. Trapped in the Rules Committee, the Urban Mass Transportation Act of 1962 died as the 87th Congress adjourned. Despite this setback, Congress did pass a bill extending the 1961 Act for six months beyond its scheduled expiration date.⁵¹

The defeat of the 1962 Urban Mass Transportation Bill in the supposedly liberalized House Rules Committee came as a surprise, particularly after President Kennedy's strong public support for a program of greater aid to urban transit. Undaunted, Senator Williams submitted a 1963 Urban Mass Transportation Bill early in the first session of the 88th Congress. Opposition developed from Senator Lausche and others on the Surface Transportation Subcommittee. In spite of this, Williams' bill, largely intact, passed the Senate by a 52-41 vote on April 4.⁵²

Even with passage of the Senate bill, it appeared that an enlarged federal mass transport program would never succeed in the House. It was expected that the legislation would die in committee as a casualty of the "anti-urban revolt" of Southern Democrats in retaliation for the Administration's civil rights program.⁵³ The House version of the bill did remain in committee for more than a year, but the House Rules Committee was not mainly responsible for the delay. The bill was held in the Rules Committee at the behest of House Speaker John McCormack, who realized that if the bill was reported out for a vote it stood a good chance of being defeated.⁵⁴

Sess. (1962). The Senator seemed particularly intrigued by the testimony of Dr. Leon Moses of Northwestern University; *id.* at 37-51. See also Altshuler, *supra* note 16, at 41.

51. Altshuler, *supra* note 16, at 41.

52. *Id.* at 43-51.

53. *Needed: A Prompt End to the Old Luxury of Limited Thinking*, 1963 ARCHITECTURAL F. 94 (1963).

54. There was considerable political wisdom in the Speaker's action. While Pres. Johnson had supported the programs of his predecessor, civil rights was of first importance on the list of priority legislation. McCormack did not wish to jeopardize the Administration's reputation for legislative success at that point by bringing the Urban Transportation Bill to the floor of the House only to have it defeated.

In April, 1964, the Mass Transportation Bill was not on the White House list of "must" legislation. To get desired action, particularly in the House of Representatives, a strong, coordinated lobbying approach was necessary. This was the lesson learned from the defeat of a proposal for construction of a rapid transit system in the District of Columbia in 1963. Labor lobbyists in Washington were persuaded to bring pressure against Congress to defeat the 1963 bill as an anti-labor measure. There was some worry about the loss of bargaining rights and also concern that the proposed subway system would put bus drivers out of work. Labor leaders finally realized that defeat of the bill would actually cut down job opportunities. Unfortunately, it was too late to make the change of heart known to Congress, and the bill was defeated in the House. Out of this, however, supporters of metropolitan mass transportation realized the necessity of lobbying.

A pressure group was formed to push the bill. Called the Urban Passenger Transportation Association (UPTA), it represented the central city interests, organized labor (now firmly in the camp of transit), the transit industry and the railroads. Labor's active interest and membership in this group was made known to President Johnson, and by May, 1964 the mass transportation bill had found its way onto the "must" list of legislation.

The problem then became one of convincing the Speaker to bring the matter to the floor and of convincing enough representatives to vote for it. The Speaker had to be shown that there were sufficient Republican votes from northern urban centers to offset the predicted loss of Southern Democrats. The UPTA reported that 35 to forty Republicans would vote for the bill. McCormack finally moved the bill out of committee, but he was still understandably reluctant to schedule it for vote. Late in May the House Republican Policy Committee had taken a firm party stand of direct, unalterable opposition to the mass transit bill. It is a well-known fact that the Policy Committee rarely takes a stand when it fears defections from its ranks. Nevertheless, the UPTA felt it had enough support for passage and sought to convince McCormack of this.

Representative William Widnall (R.-N.J.), a most effective supporter of mass transit legislation, threatened to embarrass both Speaker McCormack and the White House. Widnall promised that he would call a press conference to indicate Republican support sufficient to pass the bill and at the same time denounce the Speaker and the White House for obstruction of the legislative procedures. To avoid any embarrassment, McCormack set the vote for June 25. The House passed the bill 212 - 189. The Senate accepted the House changes, and President Johnson signed into law the Urban Mass Transportation Act of 1964.⁵⁵

The aim of the 1964 Act, which is the cornerstone of the present federal transit program, is not only to provide aid for the improvement and development of mass transportation systems but also to encourage the planning and establishment of areawide coordinated transport. In conjunction with the planning provisions of the Highway Act of 1962, incentive is given to the planning and development of a rational

55. 49 U.S.C. § 1601-12 (1970). Brdlik, *A Legislative Miracle*, 60 METROPOLITAN MANAGEMENT, TRANS. & PLANNING, 26, 50 (1964), Burke, *The Tangled Path of a Transit Bill*, THE REPORTER, July 16, 1964.

Senator Mansfield called the Urban Mass Transportation Act of 1964 a legislative miracle because never in his memory had so many Republicans deserted the party line set by the Republican Policy Committee. Miracle or not, the Act of 1964 was a decided step forward in the overall federal program of mass transportation encouragement and support.

and integrated urban transport system combining both the private automobile and mass transportation.

