

## Comment

# Viability of a Sustainable and Feasible National Transportation System

Cynthia J. McNabb\*

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### I. INTRODUCTION

The United States requires a feasible and sustainable national transportation system (NTS). Every year, the citizens of the United States spend billions of dollars on transportation costs which a more efficiently

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\* Cynthia J. McNabb has a Bachelor of Arts in Political Science from Bryn Mawr College, and a Masters in Public Policy from American University. She would like to thank the staff members of the Transportation Law Journal for their assistance with her comment.

organized transportation system could prevent.<sup>1</sup> While this country sorely needs efficient and effective transportation systems, the form which such systems should take presents a difficult determination. F. Kaid Benfield, Senior Attorney and Director of the Transportation Project at the National Resources Defense Council, presents one view of a sustainable and feasible NTS in his article, "Running on Empty: The Case for a Sustainable National Transportation System."<sup>2</sup>

This comment addresses the issues presented in the above article. Part II presents examples of current Department of Transportation (DOT) projects. Specifically, Part II addresses efforts at implementing the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). Part III comments on the author's framework for a NTS, and will also critique its feasibility and sustainability as a vision for a NTS. Part IV concludes with a look at the most effective approach for implementing society's transportation goals.

## II. NATIONAL TRANSPORTATION SYSTEMS AT WORK

Under ISTEA, several current and recently completed projects seek to alleviate some of the transportation burdens facing the United States economy. Cities across the United States have sought to find innovative and creative methods to utilize ISTEA funding to implement regionalized transportation systems. For example, the St. Louis city government has searched for alternatives to motorized transportation by investing in pedestrian-friendly projects.<sup>3</sup> Moreover, the Chicago city government recently engaged in a very similar project.<sup>4</sup> Delray Beach, Florida invested in restoring an unused rail station as a means of coordinating a "transportation hub" that would enable train, bus, and AmTrak passengers greater

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1. Governor Paul E. Patton & Governor Edward T. Schafer, *Hitting Snooze Bar on Infrastructure*, TRFCW, July 17, 1997, at 39.

The consequences of not investing in our nation's transportation system are real, and they are already being felt by American business workers and citizens every day on our roads, at our airports and on our public transportation systems: \$43 billion per year in delays and excess fuel consumption caused by congested roadways; \$24 billion per year in additional vehicle repair costs caused by poor road conditions. That's \$67 billion total per year paid by American families and businesses.

*Id.*

2. F. Kaid Benfield, *Running on Empty: The Case for a Sustainable National Transportation System*, 25 ENV'T'L. L. 651 (1995).

3. Theodore C. Taub ET AL., *ISTEA: Too Soon to Evaluate Its Impact*, CA34 ALI-ABA 143, 147. "In St. Louis, approximately \$4 million is designated for development of 100 miles of pathways to accommodate pedestrians, equestrians, handicapped, roller-bladers, and mountain bikers." *Id.*

4. *Id.* "Among many ISTEA projects in the Chicago area, bicycle paths are being laid out like never before: 201 proposed bicycle-pedestrian projects totaling 693 miles have been funded with \$106 million from ISTEA from 1992 through 1995." *Id.*

access to transportation.<sup>5</sup> Also, New Jersey sought to resurrect dead rail routes to provide alternatives to daily commutes into Philadelphia.<sup>6</sup> Most of these programs focus on the belief that traditional transportation projects do not provide viable means of securing success at meeting U.S. transportation goals. The DOT, in implementing ISTEA, recognizes that not all transportation projects are feasible or sustainable.<sup>7</sup> The DOT attempts, when allocating ISTEA resources, to locate programs it feels will meet society's goals of safety, security, efficiency, and environment-friendly transportation systems.

Since its inception, ISTEA has achieved critical success.<sup>8</sup> For instance, enactment of the ISTEA legislation illustrates that U.S. citizens "will abandon their cars – if a well-planned, convenient and comfortable transit option is available."<sup>9</sup> Additionally, supporters of ISTEA attribute reduced crime rates in such states as New York to the legislation.<sup>10</sup> Given the achievements of ISTEA, the question of whether the United States government should implement an entirely new NTS program arises.

### III. THE PROPOSAL FOR A NATIONAL TRANSPORTATION SYSTEM

Again, the creation of some form of NTS would greatly fulfill the transportation needs of many U.S. citizens. Benfield advocates a redefined NTS which expands on a DOT transportation proposition dating to late 1993. Benfield's article raises serious issues regarding the feasibility and sustainability of such a NTS. While creating a NTS seems a useful

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5. *Id.* "Delray Beach, Florida hopes to restore the historic Seaboard Coastline Railway station with \$1.83 million in enhancement dollars. The funds would be used to restore the building, develop new parking areas, and create a transportation hub that would serve AmTrak passengers, the Tri-Rail commuter train, bus service and more." *Id.*

6. *Id.*

New Jersey transportation planners hope to use about \$10 million in transportation enhancement funds during 1995. Proposals for pedestrian pathways, bike trails and historic preservation projects have been reviewed. Citizens in Glassboro, New Jersey, outside Philadelphia, hope to restore the decrepid [sic] train station which once ran trains to Philadelphia every half hour.

