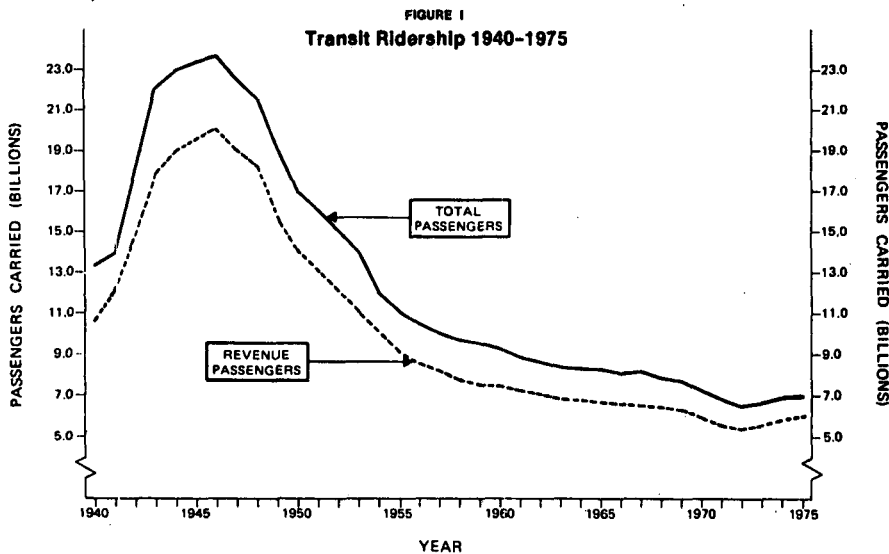


## Notes

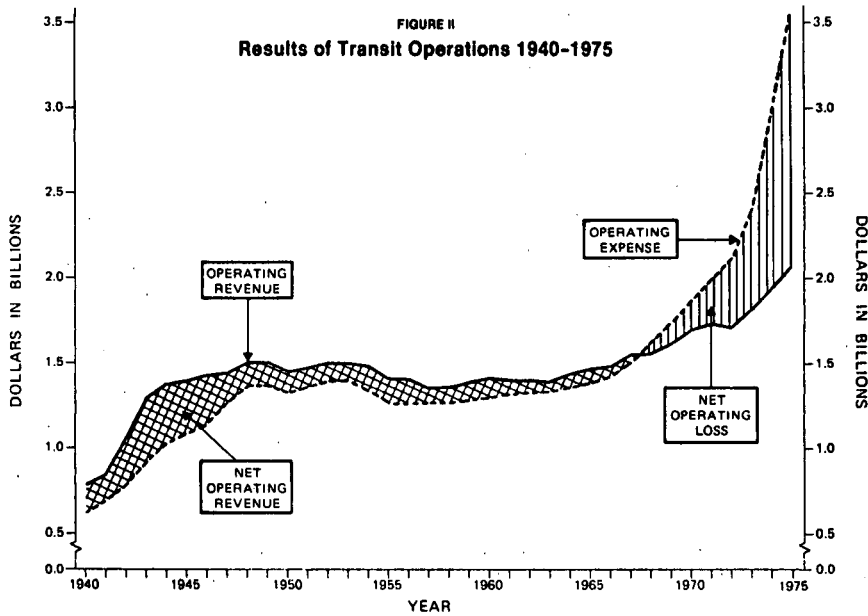
### Transit Funding Under The Urban Mass Transportation Act

Since World War II mass transit ridership and net revenues have dropped precipitously, and fare box revenues have become inadequate to support operations.<sup>1</sup> Correspondingly, an outside infusion of financial aid has become essential for continued service. In response to this need for financial assistance the Urban Mass Transportation Act of 1964 (UMT Act) was enacted, and as amended has provided funds for operating and capital expenses. These funds have enabled numerous cities to maintain mass transit service despite the staggering deficits which typify such operations.<sup>2</sup>



1. See figures 1 & 2, *infra*; G. SMERK, URBAN MASS TRANSPORTATION 142-58 (1974); *Urban Mass Transportation: Hearings on S. 3154 Before the Subcomm. on Housing of the House Comm. on Banking and Currency*, 91st Cong., 2d Sess. 221 (1970) (statement of Mayor Richard J. Daley) (farebox revenues) [hereinafter cited as *1970 House Hearings*].

2. See figure 2, *infra*; *Department of Transportation and Related Agencies Appropriations for 1978: Hearings Before a Subcomm. of a House Comm. on Appropriations*, 95th Cong., 1st Sess. pt. 5, at 338-39 (1977) [hereinafter cited as *1978 Appropriations Hearings*].



SOURCE: American Public Transit Association, Transit Fact Book (1975-1976 ed.).

Appropriations increase yearly to maintain and expand transit service,<sup>3</sup> as viable transportation systems are considered vital to the health and welfare of urbanized areas. Such systems are thought to foster important values: the preservation of the social and physical environment, the conservation of energy and other scarce resources, and the

3. The following table indicates total spending under Urban Mass Transportation Administration (UMTA) programs for the years 1965-1976:

Year	Program level (millions)
1965	\$69.2
1966	91.6
1967	157.9
1968	135.2
1969	174.0
1970	161.6
1971	401.9
1972	604.0
1973	978.5
1974	1,080.2
1975	1,525.0
1976	1,918.9

1978 Appropriations Hearings, *supra* note 2, at 348. The 1975 total includes urban systems and interstate substitution grants, while the 1976 total includes only interstate substitution grants. Department of Transportation and Related Agencies for 1977: Hearings Before a Subcomm. of the House Comm. on Appropriations, 94th Cong., 2d Sess. pt. 2, at 730 (1976) (1975 urban systems grants); 1978 Appropriations Hearings, *supra* note 2, at 389 (interstate substitution grants).

promotion of more efficient and less costly transportation.<sup>4</sup> Societal assimilation of these values virtually ensures that mass transportation will be funded, especially when reinforced by favorable results such as the modest, yet sustained, increase in ridership since 1973.<sup>5</sup>

The prominent role of mass transportation in the shaping of the urban environment bears out the importance of the financing available under the UMT Act. This is compounded by the fact that all federal appropriations for mass transit are regulated by the Act.<sup>6</sup> The following analysis is offered to facilitate a general understanding of this regulatory process. First, the legislative history of the Act will be examined to ascertain the general funding policies which have evolved. Second, the mechanics of the funding process under the Act will be considered. Third, the administration of the Act will be viewed in the judicial and administrative perspective. This inquiry will be limited to the funding of mass transportation systems under the UMT Act and unless related to this process other issues will escape scrutiny.

#### I. LEGISLATIVE HISTORY

Although President Kennedy had vigorously endorsed mass transit funding,<sup>7</sup> the UMT Act of 1964 was hardly a popular piece of legislation.<sup>8</sup> It was somewhat of a surprise when the bill did pass, albeit by a slight margin, as numerous Republicans defied the position of the Republican Policy Committee which had firmly opposed the mass transportation

4. See 123 CONG. REC. S10,557 (daily ed. June 23, 1977) (remarks of Sen. Harrison Williams) (discussion of mass transit and energy conservation); G. SMERK, *supra* note 1, at 96-117 (detailed synopsis of economic, environmental and social values). See generally OFFICE OF TECHNOLOGY ASSESSMENT, U.S. CONGRESS, ENERGY, THE ECONOMY, AND MASS TRANSIT (1975); Renshaw, *A Note on Mass Transit Subsidies*, 26 NAT'L TAX J. 639, 643 (1973) (analysis: relationship between mass transit energy savings and energy trade deficits).