There were three major portions of the 1964 Act. One portion continued the program of demonstrations originated under the Housing Act of 1961. Under the 1964 legislation, however, it became possible to initiate demonstrations on an independent basis, as well as by contract with sponsors on the local level. Furthermore, matching funds from the local area are not mandatory, although it was assumed that the two-thirds federal, one-third local contributions scheme followed under the 1961 Act would be continued. The program of low-interest loans begun under the 1961 Act was also continued under the 1964 legislation.

The most interesting segment of the Act was that involving grants of capital. Under the terms of the Act, there was both a long-run program of aid and a short-run, or emergency, program. Under the long-run program a city must satisfy the HHFA Administrator that:

the facilities and equipment for which the assistance is sought are needed for carrying out a program . . . for a unified or officially coordinated urban transportation system as a part of a comprehensive and continuing program of planned development.⁵⁶

The funds might be used for almost any capital project except the construction of public highways.⁵⁷

There were other important provisions. Persons displaced by capital improvement projects receiving grants from the federal government were able to receive payments of up to 200 dollars for purposes of relocation. Displaced business firms could receive displacement aid up to 3,000 dollars. Job protection was also provided for labor, including continuation of the rights of collective bargaining, wage security and retraining. While all grants or loans were to be made to public bodies,

56. The Secretary, on the basis of engineering studies, studies of economic feasibility, and data showing the nature and extent of expected utilization of the facilities and equipment, shall estimate what portion of the cost of a project to be assisted under section 1602 of this title cannot be reasonably financed from revenues—which portion shall hereinafter be called "net project cost."

49 U.S.C. § 1603(a) (1970).

57. The short-run program is predicated on the need to keep a jeopardized transport operation running under emergency conditions. Where the planning for the development of a unified or coordinated transport system was under way, but not yet completed, a federal grant of up to fifty per cent of the net project cost may be made. If the planning is completed within three years of the execution of the grant agreement, an additional sum is granted to bring the federal contribution up to the full two-thirds of the net project cost. Thus, planning is encouraged but not at the cost of permitting a transport system to cease operations.

private enterprise was given encouragement to participate in conjunction with public agencies. No state could receive more than 12½ per cent of the total funds disbursed. The Act also authorized the expenditure of 75 million dollars for fiscal year 1965 and 150 million dollars each year for fiscal years 1966 and 1967. Up to ten million dollars of this sum was to be available for demonstration grants the first year of the Act, and this sum was to be increased to twenty million dollars in 1965 and thirty million dollars in 1966.⁵⁸

THE AMENDMENTS OF 1966

Federal programs, particularly those in embryonic stages, are rarely left in their original state. Urban mass transportation legislation was no exception. With the addition of the capital grant program and the planning requirements of the 1964 Act, federal programs of aid and encouragement to mass transport had moved well beyond the Act of 1961. Much remained to be done, however, for if the mass transport program was out of its infancy, it still had to experience the awkwardness of adolescence.

One of the most conspicuous gaps in the program was that of funding. Despite its importance as a legislative milestone, the 1964 Act was a small program in comparison to other federal expenditures in the field of transportation. Between the passage of the Housing Act of 1961 and the last quarter of 1966, approximately 375 million dollars was spent for programs under the 1961 and 1964 Acts. During the same period, however, about 24 billion dollars was spent by the federal government on highways, airways and waterways.⁵⁹

In many cities, capital expenditures alone would not be enough. Operating deficits plagued the often meager financial resources of many municipalities. Even federal aid under the 1964 Act could not guarantee

58. 49 U.S.C. § 1603(c) & 1605(c) (1970). See also *At last: Congress Approves Transit Aid*, RAILWAY AGE, July 6, 1964, at 28-29; Smerk, *The Urban Mass Transportation Act of 1964: New Hope for American Cities*, 5 TRANSPORTATION J. 37-38 No. 2 (1965).

59. ASS'N OF AMERICAN RAILROADS, BUREAU OF RAILWAY ECONOMICS, GOVERNMENT EXPENDITURES FOR CONSTRUCTION, OPERATION, AND MAINTENANCE OF TRANSPORT FACILITIES BY AIR, HIGHWAY, AND WATERWAY AND PRIVATE EXPENDITURES FOR CONSTRUCTION, MAINTENANCE OF WAY, AND TAXES OF RAILROAD FACILITIES 4 (1965). The Institute for Public Administration has estimated that about ten billion dollars will be required for mass transport investment by 1975. The prediction is probably well on the modest side; New York City alone could utilize two billion dollars for new construction and improvement of existing facilities in the next ten years. About thirty billion dollars should be spent on urban mass transportation in the 1970's to bring transit operations all over the nation up to a reasonable level of quality. See FITCH, *supra* note 6, at 55-57; *Mass Transport: A \$10 Billion Market*, RAILWAY AGE, Feb. 18, 1963, at 25.

any solution to that problem. Indeed, some cities were so poor that they could not match federal grants for demonstration or capital purposes, even after the grants were approved by the Department of Housing and Urban Development (HUD).⁶⁰

Another financial problem that grew out of the 1964 Act was the need to provide the sort of plans and cost estimates necessary to qualify for a grant of capital. A city seeking funds to buy new buses might not run into much difficulty with engineering expense. However, for a large scale project, especially one concerning rapid transit or a commuter railway, many thousands of dollars are required to perform the engineering and planning studies needed to qualify for a grant. No federal aid was available for such purposes. Furthermore, there was a need for more research. Although the demonstration program had provided a valuable tool for increasing knowledge about mass transport, the program could hardly be considered a systematic research program. Nothing approaching the development of a complete "package" of high-caliber mass transport equipment, practices or systems had been developed.

