

UC Irvine

Working Paper Series

Title

Mobility for the Handicapped: Case Study in Public Policy

Permalink

<https://escholarship.org/uc/item/6dj7p27z>

Authors

Cargill, Jack
Fielding, Gordon J.

Publication Date

1980

UCI-ITS-WP-80-2

**Mobility for the Handicapped:
Case Study in Public Policy**

UCI-ITS-WP-80-2

Jack Cargill
Gordon J. Fielding

Graduate School of Administration and
Institute of Transportation Studies
University of California, Irvine

January 1980

Institute of Transportation Studies
University of California, Irvine
Irvine, CA 92697-3600, U.S.A.
<http://www.its.uci.edu>

CONTENTS

INTRODUCTION.	1
Regulatory Requirements	1
Anticipated Costs	2
Political Conflicts	4
LEGISLATIVE AUTHORITY FOR REGULATIONS	5
LEGISLATIVE HISTORIES	8
Legislation Through 1970.	8
Architectural Barriers Act of 1968 (ABA '68).	8
Access of Federal Facilities to the Handicapped Act of 1970 . . .	15
Urban Mass Transportation Assistance Act of 1970.	20
Landmark Legislation of 1973.	24
Federal-Aid Highway Act of 1973 (FAHA '73).	24
Rehabilitation Act of 1973 (RA '73)	30
Amendments of 1974.	47
National Mass Transportation Assistance Act of 1974	47
Rehabilitation Act Amendments of 1974	55
Federal-Aid Highway Amendments of 1974.	58
Amendments of 1978.	60
Surface Transportation Assistance Act of 1978	60
Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978	79
CONCLUSION.	86
REFERENCES.	89

INTRODUCTION

The development of the Federal requirement that transit systems become fully accessible to elderly and handicapped (E&H) persons represents a case study in how the political process affects transit operations. This study shows how the problem was identified and the policy developed. It also traces the awareness of the costs of implementing the Federal requirements.

Regulations which require public transportation systems to be made equally accessible to the nation's handicapped have developed over little more than a decade. A convenient starting point is the Architectural Barriers Act of 1968 (ABA '68) and the process culminates with publication of the regulations by the Department of Transportation (DOT) in the Federal Register, May 31, 1979 [44 FR 31442-83].*

Between these dates is a fascinating history of policy development. It features the organization and representation of handicapped groups by individuals, the emotional involvement of members of Congress, and dissatisfaction with plans for the development of the Washington METRO rail system. These issues and feelings were translated into legislation and administrative regulations which affect transit systems nationwide and will be very costly.

Regulatory Requirements

The final rule issued by DOT is designed to provide accessibility to all modes of public transportation and includes provisions for airport terminals and highway rest facilities. However, attention is devoted

*Sources are cited in abbreviated form in brackets. See "References" for explanation of abbreviations.

primarily to the requirement that transit facilities must become accessible:

- All new buses purchased must be equipped with features (lifts) that allow wheelchair users to ride them;
- Within ten years, half the buses used in peak-hour service must be wheelchair accessible;
- All new rail facilities must be accessible over prescribed time periods;
- Key stations (defined in the regulations) on existing subway and commuter rail systems must be equipped with elevators within 30 years. Key stations on light-rail systems (trolleys and street cars) must be equipped with elevators within 20 years;
- At least one car of each train on rail systems must be adapted to allow wheelchair users to board within three years. Postponement is allowed under prescribed circumstances;
- Where transit systems will not be accessible within three years, each system must make available some form of interim accessible transportation, by methods such as fitting lifts to old buses or supplying demand-responsive, lift-equipped paratransit service.

Anticipated Costs

Transit operators have vigorously opposed this rule. They have argued that it will be costly and ineffective and that paratransit alternatives provide superior service at a lower cost. Judicial relief has been sought by the American Public Transit Association (APTA) and 12 transit agencies. Their case for an injunction is based in part upon the claim that the regulations are arbitrary and capricious in requiring

employment of technology which does not exist and in using accessibility as a standard rather than mobility. Such claims are supported by the experience of operators who have installed lift-equipped vehicles:

-Lifts are seldom used. San Diego Transit Corporation reported that five lift-equipped buses introduced on two central city routes in 1977 were little used. During the first few weeks an average of two trips per day were being made. But ridership soon declined to about one passenger per week because of other travel barriers and competition from demand-responsive transit provided by the city.

-Boarding and alighting cause delay in schedules because four to five minutes are required for each. On the new General Motors bus (RTS 2) the lift is mounted on the rear door, which requires the driver to go to the rear of the vehicle for operation. This will have labor cost consequences.

-Southeastern Michigan Transit Authority reports that drivers require extra pay or 15 minutes extra layover for operating lift-equipped buses.

-Lift equipment is unreliable and costly to maintain. Bi-State Development Authority (St. Louis, Missouri) attributed an additional \$400,000 in maintenance expenses and 12 accident claims to providing accessible service during its first year.

The Congressional Budget Office estimates that implementation of the regulations over the next 30 years will cost \$6.8 billion (\$1979) for capital, maintenance and additional operating costs. CBO further estimates that special lifts on buses and elevators in subways will only

benefit seven percent of the nation's handicapped. This translates into a cost of \$38 per ride for each handicapped passenger. Demand-responsive door-to-door paratransit service would cost only \$8 per ride.

Political Conflicts

The Federal statute requires that "No otherwise handicapped individual...shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance...." Activists among the handicapped supported the legislation and have demanded through law suits that regular bus and rail transit be accessible, even though transportation more suitable for both the mobile and severely handicapped can be provided by paratransit at less cost.

How the handicapped groups identified transportation as an equity issue, how they organized support for this program and pursued it with legislation and even more vigorously through the implementation of new regulations with explicit deadlines and mandated levels of funding is a fascinating case study in public policy.

LEGISLATIVE AUTHORITY FOR REGULATIONS

The DOT regulations published on May 31, 1979, were accompanied by a lengthy discussion of their development. The final rule, known as "504 Regulations," invokes three specific legislative authorities:

-Sec. 504 of the Rehabilitation Act of 1973 (RA '73), as amended, which prohibits discrimination on the basis of handicap in any program or activity receiving Federal financial assistance, citing a definition of "handicapped individual" elsewhere within the Act, and requiring heads of agencies to devise appropriate implementing regulations, subject to Congressional committee oversight;

-Sec. 16 (a) of the Urban Mass Transportation Act of 1964 (UMTA '64), as amended, which establishes the national policy that elderly and handicapped persons have the same right as other persons to utilize mass transportation facilities and services, mandating special efforts to create this availability in all Federally-assisted mass transportation programs; and

-Sec. 165 (b) of the Federal-Aid Highway Act of 1973 (FAHA '73), as amended, which directs the Secretary of Transportation to require this type of effort in programs under provisions of several specified laws, prohibits the approval of any non-complying program or project, and gives a definition of transportation handicapped person.

The "504 Regulations" also repeatedly refer to other sections and subsections of these three laws. In UMTA '64, as amended, Sec. 5 (m) specifies that E&H transit fares during nonpeak hours shall not exceed half the general fare charged during peak times. Sec. 12 (c) (4) has a

definition of transportation handicapped person that is virtually identical to that of FAHA '73, with provision for its modification for purposes of Sec. 5 (m). Sec. 16 (b) provides for grants and loans for meeting the transportation needs of E&H persons, not only to state and local agencies, but also to private nonprofit organizations, when mass transportation services are unavailable, insufficient, or inappropriate. From the total funds provided for mass transportation, 2% may be set aside exclusively for such purposes.

FAHA '73, Sec. 301 (g), was itself the source of most of the amended Sec. 16 (b) of UMTA '64. In addition, Sec. 228 of this Act requires that curbs at pedestrian crosswalks be adapted to facilitate movement of the physically handicapped, including those in wheelchairs, and Sec. 140 allocates \$65 million to the Washington, D.C., subway system for installing elevators to make the system accessible to the handicapped.

The definition of handicapped individual in RA '73 appears in Sec. 7 (6). The Act's amended Sec. 502 establishes an Architectural and Transportation Barriers Compliance Board, whose duties include insuring that transportation facilities and rolling stock are accessible to the handicapped. Sec. 505 (a) (2), as amended, provides that the remedies of Title VI of the Civil Rights Act of 1964 shall be available to plaintiffs against violations of Sec. 504. The elimination of E&H transportation barriers is included among the purposes of the Act by Sec. 2 (11). Several other provisions require participation by representatives of the handicapped in the design and evaluation of various programs.

The original versions of these laws were on the books by the end of 1973, but UMTA '64 had already been amended prior to that time, and all

three have been amended subsequently. Many of the provisions cited here were added by amendments. In order to understand how the policy developed, it is necessary to trace the legislation chronologically. Sometimes a provision initially offered unsuccessfully as part of a law reappears in an amendment to that law passed some years later, or perhaps appears as part of a different law. In addition to UMTA '64, FAHA '73, RA '73, and their amendments, it is also necessary to examine the history of early legislation establishing the Federal interest in E&H transportation accessibility which these laws have pursued.

Legislative concern for transportation accessibility was subsequent and secondary to concern over architectural barriers. The magnitude of the legal and economic consequences of steps strengthening the claim of the handicapped to transportation accessibility was not always immediately evident. Personal experiences and personal connections of members of Congress and lobbyists for organizations of the elderly and handicapped were important for the development of the legislation. A vital role was played by "territorial" struggles between rival Congressional committees, between the executive and legislative branches, and even within handicapped organizations. Controversy over Washington's own subway system also played a pivotal role in the development of much of this national legislation. Accessibility for a local transit system was required by Federal legislation, thereby making a local issue national policy.

LEGISLATIVE HISTORIES

LEGISLATION THROUGH 1970

Accessibility for the elderly and handicapped in mass transportation did not become national policy until passage in 1970 of an amendment introduced by Rep. Mario Biaggi of New York. The original, very brief Urban Mass Transportation Act of 1964 (UMTA '64) included no E&H provisions. The early development of this policy occurred indirectly, in connection with laws relating to access to buildings and the subway system of Washington, D.C.

Architectural Barriers Act of 1968 (ABA '68)
Aug. 12, 1968 P.L. 90-480 82 Stat. 718

Accessibility for the elderly and handicapped
required in buildings constructed with Federal
funds.

The genesis of handicapped accessibility requirements for the nation's mass transportation systems was not in transportation-oriented legislation, but in hearings on a bill originally concerning government-owned public buildings. Senator E.L. Bartlett of Alaska introduced S.222 on January 12, 1967. Evidently a personal connection was among the factors motivating his introduction of the bill, since he told a House subcommittee the following year: "...I did not realize until a handicapped person came into my office a few years ago what obstacles these people confront in everyday life." Other testimony reveals that the handicapped person (unnamed) had in fact become Bartlett's legislative assistant ['68 MC 10462, pp. 4, 57]. In the Senate subcommittee hearing on the bill, Katherine Fossett of the National Association of the

Physically Handicapped (NAPH) stated that her organization's legislative committee had been "in close contact with Senator Bartlett's office." It is not clear whether initial contact preceded or followed Bartlett's introduction of the bill (or his assistant's suggestion of it) ['67 MC 15173, p. 75]. In any case, though the assistant moved on to other work ['68 MC 10462, p. 57], Bartlett's concern for the handicapped apparently continued. After his death in 1969, an annual award in his name was established for the best barrier-free architectural design by the American Institute of Architects (AIA) and the President's Commission on Employment of the Handicapped (PCEH) ['70 MC 3892, p. 29]. Representatives of both these organizations appeared to testify at hearings on Bartlett's bill and in connection with later accessibility legislation.

The scope of S.222, as introduced, was quite limited. Its essential clause would have authorized the Administrator of General Services "to prescribe regulations establishing such standards for design and construction of public buildings as may be necessary to insure that all public buildings will be reasonably accessible to persons who are physically handicapped" ['67 MC 15173, p. 2]. Bartlett told the Subcommittee on Public Buildings and Grounds of the Senate Committee on Public Works that he wished to keep the bill simple, without expansive amendments, and he voiced a sentiment often repeated in the early years of accessibility legislation:

In one sense this may be considered by some an unimportant bill since it contains no seeds of controversy, carries with it no appropriation, and will cost the taxpayers of this country only a nominal amount. Its advantage for one segment of our country's citizens are not counterbalanced to any extent by disadvantages for another, nor does it

have an accompanying appropriation -- or the prospect of appreciable costs in the future -- over which we, as Members of Congress, must agonize ['67 MC 15173, p. 3].