5. See generally figure 1 *supra*; 1978 Appropriations Hearings, *supra* note 2, at 327-31. For a provocative, albeit dated, presentation of the case against mass transit see Porter, *The Big Steal*, in A REPORT ON THE 1968 CONFERENCE ON MASS TRANSPORTATION 319 (1968); Porter, *The Big Snow Job (A Criticism of Rapid Transit Promotion Techniques)*, in A REPORT ON THE 1967 CONFERENCE ON MASS TRANSPORTATION 106 (1967).

6. Funds available for mass transit under 23 U.S.C. §§ 103(d)(4), 142 (Supp. V 1975), interstate substitution and urban systems funds, respectively, are administered through the urban mass transportation fund with the federal share in such projects specified in section 4(a) of the UMT Act, 49 U.S.C. § 1603(a) (Supp. V 1975). See generally note 111 para. 2 *infra*.

7. See, e.g., H.R. Doc. No. 384, 87th Cong., 2d Sess. 9-13, *reprinted in* 108 CONG. REC. 5988-89 (1962).

8. See G. SMERK, *supra* note 1, at 53-56. The UMT Act of 1964 took a rather tortuous course before it "found its way onto the 'must' list of legislation." A massive lobbying effort, joining previously disparate interests into a coalition, was required before the Johnson Administration and the House would consider the bill. The House Speaker, John McCormack, then had to be coaxed into placing the bill on the calendar for consideration on the floor because he feared it would be defeated. *Id.*

bill.<sup>9</sup> Perhaps due to the political realities, the measure which passed was somewhat anemic.<sup>10</sup>

In the immediately succeeding years little happened to fortify the meager provisions of the UMT Act, although attempts were made.<sup>11</sup> It was not until the Urban Mass Transportation Assistance Act of 1970 (the Assistance Act of 1970) amended the UMT Act that federal funding reached significant proportions.<sup>12</sup>

#### A. THE 1970 AMENDMENTS

During the hearings and debates on the Assistance Act of 1970 two major issues surfaced: the need for a meaningful level of spending and the need for long-term commitment of funds for mass transit.<sup>13</sup> Much of the discussion focused on the possibility of creating an urban transportation trust fund to finance an expanded program. It was commonly thought that the trust fund approach would furnish the long-term stability and monies needed to satisfactorily resolve the twofold problem.<sup>14</sup> How-

9. Sen. Mansfield purportedly called it a legislative miracle. G. SMERK, *supra* note 1, at 56.

10. The 1964 Act authorized the expenditure of \$75 million for the fiscal year 1965 and \$150 million per year for fiscal years 1966 and 1967. Pub. L. No. 88-365, § 4(b), 78 Stat. 304 (codified at 49 U.S.C. § 1603(b) (1970)). These sums were dwarfed by the billions spent on highways during these years. See *1970 House Hearings, supra* note 1, at 501 (statement of Rep. Ryan). Moreover, a few short years later a House Committee reported that, according to an UMTA commissioned study, \$28-34 billion was needed for mass transit during the 1970's. H.R. REP. NO. 1264, 91st Cong., 2d Sess. 4 (1970).

11. See H.R. REP. NO. 1487, 89th Cong., 2d Sess. 15-16 (1966) (individual statement of Rep. Fino accompanying the report). Rebuffed in his attempts to increase funding, Rep. Fino charged that the 1966 amendments to the UMT Act did not provide a sufficient level of funding, that "sliced any way you will, the Mass Transportation Act Program is still 'small potatoes.'" *Id.* at 15.

12. See Haley & Watkins, *The Urban Mass Transportation Assistance Act of 1970—A Federal Program Comes of Age*, 16 N.Y.L.F. 741 (1970); and note 10 *supra*.

13. See, e.g., *1970 House Hearings, supra* note 1; 116 CONG. REC. 2122, 34177 (1970) (remarks of Sen. Harrison Williams and Rep. Hanna, respectively).

14. See 116 CONG. REC. 26444-45, 27248-49 (1970) (remarks of Rep. Koch and Rep. Goodell, respectively); *1970 House Hearings, supra* note 1, at 94-95 (statement of Sen. Harrison Williams). The urban transportation trust fund proposals were patterned after the Highway Trust Fund, *id.*

The Highway Trust Fund, Act of June 29, 1956, ch. 462, § 209, 70 Stat. 397, as amended by numerous uncodified Public Laws, reprinted in 23 U.S.C.A. at 42-45, Supp., at 53-54 (West 1966 & Supp. 1977), permitted the highway program to be funded independently of the annual appropriations process. Specified tax revenues were collected and paid directly into the fund to be used solely for Federal-Aid highways. The result was that subsequent appropriations for highway construction did not need to tap the general revenues and were assured insofar as the money could not be used for other purposes and were available from the taxes collected. The philosophy behind this method of financing was that the user should pay for the highways, *id.* § 209(b)(2), and therefore taxes levied on motor fuels, tires, etc., were channelled into the fund, *id.* § 209(c). This is in contrast to the mass transportation trust fund proposals which would have been financed by an auto excise tax. See *1970 House Hearings, supra* note 1, at 94-95 (statement of Sen. Harrison Williams).

ever, the Nixon Administration opposed this method of financing and a contract authority approach was approved as a compromise.<sup>15</sup>

The Assistance Act of 1970 initiated a twelve-year, \$10 billion commitment to mass transportation, of which \$3.1 billion in contract authority was authorized over a five-year period.<sup>16</sup> In the events leading to its passage mass transit had become a "safe issue" politically, one which was in the common interest of previously competing groups.<sup>17</sup>

### B. THE 1974 AMENDMENTS

Notwithstanding the increased level of funding, widespread dissatisfaction persisted after the 1970 amendments to the UMT Act. Numerous legislators felt mass transit was still inadequately funded.<sup>18</sup> In addition, there was growing sentiment favoring the allocation of funds to defray operating deficits as well as capital costs.<sup>19</sup> In hearings held on

---

Limited Highway Trust Fund monies now are available for mass transit applications through urban systems funding, 23 U.S.C. § 142(e)(2) (Supp. V 1975). However, insignificant amounts have been used for mass transit under this provision. See note 111 para. 2 *infra*.

15. 1970 House Hearings, *supra* note 1, at 94-95 (statement of Sen. Harrison Williams). President Nixon rejected the recommendations of the Transportation Task Force which he had created to study the financing issue. The task force had endorsed the trust fund approach. *Id.* Apparently, the Administration felt that a trust fund could be funded only by user tax revenues, *id.* at 109-110, and opposed funding through an auto excise tax, *id.* at 94. Therefore, it found the trust fund method was not feasible given the decline in mass transit passengers. *Id.* at 110.

The contract authority technique permitted the Secretary of DOT "to incur binding obligations" up to a statutorily prescribed limit *before* actual appropriations were made. 49 U.S.C. § 1603(c) (1970 & Supp. V 1975).

16. Pub. L. No. 91-453, §§ 1, 3(b), 84 Stat. 962, 965 (codified at 49 U.S.C. §§ 1601(a), 1603(c) (1970)).

17. G. SMERK, *supra* note 1, at 80; Smerk, *Development of Federal Urban Mass Transportation Policy*, 47 IND. L.J. 249, 291 (1972).

