Public Transit New Starts Program: Issues and Options for Congress

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Summary

The New Starts program provides federal funds to public transit agencies on a largely competitive basis for the construction of new fixed-guideway transit systems and the expansion of existing fixed-guideway systems. New Starts has funded the development of bus rapid transit (BRT) and ferries, as these are eligible under the definition of fixed-guideway, but the vast majority of funding has gone to transit rail systems. Partly as a result of federal support, rail transit route-mileage in the United States almost doubled between 1985 and 2008, and rail transit passenger trips and passenger miles grew by 66% and 73%, respectively.

The federal transit program, of which New Starts is a part, is authorized by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA) (P.L. 109-59). Since SAFETEA expired on September 30, 2009, the program has operated under a series of authorization extensions. The program underwent several significant changes in SAFETEA, and a long-term reauthorization of the surface transportation program provides a major opportunity for Congress to make more changes.

Four of the most important issues that might arise in the reauthorization debate are:

- The amount of funding authorized for New Starts projects. The American Public Transportation Association (APTA), for instance, recommends increasing the program from an average of about $1.5 billion per year, as authorized by SAFETEA, to an average of $3.5 billion per year. Other policy analysts advocate shrinking federal government support for transit, particularly expensive new rail systems. Another option is to redirect New Starts funding to rehabilitating existing transit rail systems.
- The types of projects favored within the New Starts program. Some advocate a continuation of building major commuter, heavy (subway), and light rail transit systems and extensions, while others favor more emphasis on cheaper, but slower, streetcar projects, and still others favor bus and bus rapid transit (BRT).
- The New Starts approval process. Several proposals are pending to simplify the approval process or to change the way projects are rated.
- Encouragement of more private sector participation in New Starts projects. Formation of public-private partnerships (PPPs) might increase investment in rail transit, but attracting private money may require simplification of the approval process.

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Introduction

The New Starts program provides federal funds to public transit agencies on a largely competitive basis for the construction of new fixed-guideway transit systems and the expansion of existing fixed-guideway systems (49 U.S.C. §5309).[1] New Starts has funded the development of bus rapid transit (BRT) and ferries, as these are eligible under the definition of fixed-guideway, but the vast majority of funding has gone to transit rail systems. The three main types of transit rail are subway/elevated rail (heavy rail), light rail, and commuter rail. With federal support, a number of cities, such as Charlotte, Denver, Minneapolis, and Salt Lake City, have opened entirely new transit rail systems, and many others have added to existing systems. Between 1985 and 2008, consequently, rail transit route-mileage almost doubled, with light rail mileage more than tripling, commuter rail mileage doubling, and subway mileage growing by 25%. Transit rail systems now provide about 43% of unlinked public transit trips, with most of the rest, about 53%, provided by bus.[2] Public transit, as defined in federal law, does not include transportation by school bus, intercity bus, or intercity passenger rail (Amtrak).

The New Starts program is one element of the federal transit program that is administered by the Federal Transit Administration (FTA) within the Department of Transportation. The federal transit program is authorized by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA) (P.L. 109-59). Since SAFETEA expired on September 30, 2009, the program has operated under a series of authorization extensions. For example, the program was extended through December 31, 2010, under the Hiring Incentives to Restore Employment (HIRE) Act (P.L. 111-147). During the five years of SAFETEA (FY2005 through FY2009), the New Starts Program accounted for about 18% of authorized transit funding. Other major funding programs are the Urbanized Area Formula Program (43% of funding in SAFETEA), the Fixed-Guideway (Rail) Modernization program (16%), and the Bus and Bus-Related Facilities Capital program (9%). The remaining 15% of funding authorized goes for several other smaller programs, state and metropolitan planning, research, and FTA operations.

New Starts grants tend to be relatively large, and securing funding through the competitive grant making process often determines whether a project moves forward. This is a major reason for the great demand nationwide for New Starts monies. Moreover, the New Starts program, probably more than any other federal transit program, has implications for the future of transit and transit policy. Rail transit systems, more so than buses, are typically very long-lived assets that require major future financial commitments for operation and maintenance.

The New Starts program underwent several significant changes in SAFETEA, and a long-term reauthorization of the surface transportation program provides a major opportunity for Congress to consider more changes. This report discuses major issues that Congress may consider in a long-term reauthorization. These include the size of the overall program and how those funds are

[1] In federal law "fixed-guideway" is defined as a public transportation facility using and occupying a separate right-of-way or rail for the exclusive use of public transportation and other high occupancy vehicles; or using a fixed catenary system and a right-of-way usable by other forms of transportation (49 U.S.C. §5302(a)(4)).

[2] U.S. Department of Transportation, Research and Innovative Technology Administration, Bureau of Transportation Statistics, *National Transportation Statistics, 2010*, Washington, DC, table 1-1, http://www.bts.gov/publications/national_transportation_statistics; American Public Transportation Association, *Public Transportation Fact Book 2009* (Washington, DC, 2009), tables 5 and 28, http://www.apta.com/gap/policyresearch/Documents/APTA_2009_Fact_Book.pdf.

distributed in terms of project size and the required local match; the types of transit modes that are eligible and favored within the program; the New Starts approval process, including the way in which projects are evaluated and rated for funding; and private sector participation in New Starts projects. It concludes with some thoughts on the longer-term relevance of New Starts for the future of public transit.

New Starts Program

Since the enactment of SAFETEA, New Starts has been divided into two parts, one for smaller initiatives and one for larger projects. Beginning in FY2007, SAFETEA reserved $200 million per year of the overall New Starts program authorization for smaller projects, those costing $250 million or less in total and seeking $75 million or less in federal funding. These projects are known as Small Starts. The rest of the funding authorized over the five-year life of SAFETEA, about $7.4 billion of the overall $8 billion for FY2005 through FY2009, was for major New Starts projects.

Federal funding for major New Starts projects is typically committed in a Full Funding Grant Agreement (FFGA), usually a multi-year agreement between the federal government and a transit agency. An FFGA establishes the terms and conditions for federal financial participation, including the maximum amount of federal funding being committed.[3] To obtain an FFGA, a project must be authorized in law, and a project sponsor must pass through a series of steps that make up the New Starts approval process (**Figure 1**).

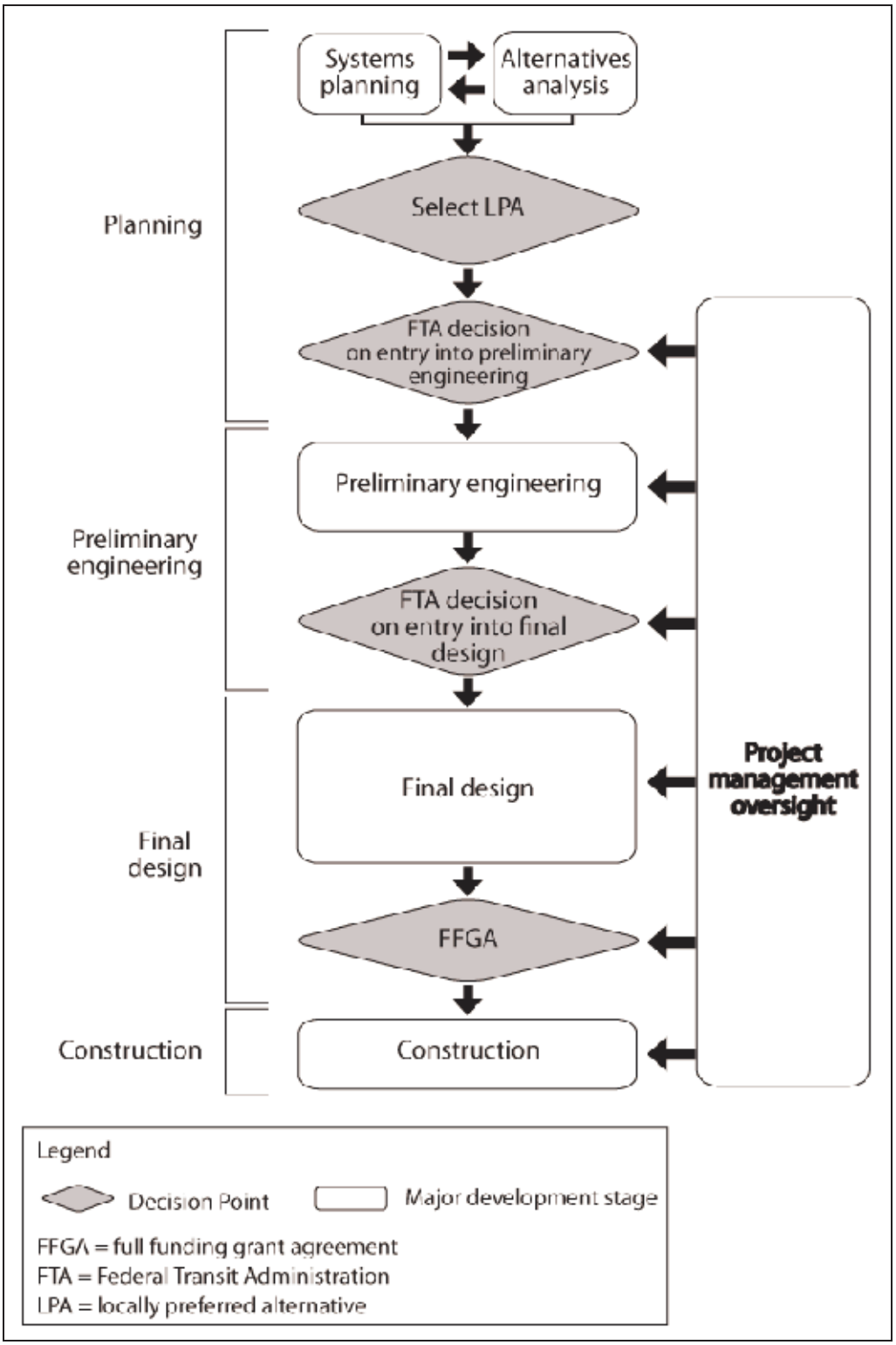
According to federal law, the process for obtaining an FFGA begins with a regional, multimodal planning process that includes systems planning and alternatives analysis. Systems planning examines the transportation needs of a region. Alternatives analysis examines the benefits and costs of different options, such as light rail or Bus Rapid Transit (BRT), in a specific transportation corridor or regional subarea. One of the alternatives that must be included is the "baseline alternative," which is defined by FTA as "the best that can be done to address identified transportation needs in the corridor without a major capital investment in new infrastructure."[4] The conclusion of the alternatives analysis is the selection of a locally preferred alternative (LPA), which is submitted by the project sponsor to FTA for evaluation and approval for entry into preliminary engineering. New Starts projects must also fulfill the requirements of the National Environmental Policy Act of 1969 (NEPA) because they involve a proposed major federal action significantly affecting the environment. FTA requires a project to have moved beyond the NEPA scoping phase before entering preliminary engineering. NEPA scoping involves identifying the alternatives that will be examined in the NEPA documents and the significant environmental issues that arise from the proposed project.[5]