Over and above these predictions of non-controversiality and cheapness, the bill was probably assured a friendly hearing in both Senate and House for personal reasons. Sen. Jennings Randolph of West Virginia, chairman of the parent Public Works Committee, was zealous then and later in his devotion to the cause of the elderly and handicapped. Senate subcommittee chairman B. Everett Jordan of North Carolina claimed similar sentiments ['67 MC 15173, p. 85]; Sen. Daniel K. Inouye of Hawaii, a member of the subcommittee, was an arm amputee ['73 H341-23, p. 89]; all three served on the conference committee which worked out the final form of the law [114 CR 18193]. House members testifying in favor of the legislation before the House subcommittee included Clarence D. Long of Maryland, who described a personal connection something like Bartlett's, and Charles E. Bennett of Florida and James H. Scheuer of New York, both of whom had in prior years been confined to wheelchairs. Long and Bennett had introduced bills of the same nature as S.222 ['68 MC 10462, pp. 8, 90; 114 CR 17431]. In debate on the floor of the House, Rep. William L. Springer of Illinois referred to his wheelchair-bound niece, and Rep. Spark M. Matsunaga described himself as the former director of Hawaii's Society for Crippled Children and Adults, which had successfully lobbied for a state accessibility law [114 CR 17430-2].

Groups represented by speakers at the Senate and/or House hearings on S.222 -- beyond the AIA, NAPH, and PCEH, already mentioned -- included the National Easter Seal Society for Crippled Children and Adults (ESS), the National Federation of the Blind (NFB), the National Rehabilitation

Association (NRA), the Paralyzed Veterans of America, Inc. (PVA) and (organized within the Department of Health, Education, and Welfare) the National Commission on Architectural Barriers to Rehabilitation of the Handicapped (NCAB). Written statements were submitted by some of these, and additional statements or letters appear in the transcripts from representatives of the AFL-CIO Building and Construction Trades Department, the American Legion, the Connecticut Society for Crippled Children and Adults, Inc., and the Washington Architectural Barriers Project. Representatives of GSA, HEW, and the Department of Housing and Urban Development also testified, as did several Senators and Representatives beyond those named heretofore.

Speakers on behalf of organizations of the handicapped were impatient with the limited scope of S.222. From her wheelchair, Katherine Fossett presented the NAPH's recommendations, which included consideration for the needs of the handicapped in private buildings as well as public, making existing buildings accessible to wheelchair users, and the general insistence "that the people in the community be made to understand their responsibility for enabling the handicapped to lead as nearly as possible a normal life" ['67 MC 15173, pp. 74f]. John N. Nagle of the NFB, speaking from a statement hastily typed in braille, and exchanging pleasantries about his group's close working relationships with both Senators Randolph and Jordan, offered some revisions that were embodied in the law as enacted. One was the deletion of "public" before "buildings" (though Congress did not go so far as to extend the coverage of the Act, as Nagle suggested, to private homes financed through government loan programs).

Another was the application of the accessibility requirement to buildings altered or remodeled with government financing, as well as those newly constructed. The specific inclusion in the Act of the architectural design standards of the American Standards Association (ASA, later the American National Standards Institute -- ANSI) was suggested by Nagle and others, but not adopted. These would in fact eventually be incorporated in implementing regulations ['67 MC 15173, pp. 71, 75, 83; see Sec. 27.5 of DOT's final rule, 44 FR 31468f]. Another Nagle recommendation whose time had not yet come was the following:

The Administrator shall consult with representatives of organizations of handicapped persons in the development of said regulations, which shall provide for the creation of an advisory committee consisting of representatives of organizations of handicapped persons, to assist and advise the Administrator in the implementation of this Act ['67 MC 15173, pp. 82-85].

Heyward McDonald of the NCAB, testifying on braces and crutches, was unsuccessful in persuading the Senate subcommittee to add "facilities" to "buildings," but the suggestion, which he and other speakers offered, that "usability" should be specified as well as "accessibility," found favor. In modified form, so did his recommendation that HEW, rather than GSA, be charged with producing the regulations (ultimately the GSA Administrator was directed to devise regulations "in consultation with" the Secretary of HEW) ['67 MC 15173, pp. 42-45; Carl Moring of the ESS also advocated "usability" language, p. 69]. William J. Maund of ESS was successful in arguing for the deletion of "reasonably" preceding "accessible" in the bill, as a potential loophole for non-compliance, but (like Nagle) unsuccessful in recommending the explicit inclusion of the ASA standards ['67 MC 15173, p. 71].

The Act as signed into law on August 12, 1968, though considerably expanded in scope, was still an Architectural Barriers Act referring only to buildings, and making no specific mention of transportation accessibility. But many witnesses and members of Congress had voiced transportation-oriented concerns during its consideration, and it was acknowledged to have implications for public transportation.

The proposed Washington METRO subway system, on which construction had not yet begun, was already a factor in the discussions -- compared, as it would also be in later years -- with San Francisco's Bay Area Rapid Transit (BART) system, whose construction was under way. Fossett described communications between her organization and the Administrator of the National Capital Transportation Agency (NCTA, predecessor of the Washington Metropolitan Area Transit Authority, or WMATA) about inclusion of accessibility features in accordance with the ASA standards and cited his letter "assuring us that his office would make every effort to give consideration to this problem in the designing and construction of the above system" ['67 MC 15173, p. 74]. Edward H. Noakes of the AIA insisted that designers of transportation systems "can easily cater to" the needs of the handicapped ['67 MC 15173, p. 89].

In the House hearing, subcommittee member Jerome Waldie of California prophetically raised an issue in connection with BART. This rapid transit system, partially financed by Federal grants, was being built without elevators and hence inaccessible to wheelchair users. Would the proposed legislation, he asked, require the subway to be accessible, and what about the cost? The BART Board of Directors, said Waldie, recently passed a resolution "saying they would be delighted to comply with

the architectural barrier problem [presumably a misprint for "program"] if the Federal Government would pick up the bill..." ['68 MC 10462, pp. 16f]. Subcommittee chairman Kenneth J. Gray of Illinois, clarifying his discussion with Waldie (who had departed), later told other questioners that the Federal Government could claim authority to mandate accessibility to projects such as BART, and that any problems were merely matters of jurisdiction between committees of Congress. William P. McCahill of the PCEH replied that if such systems were not to be interpreted as covered by the proposed law, his group would return with further recommended legislation: "We are not interested in exceptions, we are interested in inclusions" ['68 MC 10462, pp. 35f, 69f; the printed statement of Janet Fay of the Washington Architectural Barriers Project takes a similar line, pp. 86f].

The Act as finally passed was interpreted as applying to transit facilities if constructed with Federal funds, as Gray pointed out in answer to a question on the floor of the House [114 CR 17431], and as was borne out by subsequent developments. Though the meaning of "building" was explicitly to be construed as broadly as possible [113 CR 24134; S. Rept. 90-538, pp. 3f; H.Rept. 90-1532, pp. 3f; 114 CR 17430], neither subcommittee had followed the implied suggestion of the PVA's Leslie P. Burghoff of requiring accessibility of mass transportation vehicles ['67 MC 15173, p. 77], but it is significant that such an idea had already come up in 1967. Cost was still regarded as negligible. The Senate committee report stated: "Enactment of this legislation will not result in any additional cost to the Federal Government" [S.Rept. 90-538, p.4]. Even the cost of installing elevators to make a subway system

accessible was minimized by proponents of the legislation: McCahill said that Waldie's predictions about the costs of elevators for BART seemed high because they were expressed in absolute amounts, whereas in terms of percentage of the total cost of the project they were very low ['68 MC 10462, pp. 16, 69].

Access of Federal Facilities to the Handicapped Act of 1970
Mar. 5, 1970 P.L. 91-205 84 Stat. 49

ABA '68 made expressly applicable to buildings of the Washington METRO subway system.

On the very day of the ground-breaking for the Washington METRO (Dec. 9, 1969), the House Subcommittee on Public Buildings and Grounds held a hearing on a bill, H.R.14464, to assure that the accessibility requirement of ABA '68 would apply to the system. Subcommittee chairman Gray, who would attend the ground-breaking that afternoon ['72 H641-29, p. 62], told a representative of the PVA that "this committee will be an oversight committee to insure that the law is carried out." George H. Fallon of Maryland, chairman of the House Public Works Committee, introduced the bill, with Gray and three other committee members among the co-sponsors, in addition to Rep. Bennett. Fallon told the House that the committee would hold further hearings and offer other amendments, if necessary, in the future ['70 MC 3892, pp. ii-iii, 9, 17f, 23; 115 CR 39054]. GSA legal counsel had suggested that because of the unique status of the District of Columbia, some doubt could possibly arise as to whether the 1968 law applied to METRO ['70 MC 3892, pp. 4, 10f, 16, 21]. Since the original legislative purpose had been to include all subway systems receiving Federal financial support, the present bill was designed simply to close a single possible loophole [H.Rept. 91-750, p.

2; S.Rept. 91-568, p. 2*]. The bill's sponsors were nonetheless still at pains to make it clear that the accessibility requirement applied only to buildings and structures, not to vehicles. The original bill, in fact, awkwardly and illogically added "a bus, subway car, train, or similar type of rolling stock" to the categories of buildings exempted from the accessibility requirement of ABA '68--a clause the Senate committee eliminated as unnecessary ['70 MC 3892, p. 3**; H.Rept. 91-750, pp. 2f; S.Rept. 91-658, pp. 1f; 116 CR 4001].

Groups represented at the House hearing (the Senate Public Works Committee held none) were the PCEH (whose speaker was also connected with ESS), AIA, and PVA (again), the United Cerebral Palsy National Association (UCPA), and WMATA (METRO). Documents submitted included a letter from METRO's general manager, Jackson Graham, to the committee chairman, a National League of Cities report on state and local efforts against architectural barriers, and an article by Edward H. Noakes (who had testified on the 1968 law) in the Potomac Valley Architect suggesting the feasibility of "inclinators" (elevators for the handicapped to be installed in the places some escalators would otherwise occupy) for subway stations. A statement by DOT Secretary John A. Volpe, stressing that "President Nixon is personally committed to this program," was cited, and a further report from a Presidential Task Force on the

* Gray seems to imply elsewhere [116 CR 4000] that the new bill was required in order to make the 1968 law applicable to subway systems in general, but this would be a misinterpretation, as is evident from the discussion.

** Again, Gray's imprecise language could mislead. He opened the hearing by saying: "...we feel this legislation became necessary when we found the original legislation did not include rolling stock" ['70 MC 3892, p.4].

Physically Handicapped (with membership which overlapped the PCEH) was anticipated ['70 MC 3892, pp. 7, 9; H.Rept. 91-750, pp. 1f].

No phrasing in the very brief law which emerged from these deliberations can be attributed to any particular witness. Essentially, ABA '68 was simply amended by being made specifically applicable to METRO. Statements made during the discussion reveal the escalating conflict among interest groups. The harmony and unanimity that characterized the hearings on the earlier general law did not persist in the deliberations on this amendment which would require concrete compliance by a particular entity. Though cordiality prevailed, important disagreements emerged in the statements of METRO's representative, Warren Quenstedt, and speakers intent on supporting or broadening the legislation. Quenstedt differed sharply with McCahill of PCEH and Peter L. Lassen of PVA on the cost that would be involved in installing elevators in the subway system (compare Lassen's \$5 million total to Quenstedt's \$1-3 million per station for 86 stations) ['70 MC 3892, pp. 11, 14f, 19f]. Quenstedt also denied not only the accuracy, but the relevance, of estimates given for the proportion of handicapped persons within the population. The significant number, he contended, was rather the number of handicapped not restricted to their homes (since persons so restricted would be in no sense potential subway riders), yet still unable to use the transit system without special provisions being made, and also undeterred by criteria unrelated to accessibility, such as embarrassment or desire to avoid crowds, jostling, etc. He calculated that some METRO stations might expect usage by only four or five such persons per day, and none by more than about 25; the costs of providing

accessibility, including installation of elevators, must be measured against such projected patronage, he suggested ['70 MC 3892, pp. 13f*].

Cost considerations also led Quenstedt to suggest possible alternatives to complete system-wide accessibility. One suggestion was that "it might be appropriate to select key stations in which to make these provisions available," while not requiring accessibility of the other stations. Gray was unsympathetic: "Would that not be more impractical than trying to have a practical approach that would be uniform all over the system?" Quenstedt answered by pointing out that 70% of the system's users would have to reach the subway line by automobile or bus anyway: "Once engaged with that type of transportation, [they] could just as readily go to key stations rather than it be necessary that they be able to go to all of them" ['70 MC 3892, p. 15]. Subsequent questioning led Quenstedt to mention experimentation with changes in bus design, e.g., "a device that brings the loading level down closer to either the ground level or level with the curb, so that a wheelchair could be brought up and into the bus," but he denied detailed knowledge and emphasized remaining problems (e.g., narrow aisles). Then he described a recent personal excursion on a minibus, concluding: "...it occurred to me that the bus company may be the real solution to the problem with regard to transportation for the non-ambulatory through the use of the minibus and radio dispatch, because

*The point is echoed by Graham's letter, pp. 25f; Noakes' article makes a similar point, less contentiously, pp. 52f; cf. Lassen's citation of an opinion that by 1980 half the population would be "permanently disabled, suffering from a chronic disease or past 65," pp. 18f. See related comments of James Stearns ['72 S541-66, p. 514] in a different context.

this is a relatively inexpensive vehicle, a relatively small staff of persons involved, a dispatcher, and the thing can travel with great flexibility about the city to meet the demands of these people. It is a potential to be explored, sir." When asked whether minibuses were equipped to handle the handicapped, Quenstedt replied that they, too, had an incorrect loading level, but that he had felt their use "might have potential" ['70 MC 3892, p. 17].

