

NEW STARTS WORKING GROUP

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May 14, 2012

The Honorable Tim Johnson
Chairman
Senate Banking, Housing and Urban
Affairs Committee
534 Dirksen Building
Washington, DC 20510

The Honorable John Mica
Chairman
House Transportation and Infrastructure
Committee
2165 Rayburn House Office Building
Washington, DC 20515

The Honorable Richard C. Shelby
Ranking Minority Member
Senate Banking, Housing and Urban
Affairs Committee
534 Dirksen Building
Washington, DC 20510

The Honorable Nick J. Rahall
Ranking Minority Member
House Transportation and Infrastructure
Committee
2163 Rayburn House Office Building
Washington, DC 20515

Dear Sirs:

On behalf of the New Starts Working Group ("Working Group"), a coalition of more than fifty transit agencies, local governments, and private sector firms, we are writing to communicate our position with respect to the New Starts/Small Starts provisions in S. 1813, the Moving Ahead For Progress in the 21st Century, H.R. 4348, the Surface Transportation Extension Act of 2012, as well as H.R. 7, the American Energy and Infrastructure Jobs Act, as reported by the House Transportation and Infrastructure Committee.

The Working Group greatly appreciates the continued support in both the House and Senate for authorizing the New Starts/Small Starts program. The success of the New Starts/Small Starts program is very much tied to the rigorous project evaluation and approval process and the use of criteria to ensure that meritorious projects advance. We encourage the conferees to explore ways to accommodate the need for growth in the program as demand for New Starts/Small Starts funding far exceeds the proposed authorization levels. In response to this demand, many first time project sponsors are

AECOM • Alameda Contra Costa Transit District • Atkins Global • Bay Area Rapid Transit District (San Francisco) • Bombardier Transportation • Capital Metropolitan Transportation Authority • Central Ohio Transit Authority (Columbus, OH) • CH2MHill • City of Honolulu • City of Livermore, CA • City of Pasadena, CA • City of Rockford, IL • Dallas Area Rapid Transit • David Evans & Associates • Denver Regional Transit District • Downtown Development Authority (Fort Lauderdale, FL) • Fort Worth Transportation Authority • Gannett Fleming • Hampton Roads Transit • Hatch Mott MacDonald • HDR, Inc. • Hennepin County (Minnesota) • Hillsborough Area Regional Transit • InfraConsult • Jacobs • Los Angeles County Metropolitan Transportation Authority • Maryland Transit Administration (Baltimore, MD) • Metro (Portland, OR) • Metro Transit (Minneapolis/St. Paul, MN) • Metropolitan Atlanta Rapid Transit Authority • Metropolitan Transportation Authority of Harris County (Houston) • Metropolitan Washington Airports Authority • New York City Department of Transportation • Orange County Transportation Authority • PARSONS • Parsons Brinckerhoff • Ramsey County Regional Rail Authority (St. Paul, MN) • Regional Transportation District • Roaring Fork Railroad Holding Authority (Aspen, CO) • Sacramento Regional Transit District • San Francisco Municipal Transportation Agency • Santa Clara Valley Transportation Authority (San Jose, CA) • Sharon Greene + Associates • St. Louis Metro • Sound Transit (Seattle, WA) • Sonoma-Marín Area Regional Transit District • STV Engineering, Inc. • Triangle Transit (Raleigh-Durham, N.C.) • Tri-County Metropolitan Transportation District of Oregon (Portland, OR) • URS Inc. • Utah Transit Authority (Salt Lake City, UT) • Valley Metro Rail (Phoenix, AZ) • VIA Metro Transit (San Antonio, TX) • Virginia Department of Rail and Public Transportation

providing in excess of the minimum 20 percent match while existing systems are funding eligible projects outside the New Starts/Small Starts program to expedite project delivery.

We support the proposed changes to the New Starts/Small Starts project evaluation, approval and delivery process included in the Senate and House bills. Our positions included in this letter are intended to build upon those proposals.