[3] U.S. Government Accountability Office, *Public Transportation: Improvements Are Needed to More Fully Assess Predicted Impacts of New Starts Projects*, GAO-08-844, Washington, DC, July 2008, http://www.gao.gov/new.items/d08844.pdf.

[4] U.S. Department of Transportation, Federal Transit Administration, "Major Capital Investment Projects," 75 *Federal Register* 31385, June 3, 2010.

[5] U.S. Department of Transportation, Federal Transit Administration, *2006 Final Guidance on New Starts Policies and Procedures*, Washington, DC, May 16, 2006, p. 4, http://www.fta.dot.gov/planning/newstarts/planning_environment_5203.html.

Figure 1. Major New Starts Planning and Project Development Process



Source: U.S. Government Accountability Office (GAO), Public Transportation: Federal Project Approval Process Remains a Barrier to Greater Private Sector Role and DOT Could Enhance Efforts to Assist Project Sponsors, GAO-10-19, October 2009, p. 8, http://www.gao.gov/new.items/d1019.pdf.

Preliminary engineering involves the project sponsor refining the project by examining the costs, benefits, and impacts of different design alternatives, and completing an analysis of environmental impacts as required by NEPA. Once preliminary engineering is complete, FTA may approve the project for final design. Final design includes the preparation of final construction plans and cost estimates, and may also include right-of-way acquisition and utility relocation. After final design is complete, FTA may approve the project for an FFGA, at which point the project may move into the construction phase. FTA retains some oversight of a project as it is constructed. Moreover, FTA must request the funding that is to be provided under the terms of the FFGA for each approved project from Congress each fiscal year.[6] In some cases, FTA may assure a project sponsor of its intention to obligate funds for a project through what is known as a Letter of Intent (49 U.S.C. §5309(g)(1)). FTA may also obligate some of the funding expected to be provided in an FFGA through an Early Systems Work Agreement (49 U.S.C. §5309(g)(3)). Although not a guarantee of full funding, an Early Systems Work Agreement provides funding so that work can begin before an FFGA is awarded.

Project Rating

In determining whether to approve a project's move from one step to the next in the New Starts process, FTA computes an overall project rating calculated by averaging the summary ratings of the project justification criteria and local financial commitment criteria (**Figure 2**).[7] In order to advance into each stage of development, a project must achieve an overall rating of at least medium on a five-point scale (low, medium-low, medium, medium-high, high). The local financial commitment summary rating is derived from a project's capital finance plan (weighted 50%), the operating finance plan (weighted 30%), and the non-New Starts funding share (weighted 20%). The project justification summary rating is derived by evaluating project justification criteria with the following weights: cost effectiveness (20%), mobility improvements (20%), economic development effects (20%), public transportation supportive land use policies and future patterns (20%), environmental benefits (10%), and operating efficiencies (10%).[8]

Until recently, FTA would only recommend projects that received a medium or better on cost effectiveness in addition to an overall medium rating, but the Obama Administration has announced that this is no longer the case. Cost effectiveness is measured as the incremental cost per hour of transportation system user benefit. A project need now only receive an overall rating of medium to be recommended, with local financial commitment and project justification both receiving a rating of medium or better.[9] Discussed in more detail below, this change is a reaction to the criticism that focusing so heavily on time savings misses many of the other potential benefits of transit, such as environmental benefits, and skews the New Starts program away from certain types of transit modes and projects, such as streetcar systems.

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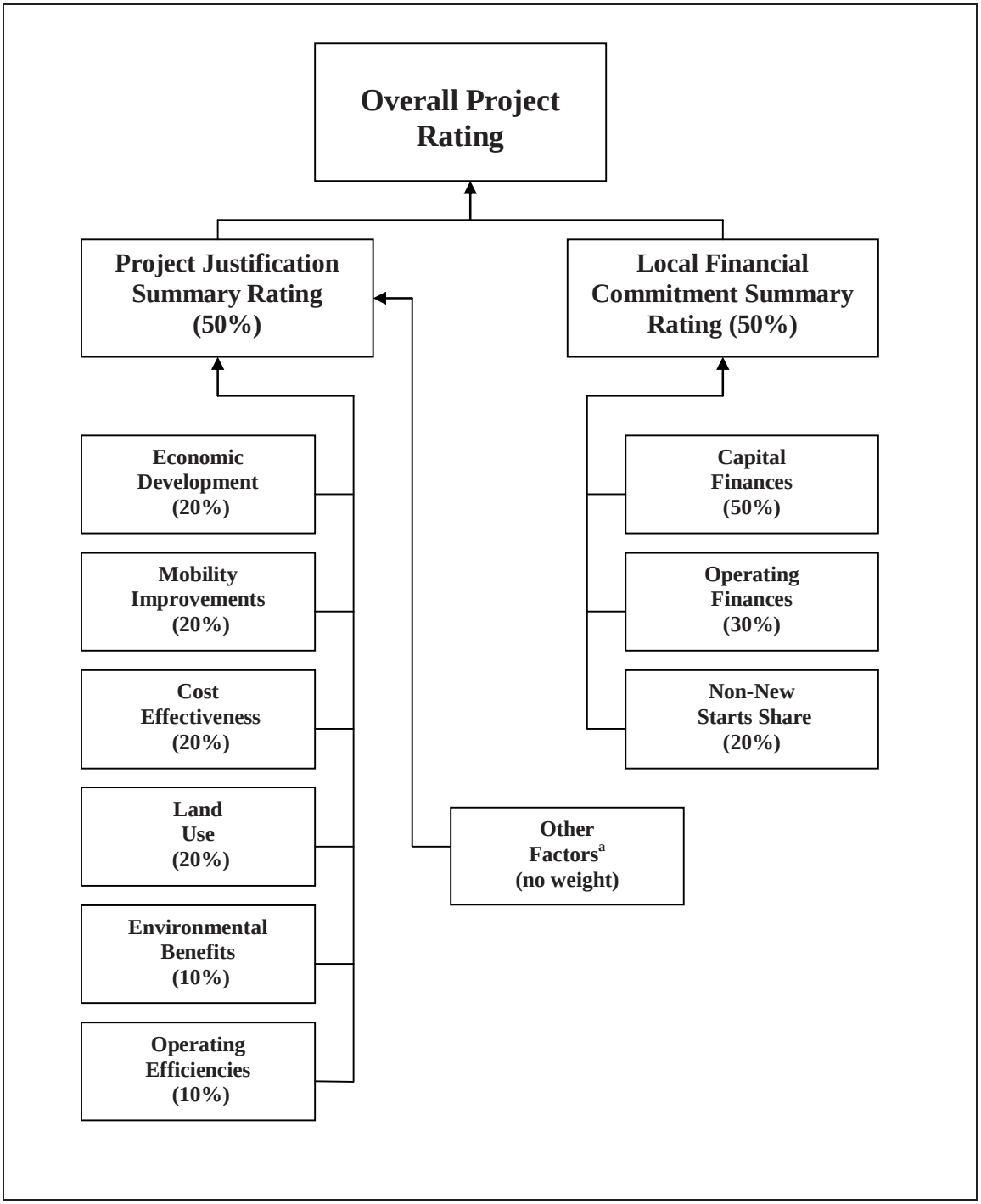
[6] See, for example, U.S. Department of Transportation, Federal Transit Administration, Annual Report on Funding Recommendations, Fiscal Year 2010, New Starts, Small Starts, and Paul S. Sarbanes Transit in Parks Program, Washington, DC, 2009, http://www.fta.dot.gov/documents/20090508_Release_FY_2010_Annual_Report.pdf.

