Comments on The Proposed Public Transportation Safety Act of 2009

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The Current State Safety Oversight Regime

- The FTA State Safety Oversight ("SSO") Program, 49 CFR Part 659, mandates that States establish State Oversight Agencies ("SOAs") that implement safety oversight and audit programs for light rail and subway systems.

- Currently 26 SOAs, varying in size on a state-by-state basis, oversee 48 rail transit systems.

- Transit systems have System Safety Program Plans approved by the SOAs.
APTA Safety Management Program


- APTA’s companion Rail Safety Audit Program measures agencies’ progress and develops benchmarking of effective practices.

- 75 agencies have conducted 415 audits over the last 20 years under this APTA Audit Program.
APTA Rail Transit Safety Standards Program

- APTA’s Standards Development Program, partially funded through FTA grants:
  - has developed 170 consensus-based standards that promote safe and efficient transit system operations;
  - uses formal methods including stakeholder views, public comments, and an appeals process.
- Many of APTA’s member transit agencies use these consensus-based standards.
Rail Transit under the SSO Regime is Safe

- For the vast majority of transit systems, the current SSO regime works.
- From 2003 to 2008, heavy rail passenger fatalities dropped by 50% and there were zero light rail fatalities. [Dec. 10, 2009 APTA Testimony.]
- A person is 142-times less likely to die as a rail transit passenger than as an automobile passenger. [Id.]
The Proposed Legislation

- Requires the FTA to establish and enforce minimum Federal safety standards for rail transit systems that receive Federal funding.
- Allows States to “opt in” and create a State public transportation safety program requiring rail transit agencies under their jurisdiction to comply with the Federal safety standards.
  - States that “opt in” to this program will receive funding, training and staffing support from the Federal government, as well as Federal certification to enforce safety regulations on behalf of FTA.
The Proposed Legislation

- Alternatively, States could “opt out” of the proposed system and allow FTA to directly enforce the new Federal safety standards on rail transit agencies.

- The proposed legislation does not preempt States that “opt in” to the program from establishing additional or more stringent safety standards that meet certain criteria.
Why Does the Current System Work Well?

- Flexibility
- Responsive to Risks
- Agencies Learn from Mistakes
- Collaborative Approach through APTA Standards
- Each transit system has different infrastructure
Alternatives to the Current Proposal

- The proposed legislation is clearly targeted at fixing safety oversight issues at a small number of agencies struggling with safety.
- Why change the system for the vast majority of States and agencies with superlative safety records?
- Would it be a better use of FTA resources to focus directly on problem agencies?
Preemption and Sovereign Immunity

- The Texas Supreme Court held that Section 13(c) of the Urban Mass Transit Act of 1964 (which requires transit agencies to create Federally-vetted employee arrangements) does not preempt a transit agency’s “sovereign immunity” from suit under State law. *Dallas Area Rapid Transit v. Amalgamated Transit Union Local No. 1338*, 273 S.W.3d 659 (Tex. 2008), cert. denied 129 S.Ct. 2767 (2009).

- How might the proposed legislation affect these federal preemption and sovereign immunity issues?
Preemption and Sovereign Immunity

- The current proposed legislation:
  - Allows States to adopt more stringent safety regulations than those Federal regulations imposed by FTA;
  - Does not preempt State law tort actions alleging that a transit agency did not comply with the standard of care established by safety regulations established by FTA or the States; and
  - Purports to not create a Federal cause of action on behalf of an injured party or confer Federal question jurisdiction for State law causes of action.
Sources

- U.S. Government Accountability Office, Observations on FTA’s State Safety Oversight Program and Potential Change in Oversight Role (Dec. 8, 2009)
- Testimony of William Millar, President, APTA, Examining the Federal Role in Overseeing the Safety of Public Transportation Systems (Dec. 10, 2009)
References

- APTA Manual of Standards and Recommended Practices for Rail Transit Systems
- APTA Safety Management Program / Rail Safety Audit Program
- APTA Standards Development Program
  - http://www.aptastandards.com/