Another appalling gap in the American transport system had become painfully clear at approximately the same time the urban transportation crisis came to a head. As intercity travel rapidly expanded in the post-World War II period, the "American transportation system" was found to be no system at all, but rather a mixture of competing and uncoordinated private and public carriers.⁶¹

Still another shortcoming was in the caliber of management of mass transport systems. One of the major mass transportation problems was the need to sell mass transport service to the public. If mass transit was to play a larger role in urban areas, the service offered would have to be marketed effectively. The many years of decline in the industry had made it attractive neither to talented and experienced business managers nor to bright, young, college-trained men. Professional management, with the broad base of business skills needed to operate successfully in the mid-twentieth century, was sorely lacking in the transit industry.

The year for meeting these problems was 1966. During that year the authorization of funds under the Act of 1964 became depleted. Interest in urban transportation, however, had been stirred on several

60. On June 30, 1964, 185,353 dollars was approved for use by Syracuse, New York, provided a matching sum of 92,647 dollars was forthcoming. Syracuse could not find the money, and the demonstration was cancelled in January, 1965.

61. See Herbert, *Transporting People*, INTERNATIONAL SCIENCE & TECHNOLOGY, Oct. 1965, at 30-42.

issues early in the second session of the 89th Congress. For example, on January 20, Senator Williams introduced a bill⁶² to authorize certain grants to assure adequate commuter service in urban areas. It was aimed at providing federal funds to defray half the cost of deficit operations. At the same time, he also introduced a bill⁶³ relating to the discontinuation or change in certain services performed by railroads, in order to require the ICC to give full consideration to all financial assistance available before permitting any such discontinuation or change. Somewhat earlier, another bill had been introduced by Senator Joseph Tydings (D.-Md.) that concentrated on the need for more research and development. The basis of this proposed legislation was that ten million dollars be made available annually from the federal government to develop new urban transport technology.⁶⁴

The heart of the changes finally adopted in 1966 was to be found in legislation introduced by Senator Williams.⁶⁵ As reported, this bill called for an increase in the amount of money made available each year from 150 million dollars to 225 million dollars. It also granted aid for the planning, engineering and designing of urban mass transport systems, training programs to help upgrade transport management and grants to college and other nonprofit institutions for research purposes. In addition, the legislation directed HUD to research new transport systems. The measure introduced by Senator Williams to allow the federal government to cover up to fifty per cent of the operating deficits of transport agencies was killed in committee.⁶⁶

In the House, the Committee on Banking and Currency reported favorably on H.R. 14810. This bill was similar in content to the legislation in the Senate except that it had no provisions for management training programs and called for expenditure of only 175 million dollars annually for mass transportation purposes.⁶⁷ However, the recommended House bill went far beyond the Senate version in one important financial matter. It provided that beginning in fiscal year 1968, 175 million dollars would be authorized "for each fiscal year thereafter," thus making the federal mass transportation activity a permanently funded program.⁶⁸ The certainty that the federal mass transport assistance programs would continue gave stability to the efforts of HUD. This

62. S.2804, 89th Cong., 2d Sess. (1966).

63. S.2805, 89th Cong., 2d Sess. (1966).

64. S.2599, 89th Cong., 1st Sess. (1965).

65. S.3700, 89th Cong., 2d Sess. (1966).

66. S. REP. No. 1436, 89th Cong., 2d Sess. (1966).

67. See H.R. REP. No. 1487, 89th Cong., 2d Sess. (1966).

68. *Id.* at 10.

certainty would also relieve HUD of the need to return periodically to Congress in order to justify the continuance of the program. It would also "give assurance that a locality starting on . . . expensive, long-term commitments for new or improved transit systems can count on continuing Federal assistance."⁶⁹

The debate that took place in both bodies of Congress was fairly extensive, but the major items for discussion centered around the amount of money to be spent rather than the issue of whether or not there was a federal role to be played in the field of urban transportation. This change in attitude was to have important implications in the years following 1966.

In the Senate, Senator John Tower (R.-Tex.) pushed for economy and introduced an amendment to cut spending from the 225 million dollars recommended by the Committee on Banking and Currency to 150 million dollars a year. The cost of the war in Vietnam and the urging of President Johnson that government keep its spending down were the reasons most often invoked.⁷⁰ The Senate voted in favor of the bill 47 - 34. Senator Tower won the day, however, and authorization for expenditures was reduced to 150 million dollars a year for the next two fiscal years, thus continuing the practice of low budgets for mass transportation.