[7] U.S. Department of Transportation, Federal Transit Administration, *FY 2009 New Starts and Small Starts Evaluation and Rating Process*, Washington, DC, July 20, 2009, http://www.fta.dot.gov/documents/tpeNewStarts_20070720_evaluationAndRating.pdf.

[8] U.S. Department of Transportation, Federal Transit Administration, "Final Guidance on New Starts/Small Starts Policies and Procedures," 74 *Federal Register* 37763-37767, July 29, 2009.

[9] U.S. Department of Transportation, Federal Transit Administration, "New Starts Policy Shift Q&A Document," January 13, 2010, http://www.fta.dot.gov/documents/New_Starts_Policy_Shift_Q_A_Document.pdf.

Figure 2. Major New Starts Project Rating



Source: CRS, based on U.S. Department of Transportation, Federal Transit Administration, *Annual Report on Funding Recommendations FY2011: New Starts, Small Starts, and Paul S. Sarbanes Transit in Parks Program*, Washington, DC, 2010, Appendix B, http://www.fta.dot.gov/documents/NewStarts_Appendix_B_Jan_2010.pdf.

a. FTA also considers "Other Factors" when calculating a project justification summary rating. These other factors are considered on a project-by-project basis after the initial assignment of a project justification summary rating. If these other factors are judged to be sufficiently compelling, FTA may increase a project's rating by one step (e.g., from medium to medium-high).

Small Starts

As noted earlier, a major change made to the New Starts program in SAFETEA was the creation of a different set of requirements for projects costing $250 million or less overall that seek $75 million or less in federal funds. The Small Starts project process is a simplified version of the process for major New Starts projects (49 USC §5309(e)). A Small Starts project must still emerge from systems planning and an alternatives analysis. However, preliminary engineering and final design are combined into a single phase known as project development. FTA approval is required for entry into project development. After project development, FTA may recommend the project for a Project Construction Grant Agreement. As with major New Starts projects, the project rating is based on its project justification summary rating and local financial commitment rating. The project justification criteria and weights are different, however, with cost effectiveness, economic development, and public supportive land use each weighted at 33.3%. A project must receive at least a medium rating to be approved. Under Small Starts, the definition of a fixed-guideway capital project includes corridor-based bus capital projects if the project has a separate right-of-way for a substantial portion in peak hours and there is a significant investment in a defined corridor including elements such as park-and-ride lots, transit stations, and advanced technology.[10]

For projects costing less than $50 million in total, known as Very Small Starts, FTA has developed an even more simplified approval process. Although the project steps are similar to Small Starts, these projects can be approved with a simpler Alternatives Analysis.[11] Until FTA issues a final regulation for the Small Starts program, projects costing $25 million or less are exempted from the Small Starts evaluation and rating process. Until then, sponsors of so-called "exempt projects" may submit relatively simple applications for funding.[12]

New Starts Program Legislative History

The New Starts program, along with the other parts of the Capital Investment Grants program, evolved from Section 3 of the Urban Mass Transportation Act of 1964 (P.L. 88-365). In 1994, Section 3 became Section 5309 in a revision without substantive change of Title 49 of the United States Code.[13] Beginning in the 1970s, as the commitment of, and demand for, federal funding began to grow, the Department of Transportation issued a series of policy statements on the principles by which it would distribute discretionary money to so-called "new starts." These policy statements issued in 1976, 1978, 1980, and 1984 introduced a series of principles that have since been written into federal law, including long-range planning, alternatives analysis incorporating a baseline alternative, cost effectiveness, local financial commitment, multi-year

[10] U.S. Department of Transportation, Federal Transit Administration, "Small Starts Fact Sheet," June 16, 2010, http://www.fta.dot.gov/planning/newstarts/planning_environment_222.html.

[11] U.S. Department of Transportation, Federal Transit Administration, "Very Small Starts Fact Sheet," June 16, 2010, http://www.fta.dot.gov/planning/newstarts/planning_environment_222.html.

[12] See U.S. Department of Transportation, Federal Transit Administration, "Side by Side of Required Information for New Starts/Small Starts Evaluation and Rating," July 2007, http://www.fta.dot.gov/documents/tpeNewStarts_20070613_sideBySideChecklist.pdf.

[13] Revision of Title 49, Transportation, United States Code (P.L. 103-272).

contracts specifying the limits of federal participation, supportive local land use planning, and a ratings system.[14]

Congress first enacted many of these principles into law in the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA) (P.L. 100-17). STURAA established the criteria by which New Starts projects would be judged in order to be eligible for federal funding, and also required DOT's recommendations for funding in the subsequent fiscal year to be detailed in an annual report to Congress. The criteria enacted in STURAA required a New Starts project to be based on an alternatives analysis and preliminary engineering, to be cost-effective, and to be supported by an acceptable amount of local financial commitment that is stable and dependable.

In the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (P.L. 102-240), Congress added to the cost-effectiveness criterion the *justifications* of mobility improvements, environmental benefits, and operating efficiencies. ISTEA also added a list of lesser *considerations* such as congestion relief, energy consumption, transit supportive land use policies and future patterns, and economic development. A New Starts project would still need to be based on alternatives analysis and preliminary engineering and to have an acceptable amount of local financial commitment.[15]

The Transportation Equity Act for the 21st Century (TEA-21) (P.L. 105-178) left the existing law mostly unchanged, but added a few additional considerations such as the costs of sprawl and the technical capacity of a grantee (usually a transit agency) to undertake a project. TEA-21 also required FTA to rate projects overall as "highly recommended," "recommended," or "not recommended." TEA-21 also made it a requirement that FTA formally approve a project to move from preliminary engineering into final design. FTA published its Final Rule in response to TEA-21 in 2000,[16] and subsequently published several program guidance documents.[17]

SAFETEA changed the three-point scale, introduced in TEA-21, to a five-point scale of high, medium-high, medium, medium-low, and low, and elevated the factors economic development effects, and public transportation supportive land use policies and future patterns, from considerations to project justifications. As noted earlier, SAFETEA also created the Small Starts program.

Prior to the enactment of SAFETEA, FTA issued a "Dear Colleague" letter announcing that a project would not be recommended for funding unless it received a medium rating for cost

[14] U.S. Department of Transportation, Federal Transit Administration, "Major Capital Investment Projects; Final Rule," 65 *Federal Register* 76863-76884, December 7, 2000, http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2000_register&docid=00-30921-filed.pdf; see also Daniel Duff, Edward J. Gill, Jr., and G. Kent Woodman, *Legal Handbook for the New Starts Process*, Legal Research Digest 30, Transit Cooperative Research Program, February 2010.

[15] FTA issued a Notice in 1996 explaining the way in which it would evaluate New Starts projects, and amended that Notice in 1997. See U.S. Department of Transportation, Federal Transit Administration, "Section 5309 (Section 3(j) FTA New Starts Criteria," 61 *Federal Register* 67093-67107, December 19, 1996; U.S. Department of Transportation, Federal Transit Administration, "Section 5309 (Section 3(j)) FTA New Starts Criteria," 62 *Federal Register* 60756-60758, November 12, 1997.

[16] U.S. Department of Transportation, Federal Transit Administration, "Major Capital Investment Projects: Final Rule," 65 *Federal Register* 76864-76884, December 7, 2000.

[17] These were Advancing Major Transit Investments Through Planning and Project Development (2003), Additional Guidance on Local Initiation of Alternatives Analysis Planning Studies, and New Starts Baseline Alternative Review and Approval Procedures.

effectiveness.[18] The emphasis on cost effectiveness has been a contentious issue since then. Following the passage of SAFETEA, in a Notice of Proposed Rulemaking (NPRM) on August 3, 2007, FTA proposed that a medium rating be required for FTA to recommend a project, and for cost effectiveness to be weighted as 50% of the project justification measure. The other 50% would consist of land use and economic development combined into one criterion at a weight of 20%, mobility benefits (20%), environmental benefits (5%), and benefits to transit-dependent riders (5%). This proposal was not well received by the House Transportation and Infrastructure Committee,[19] nor by those responding to the Notice.[20] Some of the concerns were that, contravening the intent of SAFETEA, the rule would place too much emphasis on cost effectiveness and would not sufficiently evaluate nor weight the economic development effects of transit projects. Because of these concerns, Congress included language in the Consolidated Appropriations Act, 2008 (P.L. 110-161) preventing FTA from implementing a final rule. In the SAFETEA-LU Technical Corrections Act of 2008 (P.L. 110-244), Congress amended 49 USC §5309 to require that FTA "give comparable, but not necessarily equal, numerical weight to each project justification criteria in calculating the overall project rating."