A further issue arising in the House hearing was the definition of "handicapped." Graham's letter pointed out that "the definitions which designate a person as handicapped have not to the best of our knowledge been classified or codified." His representative, Quenstedt, further stressed the ambiguity of the term ['70 MC 3892, pp. 14-25]. Their purpose was apparently to be able to describe the proposed METRO system as "accessible to the handicapped" even if in fact wheelchair occupants would not be able to use the system. Several comments by speakers and subcommittee members made it clear that, for the present purpose, it was understood that "elderly" was included wherever "handicapped" was mentioned ['70 MC 3892, pp. 10, 16, 18]. There was also some tendency to expand the definition beyond the physically handicapped. Lassen's definition of handicapped included "those with unstable medical conditions such as epilepsy, diabetes, alcoholism, mental illness, narcotics, and cardiovascular disease"; and he cited a provision of a bill introduced into the New York legislature prohibiting discrimination for "mental or physical handicap" ['70 MC 3892, pp. 18, 20, 23]. Finally, the issue of participation by organizations of handicapped persons arose in these deliberations, as it had in discussion prior to

the passage of the 1968 law. Lassen's group recommended establishing "the constitutional right" of the handicapped to full use of transportation facilities, "and the human right to participate in the design, construction, and maintenance" of them. It was established by questioning that the PVA's consultation with METRO currently came only through intermediaries, notably the PCEH ['70 MC 3892, pp. 23-25].

Urban Mass Transportation Assistance Act of 1970
Oct. 15, 1970 P.L. 91-453 84 Stat. 962

Biaggi floor amendment adds Sec. 16 to UMTA '64, establishing E&H accessibility as national policy and providing transportation-oriented definition of handicapped person.

Beginning as largely a financial measure sponsored by the Nixon administration, S.2821 as introduced in August of 1969 had no E&H provisions. Nor were any added during extensive hearings conducted by the Senate Subcommittee on Housing and Urban Affairs (which reported out a substitute bill, S.3154), during two days of Senate debate in February of 1970, or in several days of hearings by the House Subcommittee on Housing ['70 MC 490; S. Rept. 91-633; 116 CR 2122-48, 2250-76; '70 H241-5; H.Rept. 91-1264].

Somewhat surprisingly, speakers representing organizations concerned with the handicapped did not appear in these hearings conducted by the subcommittees of the respective Committees on Banking and Currency. However, for the first time in hearings relevant to this research, spokespersons for the elderly appeared. At the House subcommittee hearing of March 10, 1970, John B. Martin, Commissioner on Aging within HEW and former chairman of the Michigan State Commission on Aging, was greeted by subcommittee member Garry Brown of Michigan as "my political

foster father." Martin stressed that he appeared on his own behalf, not as the representative of any administration position, though he promised to try to elicit one. He suggested that a small proportion (1 to 3%) of research and development funds authorized by UMTA '64 be applied to the transportation problems of the elderly, and that about 1% of grants and loans under its provisions be used specifically for the transportation needs of the aged -- perhaps subsidizing fare reductions or providing new services more responsive to their needs, such as "portal-to-portal services." In dialogue with Rep. Brown, Martin emphasized that speed of transit was not particularly important to the elderly -- it might even be unsettling -- but that availability of service of some sort was critical ['70 H241-5, pp. 427-36].

William Fitch, executive director of the National Council on Aging, appeared at the next day's hearing, accompanied by representatives of the Kentucky Association of Older Persons and of a regional United Auto Workers Retirees Council. He cited a letter just received from Sen. Harrison Williams of New Jersey, chairman of the Senate Special Committee on Aging, associating himself with their efforts. Other documents provided by Williams, growing out of hearings recently held by his committee in Paterson, N.J., were also quoted. Reduced bus and train fares, a subsidized senior taxi system, and dial-a-bus services were among the suggestions received. Williams referred to a recent DOT study which he interpreted as suggesting that such "separate, specialized transportation systems be designed for the handicapped." He questioned this approach, citing more accessible "experimental bus and transit car designs." Fitch and his associates, however, declined to make specific

recommendations until other organizations could be consulted. Having contacted the National Council of Senior Citizens and the American Association of Retired Persons, Fitch sent a letter (printed with the hearings transcript) to the subcommittee chairman, Rep. William A. Barrett of Pennsylvania, suggesting greater concern for the elderly in mass transportation fares, routing, scheduling, and accessibility -- a consideration also, he said, with "handicapped persons of all ages." Furthermore, committees working out transit details "should include older persons or representatives of organizations working with and for the elderly" ['70 H241-5, pp. 551-64].

The new bill, H.R. 18165, unanimously reported out by the Banking and Currency Committee [H.Rept. 91-1264], still lacked any E&H provision. But on the floor of the House, Rep. Mario Biaggi of New York, quoting passages from a recent Presidential statement and from Martin's subcommittee testimony, and claiming the early support of Rep. Bennett, rose "to offer a very important amendment which is entitled 'Planning and Design of Mass Transportation Facilities To Meet the Special Needs of the Elderly and the Handicapped.'" The Biaggi amendment consisted of a 16th section to be added to UMTA '64, having four subsections. Sec. 16 (a) proclaimed:

It is hereby declared to be the national policy 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; and that all Federal programs offering assistance in the field of mass transportation (including the programs under this Act) should contain provisions implementing this policy.

The Secretary of Transportation was authorized by Sec. 16 (b) to make grants and loans to state and local public agencies for the specific purpose of providing accessible transportation services; 1 1/2% of the total amount of Federal obligations incurred under Sec. 4 (c) of UMTA '64 was to be set aside exclusively for improving E&H transportation accessibility. The same percentage of research, development, and demonstration funds provided under Sec. 6 of the 1964 Act was devoted to investigation of technology for improving accessibility by Biaggi's Sec. 16 (c). Finally, Sec. 16 (d) provided the first transportation-oriented definition of "handicapped person" in Federal law:

For purposes of this Act, the term "handicapped person" means any individual who, by reason of illness, injury, age, congenital malfunction, or other permanent or temporary incapacity or disability, is unable without special facilities or special planning or design to utilize mass transportation facilities and services as effectively as persons who are not so affected [116 CR 34180].

It is clear that the author of Sec. 16 aimed at integrating the handicapped into the same transportation systems used by other persons, not at providing equal or superior alternative service. Biaggi described his amendment as guaranteeing "that equal rights to transportation facilities are extended" to the handicapped, and criticized other proposals "that would set up special transportation facilities for the elderly and the handicapped." Services such as special taxicabs, he said, "would further serve to segregate the elderly and the handicapped." The amendment's inclusion of mass transportation "services" (in addition to facilities) certainly could be construed to include transit vehicles. Without explicitly saying so, it may well be that Biaggi intended to include them. Whether those who voted in favor

of his amendment, brought up at this very late stage in the development of the legislation and never subjected to committee examination, had any such idea in mind may well be doubted. The amendment was immediately declared acceptable by Banking and Currency Committee chairman Wright Patman of Texas, and was passed by the House without change and almost without discussion, by voice vote. As usual, costs were minimized; in Biaggi's words: "...we are not talking about appropriating additional funds here" [116 CR 34180f]. The new Sec. 16 of UMTA '64 emerged intact in the conference bill passed by the House and Senate and signed into law on Oct. 15, 1970 [116 CR 34192-7, 34950-2, 37264].

LANDMARK LEGISLATION OF 1973

Two of the three legislative authorities cited in DOT's "504 Regulations" were approved in 1973, while the third was substantially amended. The lengthy struggles leading to the enactment of this legislation reveal much about Congressional politics and the interest groups who were shaping Congressional opinion.

Federal-Aid Highway Act of 1973 (FAHA '73)
 Aug. 13, 1973 P.L. 93-87 87 Stat. 250

E&H accessibility required of projects under Federal Highway program; METRO elevators subsidized; amendments added to UMTA '64, including Abzug amendment authorizing grants to private nonprofit organizations and increased E&H funding.

The Subcommittee on Housing of the House Banking and Currency Committee held another hearing on urban mass transportation in February of 1972, at which Rep. Bella Abzug of New York testified in support of a measure she had originally introduced in late 1971 [117 CR 33751, 36266]. Citing the 1 1/2 percent financing provision of the Biaggi

amendment of 1970, she asked that the law be further amended to allow DOT "to provide grants to private, nonprofit groups which are willing and able to provide transportation for the elderly and handicapped right here and now," and for this purpose to increase the funds allotted to 2 percent of the total. This would amount to subsidizing dial-a-ride services, as Abzug's conversation with subcommittee members makes clear, though such grants "would only be made in areas where the regular mass transit facilities are 'unavailable, insufficient, or inappropriate'" ['72 H241-8, pp. 57-60]. The proposal disappeared from sight for a while, but ultimately resurfaced at a late stage in the development of the Federal-Aid Highway Act of 1973, to whose complicated legislative history we now turn.

FAHA '73 was supposed to be FAHA '72; the administration's highway bill (S.3590) was introduced on May 9, 1972, but was finally tied up so long in conference that it failed to come to a vote on the last day of the session [118 CR 16363, 37309-12]. The delay in enacting the Highway bill was largely caused by the strong opposition which arose between those who wished to restrict the scope of the legislation to the traditional area of matters connected with the nation's highways and supporters of a major expansion in the scope of the law. The latter were largely successful in their purpose of incorporating Federal highway policy within the broader context of a unified Federal transportation policy,* in which urban mass transit received a greater share of emphasis and

*Indicative of this change is the fact that during the two years of deliberation on FAHA '73 the Senate Subcommittee on Roads became the Subcommittee on Transportation.

financial support than heretofore. Controversy over the Highway Act's E&H provisions was only incidental to this conflict over the fundamental nature of the legislation.

The original bill included a proposed new subsection 16 (a) (2) for UMTA '64:

The Secretary may establish standards for design and construction which insure that elderly and handicapped persons have reasonable access to urban mass transportation facilities and equipment. The Secretary shall not approve a capital assistance project for construction or acquisition of new urban mass transportation facilities or equipment unless he determines the project meets such standards or unless he finds in writing that the responsible public body has taken alternative actions to insure that elderly and handicapped persons have reasonable access to urban mass transportation service. The standards established pursuant to this subsection shall be the only Federal standards with regard to accessibility for elderly and handicapped persons applicable to urban mass transportation facilities and equipment ['72 S641-16, pp. 40f].

Disagreement about, or even discussion of, this provision, is conspicuously absent from the transcript of the extensive hearings held by the Senate Public Works Committee's Subcommittee on Roads; no representatives of organizations of the handicapped or elderly were among the numerous witnesses who appeared. The Senate Banking, Housing, and Urban Affairs Committee's report [S.Rept. 92-1103] following a subsequent hearing on the same legislation (transcript apparently unpublished) mentions no controversy, either. Despite the inclusion of "equipment"--which must mean vehicles--the proposed subsection was generally conservative in import. The twice-used phrase "reasonable access" might have created the sort of loophole that had motivated proponents of ABA '68 to strike out "reasonably" prior to "accessible" in

that legislation, and the final sentence would have given precedence to this less exacting standard. The permitted "alternative actions" might be interpreted so as to allow the establishment of alternative demand-responsive systems, instead of the provision of general transit system accessibility implied in comments on the Biaggi amendment of 1970.

Meanwhile, a familiar issue and cast of characters had reappeared in a hearing before the Subcommittee on Public Buildings and Grounds of the House Committee on Public Works. Chairman Gray began the hearing by saying: "It has been brought to our attention by members of organizations and individuals that the METRO System is not being designed and constructed in accordance with the law..." ['72 H641-29, p. 1]. The harmony of 1967 and even the civility of 1970 were now replaced by considerable rancor, as METRO's Quenstedt returned (with allies) to defend his agency against the accusations of committee members and representatives of organizations supporting the interests of the handicapped. McCahill of PCEH reappeared, while NAPH was now represented by Barney F. Stanton; the National Paraplegia Foundation (NPF) sent Richard Hedding, and Dr. Margaret Kendrick (or Kenrick--both spellings are to found in the hearing transcript) of Georgetown Medical Center also testified. The PVA had no speaker present, but a written statement was submitted by its Harry A. Schweikert.