There was remarkably little general opposition to the bill that was debated in the House. Many rose to support the legislation, although Representative Paul Fino (R.-N.Y.) was unsuccessful in getting either federal funds to pay interest on bonds or relaxation of the 12½ per cent limit on funds to any given state. The big defeat came in authorizing funds for the program. Far from providing 175 million dollars annually, the bill was amended to provide 175 million dollars for one year only. The amended bill, however, passed the House by 235 - 127, and was sent on to a joint Senate-House conference committee to iron out the differences.⁷¹ President Johnson signed the resulting measure into law on September 8, 1966.

The legislation as finally enacted provided for 150 million dollars for each of the fiscal years 1967-1969. The new law provided for increased sums to be devoted to the demonstration grant program—forty million dollars for the fiscal year commencing July 1, 1967 and fifty million dollars for the next fiscal year. In addition, funds were made available for the planning, engineering and designing of urban mass

69. *Id.* at 5.

70. 112 CONG. REC. 18576-77 (1966).

71. *See* 112 CONG. REC. 19560-91 (1966).

transportation projects. Section 9 of the amended Urban Mass Transportation Act reads, in part:

Activities assisted under this section may include (1) studies related to management, operations, capital requirements, and economic feasibility; (2) preparation of engineering and architectural surveys, plans, and specifications; and (3) other similar or related activities preliminary and in preparation for the construction, acquisition, or improved operation of mass transportation systems, facilities, and equipment.⁷²

In addition to the engineering money made available, funds were also provided for management training programs. Under the amendment to § 10, federal money up to 1½ million dollars a year was made available for management training purposes. This was to be awarded in a maximum of 100 fellowships annually, not exceeding 12,000 dollars each. Like so many mass transport programs, the management training program was a much needed undertaking, but the sum made available was not commensurate with the need.

In a new program under § 11, three million dollars a year was made available in grants to public and private nonprofit institutions of higher learning to conduct comprehensive research in the problems of urban transportation. Not only was research to be carried out, but persons could also be trained to research or carry on managerial activities with operating companies. A final provision of the 1966 amendments directed the Secretary of HUD, the agency administering the urban mass transportation program, to consult with the Secretary of Commerce and thereafter to undertake a project to study and prepare, develop and demonstrate new systems of urban transportation. Encouragement was given in this section to the investigation of more exotic forms of transportation. The New System research program was the device through which this was to be done.

The New Systems program was fostered by Representative Henry Reuss (D.-Wis.) who felt that the demonstration grants provided for in the 1964 Act did not meet the needs of the urban transportation problem. While he felt that the demonstrations had been useful, he did not think they had fully exhausted the broad range of technical solutions to urban transit problems.⁷³ The Johnson Administration was indifferent to such a program of research, and the representatives of urban transportation

72. 49 U.S.C. § 1607(a) (1970).

73. D. LAWRENCE, *THE POLITICS OF INNOVATION IN URBAN MASS TRANSPORTATION POLICYMAKING: THE NEW SYSTEMS EXAMPLE* 3-4 (1970).

interest groups failed initially to see any need for federal leadership in encouraging research of a more sophisticated nature.⁷⁴ Reuss introduced the New Systems idea as an amendment to the Administration's transportation bill while the bill was under consideration in an executive session of the House Banking and Currency Committee. The Reuss amendment gained support and was included in the final version of the bill as it was released from committee. In the Senate, Senator Tydings and nine others introduced similar legislation.⁷⁵

HUD was not prepared to deal with the New Systems research program. It had almost no staff to devote to the activity and, since HUD officials became aware of the program only three months before the bill passed, they had made no procedural plans to conduct such a study. The task, therefore, fell to the Assistant Secretary for Metropolitan Development, Charles Haar, to devise a way to conduct the study.

Haar's philosophy on how to affect innovation was to acquire a good number of bright people, give each of them a problem to solve, keep them isolated from each other, and then evaluate the many forthcoming solutions.⁷⁶

Haar felt that aerospace, engineering and consulting firms had the proper expertise to conduct the work. Requests for proposals were sent to interested industrial firms, universities, research institutes and other potential sources. Seventeen contractors were finally selected early in 1967.⁷⁷ Because of Haar's personal bias, most of the firms chosen had a definite hardware orientation. Nevertheless, many of the contractors, in their final reports, recognized the institutional problems involved.⁷⁸

Events in mass transport programs were plentiful in 1967. Basically this was due to the New Systems program. For the first time the Urban Transportation Administration undertook research projects of a future-oriented nature for the purpose of determining the type of transportation systems that were either possible or needed. The research focused on three periods: the immediate future (up to three years), fifteen to twenty years in the future and up to the turn of the century.⁷⁹ While the caliber of research work was high in some cases and imagina-

74. *Id.* at 7-8, 10-11.

75. *Id.* at 12, 14-16.

76. *Id.* at 21.

77. *Id.* at 22-25.

78. *Id.* at 25-34.

