

National Capital Region Transportation Planning Board

777 North Capitol Street, N.E., Suite 300, Washington, D.C. 20002-4290 (202) 962-3315 Fax: (202) 962-3202

M E M O R A N D U M

TO: TPB Technical Committee

FROM: Eric Randall
Department of Transportation Planning

SUBJECT: Overview of Comments Submitted in response to FTA/FHWA Proposed Guidance on Transit Agency Representation on MPO Boards

DATE: November 1, 2013

On September 30, the Federal Register included a notice on “Proposed Policy Guidance on Metropolitan Planning Organization Representation” by the Federal Transit Administration (FTA) and Federal Highway Administration (FHWA). Per a provision of the surface transportation reauthorization Moving Ahead for Progress in the 21st Century Act (MAP-21), the notice proposed guidance for representation by providers of public transportation on metropolitan planning organization (MPO) boards. Comments were due by October 30. Following discussion at the October 16 Transportation Planning Board (TPB) meeting, the TPB provided a comment letter on October 22, endorsing the flexible approaches proposed in the guidance.

In all, the Federal Register lists forty-nine comments received, from metropolitan planning organizations, transit agencies, environmental groups, and private citizens. The comments received are available on the Federal Register website under the FTA and FHWA agency listings, or at:

<http://www.regulations.gov/#!docketBrowser;rpp=100;so=DESC;sb=docId;po=0;dct=PS;D=FTA-2013-0029>

Several issues frequently mentioned include:

1. Many MPOs operate under complex representation agreements, sometimes specified in state law or in interstate compacts, amendment of which would be very challenging. It was stated that MAP-21 did not change the basic laws governing board membership, and therefore that the guidance exceeded the scope of the law. It was also noted that some MPOs already have an unmanageable number of members. Others expressed reluctance to

include non-elected officials on boards, let alone giving such members voting rights at the policy level.

2. Requiring the amendment or adoption of new by-laws was expressed by many as being above and beyond the requirement of the MAP-21 language.
3. Several questions were raised over whether other public transportation providers should or should not be included, instead of only the FTA Section 5307 direct recipients who are operators of public transportation proposed in the guidance.
4. Concern was expressed that the addition of transit agencies might influence one way or another the balance between city/county representation and state representation. This appears largely to be a reflection of which government operates transit in a particular urban area.

Overall, it appears that transit agencies already have their interests represented at most MPOs. A majority of MPOs appear to have non-voting representation on their policy boards, while almost all stated that transit agencies are currently represented and participate at the technical level in committees and meetings. Most comments indicated the desire to preserve the maximum flexibility to preserve or choose at a local level the best method of transit agency representation on the MPO board. However, some comments were submitted suggesting that public transportation interests are under-represented in their urban area, and requested more specific language in the final rule to make sure public transportation provider interests are adequately represented on MPO boards.

The FTA and FHWA will need time to review these comments and prepare the final rule on this matter. The MAP-21 deadline requires public transportation providers to be represented on MPO boards by October 1, 2014.



October 30, 2013

Docket Management Facility
U.S. Department of Transportation
1200 New Jersey Ave., SE
West Building Ground Floor Room W12-140
Washington, DC 20590-0001

RE: FTA-2013-0029

Dear Sir or Madam,

The Washington Metropolitan Area Transit Authority (Metro) appreciates this opportunity to comment on policy guidance concerning *Metropolitan Planning Organization (MPO) Representation* which has been proposed jointly by the Federal Transit and Federal Highway Administrations (FTA and FHWA).

About Metro

Metro is the Designated Recipient of FTA's annual apportionment of urbanized area formula funding for the National Capital Region. The Metro system provides safe, clean and reliable transit service to 3.5 million people across 1,500 square miles of Maryland, Virginia and the District of Columbia. Around 40 percent of rush-hour Metrorail passengers are federal employees, and service is provided to millions of tourists who visit the nation's Capital every year. Metro operates the second largest heavy rail transit system, sixth largest bus network and fourth largest paratransit service in the United States:

- Metrorail currently operates 1,104 heavy rail cars serving 86 rail stations over 106.3 miles of track. In 2014, when phase I of the new Silver Line opens for revenue service, an additional 11.6 miles of track and 6 stations will be added;
- Metrobus operates 1507 buses on 318 routes serving 11,279 bus stops; and
- MetroAccess provides 2 million annual door-to-door paratransit trips for customers with disabilities who are unable to use Metro's accessible fixed route services for some or all of their trips.