FTA withdrew the 2007 NPRM in February 2009, and then in July 2009 issued final guidance establishing the use of cost effectiveness that is now in effect.[21] This was followed in January 2010 with an announcement that FTA was withdrawing the policy of only recommending for funding projects that received a medium cost-effectiveness rating or better in favor of recommending projects with an overall rating of medium or better (although projects must score a medium or better on both project justification and local financial commitment).[22] At the same time FTA announced that it intends to issue a new NPRM for changes to the evaluation for New Starts and Small Starts projects. In this regard, FTA issued an Advance Notice of Proposed Rulemaking on June 3, 2010, requesting comments on how to improve measurement of cost effectiveness, environmental benefits, and economic development.[23]

Issues and Options for Congress

New Starts Program Funding

One of the most important issues in the reauthorization of the New Starts program will be the amount of funding authorized for New Starts projects. There have been complaints over the years that there are many more worthy projects than New Starts funding can support, and more generally a number of interest groups argue that much more money needs to be spent on building

[18] Jennifer L. Dorn, Administrator, Federal Transit Administration, "New Starts Rating and Evaluation," Dear Colleague Letter, C-03-05, March, 9, 2005, http://www.fta.dot.gov/news/colleague/news_events_297.html.

[19] U.S. Congress, House Committee on Transportation and Infrastructure, *Hearing on the Federal Transit Administration's Proposed Rule on the New Starts and Small Starts Programs*, "Summary of Subject Matter," 110th Cong., 1st sess., September 26, 2007, H.Hrg. 110-72 (Washington: GPO, 2007).

[20] U.S. Department of Transportation, Federal Transit Administration, "Major Capital Investment Projects," 74 *Federal Register* 7388, February 17, 2009, http://edocket.access.gpo.gov/2009/pdf/E9-3208.pdf.

[21] See "Project Rating" section.

[22] Ray LaHood, Secretary of Transportation, "Dear Colleague New Starts and Small Starts Project," January 13, 2010, http://www.fta.dot.gov/documents/Dear_Colleague_New_Starts_and_Small_Starts_Project.pdf.

[23] Department of Transportation, Federal Transit Administration, "Major Capital Investment Projects," 75 *Federal Register* 31385, June 3, 2010.

new transit infrastructure and rehabilitating existing infrastructure to cope with population growth, growing demand for transit, congestion, and environmental concerns.[24] For example, the American Public Transportation Association (APTA) recommends authorizing the New Starts program (including Small Starts) at about $21.2 billion over a six-year period (based on FY2010 through FY2015), an average of about $3.5 billion a year. This would be more than double the $1.5 billion per year on average authorized for New Starts by SAFETEA (not taking into account inflation). Overall, APTA recommends that federal transit funding be authorized for a total of $123 billion over six years, an average of $20.5 billion per year, compared with the SAFETEA average of $9.1 billion per year.[25]

Increasing New Starts funding by increasing transit program funding overall is an option, but it may prove difficult to implement if the federal fuels tax or other taxes associated with the Highway Trust Fund are not raised. Currently, New Starts funding comes from the general fund of the U.S. Treasury, but the rest of the transit program is funded from the Mass Transit Account of the trust fund.[26] Another option is for Congress to increase funding for New Starts projects by reducing the relative share of other parts of the transit program. This, however, could reduce federal funding distributed through the formula programs and other discretionary programs that generally support existing transit service. APTA's reauthorization proposal would keep the relative share of New Starts funding at 40% of the Capital Investment Grants program, the same as under SAFETEA, with 40% continuing to go to Rail Modernization and 20% to the Bus and Bus-Related Facilities program.

Another possible avenue for increased transit funding is through legislation aimed at dealing with climate change. For example, the Clean, Low Emission, Affordable, New Transportation Efficiency Act (S. 575/H.R. 1329), sometimes referred to as CLEANTEA, proposes to establish a new trust fund, the Low Greenhouse Gas Transportation Fund, to be funded with monies coming from the auctioning of greenhouse gas emissions allowances that might arise with the enactment of a cap-and-trade system. The bill requires money from 10% of the auctioned allowanced to be deposited in the fund. Monies in the fund, distributed by formula, are for states and Metropolitan Planning Organizations (MPOs) to develop plans and targets to reduce greenhouse gas emissions from transportation, and to help fund projects that emerge from the plans. Many believe that expanding transit capacity could be one way to reduce GHG emissions from transportation because it would encourage people to switch from traveling by automobile to trains and buses.

[24] Between 1995 and 2008 there were annual increases in transit ridership, reaching 10.5 billion trips nationwide. This level of ridership has not been seen since 1957, although the population then was about 60% its current size. Nevertheless, transit accounts for about 5% of commute trips and 2% of all daily trips. Transit riders, moreover, are heavily concentrated in a few large cities.

[25] American Public Transportation Association, *APTA Recommendations on Federal Public Transportation Authorizing Law*, Washington, DC, October 5, 2008, http://www.apta.com/gap/legissues/authorization/Documents/apta_authorization_recommendations.pdf; CRS Report RL33119, *Safe, Accountable, Flexible, Efficient Transportation Equity Act - A Legacy for Users (SAFETEA-LU or SAFETEA): Selected Major Provisions*, by (name redacted).

[26] The practice of providing New Starts funding from the general fund began in SAFETEA in response to a technical budget issue. See American Public Transportation Association, *APTA Primer on Transit Funding Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Extension, and Other Related Laws, FY 2004 through FY 2011* (Washington, DC, Revised June 2010), p. 11, http://www.apta.com/gap/policyresearch/Documents/Primer_SAFETEA_LU_June_2010_Update.pdf.

Not everyone believes that more funding for New Starts is a good idea.[27] Those who advocate shrinking New Starts funding, and the transit program in general, often question the role of the federal government in transit provision. Public transit, they argue, is a mostly local issue, and federal surface transportation resources ought to be directed to that portion of the highway program that supports interstate commerce and holds more promise for congestion mitigation.[28] Opponents of New Starts funding also argue that most cities without rail systems are either too small in population or have residential and employment densities that are too low to make rail a viable option, and that extending existing rail systems, often into lower-density suburbs, is undesirable for similar reasons.

A different view on New Starts program funding is that such monies might be spent more effectively on smaller, mostly non-rail projects than on building new large rail systems. Another possibility is redirecting New Starts monies to rehabilitating existing transit rail systems, many of which were built using New Starts funding. In this view, using federal funds to maintain and improve existing transit systems might make transit more successful and more sustainable in the long run. In a speech, President Obama's transit administrator argued:

> At times like these, it's more important than ever to have the courage to ask a hard question: if you can't afford to operate the [transit rail] system you have, why does it make sense for us [the federal government] to partner in your expansion? If you can't afford your current footprint, does expanding that underfunded footprint really advance the President's goals for cutting oil use and greenhouse gases? Does it really advance our economic goals in any sustainable way? Are we at risk of just helping communities dig a deeper hole for our children and our grandchildren? Might it make more sense for us to ... roll up our sleeves, and target our resources on repairing the system we have?[29]

Research by FTA on the condition of transit assets estimates that to bring transit assets to a good state of repair would cost $78 billion, of which $59 billion is for rail systems. FTA also states that to eliminate the $77 billion backlog would require $18 billion per year over 20 years, whereas current spending for the rehabilitation, replacement, and improvement of transit assets is in the range of $12 to $13 billion per year.[30] Congress may choose to increase funding for rehabilitating transit rail systems through the Rail Modernization program, another element of the Capital Investment Grants program, or in other ways. For example, concern with the condition of the subway system in the Washington, DC, region prompted Congress in 2008 to authorize, with certain conditions and limitations, an additional $1.5 billion over 10 years to help the Washington Metropolitan Area Transit Authority (WMATA) maintain and rehabilitate its capital assets.[31]

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[27] See, for example, Randal O'Toole, *Defining Success: The Case Against Rail Transit*, Cato Institute, Policy Analysis, No. 663, March 24, 2010, http://www.cato.org/pubs/pas/pa663.pdf; see also Ken Orski, "The Future Federal Role in Transit Investment," *Innovation Briefs*, Vol. 17, No. 5, September/October 2006.

[28] Wendell Cox and Randall O'Toole, "The Contribution of Highways and Transit to Congestion Relief: A Realistic View," Heritage Foundation Backgrounder, Number 1721, January 24, 2004, http://www.heritage.org/Research/UrbanIssues/bg1721.cfm.

[29] Peter M. Rogoff, Administrator, Federal Transit Administration, Remarks Made at "Next Stop: A National Summit on the Future of Transit," Federal Reserve Bank of Boston, May 18, 2010, http://www.fta.dot.gov/news/speeches/news_events_11682.html.

[30] Federal Transit Administration, *National State of Good Repair Assessment, 2010*, (Washington, DC, June 2010), p. 3, http://www.fta.dot.gov/documents/National_SGR_Study_072010(2).pdf.

[31] Title VI of the Passenger Rail Investment and Improvement Act of 2008 (P.L. 110-432).