79. The findings from the studies were summarized in DEP'T OF HOUSING & URBAN DEVELOPMENT, TOMORROW'S TRANSPORTATION: NEW SYSTEMS FOR THE URBAN FUTURE (1968).

tive in others, the projects carried out had little value for cities currently faced with mobility problems. The immediate problem of the hard-pressed cities was money, and the anemic state of the budget for mass transit provided little encouragement. To many observers, however, it seemed foolish to study future systems when there were insufficient funds to provide aid for existing systems.⁸⁰

Another event in 1967 had portent for the future of mass transportation programs. On April 1 the new Department of Transportation (DOT) became a Cabinet-level agency of the federal government. In passing the Act establishing DOT⁸¹ Congress ordered the secretaries of HUD and DOT to study the question of whether the mass transportation program should be moved to DOT. Organizing the new department took time, but by early 1968 it was clear that DOT was highly interested in taking over the mass transportation programs.

Within the federal establishment, it was clear that there was some disillusionment with the handling of the mass transportation programs within HUD. The Bureau of the Budget was apparently disappointed at the relatively slow progress that was being made, not only in carrying out substantial improvements in mass transportation, but also in working efficiently and diplomatically with Congress to secure more funds for the programs.⁸² Organizationally, the great difficulty with HUD was that the mass transit program was buried within the structure of that department, coming under the Office of Metropolitan Development. High level administrators in HUD appeared far more concerned with the larger problems of that particular section of the agency. It was felt by many with an interest in mass transportation that relatively short shrift was being given the transit programs. Unfortunately, Assistant Secretary Haar, who headed the Office, had difficulties in building and maintaining a strong relationship with Congress, a relationship that was critical in getting the necessary funding for any of the programs. The sad fact

80. A sample of the adverse criticism may be found in the paper by Sen. Gordon Allott, *Urban Transit: Paper or Progress*, delivered at the Third International Conference on Urban Transportation, Pittsburgh, Pa., in 1968 (reprinted by the WABCO Mass Transit Center, Westinghouse Air Brake Co., Pittsburgh, Pa.).

81. 49 U.S.C. § 1651 *et. seq.* (1970).

82. Among mass transportation advocates, particularly the big city interests, unhappiness and concern arose over the fact that no major advance had been made in the funding for capital programs. Part of the problem was undoubtedly that HUD was very closely identified with the Great Society programs of the Johnson administration, and these programs had fallen on hard times. The mass transit programs could hardly avoid being tarred with the same brush as the rest of HUD.

was that the Urban Transportation Administration was poorly funded as well as dreadfully understaffed.⁸³

On the other hand, DOT was not in trouble insofar as the Great Society programs or the general debacle of the latter part of the Johnson Administration was concerned. Indeed, for the first year or so, it is fair to say that DOT was in the honeymoon period where experimentation and flexibility were still possible. This was not true with HUD, which had inherited many long standing agencies which had lost much glamour in the eyes of a Congress increasingly cynical about the effectiveness of HUD's activities.

Alan Boyd, the first Secretary of DOT, indicated to a House committee that if a shift of the transit programs to DOT was carried out, the urban transportation agency would be placed on a high level within the DOT organization. Indeed, it would be on an equal footing with the Federal Highway Administration and the Federal Railway Administration and would, thus, move up a number of steps in the pecking order for both the ear and the influence of the Secretary.

President Johnson announced in early 1968 that the Urban Transportation Administration would be switched from HUD to DOT.⁸⁴ Shortly thereafter, the report of the study conducted by the secretaries of HUD and DOT practically decided the matter, stating:

We therefore commend that there be transferred to the Secretary of Transportation such functions and authorities as he may need to provide effective leadership in urban transportation matters. We also recommend that the Department of Housing and Urban Development intensify its efforts in promoting comprehensive planning, including comprehensive transportation planning, and that the two Departments work closely together in developing the standards, criteria, rules, regulations, or procedures that are needed to assure that transportation will be fully related to urban development goals.⁸⁵

The Senate did not hold hearings on the question. In the House hearings

83. As an example, the Urban Transportation Administration had run out of travel money in January, 1968, six months before the new fiscal year would bring in more administrative funds. The two-man staff could carry out surveillance of programs and projects only by letter or telephone.

84. REORGANIZATION PLAN No. 2, 1968, FOR TRANSPORTATION, H.R. Doc. No. 262, 90th Cong., 2d Sess. (1968).

85. REPORT TO THE PRESIDENT ON URBAN TRANSPORTATION ORGANIZATION BY THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND THE DEPARTMENT OF TRANSPORTATION, H.R. Doc. No. 281, 90th Cong., 2d Sess. 4 (1968).

there was much assurance given by Boyd and HUD officials that the two departments would work very closely together.⁸⁶

It was clear that interested and influential members of Congress had sincere intentions that the mass transportation program was not to become overwhelmed by highway backers in DOT. According to the agreement between the HUD and DOT secretaries, HUD was to continue to be involved in parts of some programs, particularly the research and demonstration programs. The capital grant program was to move to DOT; however, the approval of the required comprehensive planning remained in the hands of HUD.⁸⁷ The final result was that HUD went quietly out of the transit business. For a time it retained oversight of a few projects which had been started under its jurisdiction. However, for practical purposes, after 1968 HUD had relatively little to do with mass transportation.