Project Eligibility

We support current law in terms of maintaining a distinction between New Starts and Small Starts projects. The goal would be to recognize the differences in the level of federal funding, the risk to the federal government and the complexity of the projects funded under the Small Starts program. However, we propose that the current dollar thresholds of \$250 million total project cost and \$75 million in section 5309 funding be raised to reflect increases in the cost to construct projects since August 2005 and then be raised annually thereafter based on the Engineering News-Record Construction Cost Index.

In light of the retention of both New Starts and Small Starts project categories, we urge that the conferees direct the Federal Transit Administration to develop rule-making that recognizes the differences in project complexity, cost and risk to the federal government. The current FTA project evaluation and approval process makes few distinctions between Small Starts and New Starts projects despite the significant differences in project cost and federal funding being provided for those projects. We urge that FTA truly "simplify" the Small Starts project evaluation and approval process and not continue the current project evaluation and approval approach that makes few distinctions between New Starts and Small Starts projects.

We support the establishment of a Core Capacity program, as proposed by the Senate. However, there is a need for greater clarity prior to expanding the eligibility of projects under the New Starts/Small Starts program. We propose the following: FTA establish a pilot program to advance a small number of projects to identify and develop criteria to measure the benefits of proposed projects; that up to three projects advance under this pilot program; that FTA develop guidance to define what projects would fall under the definitions of "capacity" and "functionality," as proposed in the Senate bill; that FTA also develop guidance on the project rating, evaluation and approval process which establishes a framework with the same rigor as is applied to currently eligible New Starts/Small Starts projects; and, the project approval process would be consistent with the type of project (i.e., capacity versus functionality) and the level of federal investment in the project. We believe this proposal recognizes the fact that "core capacity" projects reviewed under the New Starts project evaluation, review and rating process have already been funded, while also recognizing that the Senate is proposing a potentially significant expansion of eligibility without increasing the resources made available under the New Starts/Small Starts program. Thus, it is important to ensure that there is a

good understanding of eligible projects and how they will compete against already eligible projects.

Corridor-Based Bus Rapid Transit

The Working Group was deeply involved in the expansion of the eligibility of fixed guideway projects to include corridor-based bus rapid transit projects. We supported the language included in SAFETEA-LU and assisted the conferees in the drafting of language included in the bill. We had several concerns about the manner in which FTA implemented the program. FTA established the Very Small Projects program utilizing warrants but never made available any documentation to demonstrate that the projects would receive a "medium" or higher rating if each of the three Small Starts criteria had been applied.

Other than our concerns with the manner in which FTA implemented the Very Small Starts program, we support current law in defining eligible corridor-based bus projects. We do support the Senate language requiring a project to be a minimum operable segment. We do not support the enhanced emphasis on physical elements in the project corridor as proposed by the Senate.

Project Evaluation Criteria

We support the Senate bill language and the criteria used to evaluate New Starts and Small Starts projects. We support Senate bill language elevating "policies and land-use patterns that support public transportation" and "economic development around public transportation stations" to the same level of the project justification criteria and local financial commitment when evaluating a project. We advocated for this change to establish these requirements as a minimum expectation for New Starts/Small Starts projects. We support the Senate provision requiring cost effectiveness to be measured based on cost per rider. We urge that the conferees clarify that this definition would be consistent with the measure proposed by FTA in the Notice of Proposed Rulemaking for Capital Projects published on January 25, 2012 (77 Fed. Reg. 3848).

We express opposition to specific project evaluation criteria proposed in the House bill. Specifically, we oppose language that requires FTA to evaluate the degree of congestion relief. While a specific project can impact travel patterns in a project corridor, the project investment is tied to the actions and decisions of other units of government and private parties over which a project sponsor has little control. Further, congestion must be addressed at a regional level where a specific corridor is just one component of a more comprehensive strategy.