Project Size and Funding Distribution

With existing funding in demand from many transit agencies, the selection of one or several very large projects can severely constrain the number of projects that can be funded. Increasing the total amount of New Starts funding is one option for addressing this problem. Alternatively, Congress might place a limit on the maximum amount (in dollar terms) of federal participation in a New Starts project. Some may view this as an appropriate transition away from the creation of new rail systems or expansions in large cities to the consolidation and enhancement of existing transit systems in a wider variety of settings.[32] Others may argue that a size limit on grants will dilute the effectiveness of the New Starts program at a time when many of the policy problems to which the transit program is directed, particularly highway congestion, air quality, and other environmental problems, are highly concentrated geographically.[33] Moreover, the creation of a Small Starts program within the overall New Starts program may already provide a sufficient mechanism to fund a greater number and diversity of projects. A possible course of action for Congress might be to reserve a larger share of New Starts funding for Small Starts. SAFETEA authorized $200 million for Small Starts in FY2009 from a total of $1.8 billion, or about 11%.

Local Matching Share

Most federal highway and transit funding must be matched with state or local money in a ratio determined by federal law. These matching shares vary from program to program, and have occasionally been adjusted according to the goals of federal policy. The strong demand for federal funding in the New Starts program has led some to argue for lowering the cap on the federal share for such projects. Currently, the maximum federal share is 80%, equivalent to the federal matching share for most non-interstate highway projects. Supporters of this view argue that lowering the share would allow more of the existing federal funding to be shared among more worthwhile projects and might encourage states and localities, with more of their own money at stake, to advance only the strongest projects; the Government Accountability Office (GAO) found in 2005 that a requirement for a greater local share of costs typically leads to more economic analysis of the costs and benefits of a project.[34] Opponents of lowering the maximum federal share argue that lowering the cap might bias state and local decision-makers to favor transportation projects that require a smaller share of state and local funding (e.g., highway projects that have an 80% match).[35] To address that concern, some advocate reducing the federal share for both highways and transit, say to 50%, thereby encouraging states and localities to focus on the most productive projects.[36]

Prior to 2005, it was FTA policy to rate a project "low" if it sought a federal share of more than 60%. This policy was a response to House and Senate Appropriations Committee reports that a

[32] Orski, 2006.

[33] See CRS Report RL33995, *Surface Transportation Congestion: Policy and Issues*, by (name redacted).

[34] U.S. Government Accountability Office, *Highway and Transit Investments: Options for Improving Information on Projects' Benefits and Costs for Increasing Accountability for Results*, GAO-05-172, Washington, DC, January 2005, http://www.gao.gov/new.items/d05172.pdf.

[35] E. Beimborn and Robert Puentes, "Highways and Transit: Leveling the Playing Field in Federal Transportation Policy," in Bruce Katz and Robert Puentes, Eds., *Taking the High Road: A Metropolitan Agenda for Transportation Reform*, Washington, DC, Brookings Institution Press, 2005.

[36] D. Luberoff, "The Triumph of Pork Over Purpose," *Blueprint Magazine*, September 10, 2001, http://www.ndol.org/ndol_ci.cfm?contentid=3765&kaid=141&subid=299.

lower share was warranted because demand for funding was outstripping the available resources.[37] Since FY2007, FTA no longer downgrades a project that seeks more than 60% federal assistance, and provisions in SAFETEA prohibit the Secretary of Transportation from requiring more than 20%.[38] But since FY2002, the Senate Appropriations Committee has included, every year, in its report a directive to FTA not to sign any FFGAs with more than a 60% federal share. Projects approved for New Starts funding typically do have less than a 60% federal share and often much less.[39]

Contingent Commitment Authority

Another issue having to do with the amount of funding available for projects is contingent commitment authority. Under the New Starts program, the aggregate amount of funding available for commitment by FTA to New Starts projects is limited to the amount currently authorized, plus an amount of future funding that may become available, contingent on future authorizations and appropriations. Funding currently authorized provides FTA with what is commonly known as "commitment authority," and the expected future funding provides FTA with what is commonly known as "contingent commitment authority." When SAFETEA divided the New Starts program into two parts, major New Starts and Small Starts, it also provided separate contingent commitment authority to be calculated differently for major New Starts projects (49 U.S.C. §5309(g)(4)(A)) and Small Starts projects (49 U.S.C. §5309(g)(4)(B)). In the major New Starts program, contingent commitment authority is an amount equivalent to the last three fiscal years of funding authorized, whereas in the Small Starts program it is an amount equivalent to the last fiscal year of funding authorized.

Contingent commitment authority in the New Starts program was established in ISTEA in an amount equal to one-half the uncommitted cash balance in the Mass Transit Account of the Highway Trust Fund. The amount and calculation of contingent commitment authority were revised in TEA-21 by authorizing contingent commitments in an amount equal to the last two years of funding authorized by the act. The FY2001 DOT Appropriations Act (P.L. 106-346) increased this amount to the last three years of authorized funding. As noted above, SAFETEA maintained this last three years of authorized funding for New Starts projects and added a provision for Small Starts projects for contingent commitment authority equivalent to the last one year of authorized funding.

Toward the end of an authorization period the amount of funds committed to New Starts projects approaches the maximum commitment authority available. This threatens the ability of FTA to enter into new commitments with agencies that have satisfied the requirements for a commitment under the New Starts program. If the maximum is reached and nothing is done, FTA has to wait until more funds are authorized. The authorization of funds is usually done as part of surface transportation reauthorization, but rarely may be provided in other legislation, as was recently

[37] See, for example, U.S. Congress, House Appropriations Report, Department of Transportation and Treasury and Independent Agencies Appropriations Bill, 2004, 108-243.

[38] U.S. Government Accountability Office, *New Starts Program Is in a Period of Transition*, GAO-06-819, Washington, DC, 2006, http://www.gao.gov/new.items/d06819.pdf.

[39] See for example, U.S. Department of Transportation, Federal Transit Administration, Annual Report on Funding Recommendations: Proposed Allocations of Funds for Fiscal Year 2011, New Starts, Small Starts, Alternative Transportation in Parks and Public Lands, Washington, DC, 2010, p. 7, http://www.fta.dot.gov/documents/NewStarts_mainText_Jan_2010.pdf.

done as part of the American Recovery and Reinvestment Act (ARRA) (P.L. 111-5). Under the ARRA, the New Starts program was provided with $750 million, which increased overall commitment authority by $1.5 billion ($750 million in commitment authority plus $750 million in contingent commitment authority).

Instead of adding new funds on an ad hoc basis to "top-up" the commitment authority available to FTA for New Starts projects, Congress could change the formula for calculating contingent commitment authority. One possibility, proposed in legislation in the 110th Congress (S. 3604), is to revise 49 U.S.C. §5309(g)(4)(A) to provide contingent commitment authority based on the "sum of the funds available for the next three future fiscal years beyond the current fiscal year [FY 2009], assuming an annual growth in the program of 10%." Another option would be to increase commitment authority to equal the past four or five fiscal years' authorization, rather than the past three, as in present law.

One risk of increasing the amount of contingent commitment authority is that Congress may create funding expectations among project sponsors that future Congresses may not want to or be able to meet. Moreover, committing a larger amount of future federal funds to projects currently ready or nearly ready for an FFGA might make it harder for projects in an earlier stage of the process or only now being conceived to receive funding in the future.

Type of Transit Mode: Rail, Streetcar, Bus Rapid Transit, Bus

A continuing controversy surrounding the federal transit program, and the New Starts program in particular, has been between those who favor rail transit and those who favor bus and bus rapid transit (BRT). There has also been disagreement in regards to the types of rail that are favored in the New Starts program, with some arguing that for much of its history the evaluation process has been biased against streetcars (a slower, more geographically limited form of light rail).

Advocates of focusing federal funding on building new fixed-guideway transit, particularly rail transit, argue that it provides the higher-quality service in terms of comfort and speed that is thought to be needed to attract discretionary transit users (i.e., travelers who have the option of driving). This is deemed important because it is only by having travelers switch modes that transit can have an effect on highway congestion, parking problems, air pollution, and energy use. Second, advocates argue that fixed-guideway transit has the greatest potential for achieving desirable land use effects and economic development. Rail stations are said to encourage compact, mixed-use development, thereby counteracting urban sprawl and reducing, or at least reducing the growth of, motor vehicle travel. Third, supporters argue that where transit demand is high, the per-passenger operating costs of rail are lower than those of bus transit, and that even with higher capital costs taken into account, the total cost of rail per passenger-mile compares favorably. Fourth, rail advocates argue that it is easier to gain local public support for rail transit projects than for comparable improvements in bus service.[40]

Critics of federal support for new rail transit systems contend that such systems are expensive to build and maintain, less flexible than bus transit, and ill-suited to low-density, dispersed metropolitan areas. Rail transit, these critics contend, may be worth the cost only in high-density

[40] L. Henry and T. A. Littman, "Evaluating New Start Transit Program Performance: Comparing Rail and Bus," Victoria Transport Policy Institute, September 1, 2006, http://www.vtpi.org/bus_rail.pdf.

corridors, and that few of these remain without rail service.[41] Moreover, some critics contend that the building of new rail systems in search of discretionary riders, primarily suburban commuters, has been done to the detriment of bus-dependent populations in the central city. Overall, these critics argue, the effect has been to switch those riding buses to riding rail with little net gain in transit patronage and at increased cost.[42]