Fundamentally, the directors of METRO (whose construction was now under way) had taken no action to make the system accessible to wheelchair users. Their application for a DOT subsidy to study the feasibility of "inclinators" had been denied, but the installation of conventional vertical elevators had not been pursued as an alternative, though METRO had

continued to assure several Congressional committees that the system was being designed and built in full compliance with accessibility standards ['72 H641-29, pp. 17f, 22, 36f, 41, 55]. The "almost helpless outrage" expressed in Schweikert's statement did not differ greatly from the attitude of Rep. Gray, who suggested that METRO had simply flouted the law his subcommittee had brought out in 1970 ("I am the author of that language") and that only a current lawsuit by the NPF, PVA, Washington Urban League, and Heddinger personally, plus Congressional pressure and public opinion, had caused the subway system's managers belatedly to agree that elevators must be installed. Suddenly, Gray sneered, the agency's general counsel "got religion," a turnabout he characterized as "very gratuitous" ['72 H641-29, pp. 26, 40, 48f, 52f, 65-70; '76 H641-33, p. 224]. Moreover, METRO had disclaimed responsibility to pay for the elevators' installation: Heddinger quoted a memorandum from METRO general manager Jackson Graham saying that "the task of providing funds for the special facilities...would be the responsibility of those interested in the handicapped" ['72 H641-29, p. 19*]. In fact, though METRO's representatives were on the defensive throughout the hearing, the upshot was that Congress was compelled to assume the cost of the elevators, and to accept METRO's estimated figure of \$65 million. Chagrined, but mindful of the need for quick action,

*The Minutes of the WMATA Board meeting of Aug. 27, 1970, at which this memorandum was presented, list "others" present at the meeting. Names familiar from transcripts of hearings on these laws are "Miss Kaye Fossett" (presumably either Katherine Fossett of NAPH herself, or a relative), "Mr. Richard Heddinger", and "Mrs. Kathleen Arneson" (who must be the same person as "Mrs. Kathaleen Arneson" who accompanied the NCAB representative at the 1967 Senate subcommittee hearing on ABA '68, but did not herself address the subcommittee) ['72 H641-29, p. 36].

(delay would only increase the cost), the committee illogically tacked the appropriation for METRO accessibility onto the Highway bill [H.Rept. 92-1443, pp. 19f]. The provision reappeared in the 1973 version of the bill (S.502), and survived the adverse recommendation of DOT Secretary Claude S. Brinegar [S.Rept. 93-61, p. 47] and Sen. Robert Dole's questioning of its appearance "in this piece of fundamentally unrelated legislation" in floor debate [119 CR 8228], to emerge only slightly modified as Sec. 140 of FAHA '73.

The activism of the Senate and House Public Works Committees in connection with the development of FAHA '73 invaded the "territory" of other committees--particularly the House Banking and Currency Committee. The bill as reported out of House Public Works included a Title III consisting entirely of amendments to UMTA '64, a law over which the other committee claimed jurisdiction [119 CR 13107-13]. The earlier proposal of Rep. Abzug (a member of the Public Works Committee), providing for grants to non-profit groups providing E&H transportation services [119 CR 7114], emerged as part of Sec. 301 (g) of the final Highway bill, amending UMTA '64, Sec. 16 (b), and it survived as a provision of the law as passed and as signed on August 13, 1973. During House discussion of the conference committee report, she commented: "I myself am grateful that some provisions were placed in the bill for aid to the handicapped and the elderly, in which I played a role" [119 CR 13264, 28105, 28467]. Gray was correct in telling the House: "The Federal Aid Highway program has become a broad umbrella that recognizes the needs of all of our citizens in the transportation field and adapts on a day to day basis to the necessary changes to carry out the fulfillment of these needs" [119

CR 13127]. Transportation accessibility for the handicapped and elderly was now mandated under both the Highway program and the Urban Mass Transportation program, with oversight by zealous -- and jealous -- committies.

Local controversy over the Washington subway system had also again spilled over into national policy. METRO's Quenstedt was conscious of his symbolic role: "I may appear to be the spokesman on occasion because I happen to be the individual in town, but the transit industry, as a whole, has resisted the idea of the wheelchair in a transit system" ['72 H641-29, p. 46]. Again METRO's performance was compared (unfavorably) with BART's ['72 H641-29, pp. 20, 25, 61, 66f]. Accessibility of transit vehicles, though still not explicitly mandated, was again the subject of committee discussion ['72 H641-29, pp. 67*, 69]. Alternative E&H transportation services, approved by Abzug's provision within the Highway Act, were condemned in the hearing on METRO to the extent that their legitimacy might easily have been questioned ['72 H641-29, pp. 48f, 55]. And developments in the construction of METRO had demonstrated that accessibility for the handicapped could be costly, despite years of assurances to the contrary.

Rehabilitation Act of 1973 (RA '73)
 Sept. 26, 1973 P.L. 93-112 87 Stat. 355

Vanik nondiscrimination amendment belatedly attached;
 Architectural and Transportation Barriers Compliance
 Board established; committee amendments require E&H
 participation at various stages; Percy floor
 amendments refine purposes of Act.

*Schweikert misinterprets the legislative history of P.L. 91-205 in this connection.

During the same two years in which Congress was embroiled in controversy over what ultimately became the Federal-Aid Highway Act of 1973, another battle was raging in connection with another attempt at significant expansion of the scope of prior legislation. At issue was the incorporation of the traditional vocational rehabilitation program (long under the respected leadership of the late Mary E. Switzer) into a general program of rehabilitation and assistance for the handicapped, vocationally and otherwise.

Political struggle raged both along party lines and between the legislative and executive branches. President Nixon, re-elected in 1972 despite opposition majorities in both houses of Congress, twice vetoed versions of the Rehabilitation Act that had been passed overwhelmingly (once unanimously). In the end, the administration's opposition forced a compromise that limited the expansion Congress had sought in the scope of Federal rehabilitation services. Among the Congressionally supported E&H provisions deleted were certain programs in the area of transportation. However, no serious opposition was ever offered to the provision that became Sec. 504 of RA '73, the primary legislative authority cited for DOT's 1979 accessibility requirements.

James Stearns, a cerebral palsy victim, but a graduating senior at Dartmouth when he testified before the Senate Subcommittee on the Handicapped in May of 1972, was engaged in research on what would become a 150-page paper entitled "Crutch Power." He submitted a copy to the subcommittee upon request, and the paper was reprinted in the hearings transcript. It includes the following generalization:

The Vocational Rehabilitation Act merits attention because it is a case study in how legislation for the handicapped is formulated and also indicates the turmoil that is going on within rehabilitation circles...['72 S541-66, pp. 430-580, quote from p. 544].

The House Select Subcommittee on Education of the Committee on Education and Labor held hearings in early 1972 on a bill originally introduced in May of 1971 by Rep. Carl D. Perkins of Kentucky, the full committee chairman, with most of the committee members as co-sponsors [117 CR 14954]. Another bill introduced by subcommittee chairman John Brademas of Indiana and related bills were also heard. No mystery exists as to the authorship of the two main bills under consideration. Both were prepared by lobbyists for organizations of the handicapped [118 CR 8976], Perkins' H.R.8395 by the National Rehabilitation Association (NRA) ['72 H341-18, p. 33; '72 S541-66, pp. 372, 553] and Brademas' H.R. 9847 largely by a coalition of organizations of and for the blind ['72 H341-18, pp. 167, 180; '72 S541-66, pp. 554, 556, 654; '73 H341-23, p. 82]. The Nixon administration had not yet submitted its own proposal, though funding for the vocational rehabilitation program of HEW's Rehabilitation Services Administration (RSA) was approaching its statutory expiration date. Brademas censured the administration for being "nearly 2 years late" ['72 H341-18, p. 105].

The Perkins bill included a provision to establish within HEW a "National Commission on Transportation and Housing for the Handicapped" along the lines of the National Commission on Architectural Barriers (NCAB) which had been instrumental in developing the Architectural Barriers Act of 1968 [H.Rept. 92-928, pp. 23f; 118 CR 8977]. In arguing for establishment of the Commission, E. B. Whitten of NRA used an example that should not be surprising at this point:

A good illustration of the need for such a commission is found in the struggle which has been going on for several years to try to make sure that the Washington, D.C., subway system is constructed to be accessible to handicapped and older people, some of whom will find it necessary to use wheelchairs. The inclinator versus the escalator controversy has been interminable, and I am not sure whether it has been resolved ['72 H341-18, p. 42].

Support for creating the Commission was offered in testimony by the representative of the United Cerebral Palsy Association, Inc. (UCPA), Ernest Weinrich (himself a CP victim), by Edgar B. Porter of the National Association of Speech and Hearing Agencies, by Milton Ferris of the National Association for Retarded Children, by Harold Russell of the President's Committee on Employment of the Handicapped (who also insisted that the PCEH should have representation on the Commission), and by John Nagle of the National Federation of the Blind (NFB) ['72 H341-18, pp. 93, 107, 112, 154, 172, 196, 200].

The administration plan, an outline of which was constructed from various public statements of executive branch officials by Whitten, included the idea of subsidies for transportation for those who, because of handicaps, were unable to use mass transportation facilities ['72 H341-18, pp. 48-52]. The desirability of both establishing the Commission and providing the transportation subsidies was advocated by Craig Mills of the Tallahassee, Fla., Division of Vocational Rehabilitation, by Nathan B. Nolan of HEW's Office of Vocational Rehabilitation, and by John Kemp of the Easter Seal Society (ESS) ['72 H341-18, pp. 70, 80f, 303].

Heeding its witnesses, the committee submitted to the House a version of H.R.8395 which included the possibility of subsidizing transportation

to and from work for the handicapped as a specific area which the proposed Commission on Transportation was to examine. It was also to look into what was currently being done by public and private agencies "to eliminate barriers from public transportation systems (including vehicles used in such systems), and to prevent their incorporation in new or expanded transportation systems..." [118 CR 8974].

Kemp, a first-year law student who described himself as a "congenital quadruple amputee," was the witness who apparently had the greatest impact on the subcommittee members. Rep. Ogden B. Reid of New York described his accomplishments as "a refreshing inspiration," and Albert H. Quie of Minnesota, ranking minority member of the full committee, expressed his admiration for Kemp both in the hearings and on the floor of the House. Quie, though not a member of the subcommittee, attended three of the four days of hearings, and at one point volunteered the information that his own father had used an artificial limb ['72 H341-18, pp. 301, 304, 307; 118 CR 8980; see also '72 S541-72, p. 886]. The generally affectionate relationship between the subcommittee and the lobbyists testifying before it was evident. Rept. Orval Hansen of Idaho would later say, "We heard very heart-touching stories..." [119 CR 7104]. Brademas introduced Whitten as "a friend of this subcommittee for many years and [a man] for whom all members of our committee have very great respect," greeted Nagle and his associates as "a panel of experts," adding that "Most of them are old friends of this subcommittee," and elsewhere spoke warmly of "the great national organizations, whose only clients are handicapped people" ['72 H341-18, pp. 33, 157, 217]. This receptive attitude was not lost on the witnesses: Frederick Picard of

the Catholic Guild for All the Blind expressed his deep appreciation to the subcommittee and its staff, contrasting the accessibility of Congress with the isolation of the executive branch ['72 H341-18, p. 188].

Relations between the committee and the administration were in fact already strained. In a colloquy with HEW Secretary Elliot Richardson, Brademas suggested that the administration's approach to rehabilitation legislation might "put this committee out of business," and asserted that the administration attempted to avoid sending bills to either the House Committee on Education and Labor or the Senate Committee on Labor and Public Welfare in hopes of finding a more sympathetic hearing for its views "on these terribly important human programs" in other committees ['72 H341-18, pp. 215f].

During House debate in March, 1972, prior to the 327-0 passage of the bill, Rep. Charles A. Vanik of Ohio made a tangential reference to an unrelated bill (H.R.12154) which he had introduced in December of 1971, designed "to amend the Civil Rights Act of 1964 to include the handicapped and make illegal unwarranted discrimination in federally assisted programs." Sen. Hubert Humphrey had introduced a companion bill simultaneously; the bills had been assigned to the respective Judiciary Committees [117 CR 45945; 118 CR 8982; '72 S541-66, p. 497; 119 CR 7114].