"Safe issue" or not, interest groups were still unwilling to make sacrifices for the mass transit cause. For example, the auto industry was quick to oppose a version of the urban transportation trust fund which would have been financed by the "temporary, war emergency," auto excise tax. See 1970 House Hearings, *supra* note 1, at 606 (statement of Thomas C. Mann, President of the Auto Manufacturers Association).

18. See, e.g., 1970 House Hearings, *supra* note 1, at 141, 507 (statements of Rep. Koch and Rep. Brock Adams, respectively); 116 CONG. REC. 2147-48, 2262-63 (1970) (amendments proposed by Rep. Cranston and Rep. Goodell, respectively, which would have authorized the entire \$10 billion commitment in the first 5 years).

19. As early as Jan. 20, 1966, Sen. Harrison Williams introduced a bill with this purpose. S.2804, 89th Cong., 2d Sess., 112 CONG. REC. 707 (1966) (introduction, first and second reading, and referral to committee).

In 1970 the Senate passed a measure which provided operating assistance for mass transit as part of the Housing and Urban Development Act of 1970 (§§ 801-804) only to have it deleted by the conference committee due to opposition in the House. H.R. REP. NO. 1784, 91st Cong., 2d Sess. 64 (1970). See 116 CONG. REC. 42637 (1970) (remarks of Rep. Koch).

By 1972 more than 100 such bills were pending before a House Subcommittee. *Urban Mass Transportation: Hearings Before the Subcomm. on Housing of the House Comm. on Banking and Currency*, 92d Cong., 2d Sess. 1 (1972) (remarks of Rep. Barrett).

this issue, Senator Harrison Williams (D-N.J.) felt compelled to castigate the Nixon Administration for its uncooperative attitude.<sup>20</sup> Nevertheless, the Administration continued to maintain that the operating deficit problem was the responsibility of local governments.<sup>21</sup>

Despite the Administration's opposition, both the Senate and the House passed bills which provided for operating assistance and increased spending.<sup>22</sup> It was recognized that without such assistance the nation's transit systems might cease operations.<sup>23</sup> However, it became clear that the new Ford Administration was to have the last word when the House voted to recommit the conference report. The inability of the House to approve the conference report was largely attributable to the Administration's disaffection with the report's operating assistance section.<sup>24</sup> The conferees reconvened and conducted a hearing in an attempt to accommodate the Administration's concerns.<sup>25</sup> Somehow an acceptable version, incorporating an operating assistance provision, was formulated.<sup>26</sup> With President Ford's approval, the Urban Mass Transportation Assistance Act of 1974 passed easily.<sup>27</sup>

## II. FUNDING REQUIREMENTS UNDER THE ACT

In its present form the UMT Act provides mass transit with funds for capital and operating expenses pursuant to sections 3 and 5, respec-

---

These legislative efforts ensued because the UMT Act, as amended by the Assistance Act of 1970, provided funds for capital expenses, 49 U.S.C. § 1602 (1970), and technical studies, *id.* § 1607a, while funds for operating expenses were specifically prohibited, *id.* § 1602(a).

20. *Emergency Urban Mass Transit Legislation: Hearings Before the Subcomm. on Housing and Urban Affairs of the Senate Comm. on Banking, Housing, and Urban Affairs*, 92d Cong., 1st & 2d Sess. 86-88, 91 (1971-1972) (remarks of Sen. Harrison Williams). Sen. Williams' verbal blast was his reaction to Secretary Volpe's (DOT) decision not to testify on the operating deficit question.

21. *E.g., Emergency Commuter Relief Act: Hearings on S. 386 Before the Subcomm. on Housing and Urban Affairs of the Senate Comm. on Banking, Housing, and Urban Affairs*, 93rd Cong., 1st Sess. 51 (1973) (statement of Claude S. Brinegar, Secretary, DOT); *1970 House Hearings*, *supra* note 2, at 126 (remarks of John A. Volpe, Secretary, DOT).

22. 119 CONG. REC. 29066, 32827 (1973) (passage by Senate and House, respectively).

23. See H.R. REP. NO. 141, 93rd Cong., 1st Sess. 2 (1973).

24. See 120 CONG. REC. 25658-60, 25666-67 (1974) (remarks of Rep. Brown, Rep. Wylie and vote to recommit).

25. See H.R. REP. NO. 1427, 93rd Cong., 2d Sess. 13-14 (1974).

26. Apparently the provision reflected the Ford Administration's desire to deal with mass transportation needs in a comprehensive fashion, see *id.* Nevertheless, the operating assistance alternative it included was at odds with the longstanding Nixon Administration position. See text accompanying note 21, *supra*. The House report suggests this occurred because Congress was acting "in the spirit of cooperation with the new President . . ." H.R. REP. NO. 1427, 93rd Cong., 2d Sess. 14 (1974). The provision which was adopted is § 5 of the UMT Act. 49 U.S.C. § 1604 (Supp. V 1975).

27. See Telegram from President Ford to Rep. Brown, *reprinted in* 120 CONG. REC. 36950 (1974). For an account of the voting see 120 CONG. REC. 36573 (1974) (passage by Senate); *id.* at 36954-55 (passage by House).

tively.<sup>28</sup> These sections are the backbone of the Act and spell out the procedural and substantive requirements to be met before funds will be forthcoming.<sup>29</sup> The influence of other sections on funding can be seen when related to sections 3 and 5.<sup>30</sup>

Section 3 authorizes "grants or loans to assist . . . in financing (1) the acquisition, construction, reconstruction, and improvements of facilities and equipment for use . . . in mass transportation service . . . and (2) the establishment and organization of public or quasi-public transit corridor development corporations or entities."<sup>31</sup> The approval of funds for these purposes is contingent upon a finding by the Secretary that the applicant has "the legal, financial, and technical capacity to carry out the proposed project . . ."<sup>32</sup> The applicant must be a public agency at either the state or the local level;<sup>33</sup> and funds cannot be used for ordinary operating expenses or "procurements utilizing exclusionary or discriminatory specifications."<sup>34</sup> Finally, before financial assistance can be rendered, the interests of private transit operators must be considered,<sup>35</sup> and the applicant must agree not to compete with private charter and school bus operations.<sup>36</sup>

28. 49 U.S.C. § 1602 (1970 & Supp. V 1975); *id.* § 1604 (Supp. V 1975).

29. Appropriations for sections 3 and 5 accounted for approximately \$1.48 billion of the \$1.58 billion total under the UMT Act in fiscal year 1976. Estimates for fiscal year 1977 place the figures at \$2.25 billion out of a \$2.45 billion total. 1978 Appropriations Hearings, *supra* note 2, at 389. The other provisions which provide funds include: section 9 grants for technical studies, 49 U.S.C. § 1607a (1970), section 10 grants for managerial training programs, *id.* § 1607b, section 11 grants for research and training in urban transportation problems, *id.* § 1607c, section 16 grants to public bodies and nonprofit corporations to help meet the special needs of the handicapped and elderly, 49 U.S.C. § 1612(b) (Supp. V 1975), and section 17 assistance to Consolidated Rail Corporation, 49 U.S.C.A. § 1613 (West Supp. 1977).

30. See text accompanying notes 42-45 *infra*.

31. 49 U.S.C. § 1602(a)(1) (Supp. V 1975).

32. *Id.* § 1602(a)(1)(A).

