

AMERICAN PUBLIC TRANSPORTATION ASSOCIATION
FACT SHEET
REAL PROPERTY ACQUISITION
January 11, 2024

Issue Summary

Many public transit agencies face difficulties purchasing real property for operations and maintenance facilities because Federal Transit Administration (FTA) policies restrict the purchase of real property where federal funds will be, or are anticipated to be, used for the purchase or development of that property. In most cases, transit agencies cannot acquire such real property until National Environmental Policy Act (NEPA) processes are completed.

Expanded flexibility for early real property acquisition for public transportation projects is needed to reduce delays and associated costs of projects and to create certainty in property rights with a view toward future use.

APTA Recommendation

- **Urge Congress to adopt section 168 of H.R. 4366, Division C, the “Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2024” (THUD Appropriations Act), which expands public transit agencies’ authority to acquire land prior to the completion of NEPA review.**

On June 11, 2023, the APTA Legislative Steering Committee endorsed this concept, as outlined in President Biden’s Fiscal Year (FY) 2024 Budget Request. On October 8, the APTA Legislative Committee unanimously approved this initiative and recommendation.

APTA Actions

- **APTA will urge Congress to adopt section 168 of the THUD Appropriations Act in its letter to Senate and House Committee on Appropriations leaders outlining APTA’s priorities for a Conference Agreement on the THUD Appropriations Act.**

Background

On July 11, 2022, FTA sent a Dear Colleague letter to remind project sponsors that the purchase of real property outside of existing transit corridors cannot proceed until the NEPA process is completed or until FTA has either determined that the project is exempt as a Categorical Exclusion (CE) (i.e., corridor preservation or there will be no substantial changes); issued a decision that there is “Finding of No Significant Impact”; or issued a combined or separate final Environmental Impact Statement and or Record of Decision, ultimately clearing the project.



On March 9, 2023, President Biden released his FY 2024 Budget Request, including a legislative proposal to add flexibility to FTA's policy on land acquisition prior to NEPA by amending 49 U.S.C. § 5323(q) to include "real property interests" to existing authority allowing the purchase of right-of-way for "corridor preservation". This proposal would bring FTA's authority into parity with the Federal Highway Administration's property acquisition authority. The Senate THUD Appropriations bill adopts a similar approach by amending 49 U.S.C. § 5323(q) to replace the term "right-of-way" with "real property interests", thereby expanding the opportunity for broader property acquisition prior to the completion of environmental reviews.

On November 1, 2023, the Senate passed the Senate Amendment to H.R. 4366 by a vote of 82-15. The Senate Amendment includes section 168 of the THUD Appropriations Act.