Further, we are concerned about language that FTA consider reductions in energy consumption and air pollution when evaluating projects. The energy reduction provision will be very hard to measure given the breadth of the potential measure since it could include energy consumed in the construction of the project, the source of energy to

operate the system or the impacts on energy consumption based on the travel patterns in a project corridor. This same complexity is inherent in the air pollution measure. Thus, we support project sponsors demonstrating project benefits rather than requiring a complex analysis of both measures.

The Working Group strongly supports FTA facilitating the use of alternate project delivery approaches for New Starts and Small Starts projects. However, we oppose including the inclusion of language in the evaluation criteria that explicitly call for the use of cost-effective project delivery, management or transfer of project risks financial partnering and other public-private strategies. This language does not account for the complexity of the project, the experience of the project sponsor or state law that may or may not allow for alternate project delivery approaches. Presently, there is no apparent advantage in the project delivery process to using such approaches as current law requires projects using such delivery approaches to stop and await FTA approval to advance in the same manner as design-bid-build projects.

We are concerned about the House bill language that directs FTA to consider private contributions to a project, including cost-effective project delivery, management of the transfer of risk, expedited project schedules, financial partnering and other public-private partnerships. While we support the use of alternate project delivery approaches and private investments in projects, we believe that this should be left to the project sponsor and not specifically considered in evaluating the financial commitment for a project. This fails to account for the existence of private sector funds, the experience of the project sponsor and state law that may govern these project delivery approaches.

Project Advancement

We support the provisions in the House bill regarding the criteria FTA will apply in advancing projects through each phase of the approval process. We support the elimination of Final Design as a decision step and reducing the process to a three-step approval process. The House provisions streamline the project delivery process and provide for the use of alternate project delivery approaches without forcing project sponsors to delay projects awaiting FTA approval into final design or engineering, as proposed by the Senate bill.

We are concerned about the Senate project approval process and the expectation in the bill language that all projects complete Project Development within two years. This leaves little room for changes in project scope and alignment that frequently during preliminary engineering/project development when project sponsors increase the level of engineering to resolve alignment and station location decisions and the completion of the environmental clearance process under the National Environmental Policy Act (NEPA).

Program of Interrelated Projects

The Working Group has long advocated for allowing project sponsors to advance multiple projects while seeking New Starts/Small Starts monies for some, but not all of the projects. We strongly support the Senate provision to create this program. When evaluating a program of projects, we urge that the conferees require that the entire program be cleared at a system level under the National Environmental Policy Act (NEPA) and that the project sponsor be allowed to assume the build-out of the entire program of projects when rating, evaluating and approving projects under the New Starts/Small Starts criteria. However, we urge the conferees to be clear that a project eventually built without federal funding should not be subject to federal laws.

Warrants

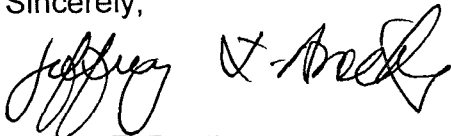
Both the House and Senate have included the expanded use of warrants to expedite the project rating, evaluation and approval process. We greatly appreciate the willingness of the House and the Senate to include these provisions. We support the House language that identifies the specific areas for FTA to develop guidance for the use of warrants. We do not believe that warrants should be specifically limited based on the project cost or the federal share of the project.

Fixed Guideway Categorical Exclusions

The Working Group supports the expansion of projects that would be eligible for categorical exclusions (CEs) and appreciate the Senate directing FTA to conduct a study on the expanded use of CEs. However, FTA and the Federal Highway Administration (FHWA) have recently published a Notice of Proposed Rulemaking (NPRM) on March 15, 2012 (77 Fed. Reg. 15310) that would accomplish this same goal. We will be submitting comments to the NPRM that support the FTA/FHWA joint rulemaking to expand the application of CEs. Thus, it appears that the publication of the final rule would obviate the need for the Senate language.

Thank you for considering our views. We stand ready to be of assistance to you to clarify any points we have made or to provide technical assistance.

Sincerely,



Jeffrey F. Boothe
Chair