Background

The Moving Ahead for Progress in the 21st Century Act (MAP-21) requires that each MPO serving an area designated as a transportation management area (TMA) must include, among other specified officials, "officials of public agencies that administer or

Washington Metropolitan Area Transit Authority

600 Fifth Street, NW
Washington, D.C. 20001
202/962-1234

*By Metrorail:
Judiciary Square-Red Line
Gallery Place-Chinatown
Red, Green and
Yellow Lines*

*A District of Columbia
Maryland and Virginia
Transit Partnership*

operate major modes of transportation in the metropolitan area, including representation by providers of public transportation”:

23 USC 134(d)(2) and 49 USC 5303(d)(2): Metropolitan transportation planning

(d) Designation of Metropolitan Planning Organizations.-

(2) Structure.-Not later than 2 years after the date of enactment of MAP-21, each metropolitan planning organization that serves an area designated as a transportation management area shall consist of-

(A) local elected officials;

(B) officials of public agencies that administer or operate major modes of transportation in the metropolitan area, including representation by providers of public transportation; and

(C) appropriate State officials.

General comment

The statutory language is broad and in some ways ambiguous, potentially generating confusion among stakeholders. For this reason it is important to identify the essential legislative intent behind the statute, and use that understanding to anchor the present policy debate and formulate guidance. Metro applauds policy-makers for making clear their understanding that MAP-21 intends that “representatives of providers of public transportation, once designated, have equal decision-making rights and authorities as other members listed in...” the (d)(2)(B) provision of the statute. Metro agrees with this interpretation of the law.

Specific comments

Preamble

The Administrators have requested comment concerning (1) the determination of a specifically designated representative (SDR), (2) the eligibility of a representative of providers of public transportation to serve as a specifically designated representative, and (3) the cooperative process to select a specifically designated representative in MPOs with multiple providers of public transportation.

These topics require, first, that several fundamental terms be clarified:

- Metro understands “major mode of transportation” to mean those modes which are separately administered within the U.S. Department of Transportation, and are also relevant to a particular MPO’s planning function (Highways, and Public Transportation, for example), and;
- The statute clearly intends to restrict MPO membership to “public agencies” which administer or operate “public transportation,” which Metro understands as defined by 49 USC 5302(14):

The term “public transportation”-

(A) means regular, continuing shared-ride surface transportation services that are open to the general public or open to a segment of the general public defined by age, disability, or low income; and

(B) does not include-

(i) intercity passenger rail transportation provided by the entity described in chapter 243 (or a successor to such entity);

(ii) intercity bus service;

(iii) charter bus service;

(iv) school bus service;

(v) sightseeing service;

(vi) courtesy shuttle service for patrons of one or more specific establishments; or

(vii) intra-terminal or intra-facility shuttle services.

Metro urges the Administrators to include such express clarifications in final policy guidance.

Second, several questions should be separately addressed before an appropriately comprehensive response can be considered.

- What is meant by the language, “specifically designated representative?” The Administrators propose that only a public transportation representative be subject to a “specific designation” process. But, given that an identical structure for MPO membership is established in both Titles 23 and 49 (see top of page 2, above), and that the (d)(2)(B) provision makes no distinction between modal rights and authorities - Metro does not understand why Public Transportation should be the only mode subject to a “specific designation” process. In fact, Metro does not find that the statute contemplates specific designation of representatives for *any* major mode of transportation. Nevertheless, it recognizes that such a process could foster cooperative deliberation within MPO memberships under certain circumstances. Therefore, Metro suggests that it would be most appropriate - especially in light of potential for duplicate representation among each stakeholder category established in the statute - for representatives of each major mode of transportation to be subject to the same “specific designation” process.
- Does MAP-21 intend that all public agencies administering or operating major modes of transportation in the metropolitan area be represented, or is the intent rather that a single “specified” entity should represent a particular mode?