*Id.*

7. Cynthia Burbank & S. Lawrence Paulson, *Congress Battles Over Successor to ISTEA*, 61 *PUBROADS* 41, July 17, 1997. "We can continue to focus on building new roads and larger airports where land is available, with the realization that this cannot possibly meet demand." *Id.*

8. Jimmy D. Morrison, *ISTEA's here (almost). Now What*, 64 *MASSTRNST*, May 15, 1998, available in 1998 WL 12061529. "There's no question that the original ISTEA legislation was a huge success." *Id.*

9. *Id.*

10. Ellen Yan, *ISTEA Refill Uncertain as States Seek More Funds*, *NWSDAY*, Mar. 22, 1998, at A28. "ISTEA fans credit the act with boosting LIRR and subway ridership by lowering crime." *Id.*

endeavor conceptually, Benfield's proposal provides an untenable framework.

#### A. EXPANDED GOVERNMENT BUREAUCRACY

First, Benfield advocates the expansion of a new government entity which would constitute the focal point for an expanded transportation system.<sup>11</sup> This agency or entity would consolidate many existing administrative agencies into a "new Intermodal Transportation Administration" under the auspices of the DOT.<sup>12</sup> The problems inherent in the coordination of this massive enterprise highlight the infeasibility and lack of sustainability of creating a NTS in such a manner. A new Intermodal Transportation Administration would require that each of the existing agencies and "subagencies" accept the consolidation effort.<sup>13</sup> Such an assumption ignores the competing interests prevalent among members of the transportation industry.<sup>14</sup>

Furthermore, in order to create a sustainable Intermodal Transportation Administration, the budgets of each of the subagencies would require formality for the new agency to possess sufficient resources for the re-organization. Typically, budgetary stability rarely exists. Recent years have marked drastic reductions in agency budgets, particularly in light of the continued emphasis on balanced budget initiatives.

#### B. WIDE-SPREAD INFORMATION/DATA COLLECTION

Benfield also indicates that in order for a NTS to fully comply with the goals of a "strategic planning process," large amounts of information would need gathering in order to evaluate program performance.<sup>15</sup> Such data collection would, in all likelihood, cost an immense amount in both dollars and resources. In many instances, wide-scale data consolidation is not considered feasible, as information/data collection places a large burden on the private sector to provide the information.<sup>16</sup>

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11. Benfield, *supra* note 2, at 652. "The Department also intends to adopt a new administrative structure that integrates the functions historically performed by the federal Highway Administration, federal Railroad Administration, federal Transit Administration, and certain other subagencies into a new 'Intermodal Transportation Administration.'" *Id.*

12. *Id.*

13. *Id.*

14. Joni Casey, *Harmonizing a Diverse Industry*, TRFCW, May 4, 1998, at 70 (recognizing the existence of competing interests in the intermodal transportation industry).

15. Benfield, *supra* note 2, at 665.

16. For instance, Mr. Benfield calls for the collection of data on "energy intensity and usage, equity and access, performance efficiency, safety and security, economic costs, air and water pollution, land use, and infrastructure conditions." *Id.* at 665. In many cases, the burden of providing such quantitative data will fall on not only government agencies, but on the private sector.

Second, the number of existing administrative agencies which would bear the responsibility for the providing and processing data ranges would be quite high. The Environmental Protection Agency, Department of Energy, Department of Housing and Urban Development, Department of Agriculture, and the Department of Labor provide just a sample of the agencies required to provide the quantitative data that Benfield suggests are key to a successful NTS.<sup>17</sup> This places a large burden on the already overloaded administrative system. Moreover, a consolidated transportation department would need to account for annual data collection and processing. Lack of resources to provide for such an effort would render a NTS ineffective.

### C. CONSOLIDATION OF CONSTITUENT BODIES AND LEGISLATION

There also exists the difficulty in organizing the countless constituent groups into one unified decision-making body, yet Benfield calls precisely for this effort.<sup>18</sup> Such an attempt is not feasible since constituent groups will probably change every five years.<sup>19</sup> In the meantime, the election of a new city government could occur or new relevant constituent groups created. Disjointed and confused policy decisions would result. Furthermore, among the various constituent groups, full agreement on a management style or new piece of legislation would not be forthcoming. It is not likely that the new NTS would accomplish much by requiring full consultation on the set of issues presented. Any policy directive and assessment of where to invest public resources becomes moot with the passage of time. Additionally, sustainable efforts at consolidated decision-making would become nearly impossible.

The NTS as envisioned in Benfield's article would require the consolidation of many federal regulations now in existence. First, ISTEA provides the framework for establishing an NTS. Beyond this framework, Benfield suggests that a sustainable and feasible DOT/NTS program should also turn to the National Environmental Policy Act,<sup>20</sup> the Energy Policy Act, the Clean Water Act, the Civil Rights Act, and the Americans with Disabilities Act for guidance.<sup>21</sup> Coordinating the intent

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17. One need only examine the type of data being requested to determine the large number of administrative agencies required for this form of massive data collection.