33. *Id.* § 1602(a)(1). A private transit company may obtain equipment and facilities under section 3 if a public entity applies on its behalf. Section 3(e) mandates that private companies participate "to the maximum extent feasible" when financial assistance is rendered for "mass transportation facilities or equipment in competition with, or supplementary to," existing mass transit service. *Id.* § 1602(e). Likewise, section 4(a) conditions section 3(a) financial aid on the development of coordinated urban transportation systems which "shall encourage to the maximum extent feasible the participation of private enterprise." *Id.* § 1603(a). See generally COMPTROLLER GENERAL, REPORT TO CONGRESS, PRIVATE COMPANIES SHOULD RECEIVE MORE CONSIDERATION IN FEDERAL MASS TRANSIT PROGRAMS (1976).

34. 49 U.S.C. § 1602(a)(1) (Supp. V 1975). See text accompanying notes 75-80 *infra*.

35. 49 U.S.C. § 1602(e) (1970). See note 33 *supra*.

36. 49 U.S.C. §§ 1602(f), 1602(g) (Supp. V 1975); 49 C.F.R. §§ 604.10-18 (1976) as amended by 41 Fed. Reg. 56,651 (1976) (to be codified in 49 C.F.R. §§ 604.15, 20) (charter bus agreements); *id.* §§ 605.10-19 (1976) (school bus agreements). Nevertheless, the aid recipient is not completely precluded from offering service in an area already serviced by a private operator. See *id.*

Section 5 authorizes the approval of projects for the "acquisition, construction and improvement of facilities and equipment for use . . . in mass transportation service" and "the payment of operating expenses to improve or to continue such service . . ." <sup>37</sup> Funds are apportioned under this section to "urbanized areas," <sup>38</sup> in accordance with a statutory formula based on total population and population density. <sup>39</sup> Aside from a subsection which stipulates the maximum fare to be charged the elderly and handicapped, <sup>40</sup> the section closely parallels section 3. <sup>41</sup>

Other provisions of the UMT Act protect the interests of employees affected by such assistance, <sup>42</sup> require assessment of environmental factors, <sup>43</sup> and prescribe that special efforts be made to meet the transportation needs of the elderly and handicapped. <sup>44</sup> These provisions specifically apply to financing under section 3 and section 5. <sup>45</sup>

If the applicable requirements are met, up to 50% of the operating costs and 80% of the capital costs of the applicant's project can be defrayed by the Act. <sup>46</sup> These funds are available under section 3 for

---

Section 3 also requires that the development of projects in "urbanized areas" be "based on a continuing comprehensive transportation planning process. . . ." 49 U.S.C. 1602(a)(2) (Supp. V 1975). "Urbanized areas" under this section (to be distinguished from section 5) are "of more than fifty thousand population." *Id.* Exhaustive regulations specifying how this process is to operate have been promulgated. See 49 C.F.R. §§ 613.100-204 (1976); 23 C.F.R. §§ 450.100-320 (1977). Moreover, applicants for funds "to finance the . . . construction . . . or improvement of facilities or equipment which will substantially affect a community" must afford "an adequate opportunity for public hearings pursuant to adequate notice," and must consider the "economic and social effects of the project and its impact on the environment. . . ." 49 U.S.C. § 1602(d) (1970). See generally *Ridley v. Blanchette*, 421 F. Supp. 435 (E.D. Pa. 1976).

37. 49 U.S.C. § 1604(d)(1) (Supp. V 1975).

38. "Urbanized areas" are areas "so designated by the Bureau of Census. . . ." *Id.* § 1604(a)(3): This definition applies only to section 5. *Id.* § 1604(a).

39. 49 U.S.C. § 1604(b)(1) (Supp. V 1975).

40. *Id.* § 1604(m).

41. *E.g.*, section 5(l) is almost identical to section 3(a)(1)(A) insofar as it requires "legal, financial, and technical capacity to carry out the project" on the part of the applicant. *Id.* § 1604(l). Furthermore, the provisions of section 3 which pertain to private transit companies and private bus operations are expressly made applicable to section 5. See 49 U.S.C. §§ 1602(e)-1602(g) (1970 & Supp. V 1975) (which make the requirements applicable to the entire Act).

42. 49 U.S.C. § 1609 (1970).

43. *Id.* § 1610.

44. 49 U.S.C. § 1612 (1970 & Supp. V 1975).

45. See *id.* §§ 1602(e)(4), 1604(n)(1) (labor standards); *id.* §§ 1602(d), 1610 (environmental protection); *id.* § 1612 (rights of elderly and handicapped). See generally 49 C.F.R. §§ 613.200-202 (1976); 23 C.F.R. §§ 450.116-120 (1977) (regulations: urban transportation planning process); 49 C.F.R. §§ 609.1-25, 613.204 (1976), as amended by 41 Fed. Reg. 13817, 45842 (1976) (to be codified in 49 C.F.R. §§ 609.15(a)-15(c), and 42 Fed. Reg. 9655 (1977) (to be codified in 49 C.F.R. §§ 609.15(a)-15(c)) (regulations: transportation of the elderly and handicapped).

46. 49 U.S.C. §§ 1603(a), 1604(e) (Supp. V 1975).



capital assistance on a discretionary basis,<sup>47</sup> and under section 5 for capital and operating assistance based on the population formula. In reality, almost no capital assistance has been sought under section 5 because of the tremendous operating deficits which beset mass transit operations.<sup>48</sup>

### III. ADMINISTRATION OF THE ACT

The federal aid program created by the UMT Act entails pervasive regulation. Checks and balances have evolved under the Act to ensure that the various interests affected by such aid are not unduly impacted. The administration of these laws and regulations, whether by a court or by the Urban Mass Transportation Administration (UMTA),<sup>49</sup> further delineates the funding process.

#### A. JUDICIAL REVIEW

Parties initiating litigation pursuant to the UMT Act generally have sought declaratory and injunctive relief. A declaration of the rights of the parties is sought so that an injunction premised on those rights can be requested. Typically, a private citizen or group seeks to enjoin the disbursement of funds to a transit agency. The substantive requirements of the Act thereby exert considerable influence on the administration of funds. The more controversial requirements—those involving the rights of the handicapped and the interests of private companies—will be considered following a discussion of standing, which has proven to be more than a perfunctory threshold matter.

#### 1. *Standing*

As the early cases construing the UMT Act reveal, there is no express provision for standing in the Act.<sup>50</sup> Therefore, a finding that a

47. There is a minor exception to this provision with respect to the short term use of funds. Section 3(h) permits the use of funds for operating expenses with up to one-half the assistance rendered "if the secretary finds that effective arrangements have been made to substitute and, by the end of the fiscal year following the fiscal year for which such sums are used, make available an equal amount of state or local funds. . . ." *Id.* § 1602(h).

48. Approximately 94% of the section 5 formula grants were used to offset operating expenses. CONGRESSIONAL BUDGET OFFICE, U.S. CONGRESS, URBAN MASS TRANSPORTATION: OPTIONS FOR FEDERAL ASSISTANCE X (1977) [hereinafter cited as BUDGET OPTIONS].

49. UMTA is one of the "operating administrations" which compose the Department of Transportation (DOT). 49 C.F.R. § 1.3(b)(6) (1976). It "[i]s responsible for (1) Exercising the authority vested in the Secretary [DOT] for developing comprehensive and coordinated mass transportation systems. . . ; (2) Administering urban mass transportation programs and functions; and (3) Assuring appropriate liaison and coordination with other governmental organization[s] with respect to the foregoing." *Id.* § 1.4(g).