Even the environmental benefits of new rail lines have been called into question. Critics argue that energy use, and therefore greenhouse gas emissions, of new transit rail systems per passenger mile are not necessarily lower than the bus or automobile use they replace because most rail users have to reach the station by bus or car, and massive amounts of energy are used to build rail systems. Moreover, these critics contend that even if new rail transit systems did reduce energy consumption per passenger mile, too few people use them to make any substantial difference.[43] Consequently, the reduction in emissions from building new rail lines has been found to be negligible in many cases.[44] Better alternatives, according to this view, include encouraging the use of alternatively powered cars and buses, improving fuel-efficiency of conventionally fueled vehicles, and reducing highway congestion by building new capacity and properly timing traffic signals.[45]

One alternative is to shift federal support for new transit capacity to buses or BRT, in which express buses run over roads with some sort of priority system ranging from traffic signal preemption to an exclusive busway. The main argument for BRT is its cost effectiveness compared with new rail systems. GAO, for instance, found that although capital costs varied enormously from place to place depending on local conditions, on average, the capital cost per mile for BRT compared with light rail was 39% if the buses run on exclusive busways. If the BRT is designed with buses running in High Occupancy Vehicle (HOV) lanes, then BRT is only 26% the capital cost of light rail. With BRT buses on city streets the capital cost is 2% the capital cost of light rail. GAO's analysis of operational costs showed no consistent advantage for light rail over BRT.[46]

Another argument in favor of BRT is that it is more flexible.[47] BRT can be designed in many different ways depending on local conditions and travel needs. Moreover, starting, stopping, and modifying BRT service is easier than with a fixed-in-place rail system. Detractors argue that this flexibility is the main reason why the economic development benefits around BRT stations and stops will be lower than those around transit rail stops and stations. Because of the relatively limited experience with BRT no firm conclusion about its economic development benefits in comparison with transit rail can be drawn at this time. Some have suggested that with similar

[41] See the discussion in Martin Wachs, "U.S. Transit Subsidy Policy: In Need of Reform," *Science*, Vol. 244, pp. 1545-1549.

[42] Richmond, 2001.

[43] Randal O'Toole, *Does Rail Transit Save Energy or Reduce Greenhouse Gas Emissions?*, Cato Institute, Policy Analysis, No. 615, , April 14, 2008, http://www.cato.org/pubs/pas/pa-615.pdf.

[44] Richmond, 2001.

[45] O'Toole, 2008.

[46] U.S. General Accounting Office (now the Government Accountability Office), *Bus Rapid Transit Shows Promise*, GAO-01-984 (Washington, DC, September 2001), http://www.gao.gov/new.items/d01984.pdf.

[47] U.S. Department of Transportation, Federal Transit Administration, *Characteristics of Bus Rapid Transit for Decision-Making*, FTA-FL-26-7109.2009.1, Washington, DC, February 2009, http://www.nbrti.org/docs/pdf/High%20Res%20CBRT%202009%20Update.pdf.

service characteristics and proper planning, there is no reason why the economic development benefits could not be similar to those of transit rail.[48]

In 2001, GAO found that, for a number of reasons, New Starts funding for BRT had been limited.[49] First, many communities had already built and operated rail systems that provided a wealth of experience with rail and generated a number of proposals for expansion. Second, the New Starts program at that time tended to favor larger, more capital-intensive projects that could garner for a community significant capital funding from the federal government. Third, at that time, under TEA-21, the program required that, to be eligible, BRT projects had to operate on a separate right-of-way for the exclusive use of transit and high-occupancy vehicles.

Congress and FTA have made efforts over the past decade to encourage proposals for BRT. SAFETEA initiated several changes in the New Starts program that seem to have improved the funding prospects of BRT, including setting aside funding for Small Starts and expanding the definition of fixed-guideway to include more BRT projects. In SAFETEA Section 3111, the definition of a fixed guideway capital project in the New Starts program was broadened to include corridor-based bus capital projects if

> (A) a substantial portion of the project operates in a separate right-of-way dedicated for public transit use during peak hour operations; or (B) the project represents a substantial investment in a defined corridor as demonstrated by features such as park-and-ride lots, transit stations, bus arrival and departure signage, intelligent transportation systems technology, traffic signal priority, off-board fare collection, advanced bus technology, and other features that support the long-term corridor investment.

Thanks to this change in the law, in FY2011 BRT projects were the most numerous transit mode in the New Starts/Small Starts funding pipeline, although they represented a small share of the cost of all the projects.[50] BRT projects in the New Starts/Small Starts pipeline include the New Britain-Hartford Busway in Connecticut, phase 3 of the Silver Line in Boston, Massachusetts, and the Mason Corridor BRT in Fort Collins, Colorado.[51] Some have suggested going even further to make projects for express toll lanes as part of a BRT network eligible for New Starts funding.[52]

Detractors argue that BRT projects, while cheaper than rail systems, are still more expensive and less effective than conventional bus service. For instance, one analyst contends that "modest improvements to basic bus services combined with an attractive fares policy have shown they can secure substantially greater ridership increases than capital-intensive projects involving either

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[48] Transportation Research Board, *Bus Rapid Transit Practitioner's Guide*, Transit Cooperative Research Program, Report 118 (Washington, DC, 2007), http://onlinepubs.trb.org/onlinepubs/tcrp/tcrp_rpt_118.pdf; see also U.S. Department of Transportation, Federal Transit Administration, *Bus Rapid Transit and Development: Policies and Practices that Affect Development Around Transit*, Report No. FTA-FL-26-7109.2009.5, Washington, DC, December 1, 2009, http://www.nbrti.org/docs/pdf/BRT%20and%20land%20use_97ver_508.pdf.

[49] Ibid.

[50] U.S. Department of Transportation, Federal Transit Administration, *Annual Report on Funding Recommendations FY2011: New Starts, Small Starts, and Paul S. Sarbanes Transit in Parks Program*, Washington, DC, 2010, http://www.fta.dot.gov/publications/reports/reports_to_congress/publications_11092.html; see also K. Siggerud, Director of Physical Infrastructure, U.S. Government Accountability Office, *Preliminary Analysis of Changes to and Trends in FTA's New Starts and Small Starts Programs*, Statement Before House Subcommittee on Highways and Transit, May 10, 2007, GAO-07-812T, http://www.gao.gov/new.items/d07812t.pdf.

[51] U.S. Department of Transportation, Federal Transit Administration, 2010.

[52] Orski, 2006.

light rail or busway construction."[53] Others contend that BRT projects favor suburban commuters over more centrally located transit such as streetcars, which are a lighter, cheaper, but slower type of light rail.[54] In addition to being cheaper than other types of light rail, streetcar systems, supporters argue, are quicker and less disruptive to build, and provide a high level of service in support of dense, walkable cities, particularly those with smaller populations.[55] As discussed earlier, the Obama Administration's recently issued guidelines on deemphasizing cost effectiveness as a factor in evaluating New Starts projects, together with its emphasis on livable communities, are thought to be a boost to federal funding for streetcars. In December 2009, FTA announced it would be making $130 million in unallocated New Starts funding available for "urban circulator" projects such as streetcars.[56] FTA announced in July 2010 that it was awarding the $130 million among five streetcar projects and one BRT project.[57]

New Starts Approval Process

Another major concern with the New Starts program is the complexity, length, and expense of the federal funding approval process. As outlined earlier, the New Starts process requires the development of extensive data and the preparation of a large number of detailed reports and other documents, all of which are reviewed in depth by FTA in making multiple project approval determinations. GAO has suggested that the New Starts evaluation process might be used as a model for other federal programs to ensure the effective use of federal funding.[58] Many in the transportation industry, however, believe that these requirements have become increasingly time-consuming and costly.[59] One transit agency estimates that federal involvement can add an extra one to two years to a project and 10% to 15% extra in project costs.[60]

GAO, in a recent study, was unable to examine this issue comprehensively due to data problems. GAO found that FTA and project sponsor data are insufficient to adequately assess the time it takes for projects to move through the New Starts process, and therefore, whether the process has become lengthier or not. Complete data were only available for 9 of the 40 projects that have

[53] Richmond, 2001, p. 161.

[54] Siggerud, 2007; T. Herrick, "A Streetcar Named Aspire: Lines Aim to Revive Cities," *Wall Street Journal*, June 20, 2007, B1.

[55] Shelley Poticha and Gloria Ohland, "Why Streetcars and Why Now?," in *Street Smart: Streetcars and Cities in the Twenty-First Century*, ed. Shelley Poticha and Gloria Ohland (Oakland, CA: Reconnecting America, 2006).

[56] U.S. Department of Transportation, Federal Transit Administration, "Exempt Discretionary Program Grants (Section 5309) for Urban Circulator Systems," 74 *Federal Register* 64989-64994, December 8, 2009.

[57] U.S. Department of Transportation, Federal Transit Administration, "U.S. Transportation Secretary Ray LaHood Announces $293 Million for New Transit Solutions, Economic Development Nationwide," Press Release, July 8, 2010, http://www.fta.dot.gov/news/news_events_11823.html.