18. *Id.*

19. *Id.* "[T]he Department should articulate, after full consultation with its state and local government partners and citizen constituents, its assessments of where to invest public resources along with appropriate management, policy direction, and proposals for new legislation, if appropriate. DOT should repeat this undertaking periodically, perhaps at five-year intervals." *Id.*

20. *Id.* at 660. "The National Environmental Policy Act (NEPA) provides further direction to the federal DOT, both in administering its program generally and in undertaking significant exercises such as establishing the NTS." *Id.*

21. *Id.* at 662.

and structure of each massive regulatory regimes into a national transportation legislative act seems an insurmountable feat.

#### D. LACK OF VIABLE MODELS

Benfield cites three models of successful strategic planning efforts to argue for performance assessments in conjunction with a NTS: The U.S. Forest Service's Forest and Rangeland Renewable Resources Planning Act (RPA),<sup>22</sup> the U.S. Department of Agriculture's Soil and Water Resources Conservation Act (RCA),<sup>23</sup> and the United Kingdom's Royal Commission on Environmental Protection.<sup>24</sup> None of these three models provides a feasible or sustainable model on which to base the strategic planning aspect of a NTS. First, a NTS proposes a larger program than either the RPA or the RCA. In fact, Benfield conceives of a NTS requiring the consolidation of agencies and federal regulatory programs. Neither the RPA or the RCA were created with such an extensive vision in mind. Second, the Royal Commission on Environmental Protection should also be discounted. While broad in scope, the environmental concerns in a nation the size of the United Kingdom hardly compare in size and scope to the consolidation of a United States NTS.

For the reasons listed above, Benfield does not provide a feasible or sustainable framework for the creation of a NTS. First, such a national system conceives of both a time intensive and resource exhaustive method of forming an entirely unique government entity. Second, the maintenance of a state agency to measure the performance of a new system is costly. Nevertheless, Benfield completely ignores this cost factor. Finally, the models provided as a basis for the planning state of the NTS do not provide sufficient examples on which to compare a new NTS. Therefore, the United States government should consider other alternatives to the one which Benfield advocates.

#### IV. CONCLUSION

One such alternative presents itself in the reauthorization of ISTEA: TEA-21 (Transportation Equity Act for the 21<sup>st</sup> Century). President Clinton signed this six-year transportation reauthorization on June 9, 1998.<sup>25</sup> TEA-21 guarantees a record \$198 billion investment within the limits of a balanced budget,<sup>26</sup> and seeks to meet the majority of society's

22. 16 U.S.C. §§ 1600-1614 (1994 & Supp. II 1996).

23. 16 U.S.C. §§ 2001-2009 (1994 & Supp. II 1996).

24. Royal Comm'n on Env'tl. Protection, Pub. No. CM 2674, Eighteenth Report: Transport and the Environment (1994).

25. *President Clinton Signs Transportation Bill for the Twenty-first Century*, D.O.T. News Release, June 9, 1998, available in 1998 WL 301926.

26. *Id.*

transportation goals. For instance, the Secretary of Transportation, Rodney E. Slater, stated that TEA-21 “focuses on improving safety, rebuilding America, protecting the environment, creating opportunity and ensuring global competitiveness.”<sup>27</sup> In fact, TEA-21 expands ISTEA funding in many of the above areas such as the environment, which will receive 35% more funding under TEA-21 than it did under ISTEA.<sup>28</sup> Because TEA-21 is an expansion of ISTEA, the United States government already has years of experience on which to reflect when determining whether this type of federal legislation meets the country’s needs for a NTS.

Most of the evidence suggests the success of ISTEA. In fact, reauthorization of ISTEA received high levels of bi-partisan support.<sup>29</sup> Furthermore, both the House and Senate have approved measures that guarantee continued funding for federal and state transportation projects through the application of gas tax revenue.<sup>30</sup> With such a pool of continued revenue, national transportation projects as financed through TEA-21 should continue to flourish and expand.

In conclusion, that which is not broken should not be fixed. TEA-21 already provides the kind of NTS which Benfield endorses in his article. Instead of wasting taxpayer dollars on a new NTS, the DOT should focus on the continuation of the already successful NTS programs in place. While billions of dollars each year are spent inefficiently on transportation costs, the Department is moving in the right direction. With the assurance of continued funding through TEA-21, the DOT now has the capability and flexibility to strategically plan for the future. Through innovation and creativity, as witnessed by the NTS programs under ISTEA, we begin to see the formation of a sustainable and feasible NTS. With both time and continued public support, the DOT will likely meet Benfield’s challenge of creating a NTS which will meet society’s transportation goals.

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27. *Id.*

28. ISTEA Reauthorization Policy Statement and Principles, 61 Fed. Reg. 30,276 (June 9, 1998).

29. Frank N. Wilner, *Strange Bedfellows*, TRFCW, Apr. 27, 1998, at 13.

30. *ISTEA Negotiators to Work Through Weekend For Deal*, CONGDAM, May 15, 1998, available in 1998 WL 9512663.