Chairman Harrison Williams of the Senate Committee on Labor and Public Welfare organized a Subcommittee on the Handicapped as a reconstituted and enlarged version of the former Subcommittee on Handicapped Workers. The first hearings ever held by the new subcommittee were those on H.R.8395 and related bills, in May and June of 1972 ['72 S541-66, pp. 1, 546; 118 CR 32294]. The subcommittee

chairman, Sen. Jennings Randolph, designated Sen. Alan Cranston of California (whose other activities included the chairmanships of the Veterans' Affairs Subcommittee and the Subcommittee on Health and Hospitals) to preside at the hearings and lead the floor debate on this legislation ['72 S541-66, p.2]. Personal considerations apparently contributed to Cranston's willingness to undertake these duties. His wife had suffered a paralyzing stroke in December, 1969, and was still involved in physical therapy associated with its effects. Moreover, Cranston's legislative aide at the time of these hearings, Michael Burns, was later described by Cranston as "a young Vietnam Navy pilot who, as a result of a service-connected injury, is a quadriplegic confined to a wheelchair" ['72 S541-66, pp. 572, 698; S541-72, p. 1512; quotation from 119 CR 10800].

Many of the same persons who had testified before the House Subcommittee appeared at these Senate hearings, including Kemp, Nagle, Whitten, Russell, Weinrich, Ferris, Mills, Milton Cohen of the Federation of the Handicapped, Irvin P. Schloss (representing several blind organizations), John C. Harmon of Goodwill Industries of America, Inc., Mae Hightower of the American Occupational Therapy Association, and Drs. George E. Schreiner and Edward W. Lowman of Georgetown University and N.Y.U. Medical Centers, respectively. Familiar names from hearings on prior legislation were those of Harry A. Schweikert, now representing both the National Paraplegia Foundation (NPF) and the Paralyzed Veterans of America (PVA), and Barney F. Stanton of the National Association of the Physically Handicapped (NAPH). Peter J. Salmon of the Industrial Home for the Blind, described as "a long-time friend of Helen Keller,"

brought with him Dr. Robert J. Smithdas of the National Center for Deaf-Blind Youth and Adults. The latter, though himself deaf and blind, was able to "hear" Salmon's testimony by putting his hand on Salmon's cheek and lips, and also to address the subcommittee, eliciting from Cranston the comment: "You are a very impressive man. It is wonderful to have you with us in the Senate today" ['72 S541-72, pp. 1425f]. James Stearns, minimizing his problems by describing himself as "a consumer who does happen to have cerebral palsy," also greatly impressed the subcommittee members, e.g., Cranston ("yours is a beautiful statement by a beautiful person") and Robert T. Stafford (who told Stearns that his presentation "will be helpful and an inspiration to this committee") ['72 S541-66, pp. 425-449].

The Transportation and Housing Commission of the House-passed bill was generally approved of by witnesses appearing before the Senate subcommittee or submitting written statements to it ['72 S541-66, pp. 422, 671, 862; S541-72, pp. 888, 921, 955, 988, 1006, 1017, 1594], but DOT objected to its proposed establishment within HEW ['72 S541-66, p. 100; S541-72, p. 1730], and the administration in general opposed its creation as unnecessary ['72 S541-66, pp. 137, 421]. The new committee-written bill (S.3987), introduced by Randolph in mid-September, did not include the House bill's Commission, but had a section establishing an "Architectural and Transportation Barriers Compliance Board." Another provision, directing the Secretaries of Labor and HEW to cooperate with the PCEH and increasing that organization's funds, was explicitly said to have been added by the committee at PCEH's request.

The new bill also included a section entitled "Nondiscrimination Under Federal Grants" -- a slightly adapted version of Rep. Vanik's erstwhile amendment to the Civil Rights Act [118 CR 32293; '72 S541-72, pp. 1611-1723, esp. 1710-14]. Nothing in the oral testimony of the Senate hearings would tend to create an expectation of this development, but it is possible that the committee was influenced by certain documents submitted to it and reprinted in the hearings transcripts. Stanton had forwarded a letter from the NAPH chapter of Columbus, Ohio, in which the enactment of Vanik's bill was urged ['72 S541-72, p. 1527]. And Stearns, in his long research paper, had attached great importance to the Vanik amendment, taking note at one point that "Congressman Vanik has said that one of the main reasons he is introducing an amendment to the Civil Rights Act is to correct discrimination in transportation" ['72 S541-66, p. 517; see also pp. 495, 497, 507, 518, 576]. Vanik himself later credited his co-sponsor, Sen. Humphrey (not a member of the committee), with incorporating the language of his bill into the pending Rehabilitation Act, since neither Judiciary Committee had yet reported it out [119 CR 7114]. So, under the first of several different section-numbers, the provision that would eventually become Sec. 504 belatedly became attached to the Rehabilitation bill.

The transcripts of these 1972 Senate hearings -- 1732 pages in two volumes -- reveal many interesting details about connections between Government staff personnel and the handicapped, about relations between the handicapped themselves and the non-handicapped leadership of certain organizations working on their behalf, and about the internal structure of organizations of the handicapped. RSA's decreased effectiveness in

getting funds since the death of Mary Switzer was attributed by one witness (Dr. Lowman) partly also to the severing of a personal connection: "...we used to have a very good friend at the White House who looked after Mary's budget. He was an amputee. I forget his name. But he is no longer with us -- he is deceased" ['72 S541-66, p. 697]. Stearns' paper is of fundamental usefulness, as are the two reprinted position papers by Stanton--one each under the letterheads of the NAPH and the National Congress of Organizations of the Physically Handicapped (COPH) [In the following paragraphs, all quotations of Stearns are from '72 S541-66, pp. 561-574, and of Stanton from '72 S541-72, pp. 1512-20].

Stearns interviewed Michael Burns and several other legislative aides: Mike Francis (employed by Sen. Stafford), Pat Gwaltney (Sen. Taft), Jim Harvey (majority, House Education and Labor Committee), Dr. Martin LaVor (minority, same committee), and Lisa Walker (Sen. Williams). Stanton thanked Burns for postponing the appearance of his delegation until after its members had attended COPH's annual meeting, and generally expressed gratitude for "the invaluable help we get from Hill personnel and staffers," naming a Miss Kapper (Rep. Gude), Gene Goss (Rep. Mills), and George E. Lawless of the Senate Subcommittee on the Handicapped. Stanton emphasized the fact that many of the national officers of NAPH were themselves severely handicapped (pointing out that several who addressed the subcommittee had typed their written statements "with one finger"). He had kind words for the PCEH, but his wife, Vicki Cox Stanton, was more critical, in answering a question by Cranston:

You think there are a lot of agencies taking care of us.
You think that the mayor's committee and the Governor's
committees are doing all kinds of things, and the adv[iso]ry

groups, but we are here to tell you they are really not. Maybe they feel like "do-gooders," and since they are not being paid to do it, they are not doing what you think they are doing--even though they may have a banquet or luncheon once a year for "hire the handicapped." They are doing what they think they should be doing and not doing what we want them to do ['72 S541-72, p. 1511].

Stearns described "the major interest groups for the handicapped" -- listing as examples the PCEH, ESS, UCPA, and NRA -- as "generally dominated by professionals," lamented "the exclusion of the disabled themselves from active participation in leadership roles in the interest groups that represent them," and suggested that "the professionals now in power naturally want to hold their position and there may even be in some cases a sense of paternalism...." Durward K. McDaniel of the American Council of the Blind took a similar line ['72 S541-66, p. 666]. Stearns also condemned the apathy he perceived in the rank and file of handicapped organizations: "They could be effective but only because of the strong leadership, not because of grassroots support." He quoted PVA's Harry Schweikert (whose leadership he and Stanton both praised highly) as having candidly admitted: "I didn't get much input from the membership on vocational rehabilitation, and I usually don't hear from them." After a PVA meeting at which only one of 14 veterans present had served in Vietnam, Stearns talked to Vietnam veterans who had not attended. He was told that PVA did not represent their interests -- but they could not state for him what those interests were. The failure of different groups of the handicapped to work toward common goals was emphasized by Stearns, whose research paper provides the interesting information that Rep. Brademas' H.R.9847 was not only written by interest groups for the blind, but was in its original form concerned exclusively with programs for the

blind--Brademas' office had to extend its coverage to other categories of the disabled!

Exploitation of what he called an "apple pie and motherhood" appeal was Stearns' suggestion for bringing about pro-handicapped legislation: "No one wants to be against the handicapped...." Stanton provided an example of lobbying technique, telling of a recent letter in Ann Landers' advice column entitled "End Cruel Insults to the Handicapped":

NAPH used this column for public relations about the problems of the physically handicapped, phoning the White House, this Subcommittee, the PCEH, other interested organizations, over 200 Hill offices, had copies duplicated for distribution at the PCEH meeting, sent copies to all NAPH Chapters for action, took it to the CAPH Annual Meeting in Waterloo, Iowa, where it came to the attention of 100 delegates and representatives of many physically handicapped organizations.

Perhaps in response to some of the observations of Stearns and Stanton, Cranston began quizzing witnesses about the proportion of handicapped persons within the leadership ranks of their organizations. The results were sometimes embarrassing, e.g., Goodwill Industries' "probably 1 or 2" handicapped staffers out of ca. 35 ['72 S541-72, pp. 983, 986; see also pp. 901 (ESS), 1039 (PCEH)]. He was eventually asking witnesses whether they thought that "consumer participation and policymaking on program evaluation" should be "mandated, required in the law?" ['72 S541-72, p. 1510].

METRO again served as a paradigm for transportation accessibility problems. Assurances were offered to the subcommittee by Edward Newman of RSA that "We have been active in the District of Columbia subway system, in attempting to bring our information [on eliminating barriers] to the local authorities for use in the development of that system."

Stearns described San Francisco's BART as accessible and was convinced that "the Washington D.C. subway system now under construction is designed for use by the impaired...." But Stanton referred to the present need to "spend \$44 million to get us on the METRO Subway" (an estimate which proved to be conservative). When asked to describe the kinds of architectural barriers and transportation problems encountered by the handicapped in using vocational rehabilitation services, UCPA's Weinrich used an example that apparently came immediately to mind: "You want me to do that in a hurry?...The subway here that is being built in Washington, D.C., originally was supposed to be barrier free. It isn't. A handicapped person cannot get to it" ['72 S541-66, pp. 262, 512; S541-72, p. 1516; S541-66, p. 717].

In the Senate debate on S.3987, Stafford quoted from the statements of Stearns, especially emphasizing the desirability of participation by the handicapped in devising programs affecting them. A floor amendment designed to increase handicapped representation in the PCEH, sponsored by several committee members, passed following a comment by Cranston about how "distressed" the subcommittee had been to learn of their low current representation [118 CR 32305-7]. Cranston also successfully offered on behalf of the absent Sen. Charles Percy (Illinois) a group of amendments which included a statement that one purpose of the Act would be to

evaluate existing approaches to architectural and transportation barriers confronting handicapped individuals, develop new such approaches, enforce statutory and regulatory standards and requirements regarding barrier-free construction of public facilities and study and develop solutions to existing architectural and transportation barriers impeding handicapped individuals.

This provision ultimately became Sec. 2 (11) of the Act. Percy may have been motivated to offer these amendments by his frustration in a recent attempt to hire a handicapped person for a clerical position, an incident which he describes in the statement Cranston submitted for the record [118 CR 32308]. The amended bill passed the Senate 70-0.

As reported out of conference committee, the bill included the transportation provisions of both House and Senate versions, notably the House's Commission on Transportation and the Senate's Barriers Compliance Board. There was even a further (short-lived) provision subsidizing transportation for handicapped migrant farm workers and their families. Vanik's nondiscrimination clause had a new section number, but unchanged content [H.Rept. 92-1581, repr. in 118 CR 35141-63]. In the words of Sen. Williams, the bill's supporters "had left no stone unturned, and no need unmet" ['73 S541-26, p. 220]. The conference bill passed both houses without opposition, but reached President Nixon very near the end of the session. Its supporters were stunned when, blaming "fiscal irresponsibility," he allowed the "Rehabilitation Act of 1972" to die without his signature ("pocket-vetoed" it) [118 CR 37198, 37203f; '73 S541-26, pp. 1, 216].

Nixon was resoundingly re-elected between the pocket-veto of RA '72 and the introduction, within the first week of 1973, of companion bills (H.R.17 and S.7) having--except for reductions in appropriations levels--virtually the same content as the rejected bill. Each was still, in fact, entitled "Rehabilitation Act of 1972," because certain funds had been appropriated, in other legislation, for programs expected to be

authorized by that Act, and the administration had claimed the right to impound these funds, since no Act of that title had become law [119 CR 38, 93, 5863, 5874]. The same subcommittees scheduled early hearings, their members denouncing the pocket-veto in bitter terms both in committee and on the floor of Congress ['73 S541-26, pp. 219, 227; 119 CR 5883, 5896]. Many of the preceding year's witnesses appeared for the first of two hearings conducted (again under Cranston) by the Senate Subcommittee on the Handicapped. Since their arguments were so similar to those previously expressed, and since they were so unanimous in calling for the reporting out of a bill virtually identical to the vetoed measure, Cranston simply had each group's statement printed in the committee record, without calling on anyone to speak. Chairman Randolph volunteered to linger for personal conversations with those who had come to the hearing ['73 S541-26, pp. 210, 263].