In the meantime, however, the mass transportation programs had bogged down because of the uncertainty created by the agency change-over. Administrators were reluctant to make important decisions on most matters because of the proposed transfer of departments. Even after it was assured that the switchover would take place, there was still delay until the move was accomplished. The announcement by President Johnson that he would not run in 1968 also raised the specter of a possible change in administration. Adding to the slowdown was a physical move into the new DOT building which was finally ready for occupancy in September, 1968. Finally, the election of Richard Nixon made lame ducks of Johnson Administration officials. It is fair to say that insofar as real progress in mass transportation programs was concerned, 1968 was a period of slowdown.

THE ACT OF 1970

Within a few months of taking office, the Nixon Administration

86. *Hearing Before a Subcomm. of the House Comm. on Government Operations; Reorganization Plan No. 2 of 1968 (Urban Mass Transportation)*, 90th Cong., 2d Sess. at 14-17 (1968). The major question before the House committee was whether DOT would fully realize the role that transportation plays in urban development. In all honesty, because of its over-all mandate, HUD would be expected to be far more sensitive to the issues of urban development but in the final analysis, brilliant lobbying convinced key senators and congressmen that DOT was a better place for the mass transportation programs than HUD.

87. *Agreement between the Secretary of the Department of Housing and Urban Development and the Secretary of the Department of Transportation*. (This is a mimeographed document signed by the Secretary of Housing and Urban Development, Robert Weaver, on September 9, 1968, and by Transportation Secretary Alan Boyd on September 10, 1968.) For commentary on the agreement, see *On the Washington Scene*, METROPOLITAN Nov./Dec. 1968, at 28, 30.

had a chance to evaluate what it had inherited. Looking at the Urban Mass Transportation Administration, as the agency was named after it had been transferred from HUD, it was apparent that UMTA was undermanned. For example, although it was placed on the same organizational level in DOT as the Federal Highway Administration, which had 40,000 employees, UMTA had a total of only 58 staff people. There was no question that most of the staff was highly dedicated; however, there were not enough people even to administer the programs and projects UMTA had in hand. Even though the level of expenditures by UMTA was not high in comparison to other federal agencies, on a per man basis it averaged one of the highest ratios of money to manpower in the federal government. The ordinary routine of overseeing projects already begun made it difficult to evaluate the new proposals which came in.

In early 1969 there seemed to be no strong lobbying voice for the mass transportation program. The main constituency of the UMTA programs, the urban transportation industry, was relatively ineffective as a lobbying group with Congress. Part of the problem was a dichotomy within the industry. Those interested in rail commuter and rapid transit operation had relatively little to do with the American Transit Association, which largely represented the bus interests. Indeed, there had been some concern earlier that the latter organization's policy did not fully reflect the needs of the major cities which contained rail mass transportation.

Within the Institute for Rapid Transit, a number of the railroads with commuter operations seemed to feel little common interest with rapid transit operators, preferring to work through the Association of American Railroads. All groups attempted to carry out lobbying activities, but they were relatively ineffective separately. Adding to the problem, city officials had become used to working with HUD and its predecessor agencies over the years on a variety of urban problems; they now had to become accustomed to working with a new department.

Even though the situation appeared unsettled during and immediately after the changeover in administrations, a most encouraging position was taken by President Nixon on the mass transportation issue. Both the President and his Secretary of Transportation, John Volpe, took a strong stand on giving priority treatment to urban mass transportation problems in the first session of Congress under the new Administration. What made such a position encouraging was the fact that the mass transportation program was often viewed as a child of the Democratic Party.

In making mass transportation into an issue which could garner substantial congressional support, there were a number of inherent difficulties. In the minds of many legislators the mass transportation activities of the federal government were still tarnished by the Great Society debacle. Federal mass transportation programs had never been wildly popular in Congress. The programs appeared to lack glamour and had not provided the sort of image that would allow legislators to support them without suffering within their constituencies. An observer in early 1969 would be accurate in stating that mass transit was a "safe" issue only for a senator from a state with one or more major urban centers or to a representative from a congressional district in a large urban area.

Counteracting the image of mass transit as primarily a big city affair was the steady failure of private mass transit firms. The growing inflation of the late 1960's was a severe blow to an industry that was relatively labor intensive. Labor costs rose sharply as new contracts with the various unions were made. The cost of equipment and supplies also rose sharply. Marginal private operators all over the nation began to fail. An increasing number of cities found that they would have to take over their transit systems if service was to continue. Pressure began to mount on congressmen to augment the mass transit programs.

The most serious problem, as far as cities were concerned, was that future funding of the mass transportation program was uncertain. This made capital projects particularly unpopular at the local level. By 1969 a number of urban areas that had received technical studies grants were ready to give serious consideration to the construction or extension of rapid transit systems. Without the certainty of capital grants in the future, it was impossible to move ahead.