50. See *Kendler v. Wirtz*, 388 F.2d 381, 383 (3rd Cir. 1968); *S. Suburban Safeway Lines, Inc. v. Chicago*, 285 F. Supp. 676, 678 (N.D. Ill. 1968); 49 U.S.C. §§ 1601-1612 (1970 & Supp. V 1975).

given issue is unreviewable effectively denies standing to a party seeking judicial relief.<sup>51</sup> The rationale in such cases is that the party does not have an interest "within the zone of interests protected" by a "relevant" statute because the relevant statute, the UMT Act, precludes judicial review.<sup>52</sup>

*Pullman, Inc. v. Volpe*<sup>53</sup> illustrates the standing problems created by the Act. Pullman, Inc., a disappointed bidder on a contract for the manufacture of rail commuter cars, brought suit to enjoin the awarding of the contract to General Electric Co. (GE) on the ground that the GE bid did not conform with the prescribed specifications and that Pullman should have been awarded the contract as the lowest responsive bidder.<sup>54</sup> The court declined consideration of the merits holding that, in view of the technical expertise required and lack of statutory language to the contrary, the question of bid conformity was committed to UMTA's discretion.<sup>55</sup>

In *Pullman*, standing was denied because no language conferring rights on competing bidders was discernable in the Act.<sup>56</sup> However, the issue is not as easily decided when substantive rights are explicit in the Act; a denial of standing emasculates those rights.<sup>57</sup> Moreover, in the latter case the issues are more capable of judicial resolution and the legislative intent establishing positive rights is more apparent. Undoubtedly judicial review is more likely where specific rights are protected on the face of the Act.

The lack of statutory language also has necessitated a separate determination as to standing on those matters which are found to be reviewable. This has not deterred the courts in recent mass transit cases; an effort to give meaning to the overt language of the Act is being made.<sup>58</sup> Yet, the apparent willingness of the courts to give effect to the

51. See *S. Suburban Safeway Lines, Inc. v. Chicago*, 416 F.2d 535, 539 (7th Cir. 1969); *Pullman, Inc. v. Volpe*, 337 F. Supp. 432, 440 (E.D. Pa. 1971).

52. See e.g., *Pullman, Inc. v. Volpe*, 337 F. Supp. 432, 440 (E.D. Pa. 1971). See generally Ass'n of Data Processing Serv. Organizations v. Camp, 397 U.S. 150 (1970); *Barlow v. Collins*, 397 U.S. 159 (1970). Section 10(a) of the Administrative Procedure Act (APA) provides that "[a] person suffering legal wrong because of agency action *within the meaning of a relevant statute* is entitled to judicial review thereof." 5 U.S.C. § 702 (1970) (emphasis added). The Supreme Court recently interpreted this provision and held that it does not confer subject matter jurisdiction independently of another statutory basis: a "relevant" statute. *Califano v. Sanders* 97 S. Ct. 980 (1977).

53. 337 F. Supp. 432 (E.D. Pa. 1971).

54. *Id.* at 435.

55. *Id.* at 436-39.

56. See *id.* at 439-40.

57. See *Lloyd v. Regional Transp. Auth.*, No. 75-C-1834 (N.D. Ill. Mar. 16, 1976), *rev'd*, 548 F.2d 1277 (7th Cir. 1977); text accompanying notes 69-73 *infra*.

58. See *Bradford v. Chicago Transit Auth.*, 537 F.2d 943 (7th Cir. 1976), holding that a school bus company had a protected interest against "illegal competitors" under sections 3(g)

statutory language does not mean that standing requirements per se have been relaxed. The Supreme Court has stressed that cases which might otherwise be heard can be rejected for prudential considerations when they involve "generalized grievances" or the rights of third parties.<sup>59</sup>

## 2. *Rights of the Mobility Handicapped*

Efforts by the mobility handicapped to assert their rights under the UMT Act have resulted in numerous actions joining municipal transit agencies, UMTA, and the Department of Transportation (DOT) as parties.<sup>60</sup> The problem has been that buses which are inaccessible to the handicapped and elderly are purchased using UMT Act grant monies. This has occurred despite the legislative command that:

elderly and handicapped persons have the same right as other persons to utilize mass transportation facilities and services; that *special efforts* shall be made in the planning and design of mass transportation facilities and services so that the availability to elderly and handicapped persons of mass transportation which they can effectively utilize will be assured

61

Therefore, the issue that is being litigated is whether the "special efforts" requirement of the Act has been faithfully executed.<sup>62</sup> The problems

---

and 49 U.S.C. § 1602a(b) (Supp. V 1975) of the UMT Act, provisions which restricted competition by an UMTA grantee with existing school bus companies; *Ridley v. Blanchette*, 421 F. Supp. 435 (E.D. Pa. 1976), holding that local residents could rely on section 3(d) of the UMT Act, a provision requiring public hearings for consideration of the social, economic and environmental effects of a project, to establish standing. See generally *Inman Park Restoration, Inc. v. UMTA*, 414 F. Supp. 99 (N.D. Ga. 1976), where the court indicated that since the requirements of both section 4(f) of the Department of Transportation Act (DOT Act), 49 U.S.C. § 1653(f) (1970), and section 102(c) of the National Environmental Policy Act, 42 U.S.C. § 4332(C) (1970), were contained in section 14 of the UMT Act it saw "no reason not to apply the rules set out by the Supreme Court in *Overton Park* to the review of agency actions under 14(c)," 414 F. Supp. at 130. Since *Overton Park v. Volpe*, 401 U.S. 402 (1971), provides for at least minimal judicial review under section 4(f) of the DOT Act, the *Inman* analysis may be helpful to that extent.

59. *Warth v. Seldin*, 422 U.S. 490 (1975). See also *Urban Alliance v. Bi-State Dev. Agency*, 531 F.2d 877 (8th Cir. 1976) (Assoc. Justice Tom C. Clark, U.S. Supreme Court, Retired, sitting by designation), where plaintiffs were denied standing to enjoin UMT Act assistance, notwithstanding their allegations of violations of the Civil Rights Act, because they failed to allege they would be personally injured.

60. See e.g., *United Handicapped Fed'n v. Andre*, No. 76-1369 (8th Cir. June 21, 1977); *Lloyd v. Regional Transp. Auth.*, 548 F.2d 1277 (7th Cir. 1977); *Bartels v. Biernat*, 427 F. Supp. 226 (E.D. Wisc. 1977). These cases have not held that the UMT Act creates a private right of action. Standing has been granted on the basis of section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (Supp. V 1975). For an in-depth discussion of the rights of the mobility handicapped with respect to mass transportation see Reed, *Equal Access to Mass Transportation for the Handicapped*, 9 *TRANSP. L.J.* 167 (1977).

61. 49 U.S.C. § 1612(a) (1970) (emphasis added).