Stephen Kurzman of HEW appeared to defend the administration's position at both the second Senate hearing and the single House hearing, held on consecutive days in early February. His reception in both hearings was unfriendly, the dialogue between him and Rep. Brademas being particularly acrimonious ['73 S541-26, p. 407; '73 H341-23, pp. 37, 41, 49, 68]. Both Brademas and House parent committee chairman Perkins cited the avalanche of support the committee had received for re-passage of the vetoed bill. On the Senate floor, sponsors of S.7 claimed a similar groundswell of support ['73 H341-23, pp. 66, 68; 119 CR 5881, 5886, 5898]. The administration was equally recalcitrant, not offering an alternative bill until after the conclusion of the hearings ['73 H341-23, p. 74; 119 CR 5884f, 7111].

In the House subcommittee hearing, NFB's Nagle had talked of overriding another possible Presidential veto, and Cranston advocated preparedness to do so in Senate debate ['73 H341-23, p. 79; 119 CR 5883, 5896]. Nixon supporters in Congress asserted that the primarily-Democratic supporters of the Rehabilitation bill wanted another veto, just so it could be overridden, preparing the way for the overriding of other vetoes of other legislation. The widespread sympathy for the handicapped, they argued, was being used as a wedge to bring back many costly social programs [119 CR 5890, 5896, 7117, 10800f, 10816]. Both sides at times waxed classical: Vanik likened Nixon's veto of the measure to the ancient Spartans' practice of exposing handicapped children at birth [119 CR 18137], while Sen. Dole rather confusingly described the Rehabilitation bill as "really a Trojan horse containing the seeds of a runaway Congressional spending spree" [119 CR 10816]. The controversy did, in fact, lead to a second veto, which the Senate narrowly (60-36) failed to override on April 3 [S.Doc. 93-10; 119 CR 9597f, 10822f]. After the failure in the Senate, no attempt was made in the House.

The unsuccessful effort to override the veto in the Senate brought forth strongly personal appeals. Humphrey asked: "How many Members of this body have a retarded child? How many Senators have somebody in their families who is physically or mentally or emotionally handicapped?" and talked of his own retarded grand-daughter [119 CR 10804]. Cranston told of his wife's paralyzing stroke and referred poignantly to his quadriplegic staff aide:

I think many of you have seen Michael Burns with me on the floor when I was managing this bill and its predecessor....I wish Mr. Burns could be here today for this bill truly is a tribute to his enormous courage, insight, and perseverance. I regret to say, however, that his great efforts on this legislation over the past year have been such that at present he is hospitalized recovering from the efforts of too great a strain he imposed on himself in working to perfect and move through the legislative process this measure and to overcome the obstacles raised by the OMB [Office of Management and the Budget] decision-makers. I hope, Mr. President, that we can send him the get well card that he and 10 million other handicapped Americans deserve by voting to override the unconscionable veto of S.7 [119 CR 10800].

Since the administration, however, had finally come up with an alternative proposal (less far-reaching and less costly) [119 CR 10819, 10823], opponents of the Rehabilitation bill were no longer on the defensive. Sen Taft, in support of the administration bill, directly countered Cranston's personal appeal: "I had a parent who was incapacitated for 8 years as a stroke victim....I had a wife who was an amputee....But that is not the issue today" [119 CR 10800].

Supporters of the twice-vetoed Rehabilitation bill reluctantly realized they would be forced to compromise. On May 23, Sen. Randolph introduced S.1875, whose content had been negotiated in advance with the administration [119 CR 16658, 18129f, 18133, 24567, 29628, 29632]. On the same day, Rep. Brademas introduced H.R.8070, which he described as a "compromise hopefully acceptable to the President" [119 CR 16827, 18127]. The Act was ultimately passed and signed into law on September 26, 1973 [119 CR 29633f, 30151f, 31747].

The enacted version of RA '73 lacked many of the provisions of the legislation twice approved by Congress. The National Commission on Transportation and Housing had been eliminated along with several other

committees and councils. But the Architectural and Transportation Barriers Compliance Board (which was retained) was directed to undertake a study of the transportation and housing needs and problems of the handicapped [119 CR 29631]. Clauses concerning the PCEH's role, financing, and make-up were retained. Another provision emerging intact was the nondiscrimination clause [119 CR 18137], now for the first time designated Sec. 504. In its entirety, this original final section of RA '73 said:

No otherwise qualified handicapped individual in the United States, as defined in Section 7 (6), shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

No enforcement provisions were added, but John Nagle, prophetic as always, had told the House subcommittee that this section of the Rehabilitation bill was of paramount importance, because when confronted with illegal barriers the handicapped would now have judicial recourse ['73 H341-23, p.78].

AMENDMENTS of 1974

All three of the fundamental laws enacted or amended in 1973 were revised by amendments passed within the following year. The development of this 1974 legislation in Congress was complicated by the premature change of administrations.

National Mass Transportation Assistance Act of 1974
Nov. 26, 1974 P.L. 93-503 88 stat. 1565

Half-fares for E&H riders in nonpeak hours made a provision of UMTA '64; Matsunaga floor amendment clarifies the provision; major jurisdictional struggle between committees.

The struggle between committees that had marked the development of FAHA '73 came to a showdown during two years of deliberations on this Act, which was signed into law on Nov. 26, 1974. The original bills were referred to the respective banking committees (Senate Banking, Housing and Urban Affairs; House Banking and Currency). The new House Subcommittee on Urban Mass Transportation, which considered this legislation, had been recently created "in order to highlight the importance which we as members of the Banking and Currency Committee view the whole matter of urban mass transportation," said subcommittee chairman Joseph G. Minish of New Jersey, as it began hearings (its first ever) in March of 1973 ['73 H241-3, p. 1].

Minish's own bill, H.R.5424, was a primary subject of these hearings. It included a provision amending Sec. 16 (b) of UMTA '64, authorizing loans to public agencies and private nonprofit organizations for providing E&H transportation services, and increasing the proportion of funding for this purpose to 2% of the total Federal obligation incurred ['73 H241-3, pp. 3f]. UMTA Administrator Frank C. Herringer testified in opposition to the provision ['73 H241-3, p. 92], and it was not a part of the new bill, H.R.6452, which the committee reported out. If the provision seems familiar, this is because it reappeared about a month later in another Banking and Currency Committee bill, and ultimately became part of FAHA '73. Its author was Rep. Bella Abzug [119 CR 13264, 32821].

Another provision of Minish's bill would have amended Sec. 3 (a) of UMTA '64 by requiring transportation agencies receiving Federal financial assistance not to charge E&H riders during nonpeak hours fares greater than half the generally applicable rates. In floor debate, Rep. Frank

Annunzio of Illinois claimed to have added a similar amendment to a housing bill, reported sometime previously by Banking and Currency, which had died in the Rules Committee [119 CR 32801]. Some misgivings over the provision in the current bill were expressed in a statement presented to the subcommittee by Benjamin L. Bendit of the National Association of Motor Bus Owners and the New Jersey Motor Bus Association, but the provision was still included in H.R.6452 as reported to the House on April 16, 1973 ['73 H241-3, p. 61; H.Rept. 93-141]. The bill was not actually debated, however, until October. It was apparently set aside until action could be completed on FAHA '73. In debate of April 19 on the Highway bill, in fact, Abzug offered this same half-fare provision as a floor amendment, with support from Rep. Biaggi; it was rejected by voice vote [119 CR 13266-9]. So it remained an element of the pending Mass Transportation bill.

When finally debated in the House, the half-fare provision prompted misgivings by a member of the Banking and Currency Committee, Rep. Philip M. Crane of Illinois:

...local transit operations will be subject to equal protection arguments which can lead to complete disruption of local operations. The Federal Government can be expected to put pressure on cities to operate service for certain special groups. We already have that now in the bill, as the Members know, to the extent that the Secretary of Transportation shall not provide operating subsidy assistance to local communities unless the rates charged to elderly and handicapped during the nonpeak hours will not exceed one-half of the rates charged to other persons. But it need not stop there, and probably will not [119 CR 32798].

Other speakers, however, were uniformly favorable. Rep. Robert Drinan of Massachusetts called the provision "particularly important" and reported

that the American Association of Retired Persons and the National Retired Teachers Association supported passage of the bill [119 CR 32810]. Despite this comment, and a statement made during the Senate subcommittee hearings by the American Transit Association's Carmack Cochran to the effect that senior citizens' organizations had lately become more active ['73 S241-16, p. 71], no representatives of such organizations -- or, for that matter, of organizations of the handicapped -- appeared at either set of hearings. Rep. S.M. Matsunaga succeeded, via floor amendment, in adding a related provision to the bill: "Nothing contained in the Act shall require the charging of fares to elderly and handicapped persons." He was concerned lest cities such as his own Honolulu, which allowed persons over 65 to ride free, might be influenced to begin charging them half-fares [119 CR 32823].

Though bills passed both houses (S.386 at this stage had no E&H provisions) and conferees were appointed, no mass transportation legislation emerged before the end of the first session of the 93rd Congress. The conference reports were finally filed in late February of 1974 [120 CR 4267-71, 36565]. Despite the advanced stage of consideration of these banking committee bills, the House Public Works Committee began work on its own mass transportation bill, H.R.12859, early in the second session. It was introduced on Feb. 19, 1974, by committee chairman John A. Blatnik (Minnesota) and ranking minority member William H. Harsha (Ohio) [120 CR 3302]. The Committee not only held public hearings of its Transportation Subcommittee in Washington, but also sent groups of its members to New York City, Atlanta, Boston,

Chicago, Los Angeles, and Sacramento for further hearings ['75 H641-1; H. Rept. 93-1256, p. 17].

The Nixon administration was initially behind this effort, and the bill as originally submitted was its Unified Transportation Assistance Program. With administration support, the House re-committed the conference bill of the banking committees [120 CR 36565, 36944]. Part of the planned reorganization was the placing of virtually all aspects of mass transportation legislation in the House under the jurisdiction of the Public Works Committee. It was, however, an uneasy alliance. As Rep. James J. Howard (New Jersey), chairing the hearing in Atlanta, told one witness -- Governor Jimmy Carter -- "...many people in the Congress and on the committee feel that this proposal is merely a basis for writing legislation in the Public Works Committee," which he characterized as a committee that "has its own ideas, many of which are different from that of the administration" ['74 H641-17, p. 500]. The bill which the committee reported out went well beyond the intent of the administration; the possibility of a veto was raised, and some minority members of the committee itself now opposed the bill [H.Rept. 93-1256, pp. 59, 62; 120 CR 28289f].

Organizations of the elderly and handicapped were unrepresented at the hearings held around the country and the subcommittee meetings held in Washington. Rep. Robert A. Roe (New Jersey) claimed personal authorship of language inserted in the bill in committee which would have amended Title 23, U.S. Code, by adding the following provision (among others):

The Secretary shall require and provide that all projects receiving Federal financial assistance under this chapter shall be planned, designed, constructed and operated so that all public mass transportation facilities, equipment and services can effectively be utilized by elderly and handicapped persons who, by reason of illness, injury, age, congenital malfunction, or other permanent or temporary incapacity or disability, including nonambulatory wheelchair bound and those with semiambulatory capabilities, are unable without special facilities or special planning or design to utilize such facilities and services as effectively as persons not so affected [120 CR 28401; H.Rept. 93-1256, pp. 10, 58].

The report accompanying the bill included a long recitation of the House Public Works Committee's work "in the forefront" of Federal accessibility legislation, especially citing its sponsorship of the Architectural Barriers Act of 1968 and the amendment of 1970 applying accessibility requirements to the Washington METRO subway system. Despite its own careful exclusion of vehicles from the purview of this 1970 Act, the committee now proclaimed:

The precedent in the record is clear. This section is intended to see that any facility, be it a bus station, railroad station, a bus, or commuter train, as some examples, are to be built and utilized in a manner so that these people who do not have the ability to move around in a normal fashion can find easy access and egress to such facilities [H.Rept. 93-1256, p. 3 (emphasis added)].

As House debate on H.R.12859 began in August of 1974, Rep. James C. Cleveland (New Hampshire), a minority member of the Public Works Committee, reiterated a point he had made during public hearings: the committee and its staff lacked expertise in the mass transportation field. He described the bill as "one of the poorest products of the legislative process" he had seen, and observed that "Most of the people on the floor of the House at this particular moment are members of the Committee on Public Works" [120 CR 28290; '74 H641-17, p. 629]. After

debate on three separate days, however, the bill passed the House 324-92 [120 CR 29392].