A means of remedying the problems of long-range financing was contained in bills introduced into Congress in early 1969. The bill in the Senate was introduced by Senator Williams and bills in the House were introduced by Representatives Wright Patman (D.-Tex.), William Barrett (D.-Pa.), Edward Koch (D.-N.Y.) and William Moorhead (D.-Pa.). All of these bills called for the use of trust fund financing, similar to the highway trust fund, in order to provide sustained support for transit programs. The strength of the trust fund approach is that the money is provided regularly, thereby negating the need for Congress to use the general fund for appropriations. A possible source of trust fund money was the excise tax on new automobiles. This money did not

go into the highway trust fund, and utilizing it did not seem likely to anger the highway interests.⁸⁸

Through much of his commentary on mass transportation in the Spring and early Summer of 1969, it became clear that Secretary Volpe, who apparently felt he was voicing the thoughts of the Administration, supported the use of a trust fund to help finance the federal transit system. Although highway interests greeted this with dismay at first, the possibility of using the excise tax on automobiles, rather than the money of the highway trust fund, allayed their anxiety. At this point things began to look better for a greatly expanded mass transportation program. A setback came, however, in August, 1969 when President Nixon proposed a ten billion dollar program in mass transportation over a twelve-year period, but at the same time made it perfectly clear that he had no intention of having the transit programs funded through a trust fund, at least in the near future. Since the Bureau of the Budget had taken a dim view of the transit trust fund approach, the idea was dead.⁸⁹

At about this time, a coalition of interest groups began to form. The catalytic force was a combination of the Conference of Mayors and the National League of Cities. The coalition initially was composed of the Mayors' Conference, the League, the Institute for Rapid Transit, the American Transit Association and the railroads.

In the Fall of 1969, the urban transportation interest group made it clear to the highway lobby that they too had an important stake in supporting a well-financed transit program. The critical point to the highway interests was the fact that the highway trust fund was soon to be revalued by Congress. Big city mayors let it be known through the coalition that they would take a highly critical view of continuation of the highway trust fund and the steady flow of money to the highway program if the highway interests did not back the mass transportation program. Assured that the highway trust fund would not be tampered with for transit purposes, the highway interests joined the transit bandwagon.⁹⁰

88. Sen. Williams' bill was S. 1032, which in an amended version eventually became the Mass Transportation Act of 1970. See *PASSENGER TRANSPORT*, Feb. 21, 1969; *PASSENGER TRANSPORT*, Mar. 21, 1969, for comment on the introduction of the legislation.

89. See *PASSENGER TRANSPORT*, Aug. 15, 1969, at 1; *METROPOLITAN*, Sept./Oct., 1969, at 36-38.

90. The highwaymen were wise to sacrifice at the time in return for support in the future. Many mayors and public officials had become disillusioned with the highway program, and citizens were voicing displeasure with the practice of ramming highways through residential areas or places of historic interest. The Bureau of the Budget felt that the Highway Trust Fund should be abolished, or at least altered to allow the funds

The problem of guaranteed funding remained, even though general support for mass transit was building. The Nixon program called for authorization of 3.1 billion dollars to begin with, but this did not mean a binding obligation. Congress still would need to make annual appropriations, and the long-range projects would still suffer from uncertainty.⁹¹ The breakthrough came when Senator Williams introduced an amendment to overcome the objections to the short-term nature of the annual appropriations process and yet not depart from the Administration's program.⁹²

Williams' amendment provided, in part:

To finance the programs and activities, including administrative costs, under this act, the Secretary is authorized to incur obligations in the form of grant agreements or otherwise in amounts aggregating not to exceed \$3,100,000,000.

This amount shall become available for obligation upon the effective date of this subsection and shall remain available until obligated.

There are authorized to be appropriated for liquidation of the obligations incurred under this subsection not to exceed \$80,000,000 prior to July 1, 1971, which amount may be increased to not to exceed an aggregate of \$310,000,000 prior to July 1, 1972, not to exceed an aggregate of \$710,000,000 prior to July 1, 1973; not to exceed an aggregate of \$1,260,000,000 prior to July 1, 1974; not to exceed an aggregate of \$3,100,000,000 thereafter.⁹³

Although work still remained in getting the new mass transportation legislation through Congress, Williams' amendment was the break-

collected to be used more broadly. This attitude was echoed, in part, by some members of Congress who were unhappy at the relative loss of control over money when the trust fund method was used. In short, seeing a fight ahead on the extension of their trust fund, the highway people wanted the support of the urban constituency. See *On the Washington Scene*, METROPOLITAN, Sept./Oct., 1969, at 36.

91. See *Villarreal Answers Questions About Nixon's Public Transportation Bill*, PASSENGER TRANSPORT, Sept. 12, 1969, at 1.

92. See *Williams Named Man of the Year*, PASSENGER TRANSPORT, Oct. 10, 1969, at 1-2.

93. *On the Washington Scene*, METROPOLITAN, Jan./Feb., 1970, at 29. This was changed in the final bill to read as follows:

Not to exceed \$80,000,000 prior to July 1, 1971, which amount may be increased to not to exceed an aggregate of \$310,000,000 prior to July 1, 1972, not to exceed an aggregate of \$710,000,000 prior to July 1, 1973, not to exceed an aggregate of \$1,260,000,000 prior to July 1, 1974, not to exceed an aggregate of \$1,860,000,000 prior to July 1, 1975, and not to exceed an aggregate of \$3,100,000,000, thereafter.