62. See *United Handicapped Fed'n v. Andre*, No. 76-1369 (8th Cir. June 21, 1977); *Lloyd v. Regional Transp. Auth.*, 548 F.2d 1277 (7th Cir. 1977).

which have arisen in interpreting this language are largely due to delayed promulgation of regulations on the subject.<sup>63</sup>

A helpful discussion of the special efforts question in light of the regulations can be found in *Bartels v. Biernat*.<sup>64</sup> The court there noted that "[t]he statute does not allow the County to wait until the perfect solution is found" although "the technology necessary to implement some of the proposed solutions . . . is not fully advanced . . ." <sup>65</sup> It went on to issue a permanent injunction restraining the acquisition and operation of new mass transit vehicles which cannot be utilized by the handicapped, but with a proviso. The proviso allowed for the "immediate purchase of such vehicles" if the "failure of the system would result without their purchase" so long as "all diligence is being used to plan, design and implement facilities . . . which can be effectively utilized by mobility handicapped individuals."<sup>66</sup>

*Bartels* attempted to balance realistically the limitations of current technology and the rights of the handicapped; future cases and administrative developments should refine this analysis.<sup>67</sup>

### 3. *Interests of Private Companies*

Ostensibly, private enterprise also is protected by the UMT Act. Section 3 incorporates safeguards against "unfair" competition,<sup>68</sup> and prohibits the use of funds "to support procurements utilizing exclusionary or discriminatory specifications."<sup>69</sup> Judicial interpretation of these provisions is unclear and is perhaps best characterized as being case-by-case.

For example, in *South Suburban Safeway Lines, Inc. v. City of Chicago*,<sup>70</sup> the Seventh Circuit held that while section 3 did indicate a concern for private transit operators, it was not intended to prohibit competition, and that the determination as to whether financial assistance should be granted was committed to agency discretion. As a

63. See *United Handicapped Fed'n v. Andre*, No. 76-1369 at 8 (8th Cir. June 21, 1977); *Lloyd v. Regional Transp. Auth.*, 548 F.2d 1277, 1278 (7th Cir. 1977). The special efforts provision was adopted as part of the Assistance Act of 1970, and regulations implementing this policy were not issued until mid-1976. 41 Fed. Reg. 18,239 (1976) (codified at 49 C.F.R. §§ 609.1-.25, 613.204 (1976)).

64. 427 F. Supp. 226 (E.D. Wisc. 1977).

65. *Id.* at 232.

66. *Id.* at 233.

67. See generally Decision of Brock Adams, Secretary of Transportation, to Mandate Transbus (May 19, 1977), reprinted in 123 CONG. REC. S10,562-65 (daily ed. June 23, 1977).

68. 49 U.S.C. §§ 1602(e), 1602(g), 1602a(b) (1970 & Supp. V 1975). "Unfair" competition may result between a subsidized entity and a private company without UMT Act aid.

69. *Id.* § 1602(a)(1).

70. 416 F.2d 535, 539 (7th Cir. 1969).

result, South Suburban lacked standing to challenge a grant to the Chicago Transit Authority.<sup>71</sup>

Conversely, in *Bradford School Bus Transit v. Chicago Transit Authority*<sup>72</sup> the same court held that a private school bus company did have standing and that the competition issue was reviewable. This decision was based on provisions of section 3 with arguably identical import as those in *South Suburban*,<sup>73</sup> and although the court purportedly distinguished the case on its facts,<sup>74</sup> its failure to overrule *South Suburban* is puzzling.

Another case, *AM General v. DOT*,<sup>75</sup> is potentially an analogue to both *South Suburban* and *Bradford*. The court in *AM General* permitted the use of mass transit funds to purchase buses with specifications which only one manufacturer had developed,<sup>76</sup> despite statutory language forbidding the use of funds for procurements using "exclusionary or discriminatory specifications."<sup>77</sup> The court's justification for the decision was that it was in keeping with the policy of the UMT Act to encourage product improvements,<sup>78</sup> and that AM General was fully apprised of the technology being developed and simply chose not to offer a competitive product.<sup>79</sup> The provision of the Act calling for assistance "in the development of improved mass transportation facilities, equipment, techniques, and methods"<sup>80</sup> was thus reconciled with the provision which forbade "exclusionary or discriminatory specifications."<sup>81</sup> The facts were crucial in resolving the issue and bear out the court's efforts to abide by the meaning of the Act.<sup>82</sup>

In summary, courts in more recent cases such as *Bradford* and *AM General* seem less hesitant to grapple with the legislative intent of the UMT Act. This is in contrast to the *South Suburban* type of analysis which

71. The court went on to decide the merits against South Suburban regardless. *Id.* at 539-40.

72. 537 F.2d 943, 946-49 (7th Cir. 1976).

73. Compare 49 U.S.C. § 1602(e) (1970) (*South Suburban*) with 49 U.S.C. §§ 1602(g), 1602a(b) (Supp. V 1975) (*Bradford*).

74. *Bradford School Bus Transit v. Chicago Transit Auth.*, 537 F.2d 943, 945-46 (7th Cir. 1976).

75. 433 F. Supp. 1166 (D.D.C. 1977).

76. *Id.* at 1179-80.

77. 49 U.S.C. § 1602(a)(1) (Supp. V 1975). The case is possibly an analogue of *South Suburban* on this point; on the surface the court ignores the statutory language and defers to UMTA.

78. *AM General v. DOT*, 433 F. Supp. 1166, 1178-79 (D.D.C. 1977). See 49 U.S.C. § 1601(b)(1) (1970).

79. *AM General v. DOT*, 433 F. Supp. 1166, 1178-79 (D.D.C. 1977).

80. 49 U.S.C. § 1601(b)(1) (1970).

81. 49 U.S.C. § 1602(a)(1) (Supp. V 1975).

82. See *AM General v. DOT*, 433 F. Supp. 1166, 1178-79 (D.D.C. 1977).

would tend to defer consideration of the statutory language. Unfortunately, other cases supporting this conclusion are few, and are too scarce to lend predictability to judicial actions.

### B. *THE URBAN MASS TRANSPORTATION ADMINISTRATION (UMTA)*

Administrative developments are often coextensive with judicial action. As noted earlier, administrative regulations have been used to fashion remedies in the litigation involving the rights of the handicapped.<sup>83</sup> Nevertheless, in most instances UMTA would be the first governmental body to act since it is responsible for the administration of the UMT Act.<sup>84</sup> The Administrator of UMTA is delegated the rulemaking authority which is vested in the Secretary (DOT) by the Act in order to carry out its purposes.<sup>85</sup>

Under the direction of the Administrator the agency influences the funding process on what could be termed formal and informal levels. Formal actions are those which generally have a legally cognizable effect, such as rulemaking; informal actions would include any other actions the agency takes, such as issuing policy statements and advising potential grant applicants.<sup>86</sup>

#### 1. *Formal Actions*

On the formal level, rulemaking has had readily appreciable effects. For example, notwithstanding the time and effort required,<sup>87</sup> all urban transportation projects funded by UMTA must be developed through an elaborate planning process. Comprehensive transportation planning is required for "urbanized areas" under the Act,<sup>88</sup> and regulations have been promulgated to implement these planning directives.<sup>89</sup> Unless the planning procedures specified in the regulations are followed, no funds can be obtained.<sup>90</sup>

83. See text accompanying notes 63-66 *supra*.

84. 49 C.F.R. § 1.4(g) (1976). See Reorg. Plan No. 2 of 1968, 33 Fed. Reg. 6965 (1968), reprinted in 49 U.S.C. at 12,100-01 (1970), and in 82 Stat. 1369 (1968); note 95 *infra*.

85. 49 U.S.C. §§ 1604(j)(3), 1608(a) (1970 & Supp. V 1975); 49 C.F.R. § 1.51 (1976).