Metro reads the statute as giving Transportation modes a seat at the table separate-and-apart from “local elected officials” and “appropriate state officials”. The language affording that Transportation seat also imposes sub-categorization based on mode. Such differentiation is necessary to ensure that Public Transportation has equal decision-making rights and authorities as the other major modes of transportation represented. It follows that Transportation should be represented in an MPO, by major mode, and that each major mode represented should have equal voting rights and authorities. Where there are many potentially eligible participants for each modal category, achieving the requisite equality may require single entity representation of each specific mode.

Determination of specifically designated representatives (SDRs) and eligibility of representatives of providers of public transportation

Without regard to the form of representation that various Transportation modes take in the MPO (individual, collective or proportional), Metro believes that the de facto SDR for the Public Transportation mode must be the TMA’s designated recipient for 49 USC 5307 urbanized area formula funding, or, in those TMA’s with multiple designated recipients, the single largest public agency operator within the TMA. If the SDR leads in the MPO for a collective of other eligible entities, it should be afforded at least 51% of the Public Transportation vote, to affirm its leadership role within the TMA.

As to other eligible entities, the Administrators propose that only representation by providers of public transportation that operate in a TMA *and are direct recipients* of 49 USC 5307 funding – are eligible. Metro does not find statutory authority for this position. Moreover, it believes that MAP-21’s focus on the MPO function aims to achieve improved planning for networked, multi-modal regional transportation systems – regardless of how federal funding may support components of those systems. Metro suggests that - if stakeholders cooperatively decide that the SDR for Public Transportation (as identified above) should represent some collective interest – then any public agency provider that contributes current operating data for the TMA to FTA’s National Transit Database should be eligible to participate at some level.

The cooperative process to select a specifically designated representative in an MPO with multiple providers of public transportation.


Metro agrees that there is no one-size-fits-all solution to the question of how to assure “equal decision-making rights and authorities” for public transportation providers in the MPO, and encourages the Administrators to stay the course of adopting a flexible and cooperative structure within which each MPO can establish compliant boards and voting mechanisms. However, Metro would like Administrators to provide clarification on the meaning of “equal,” according to their understanding of legislative intent. Metro encourages Administrators to adopt guidance that

defines “equal” to mean voting rights and authorities *relative to the other membership categories*. Thus, if there are two categories of voters at the MPO Transportation table – Highways and Public Transportation, for example – public transportation providers would divide amongst themselves the one vote for Public Transportation while sponsors of highway projects would divide the vote for Highways. What would be unequal, in Metro’s opinion, is a system where public transportation providers have one vote to share and state officials have three votes to share. This could happen because a state’s interests are likely to be represented in all three statutory membership categories.

Metro recognizes that it may be a challenge for governmental interests represented within the Transportation category to participate independently of the other two membership categories (local elected and appropriate state officials). As a result, a state could effectively multiply its voting rights and, in the process, overwhelm the Public Transportation voice. As suggested earlier, one way to mitigate potential for this outcome might be to require that the cooperative, “specific designation” process be applied, by mode, to *all* major transportation modes within the purview of an MPO, not just to Public Transportation.

In closing, Metro believes that, ultimately, each MPO will need to address, on a case-by-case basis, the unique attributes of its organization - including the mix of transportation modes and state and local representation. Stakeholders will require policy guidance that supports such a flexible approach, and simultaneously identifies clear boundaries that ensure outcomes consistent with legislative intent. Metro is grateful for the opportunity to participate in this important policy debate, and looks forward to continuing the engagement with fellow stakeholders that will lead to realization of MAP-21 objectives for the MPO process.

Sincerely,

A handwritten signature in black ink, appearing to read "Regina Sullivan", followed by a long horizontal line extending to the right.

Regina Sullivan
Managing Director
Office of Government Relations