Included in the House debate were statements by Public Works Committee members Roe, Abzug, and Don H. Clausen of California. Clausen described meetings with senior citizens and the handicapped among his constituents at which E&H accessibility was "very much on the minds of these people." James R. Grover of New York pointedly disagreed with his fellow Republican, Cleveland [120 CR 28292, 28401f, 28419]. Rep. Vanik again described transportation accessibility for the handicapped as a "civil rights" issue [120 CR 29388]. Rep. Biaggi cited his own 1970 amendment, saying:

Unfortunately, the Department of Transportation has taken a leaf from past history and interpreted that to mean "separate but equal" systems.... The dial-a-ride programs and other specialized transportation systems for the handicapped are too expensive to maintain and are very limited in availability. To make mass transit systems for the general public accessible to the handicapped is no more complicated than making public buildings accessible [120 CR 28414].

In contrast, one of the witnesses at the hearings, Professor Pastora Cafferty of the University of Chicago, a trustee of the Chicago Urban Transit District, even while stressing the desirability and ultimate economic benefit of increasing the employability of the handicapped through improved transportation accessibility, conceded that "obviously it is very expensive" to provide the necessary facilities, which she said would include "minibuses and specialized services to the handicapped" ['74 H651-17, p. 781; see also 789].

The banking committees did not yield passively in their struggle with the House Public Works Committee. Under the chairmanship of Harrison Williams of the Senate Subcommittee on Housing and Urban Affairs, the

conferees on S.386 held an extraordinary joint public hearing on September 25, 1974, at which sharp words were directed toward DOT Secretary Brinegar, UMTA's Herringer, and Rep. Glenn M. Anderson (California), who appeared at the hearing to testify that the Public Works Committee's H.R.12859 was a better bill ['74 H241-24 (= S241-36), pp. 19, 21, 106f]. In November the houses of Congress debated the conference reports, which--like the earlier report on which no action had been taken--included the House Banking and Currency Committee's half-fare provision (now part of a new Sec. 5 for UMTA '64) and Matsunaga's clarificatory amendment (Sec. 108 of the final version of the bill) [H.Rept. 93-813 and 1427; S.Rept. 93-1288; repr. in 120 CR 4267-71, 33714-19, 36160-4]. The conferees had worked out an agreement with the new Ford Administration; they refused to confer with the House Public Works Committee or to attempt to reconcile their bill with its House-passed bill [120 CR 36163, 36564, 36572, 36949]. The Public Works bill, including its strong E&H provision, consequently died.

In the final House debate on the conferees' version of S.386 (which had passed the Senate without serious opposition), members of the Public Works Committee could only console themselves with observations to the effect that their action had prompted the other committees to work out a more viable compromise bill than had initially been offered. Rancor clearly remained. Still, with the beginning of the new session, mass transportation jurisdiction in the House would be vested in the Public Works Committee--to be reconstituted as the Public Works and Transportation Committee [120 CR 36947-54]. The important E&H provision which had perished with H.R.12859 would not be forgotten.

Rehabilitation Act Amendments of 1974
Dec. 7, 1974 P.L. 93-516 88 Stat. 1617

Definition of handicapped in RA '73 clarified;
provisions relating to Architectural and
Transportation Barriers Compliance Board revised.

Congressional leaders who had fought the long and difficult battle leading to the passage of RA '73 discovered almost immediately that elements of the Act required clarification or revision. The struggle between committees that had dominated the development of the earlier law did not recur, but conflict between the legislative and executive branches continued. These amendments, like the original Act, were vetoed prior to their eventual enactment.

Oversight hearings conducted by the House Select Subcommittee on Education in August, November, and December of 1973 and March of 1974 convinced the committee members that amendments were necessary. Their initial effort was designed simply to transfer the Rehabilitation Services Administration out of the jurisdiction of the Social and Rehabilitation Service (i.e., the agency in charge of "welfare" programs) to a less restricted position, still within HEW [H.Rept. 93-1048, pp. 4f; 120 CR 15740]. Rep. Vanik described RSA as being "in danger of a bureaucratic assassination at the hands of an administration apparently dedicated to its death." The requirements of Title V of RA '73, he continued, had been particularly slighted, despite his own numerous letters of protest. The Architectural and Transportation Barriers Compliance Board (ATBCB) of Sec. 502 had done little in eight months, said Vanik, beyond choosing its chairman. Nor had any constructive reaction been made to court cases

which had been brought under Sec. 504 (so far, such cases dealt generally with educational, not transportation, discrimination) [120 CR 15743f].

A hearing of the Senate Subcommittee on the Handicapped in June of 1974 supported similar conclusions. It was also pointed out to the committee members that application of the definition of "handicapped individual" in RA '73, Sec. 7 (6) to the implementation of Sec. 504 and other sections not concerned exclusively with employment had proved "troublesome," since the definition itself was entirely employment-oriented [S.Rept. 93-1139, pp. 19, 23, 28, 51f]. Prior to the hearing, Sen. Stafford and other members of the Labor and Public Welfare Committee had introduced S.3108 (on Mar. 25); the similar H.R.14225 was introduced on Apr. 11 by Reps. Brademas, Perkins, Quie, and Edwin D. Eshleman of the House Education and Labor Committee [120 CR 5185, 15659]. House floor debate of May 21 led to passage of H.R.14225 by a vote of 400-1. Among those speaking in favor of the bill was Rep. Biaggi. During the debate, Vanik recommended consideration of providing Federal financial assistance for States confronted with high court-imposed costs in meeting the requirements of Sec. 504 (in education) [120 CR 15743f].

The House-passed measure was on the agenda of the Senate subcommittee as it prepared the amended form of its own bill. The version reported out on Sept. 6 incorporated most of the House bill and added other provisions, including a revised definition of "handicapped individual," provisions designed to strengthen ATBCB, and a title calling for the convening of a White House Conference on Handicapped Individuals. Neither bill made any alterations in or additions to Sec. 504 itself, but the Senate committee report pointed out that the provision

was patterned after, and is almost identical to, the anti-discrimination language of section 601 of the Civil Rights Act of 1964...and section 901 of the Education Amendments of 1972.... It does not specifically require the issuance of regulations or expressly provide for enforcement procedures, but it is clearly mandatory in form, and such regulations and enforcement were intended by this Committee and by Congress [S.Rept. 93-1139, p. 24].

The Senate passed S.3108 by voice vote, substituted its content for that of H.R.14225, then passed the amended bill in like manner [120 CR 30553]. The conference report (essentially the Senate-passed bill) was approved unanimously by both houses and sent to President Ford [120 CR 35023, 35712f, 36047].

Like his predecessor, Ford vetoed the Rehabilitation bill overwhelmingly passed by Congress (emphasizing his objections to the transfer of RSA). Since the veto of Oct. 29 preceded an election recess by less than ten days, Ford contended that it was a "pocket" veto, not subject to being overridden when Congress returned for the remainder of the session [120 CR 36246]. Denying the propriety of this argument, the House voted 398-7 to override, and the Senate followed suit, 90-1. References to Nixon's vetoes of the 1973 Act, and invective similar to that which had been directed against them, marked the debates preceding the votes to override [120 CR 36614-22, 36849-65].

Confronted with an administration which refused to accept the overriding of the veto as binding, and desirous of avoiding the delay that would be involved in determining the issue in the courts, the House and Senate committee leadership resorted to an end-run. In late November, they simply introduced twin bills (H.R.17503 and S.4194) identical to the conference bill already passed [120 CR 37297, 37449]. These too were

overwhelmingly approved. It was expected that President Ford would merely allow the measure to become law without his signature, but he relented and signed H.R.17503 into law on Dec. 7, 1974 [120 CR 37400-6, 37602f, 39265].

Federal-Aid Highway Amendments of 1974
Jan. 4, 1975 P.L. 93-643 88 Stat. 2281

Wheelchair users incorporated into definition of handicapped in FAHA '73; DOT Secretary prohibited from approving inaccessible projects; national policy on E&H accessibility affirmed.

The Senate Public Works Committee incorporated language specifying the inclusion of "nonambulatory wheelchair-bound" and "semiambulatory" persons in one of several proposed 1974 amendments to the Federal-Aid Highway Act of 1973. The report accompanying the bill (S.3934) stated: "...the committee has heard from handicapped individuals and from organizations representing disabled persons that this section needs to be strengthened" [S.Rept. 93-111, pp. 7f*]. This concern, echoed on the floor of the Senate in comments by committee chairman Jennings Randolph and committee member Robert T. Stafford of Vermont, citing their other roles as chairman and ranking minority member of the Subcommittee on the Handicapped [120 CR 30820-3], led to passage of these brief amendments. Sen. Frank Church of Idaho, chairman of the Committee on Aging, also strongly supported the bill [120 CR 30862f]. Sec. 165(b) was amended to say:

*Neither in this report nor in comments on the floor of Congress are individuals or organizations identified. It is not clear whether or not such statements were made in formal hearings. The CIS Abstracts of the hearings of Mar. 12 ('74 S641-20) and of Feb. 20-21 and Mar. 26 ('74 S641-21) mention no such comments and include no familiar individual or group names.

The Secretary of Transportation shall require that projects receiving Federal financial assistance under (1) subsection (a) or (c) of section 142 of title 23, United States Code, (2) paragraph (4) of subsection (e) of section 103, title 23, United States Code, or (3) section 147 of the Federal-aid Highway Act of 1973 shall be planned, designed, constructed and operated to allow effective utilization by elderly or handicapped persons who, by reason of illness, injury, age, congenital malfunction, or other permanent or temporary incapacity or disability, including those who are non-ambulatory wheelchair-bound and those with semi-ambulatory capabilities, are unable without special facilities or special planning or design to utilize such facilities and services effectively. The Secretary shall not approve any program or project to which this section applies which does not comply with the provisions of this subsection requiring access to public mass transportation facilities, equipment and services for elderly or handicapped persons.

Immediately preceding this amendment to FAHA '73 in the 1974 bill was a statement of national policy resembling -- but stronger than -- Sec. 16 (a) of the current UMTA '64. Yet this statement was not designated as an amendment to UMTA '64. Learning from the troubles of their House counterparts, the leaders of the Senate Public Works Committee avoided confrontation with rival committees. With reference to the national policy statement, Stafford told the Senate only that the members of the Public Works Committee "hope that the Committee on Banking and Urban Affairs, which has jurisdiction over the UMTA program, would take early action to include identical requirements for that program." Randolph said much the same thing [120 CR 30820, 30823]. There was also a retreat from the rhetoric of cheapness. The bill's sponsors did not promise that accessibility for the elderly and handicapped would entail little or no cost. Randolph's words were more circumspect:

I do not believe making public transportation usable by the elderly and the handicapped would impose an unacceptable demand on our transport system. I think it is a cost that the people of the United States should willingly assume so

as to end the discrimination against a particularly vulnerable segment...of our American society [120 CR 30823].

The Federal-Aid Highway Amendments of 1974 were actually signed into law during the first week of January, 1975.

AMENDMENTS OF 1978

Two Acts modifying the E&H provisions of the amended 1964 and 1973 laws were signed on November 6, 1978, after Congressional struggles lasting several years. Events in the development of the DOT "504 Regulations" themselves were critical in shaping the final form of these Acts, as were early court cases arising in connection with Sec. 504. Another key element in the background of the 1978 legislation was the Department's "Transbus Program," inaugurated in 1971. This experimental low-floored, wide-doored vehicle was designed to be fully accessible to wheelchair users and semiambulatory persons, assisting their boarding and exiting through a "kneeling" feature and (depending upon the prototype) either a ramp or lift device.

Surface Transportation Assistance Act of 1978
Nov. 6, 1978 P.L. 95-599 92 Stat. 2689

Wheelchair users added to definition of handicapped in UMTA '64; definitions transferred to Sec. 12 (c) and Sec. 16 (d) repealed; formula for 2% E&H set-aside slightly altered; DOT assistance for rail operators evaluating accessibility costs.

In early 1975, Sen. Harrison Williams and others introduced S.662, a bill they characterized as being designed to enact provisions suggested during consideration of the National Mass Transportation Assistance Act of 1974 but omitted in the final version of that Act [121 CR 2928; S.Rept. 94-365, p. 2]. A major element of the bill was a thorough

amendment of Sec. 16 of the Urban Mass Transportation Act of 1964. The revised section contained specific directives to the Secretary of Transportation for implementing the national policy of E&H transportation accessibility established by the 1970 Biaggi amendment, including a new Sec. 16 (b) (1):

Effective immediately, any vehicle, building, station, or other structure for any new rapid rail system or other grade-separated fixed guideway system, and any other vehicle integrated with such a system, and any extension of an existing system that forms a usable segment, and any other station facility for use by the general public shall be accessible to elderly and handicapped persons. The Secretary shall issue accessibility standards for transit vehicles designed for at-grade operations, which may incorporate such reasonable exceptions from the requirements for grade-separated systems as the Secretary may deem required by the nature of the vehicle or its proposed use and the commercial availability of reliable equipment to facilitate accessibility except that such exceptions shall only apply where the Secretary determines, based on substantial evidence and in accordance with a detailed timetable ... that the provisions of this subsection are otherwise being carried out.