86. These definitions attempt to parallel the Administrative Procedure Act, with formal action being equated to "agency action". See 5 U.S.C. § 551(13) (1970). Note that even strictly informal communications can become relevant in subsequent litigation and thereby affect the outcome of a given case. See *AM General v. DOT*, 433 F. Supp. 1166 (D.D.C. 1977). Policy statements may have legal effect and hence be reviewable if deemed "final agency action." E.g. *Citizens Communications Center v. FCC*, 447 F.2d 1201 (D.C. Cir. 1971).

87. See Altshuler & Curry, *The Changing Environment of Urban Development Policy—Shared Power or Shared Impotence?* 10 URBAN L. ANN. 3, 13-15 (1975).

88. 49 U.S.C. §§ 1602(a)(2), 1604(g), 1604(l) (Supp. V 1975). "Urbanized areas" are defined differently under each section, see notes 36 para. 2, 38 *supra*.

89. See 49 C.F.R. §§ 613.100-.204 (1976); 23 C.F.R. §§ 450.100-.320 (1977).

90. See 23 C.F.R. § 450.318 (1977) (selection of projects for implementation); *id.* § 450.320(c) (program approval); *L.A. v. Coleman*, 423 F. Supp. 496 (S.D. Cal. 1976).

The significance of rulemaking in relation to transit financing has been demonstrated in *County of Los Angeles v. Coleman*,<sup>91</sup> which involved a challenge to rulemaking authority. The case arose when Los Angeles County discovered that planning procedures blocked its eligibility for highway and mass transit funds. The county had submitted its project requests to the area "metropolitan planning organization" (MPO), but the MPO failed to make submissions to the State of California and the Secretary (DOT); as a result, the county's requests were not included in the "annual element" required by the regulations prior to funding.<sup>92</sup> In an attempt to rectify the situation the county sought an order to compel the Secretary to consider its project requests. It alleged that the planning regulations were unconstitutional and contrary to the intent of Congress insofar as they precluded the direct submission of project requests to the Secretary.<sup>93</sup> However, the court disagreed, and although it recognized the hardship imposed on the county, it upheld the regulations.<sup>94</sup> Accordingly, the Secretary's rulemaking with respect to those regulations was legitimated.<sup>95</sup>

Formal actions other than rulemaking also may affect funding. An example is the decision of Secretary Brock Adams to mandate the Transbus,<sup>96</sup> a standard size bus with a low floor, ramp, and wide door to allow for boarding by wheelchair-bound passengers.<sup>97</sup> The Transbus mandate reverses a prior decision,<sup>98</sup> and "will apply to *all procurements* containing vehicle specifications approved by UMTA, issued for bid after September 30, 1979."<sup>99</sup> This mandate requires radical changes in bus specifications and design, and is likely to revolutionize the current bidding-funding scenario.<sup>100</sup>

---

91. 423 F. Supp. 496 (S.D. Cal. 1976).

92. *Id.* at 499. MPO submission of an annual element is required by 23 C.F.R. § 450.318(a) (1977). The annual element contains the following: descriptive material on each project; estimates of the total costs and of the federal funds to be obligated during the program year; proposed sources of funds; an identification of the recipient and the public agencies carrying out the projects.

93. *Id.* at 497, 500.

94. *Id.* at 500-03.

95. Whether the pertinent regulations are upheld or overruled, as issued or as applied, they have an impact on funding. Generally aid is given or withheld based upon compliance with regulations existing when the application for assistance is made. Therefore, the prospect of a legal victory—after protracted litigation—is unappealing if the transit system collapses in the interim. Nevertheless, the availability of injunctive relief may temper the impact of the regulations. See generally *Bartels v. Biernat*, 405 F. Supp. 1012 (1975) (preliminary injunction issued enjoining the purchase of mass transit vehicles on behalf of mobility handicapped).

96. Decision of Brock Adams, Secretary of Transportation, to Mandate Transbus (May 19, 1977), reprinted in 123 CONG. REC. S10,562-65 (daily ed. June 23, 1977).

97. *Id.* at 12-13, 123 CONG. REC. at S10,565.

98. *Id.* at 1, 123 CONG. REC. at S10,562.

99. *Id.* at 2, 123 CONG. REC. at S10,563 (emphasis added).

100. See *id.* at 10, 123 CONG. REC. at S10,564.

## 2. Informal Actions

Informal actions taken by UMTA can be equally important. An "informal" effort to ensure that private companies are aware of their potential eligibility for aid could slow the massive shift toward public ownership of transit systems.<sup>101</sup> Conceivably, more private companies might continue or expand transit operations if they were subsidized.

The general opinions of UMTA also carry weight. On a given issue, the support of the executive branch as verbalized by UMTA can streamline the route to congressional approval, while its opposition may make it difficult or impossible to obtain approval.<sup>102</sup> To be sure, UMTA's lobbying activities and opinions may take on a formal character if the laws which are enacted reflect concessions that have been made to UMTA.

UMTA or DOT opinions can be crucial whether or not laws which align with their views are enacted. Policy statements are often opinions which merely await judicial recognition of their legally binding effect.<sup>103</sup> Perhaps the most important pronouncement of this kind is the recent DOT *Policy Statement on Major Mass Transportation Investments*.<sup>104</sup> The *Statement* was drafted to inform urban areas of the issues considered in federal decisions so that funds might be allocated more efficiently. It generally provides that:

federal support will be available only for those alternatives which the analysis [of transportation alternatives] has demonstrated to be cost effective, where effectiveness is measured by the degree to which an alternative meets the locality's transportation needs, promotes its social, economic, environmental, and urban developmental goals, and supports national aims and objectives.<sup>105</sup>

---

101. There are indications that such an effort is contemplated and may be underway. See COMPTROLLER GENERAL, REPORT TO CONGRESS, PRIVATE COMPANIES SHOULD RECEIVE MORE CONSIDERATION IN FEDERAL MASS TRANSIT PROGRAMS 24-27 (Dec. 10, 1976) (reply from DOT to the Report: Appendix I). Recall that this type of effort is required by the Act, see note 33 *supra*. To this end UMTA has issued a proposed Statement of Policy on Paratransit which requires the participation of private companies. See 1978 Appropriations Hearings, *supra* note 2, at 695 (UMTA response to additional questions submitted by Rep. Conte). Recent private participation is evidenced in a first time grant to private bus operators in New York City. Dept. of Transportation, News Release No. 77-21 (April 13, 1977).

See generally G. SMERK, *supra* note 1, at 135-40 (historical chronology of events in the shift from private to public ownership), 141 (statistics: movement to public ownership).

102. See, e.g., text accompanying notes 19-27 *supra*. The Administration's views are regularly aired at the yearly appropriations hearings when UMTA justifies its budget submission. E.g. 1978 Appropriations Hearings, *supra* note 2.

103. See note 86 *supra*.

104. 41 Fed. Reg. 41,513-14 (1976). "Major mass transportation investments" for purposes of the *Statement* are those which involve "new construction or extension of a fixed guideway system (rapid rail, light rail, commuter rail, automated guideway transit) or a busway . . . ." *Id.* at 41,513.

105. 41 Fed. Reg. 41,513 (1976).



To implement this general provision, the *Statement* outlines specific policy areas which directly relate to the planning requirements found in the DOT-UMTA regulations.<sup>106</sup> By delineating the factors to be considered under each policy area, it further explains the skeletal guidelines prescribed by these regulations.<sup>107</sup> Thus, the "informal" opinions set forth in the *Statement* seem to be inseparable from the "formal" regulations.