H.R. 18185, 91st Cong., 2d Sess. § 4c (1970).

through. The next step was strengthening the coalition, carefully dealing with key congressmen and putting together effective testimony to be heard by the appropriate committees.⁹⁴

Meanwhile, the coalition was doing its work. It even began to convince conservative legislators without big city constituencies. In lobby effort and committee testimony it was pointed out repeatedly that the mass transportation programs benefited not only large cities but also the small towns in states with large nonurban populations. Evidencing this value to smaller cities was the dispersion of funds through the capital grant program. While the demonstration grants had tended to be concentrated in the larger cities on the East and West coasts, the capital grants and, to some extent, the technical study grants, had been well distributed around the country.

Furthermore, the transit program was not only generally beneficial but also fulfilled certain welfare needs. For instance, a congressman could claim to part of his constituents that the mass transportation programs would take important steps in relieving highway congestion so that his constituents could drive more easily. On the other hand, he could also claim to low-income minority groups that improvements in mass transportation would be highly beneficial to them by providing the mobility necessary to reach jobs, places of medical care and so forth. In a very real sense, backing transit could be construed as being all things to all people.⁹⁵

The work of the coalition began to succeed. The Senate passed the bill with Williams' amendment by an 83 - 4 vote in February, 1970. During the spring and summer of 1970 the coalition made a concerted drive in the House. In September, the House passed the transit bill by a vote of 327 - 16, and President Nixon signed the bill into law in October. Without doubt a major victory was achieved for the cause of urban mass transportation.⁹⁶

94. Difficulties arose when the committee jurisdiction of the bills was questioned. Transit legislation had always fallen to the House and Senate Committees on Banking and Currency, which traditionally dealt with HUD matters. Although the mass transportation programs had been shifted to DOT, the Banking and Currency committees maintained that they still had jurisdiction. The House Interstate and Foreign Commerce Committee and the Senate Commerce Committee, which have jurisdiction over DOT legislation, insisted that they should handle the transit programs. Both Banking and Currency Committees held many firm supporters of transit legislation and to lose their support on transit matters might raise serious difficulties. For the time being, at least, the committee jurisdiction was not changed. What will happen in the future remains to be seen. See *On the Washington Scene*, METROPOLITAN, Nov./Dec., 1969, at 44.

95. See "*Damnedest Coalition*" *Fights for Transit Aid Bill Passage*, PASSENGER TRANSPORT, July 3, 1970, at 4-5.

96. See *Senate Passes Transit Aid Bill*, PASSENGER TRANSPORT, Feb. 6, 1970, at

CONCLUSION

Some of the speeches made in the House on the occasion of the passage of the 1970 Act reflect the attitude of Congress. One of the clearest statements of the congressional attitude toward transit came from Representative Patman, who said:

The transit industry has been the victim of the American desire for the automobile so the public transportation has not received much new capital and is now operating with old equipment, old ideas, and, all too often, uninspired management operating on the premise that their primary goal is to minimize losses. . .

In view of the apparent local nature of the problems, some people might wonder why the Federal Government should undertake the vast responsibility of assisting communities in the development of their public transportation service. The first and most significant reason is the Federal interest in keeping the cities of this country healthy . . . it is not only fair but essential that we assist the cities in financing needed public transportation service.

A second and perhaps less obvious reason is the fundamental federal interest in building up this local transportation link which will enable other transportation modes to work more effectively . . .⁹⁷

Clearly in one of the strange twists of politics, mass transportation had become a safe issue. Supporting transit helped everyone. Interests usually considered as competing with transit, such as the highway lobby, came to realize that their interests, too, were furthered by the mass transportation issue. The highway interests learned that they had to lend their support or lose the vital backing of powerful, big city politicians, and even small city politicians, in getting the highway trust fund renewed.

After almost ten years, the mass transportation programs of the United States Government finally received the kind of funding necessary to do an efficient job. However, the sums involved are still small considering the magnitude of the task. Furthermore, the transit trust fund will probably become an issue again. The success of the trust fund, and

1, 6; *Bill Passes*, PASSENGER TRANSPORT, Oct. 2, 1970, at 1-7, 10-12; *President Nixon Signs Transit Aid Bill*, PASSENGER TRANSPORT, Oct. 16, 1970, at 1.

97. 116 CONG. REC. 9349 (1970).

of all future transit programs, depends primarily on maintaining the coalition that worked so well in 1969 and 1970.

There are some who doubt whether the many segments of our society can work together. Only the self-deceived can deny that the republic is suffering from internal problems and disaffections unique since the Civil War. One thing is certain, however. Much of the dissension is a product of urbanization carried out in a manner which is debilitating and demoralizing. If the nation's problems are focused on its cities, they are also likely to be solved there. The shot in the arm given mass transportation in 1970 should help make the process of providing livable cities a little easier.