[58] See, for example, Government Accountability Office, *Surface Transportation: Restructured Federal Approach Needed for More Focused, Performance-Based, and Sustainable Programs*, GAO-08-400, Washington, DC, March 2008, http://www.gao.gov/new.items/d08400.pdf; see also, Donald J. Emerson and Jeffrey D. Ensor, *New Starts: Lessons Learned for Discretionary Federal Transportation Funding Programs*, Bipartisan Policy Center, January 25, 2010, http://www.bipartisanpolicy.org/sites/default/files/New%20Starts%20Paper%20Jan%202010.pdf.

[59] See, for example, U.S. Department of Transportation, Federal Transit Administration, *New Starts Program Assessment Final Report*, Report Prepared by Deloitte, February 12, 2007, http://www.fta.dot.gov/planning/newstarts/planning_environment_6916.html.

[60] Testimony of R. Snoble, Chief Executive Officer, Los Angeles County Metropolitan Transportation Authority, in U.S. Congress, House Subcommittee on Highways and Transit, May 10, 2007, http://transportation.house.gov/Media/File/Highways/20070510/Roger%20Snoble%20Testimony.pdf.

received an FFGA since 1997, and GAO notes that these 9 are not necessarily representative of the entire group. Of the 9 projects, the shortest completion time of the New Starts process, from the beginning of alternatives to the approval of an FFGA, was 4 years 7 months, and the longest was 14 years 2 months.[61] FTA told GAO that project delays are often the result of actions at the local level, and thus not always directly attributable to the federal program. For instance, due to local political pressures, sponsors sometimes change a project's scope when well into its development, and, in other instances, a project's local financing mechanism might be withdrawn only to be replaced by something else some time later.[62]

There have been a number of legislative changes and administrative actions dealing with the difficulty and delays attributed to the New Starts approval process. In SAFETEA, Congress enacted the Small Starts program, in part, to simplify the application process for less expensive projects. As discussed in more detail below, SAFETEA also created a pilot project, the Public-Private Partnership Pilot Program, or "Penta-P," to see whether program simplification would increase private participation and risk-taking in project development, construction, and operation. To accelerate program approvals, FTA has offered regular training workshops to potential project sponsors and developed project delivery tools such as project requirements checklists.[63]

Congress may want to consider other ways to simplify and shorten the New Starts process, particularly for major New Starts projects. Options for programmatic changes to reduce the complexity of the process typically involve reducing the number of steps in the New Starts process and moving up the federal government's decision or signal of intent to fund a project to earlier in the process. One proposal, put forward by APTA, among others, suggests replacing approval for entry into preliminary engineering with approval for entry into the New Starts program. According to this suggestion, approval into the program would signal the federal government's intent to ultimately fund a project providing certain conditions are met. APTA also suggests eliminating the requirement for FTA to approve advancement into final design. To help manage projects through this abbreviated process, there have been proposals for Project Development Agreements (PDAs), an idea APTA supports. As APTA argues: "the PDA should include schedules and roles for both FTA and the grantee and should define the criteria and conditions a project must meet to streamline and expedite overall project delivery and could be the basis for an Early System Work Agreement once the National Environmental Policy Act (NEPA) process is completed."[64]

Simplifying the New Starts process might significantly shorten project delivery times. According to some, quick approval of federal funding is particularly appropriate where the risks are low, such as when the federal funding amount and share are relatively low, and where project benefits are likely to be high relative to costs. Critics worry that such changes may reduce the rigor of the evaluation process, ultimately leading to federal support of less beneficial projects. Simplifying the process by creating a low hurdle for entry into the New Starts pipeline also creates the possibility that FTA may receive a large number of project proposals that it would have to manage through the evaluation process to ultimate denial. Another possibility is that FTA will

[61] Government Accountability Office, *Public Transportation: Better Data Needed to Assess Length of New Starts Process, and Options Exist to Expedite Project Development*, Washington, DC, August 2009, GAO-09-784, p. 14, http://www.gao.gov/new.items/d09784.pdf.

[62] Ibid.

[63] Ibid.

[64] American Public Transportation Association, 2008, pp. 14-15.

approve or intend to approve for funding many more projects than can be supported by the available commitment authority. This may mean relatively quick funding approval for projects that then languish while waiting in line for more commitment authority to be made available by Congress.

The law could speed New Starts projects by "fast-tracking" projects that are low-risk or that involve a relatively low share of federal funds, although, as noted above, recent Congresses have generally discouraged attempts to favor projects with low shares of federal funds. In essence, the Small Starts program fast-tracks projects using relatively small amounts of federal funds. The downsides of fast-tracking are that problems might not be detected early in project development, that there may be charges of favoritism if some projects are treated to less scrutiny and quicker approval than others, and that some New Starts sponsors may have little experience in project development and construction.

FTA already has the authority to implement management or rulemaking changes that might speed up and improve the New Starts approval process. Many of these were identified in a study commissioned by FTA that was published in 2007.[65] For example, the study noted that some project stages lack clear and concise definitions of requirements, that some organizational conflicts exist within FTA, and that there is ineffective use of technology for project submissions. Moreover, the New Starts review process is "first-in, first out," which means that a relatively small, simple project may get stuck behind a large and complex project in the review process. GAO stated back in 2008 that FTA is working to implement some of these recommendations,[66] but the amount of progress on these many and varied issues is not clear. Congress might play an active role in overseeing the implementation of these improvements. Along these lines, some also believe that with more staff dedicated to reviewing New Starts proposals, FTA might be able to reduce the time it takes to evaluate projects. An option Congress might consider, therefore, is providing more funds for New Starts administration, although this might prove difficult in the current fiscal environment. Finally, the frequent issuance of policy and guidance changes by FTA is also believed to lead to project delay and additional costs because sponsors have to revise and resubmit project materials. To avoid this, some suggest that FTA apply these changes to future project submissions, although this may reduce FTA's ability to improve its oversight on existing projects. Congress might direct FTA on this issue.

Many expect major changes to the New Starts approval process to be part of surface transportation reauthorization legislation. Reauthorization legislation in the 111th Congress has been limited. Only one somewhat complete reauthorization bill has been introduced in the 111th Congress, the Surface Transportation Assistance Act of 2009 (STAA).[67] The bill lacks funding data and other details. Although not formally introduced and hence unnumbered, the bill nonetheless has been marked up by the House Committee on Transportation and Infrastructure, Subcommittee on Highways and Transit. Some of its provisions deal with the New Starts program and particularly the approval process.

The STAA would require FTA to approve a project for entry into project development if it has been chosen as the locally preferred alternative as required under the metropolitan transportation

[65] Department of Transportation, Federal Transit Administration, Report Prepared by Deloitte, 2007.

[66] GAO, 2008.

[67] House Transportation and Infrastructure Committee, Surface Transportation Authorization Act of 2009, Committee Print, http://transportation.house.gov/Media/file/Highways/HPP/OBERST_044_xml.pdf.

planning process. Once a project is approved for project development, the multi-step approval process is reduced to one step, the approval of an FFGA. The bill also does away with the alternatives analysis required under the New Starts program, which is often seen as a duplication of the alternatives analysis required under NEPA. The act would also allow the Secretary of Transportation the option to fast-track some projects, and would base the rigor of FTA's evaluation partly on the amount of federal assistance being sought by the applicant. The break point between a major New Start and a Small Start would be raised from $75 million to $100 million in federal assistance. Projects requesting $25 million or less would be exempt from the requirements of the program and would be advanced using a special warrant, presumably a written pledge of federal support if certain conditions are met. Finally, the act would create an Office of Expedited Project Delivery within FTA to speed capital projects, particularly New Starts/Small Starts projects. The Office would be expected to monitor project progress, promote best practices, help with coordination, use conflict resolution techniques, and coordinate with an Office of Expedited Delivery in the Federal Highway Administration (FHWA).

Another issue that has received a good deal of attention over the past few years is the method for evaluating and rating New Starts proposals, particularly the project justification criteria. Despite the recent changes made to the evaluation process by FTA, Congress might consider further modifications to the way New Starts project are evaluated. One option for Congress would be to leave the project justification criteria as they are in current law, and to wait and see how FTA's recent proposed guidance works out in practice. The approach taken by FTA places greater weight on a number of criteria, particularly economic development and land use, that some interest groups have been calling for and Congress required in the SAFETEA-LU Technical Corrections Act. Congress might support this approach by providing FTA with extra resources to improve data development and travel modeling. Congress might decide, on the other hand, that the weighting scheme devised by FTA is not appropriate and that the justification factors in the statute should be revised to include more detail and less latitude for FTA. This might provide Congress with a chance to add factors that it wants explicitly taken into consideration, such as energy reduction and greenhouse gas emissions, for example. Alternatively, Congress might simplify the justification criteria by focusing them on the mobility benefits. In the past, some have expressed the view that the most important criteria for New Starts projects should be the potential of a new transit option to transport the most travelers at a lower cost in comparison with other transportation alternatives and to reduce highway congestion. The fear among some is that focusing on economic development might divert resources away from those that "will have a greater impact on congestion mitigation, environmental quality, and travel time."[68]

The STAA proposes to replace the current project justification criteria with an evaluation of benefits including mobility and accessibility, congestion relief, energy and environmental benefits, economic development, and public transportation supportive land use policies and future patterns as compared with a no-action alternative. These benefits would be evaluated in reference to how much federal assistance is being sought.[69] In addition, the STAA would prohibit the use of a cost-effectiveness index and limit the use of transportation system user benefit calculation to an evaluation of mobility.