The overall effect of the *Statement* is to give the UMT Act program a perceptible direction in terms of policy, something which has been lacking.<sup>108</sup> When the interaction between the applicant, UMTA, and the courts is considered in light of the laws and regulations, the policy position taken by DOT is of paramount importance.<sup>109</sup>

#### CONCLUSION

The UMT Act has undergone substantial change since its inception. As a practical matter, the various prescriptions enunciated in the Act have become increasingly important. The number of legal actions has swelled, reflecting a growing awareness of the rights upon which funding is conditioned. Political forces and internal pressures generated by the aid program have been influential. Nevertheless, despite the adjustments and changes, the lofty goal of establishing sound urban mass transportation systems continues to be elusive, and the underlying problems still exist. While it is clear that money alone cannot solve these problems, the financing of mass transit is still very much a part of the overall problem.<sup>110</sup> It seems certain that mass transit will require drastically increased amounts of federal aid.<sup>111</sup>

106. Compare *id.* at 41,513-14 with 23 C.F.R. §§ 450.116-.120 (1977).

107. *E.g.*, an evaluation of alternatives "should assess each alternative's capital and operating costs; ridership attraction; capital and operating efficiency and productivity; effects on modal choice, level of automobile use, environmental impacts and energy consumption; impact on land use and development patterns; extent of neighborhood disruption and displacement; job creation impact . . . ." 41 Fed. Reg. 41,513 (1976).

108. See G. SMERK, *supra* note 1, at 250-56.

109. See text accompanying notes 50-58, 76-81. The spending on major mass transportation projects, as defined *supra* note 104, is a substantial portion of UMTA spending. For example, through fiscal year 1980 about 70% of the capital grants are budgeted for rail transit, "split about evenly between completely new rail systems and improvements and extensions to existing rail networks." BUDGET OPTIONS, *supra* note 48, at 4.

110. See Verbit, *The Urban Transportation Problem*, 124 U. PA. L. REV. 368, 488 (1975); G. SMERK, *supra* note 1, at 256-66.

111. UMT Act spending for capital improvements since Feb. 1965 (as of Feb. 28, 1977) totals \$6.84 billion. 1978 Appropriations Hearings, *supra* note 2, at 415. Uncommitted contract authority at year end 1976 totalled approximately \$9.4 billion, *id.* at 391, of which \$3.4 billion is to be disbursed under section 5 and probably will be used for operating deficits. See note 48 *supra*. The net result is that roughly \$13 billion has been or will be spent on mass transit under

Alternative funding strategies to meet the projected needs are being continually evaluated. Legislation is before Congress which is designed to broaden the UMT Act,<sup>112</sup> and Congress has already created a National Transportation Policy Study Commission to assist in developing a comprehensive program.<sup>113</sup> The DOT also is studying the mass transit financing issue in conjunction with transportation policy in general.<sup>114</sup> Moreover, trust fund financing is being discussed anew.<sup>115</sup> Hopefully, progress will be made toward integrating the financial, technological and social elements of the urban transportation problem. The limited success

the existing program. This amount pales in the face of much higher estimates of the capital spending still required. See e.g. DEPARTMENT OF TRANSPORTATION, 1974 NATIONAL TRANSPORTATION REPORT III-12 (1974) (\$23.2 billion required for 1972-1980, \$63.7 billion for 1972-1990 (in 1971 dollars)). See also 1970 House Hearings, *supra* note 1, at 111 (remarks of John A. Volpe, Secretary of DOT) (Volpe conceded that the \$10 billion Assistance Act of 1970 was only a beginning). Given that mass transit operations are generally insolvent it is clear that governmental funds will be relied upon heavily to meet capital costs. Since the UMT Act can be expected to cover up to 80% of these costs under 49 U.S.C. §§ 1603a, 1604(e) (Supp. V 1975), substantially increased appropriations are required.

Supplemental funds for mass transit are available under 23 U.S.C. §§ 103(e)(4), 142 (Supp. V 1975). Amounts utilized under the section 142 urban systems program have been inconsequential. See BUDGET OPTIONS, *supra* note 48, at x; COMPTROLLER GENERAL, REPORT TO CONGRESS, WHY URBAN SYSTEM FUNDS WERE SELDOM USED FOR MASS TRANSIT 3 (March 18, 1977) (as of June 1976, only \$74 million or 3% of the authorized urban systems funds were used for mass transit). In contrast section 103(e)(4) interstate transfer grants have reached \$775 million per year, 1978 Appropriations Hearings, *supra* note 2, at 389, and seem likely to increase, see *id.* at 391. Congress anticipates completion of the interstate highway system by Sept. 30, 1990, see 23 U.S.C.A. § 101(b) (West Supp. 1977), hence funds may be available until then under section 103(e)(4). In any case, additional appropriations will be required despite the supplemental sources of aid, especially when general inflationary trends are considered. See 1978 Appropriations Hearings, *supra* note 2, at 909-10 (statement of B.R. Stokes, Executive Director, American Public Transit Association).

112. See S. 208, 95th Cong., 1st sess., 123 CONG. REC. S10,579-81 (daily ed. June 23, 1977). After passage by the Senate the bill includes: \$4.75 billion in new grant authority for section 3 of which the first \$400 million annually is reserved for bus acquisitions, \$295 million to supplement section 5 operating assistance funds, and a provision that the \$500 million set aside for rural areas in 1974 may be used for operating as well as capital expenses. *Id.*

113. Federal-Aid Highway Act of 1976, Pub. L. No. 94-208, § 154, 90 Stat. 425 (1976), reprinted in 23 U.S.C.A. at 12-13 (West Supp. 1977).

114. See e.g., Dep't of Transportation, News Release No. 33-77 (Feb. 25, 1977); Dep't of Transportation, News Release No. 27-77 (Feb. 10, 1977). Interestingly, a tension of sorts seems to be developing between the Administration and Congress over policy formulation. The National Transportation Policy Study Commission is evidence of this as it is primarily a legislative body. Furthermore, Sen. Harrison Williams has introduced S. 208 extending the UMT Act program before the Administration has been able to develop its own approach. See note 112 *supra*.

115. Indications are that Rep. Howard (D-N.J.) who is chairman of the House Surface Transportation Subcommittee, will attempt to resurrect the mass transit trust fund. See [1977] CONG. Q. (CQ) 1371. Meanwhile, Sen. Kennedy (D-Mass.) has introduced legislation to end the Highway Trust Fund after which Rep. Howard's trust fund is patterned. S. 1870, 95th Cong., 1st Sess. (1977).

of the UMT Act in financing mass transit attests to the overwhelming magnitude and complexity of the problem.<sup>116</sup>

*Charles R. Aschwanden*

---

116. See generally BUDGET OPTIONS, *supra* note 48; W. OWEN, TRANSPORTATION FOR CITIES (1976); G. HILTON, FEDERAL TRANSIT SUBSIDIES (1974); Verbit, *The Urban Transportation Problem*, 124 U. PA. L. REV. 368 (1975).

DOT has issued a policy statement on Major Urban Mass Transportation Investments which is the result of a past study of the urban transportation problem. The policy outlined requires a detailed evaluation of the multifarious aspects of the problem. See text accompanying notes 104-09 *supra*.