[68] U.S. Congress, House Committee on Appropriations, Departments of Transportation, Treasury, and Housing and Urban Development, the Judiciary, District of Columbia, and Independent Agencies Appropriations Bill 2007, H.Rept. 109-495, pp. 76-77.

[69] Surface Transportation Authorization Act of 2009, pp. 520 and 523.

In its 2008 report on New Starts, GAO provides several other options for changing the evaluation of New Starts projects.[70] One option is to attempt to monetize all the benefits and costs of a proposed project by using benefit-cost analysis. The main potential advantage of this approach would be its comprehensiveness; it might also improve the ability of FTA to compare projects. However, critics of this approach argue that many benefits associated with transit projects are hard to monetize, and current law does not allow FTA to consider the dollar value of mobility improvements when evaluating projects. Another option would be to evaluate projects differently based on a primary goal defined at the local level. This would provide for substantial flexibility in the New Starts program, but might make it very difficult and more contentious to decide which projects should receive federal funding. Additionally, elevating local goals might make it difficult to fund projects that serve national priorities. Another alternative is to make the New Starts program a formula program, thereby devolving responsibility for evaluation to the states. A downside to this approach is that the funds would likely be distributed so widely that no one place would receive enough to be able to build a new fixed-guideway system or in many cases an extension to an existing system.

Private Sector Role in New Starts

Developing as it did in the 1960s and 1970s, it is probably no surprise that the New Starts program came to be associated with the traditional "design-bid-build" method of developing major infrastructure projects. With a design-bid-build project, public sector organizations conceive, develop, and finance a project, bid out construction (and sometimes design work) to private sector firms, and, once complete, take control for operation and maintenance. Design-bid-build tends to follow a sequential order of project delivery steps, and the New Starts program dovetails with this sequential process. GAO, among others, has noted that the alignment of the New Starts program with design-bid-build has been an impediment to greater private project involvement through public-private partnerships (PPPs).[71] This is because, as GAO states, "transit projects that use alternative approaches often rely on the concurrent completion of project phases to meet cost and schedule targets and to accrue savings and other potential benefits."[72] Some of the main benefits of PPPs are said to be private project financing, cost savings, quicker project completion, infrastructure and service quality improvements, and a transfer of risk from the public to the private sector.[73]

Congress has acted before on concerns about involving the private sector in New Starts projects. ISTEA furthered the use of PPPs in transit by initiating a demonstration program to explore the use of Design-Build (DB) and Design-Build-Operate-Maintain (DBOM) in the New Starts program. DB combines design and construction into one fixed-fee contract, and DBOM adds private sector responsibility for operation and maintenance once a facility goes into service. ISTEA also directed FTA to issue guidance on the use of DB/DBOM in the Federal New Starts program. More recently, Section 3011(c) of SAFETEA authorized the Secretary of Transportation to establish a pilot program to explore the use of PPPs with up to three project sponsors involved

[70] GAO, 2008.

[71] U.S. Government Accountability Office, *Public Transportation: Federal Project Approval Process Remains a Barrier to Greater Private Sector Role and DOT Could Enhance Efforts to Assist Project Sponsors*, GAO-10-19, October 2009, http://www.gao.gov/new.items/d1019.pdf.

[72] Ibid., p. 22.

[73] CRS Report RL34567, *Public-Private Partnerships (PPPs) in Highway and Transit Infrastructure Provision*, by (name redacted).

with new fixed-guideway capital projects involving federal funds. This new program is known as the Public-Private Partnership Pilot Program, or "Penta-P." FTA's three project sponsors for inclusion in Penta-P are Bay Area Rapid Transit (BART), Denver Regional Transportation District (RTD), and Metropolitan Transit Authority of Harris County (Houston Metro).

In its recent report reviewing private sector involvement in major New Starts projects, GAO found changes in project delivery, but not in project finance.[74] According to GAO, seven New Starts projects since 2000 have been completed using an alternative approach, five using DB and two using DBOM. To date, the Penta-P program does not appear to have made a major difference. FTA is permitted to streamline the New Starts process for projects in the Penta-P program, for instance, approving concurrent entry into preliminary engineering and final design. But generally FTA has not approved such changes because it believes too few of the risks have been transferred from the public sector to the private sector by the project agreements, particularly in the realm of project financing.

If Congress believes that greater private sector participation in New Starts is desirable, it might, as mentioned earlier, simplify the program by reducing the number of steps in the process. For example, APTA suggests replacing the separate evaluations required for entry into preliminary engineering and final design with a single evaluation for entry into the New Starts program. Also, as mentioned earlier, Congress might encourage FTA to issue more early, but conditional, approvals, something that FTA already has the power to do, although with limitations. Another suggestion is to create a mechanism to provide guidance and technical assistance for the creation of PPPs. The United Kingdom and two Canadian provinces have set up quasi-governmental entities to do this on a fee-for-service basis. FHWA has created an office to support highway PPPs, the Office of Innovative Program Delivery, and FTA might do so for transit PPPs. As mentioned, the STAA proposes to create an Office of Expedited Project Delivery in FTA that would provide a technical assistance, "problem-shooting," and coordinating role within the agency and between FTA and other federal and non-federal entities. One particular area of concern for the Office of Expedited Project Delivery might be the environmental review process that is seen by many as a complex and time-consuming stumbling block.

Perspectives on the Future of Public Transit: Implication for New Starts

Differing views on the size and shape of the New Starts program to some extent depend on expectations about the future role of public transit over the next few decades. Transit supporters argue that record-breaking ridership over the past few years is an indicator of future growth in demand, the recent recession-related decline notwithstanding. This growth in ridership they believe will only be stimulated by concerns over the financial and environmental costs of automobiles and highways. These supporters believe the spike in the price of gasoline to more than $4 a gallon in the summer of 2008, and the concomitant rise in transit use, is a harbinger of America's transportation future. Climate change, transit advocates argue, is another reason to believe that transit's role in the future will be much more important. If these factors are taken along with the projection by the Census Bureau that the U.S. population will grow to 440 million by 2050 (from 310 million in 2010), with most of the growth occurring in large metropolitan

[74] U.S. Government Accountability Office, GAO-10-19, October 2009.

areas, then transit advocates argue that substantially more investment is needed in transit infrastructure, particularly high-capacity and electrified rail transit.[75]

Transit skeptics, on the other hand, point out that in the context of population growth, the recent increases in transit ridership are not so dramatic. Transit ridership per capita today, they note, is lower than it was in the 1980s. This is despite a substantial increase in the supply of transit, much of which has been in the form of rail transit supported by the New Starts program. Skeptics also point out that the factors that have caused transit providers to struggle in the post–World War Two period are still at work. These factors include metropolitan population and job decentralization, income growth, and the widespread availability of personal motor vehicles. Moreover, they argue that the financial and environmental costs of automobiles, particularly the costs associated with petroleum, will be mitigated by improvements in fuel efficiency, including the increasing development and use of alternatively fueled vehicles such as the Chevy Volt and Nissan Leaf. In this view, new and expensive transit rail systems are likely to be woefully underused and a burden on current and future taxpayers.[76]

A third perspective is that the future of surface transportation over the next few decades, at least in terms of the share of travel made by automobiles and transit, will not be very much different from today. In this view, the financial and environmental costs of automobile travel will remain much as they are currently or may slowly decline. This is because with the introduction of new automotive technologies, such as all-electric vehicles, the debate about some of these costs is likely to move from the transportation sector (i.e., cars versus transit, etc.) to the energy generation sector (i.e., coal versus nuclear, etc.). The introduction of new technologies over the next few decades, it is thought, will slowly provide choice and flexibility in fuel source that will not dramatically change the patterns of use of personal vehicles and public transit. Population growth, much of which will be concentrated in urban areas, nevertheless, according to this perspective, is likely to require alternatives to personal vehicles in highly congested locations. In this view, automobiles are likely to remain the dominant mode of transportation, but building new fixed guideway transit systems and expanding existing fixed guideway systems may be appropriate in certain situations. New, extensive rail systems, accordingly, are likely to remain relatively rare, and buses, moreover, are likely to remain the main form of transit service in most places.[77]

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[75] See, for example, American Public Transportation Association, *TransitVision2050*, Washington, DC, October 2008, http://www.apta.com/gap/transitvision/Documents/transit_vision_2050.pdf.

[76] See, for example, Randal O'Toole, *Rails Won't Save America*, Cato Institute Briefing Paper No. 107, October 7, 2008, http://www.cato.org/pubs/bp/bp107.pdf.

[77] See, for example, David W. Jones, *Mass Motorization + Mass Transit: An American History and Policy Analysis*, Indiana University Press, 2008.