Thus for the first time accessibility of transit vehicles was to be specifically mandated, and not only rail vehicles but also (with some possible modifications) "vehicles designed for at-grade operations," i.e., buses and streetcars. Moreover, such requirements were to be "effective immediately."

Other new subsections established local and national advisory committees with handicapped participation and mandated certain reports and plans. The already-established program of grants and loans to public and private nonprofit agencies for E&H transportation services, the 2% funding level for such purposes, and the 1 1/2% funding for research, development, and demonstration projects were to be retained as elements

of the revised Sec. 16, but a new definition of "elderly and handicapped persons" was to be incorporated. It would include anyone "who is nonambulatory wheelchair bound or who has semiambulatory capabilities" ['75 S241-30, pp. 3-5]. The purpose of this last provision, according to the report of the Senate Banking, Housing and Urban Affairs Committee, was to bring the Urban Mass Transportation program's definition into conformance with that of the Highway program, as established by the 1974 Federal-Aid Highway Amendments [S.Rept. 94-365, p. 65] -- precisely the development for which the sponsors of those amendments had called at the time. The bill's prohibition of approval by the Secretary of any non-accessible projects was also a provision borrowed from the amended Highway Act ['76 H641-33, p. 384]. Much of the phrasing of these provisions seems to have been derived from the House Public Works Committee's abortive version of the National Mass Transportation Assistance Act of 1974.

The bland tone of the committee report, with its estimates of low costs for compliance [S.Rept. 94-365, pp. 5, 8], was consistent with the ease of Senate passage of the bill on Sept. 19, 1975. Williams himself was content to send a written statement in support of it. Sen. John Tower of Texas, apparently managing the bill, said: "Mr. President, so far as I understand, there is no controversy on this measure. I urge the Senate to dispose of the matter with an affirmative vote." This was done [121 CR 28775-7].

But the hearings which had been held by the Subcommittee on Housing and Urban Affairs (Williams presiding) during mid-June were rife with present and future conflict. Militancy on the part of lobbyists for the

elderly and handicapped had been augmented by recent successes in suits based on Sec. 504 (Harold Russell of PCEH commented on this development). John A. Lancaster, a disabled ex-marine representing PVA at the hearings, was also an attorney. He made reference to "a lawsuit concerning the accessibility of Metro here in Washington" which his organization had recently won (Russell also mentioned the case), and submitted a sample brief comparable to those already filed in several cities and scheduled for filing the next day in several others ['75 S241-30, pp. 13, 51-57; brief repr. in pp. 61-100].

Officials of local governments and transit agencies, on the other hand, were finally becoming aware of the potential consequences of E&H transportation accessibility. Robert B. Johnston of the Port Authority Transit Corporation of Pennsylvania and New Jersey stressed safety problems and the probable decline in the quality of service to the general ridership. He supported this argument by citing a study of METRO's operation, as well as cost considerations, in urging suspension of "the enactment of any requirements for immediate, complete accessibility" ['75 S241-30, pp. 232-236]. Representatives of other local authorities made similar statements ['75 S241-30, pp. 37, 125-127, 150, 170-172, 237]. Jack R. Gilstrap of the American Public Transit Authority (APTA) was willing to agree that cost was no excuse for non-compliance as to accessibility, but suggested that financial help would be needed in bearing the burden ['75 S241-30, p. 184]. Lancaster was moved to express his impatience with "all the inconsiderate, cost-concerned officials" ['75 S241-30, p. 54].

More than at hearings on earlier legislation, speakers emphasized the differences in the transportation needs of the elderly and the handicapped. While representatives of handicapped organizations, such as Thomas C. O'Brien of the newly-formed American Coalition of Citizens with Disabilities (ACCD), continued to stress transit system "accessibility," advocates of alternative E&H transportation services were beginning to counter these demands with praise for the greater benefits of "mobility." One speaker taking this position was J.K. "Sparky" Ullmer, user of an electric-powered wheelchair, who represented no organized group, but accompanied a transit district director from his home town of Denver [1975 S241-30, pp. 36f. 101, 109, 112, 120, 122-125, 145, 170, 193, 195, 232, 240f].

The Department of Transportation and its Urban Mass Transportation Administration were caught in the middle of this controversy. A Notice of Proposed Rulemaking (NPRM), i.e., a draft version of departmental "504 Regulations," had been issued in February (the original target date for the publication of the final rule was March 1, 1975!). Documents submitted by James Raggio of the Public Interest Law Center of Philadelphia included an embarrassing memorandum written by UMTA Administrator Frank C. Herringer (who had appeared as a witness the preceding day), saying that full accessibility "may be politically inevitable, but may not make any sense from a transportation effectiveness or cost benefit standpoint," and envisioning possible future retreat from the requirement. Another such memo, by UMTA's Chief Counsel, Sallyanne Payton, contained the following statement: "The regulations were developed for litigation and political reasons, and say what they must say in order to satisfy

those concerns" ['75 S241-30, pp. 13, 51f]. It is not surprising that both lobbyists and Senators were suspicious of the Department's sincerity in promulgating its regulations, and were desirous of compelling enforcement of E&H accessibility through legislation ['75 S241-30, pp. 2, 17, 56, 105, 168].

Also early in 1975, H.R.3155, a measure virtually identical to S.662, was introduced by Rep. James J. Howard ['76 H641-33, p. 2]. Neither bill received further floor attention in that year, but both were discussed in House subcommittee hearings during the second session of the 94th Congress. In January and February, 1976, Rep. S.M. Matsunaga chaired hearings of the Subcommittee on Federal, State and Community Services of the House Select Committee on Aging. Rep. Biaggi, a member of the subcommittee, attended only one of the three hearings, but dominated that session with an "opening statement" denouncing the failure of the Department of Transportation to implement his 1970 amendment, which had added Sec. 16 to UMTA '64, a failure he called "a national disgrace." His efforts in the interim had included an amendment added to the 1975 appropriations bill prohibiting the use of DOT funds for purchasing inaccessible vehicles. Biaggi was severely critical of UMTA for providing legal assistance to transit agencies -- Washington's METRO was among those named -- under suit by organizations of the handicapped because of inaccessibility. In addition to his comments at the hearing, Biaggi submitted written questions for response by DOT ['76 H141-28, pp. 48-51, 148f].

Rep. Bella Abzug, who commented upon the considerable interest in developing appropriate legislation within the Public Works and

Transportation Committee, of which she was a member, was a witness at one day of these hearings. She too cited her own earlier amendment, the 1974 provision which had made Federal funds available to private nonprofit organizations providing E&H transportation services. DOT had initially resisted implementing this program too, she claimed. More importantly, now that it had become established, the Department "has treated this program, which was established as an interim program, as a substitute for rather than an addition to a more fundamental program," i.e., full transportation accessibility ['76 H141-28, pp. 64-66].

John B. Martin, no longer U.S. Commissioner on Aging, but now a Lobbyist for the American Association of Retired Persons and the National Retired Teachers Association, took a line similar to that which he had taken in hearings on an earlier law: given the necessity to choose between accessibility and mobility, the interests of his constituents would dictate opting for mobility ['76 H141-28, p. 81]. The Transbus program and other technical developments relating to transit vehicle accessibility were commented upon ['76 H141-28, pp. 49f, 68, 143, 149f], as were developments in the promulgation of departmental accessibility regulations ['76 H141-28, pp. 49-51, 55, 79, 142, 148].

These last-named issues were central to discussion in hearings of June, 1976, held by the Subcommittee on Surface Transportation of the House Public Works and Transportation Committee, on H.R.3155 and related bills. By this time, Executive Order 11914 had also come out (April 26), mandating accessibility in all Federally-assisted programs ['76 H641-33, p. 329]. Abzug and PVA's Lancaster again made statements, as did Richard Hedding of NPF; John O. Salvesen of the National Council for the

Transportation Disadvantaged (NCTD) also appeared. But many of the witnesses represented the positions and interests of the transit industry (John D. Collins of Rehab Transportation, Inc., a Washington area paratransit service organized and operated by handicapped entrepreneurs, is more difficult to categorize). Disagreements were frequent, fundamental, and sometimes heated.

Robert E. Patricelli, Herringer's successor as UMTA Administrator, offered a summary of stages in the development of the experimental low-floored Transbus, making the point that his agency found itself caught somewhat "in the middle." Manufacturers, he explained, insisted that the Transbus, though workable as a prototype, had not yet been shown to be practical in day-to-day and year-to-year operation under realistic conditions. Moreover, manufacturers and transit operators had invested large sums of money in an "interim" model ("Advanced Design Bus," or ADB) which incorporated some of the features of Transbus (wider doors, etc.) but not its critical low-floor feature; if rapid change-over to Transbus should be mandated by legislation or regulation, devastating losses were predicted. Yet only vehicles such as Transbus could in fact meet the complete wheelchair-accessibility requirements demanded by handicapped organizations and under discussion by Congress ['76 H641-33, pp. 369-374].

Lancaster dismissed such arguments as dishonest, citing an April, 1976, report to Congress by Patricelli himself, which said that the Transbus project had proved that the low-floor bus was workable. General Motors controlled the market for the "interim" type ADB and, suggested Lancaster, "the decision whether or not to produce Transbus is controlled by General Motors through its spokesman, UMTA..." ['76 H641-33, pp. 329f].

In a similar vein, Hedding described an operational type of wheelchair lifting device that, he said, was already available for installation on buses, concluding that "the industry has not even tried...; they have the expertise..., but they have not addressed the problem." All energies were being devoted instead, Hedding contended, to pushing for approval by DOT and Congress of alternative paratransit systems ['76 H641-33, p. 228].

Aside from the question of whether fully-accessible buses were yet technically operational, the issue of costs involved in attaining and operating accessible bus fleets (whether by purchasing accessible buses or by retrofitting buses already in operation) received extensive comment.

Leonard Ronis of Cleveland's transit authority remarked rather heatedly:

We are told to be economical, we are told not to waste the Federal Government's money or the tax money that we collect in our area, and we are pointing out that that is a very inefficient way to operate, to take, in our case, 800 vehicles and adapt them--adapt 800 vehicles so that they can take care of possibly 200 people ['76 H641-33, p. 209].

Subcommittee member Bud Shuster of Pennsylvania, using figures supplied by Ronis, computed a per-customer per-day cost of about \$300 for E&H accessibility in Cleveland. Ronis agreed with his computation, adding: "It would be cheaper to buy each one of them a special automobile with a lift." Similar computations yielded a figure of only around \$10 per-rider per-day for an alternative demand-responsive system ['76 H641-33, pp. 212f].

Several witnesses made the further point that capital costs of conversion to accessible vehicles were by no means the only increased costs projected. More expensive maintenance and lesser fuel efficiency were predicted for the heavier low-floor buses. Moreover, it was suggested

that substantial fleet expansion would be necessary just to maintain current levels of service, because of the lowered seating capacity in buses providing spaces for wheelchairs and also because of delays caused by the process of getting wheelchair bound passengers on and off the buses ['76 H641-33, pp. 199-201, 211f, 369f].

Some of these cost-related arguments were directly attacked by other speakers. Hedding responded to Ronis' statement on the loss of passenger capacity by saying:

This is absurd. This claim was based on his claim that six seats would be lost in each bus to accommodate a wheelchair. He should know and inform the Senators that drop-down seats could be used to avoid the loss in seating capacity when the spaces were not actually being occupied by persons in wheelchairs. He also should know that his transit system, as well as all others, base their total fleet size on the overall capacity of the bus, including standee capacity during rush hours. Thus, the total capacity of the vehicle would actually increase when a wheelchair passenger was not present.

Hedding added the further point that transit agencies had used the costs of providing E&H accessibility as pretexts for asking increased Federal financial assistance -- in amounts far in excess of the actual additional costs incurred. The ultimate effect was a net gain to such agencies in consequence of their installation of accessibility features.

A conspicuous example cited was Washington's METRO subway. Making the system accessible, said Hedding, would actually cost in the area of \$20-30 million out of the \$65 million Congress had appropriated in 1973; the difference would end up in the system's general operating funds. Similarly, Cleveland's transit authority would seek Federal funds to buy more buses because of the fleet expansion allegedly necessitated by making the vehicles accessible. Thus the agency

winds up getting a bigger bus fleet in its system. And so it serves the public well. But to put that on the handicapped as the cost, I don't think is fair. Because they would be getting more buses -- they would then be able to provide better service with the additional buses. But it shouldn't be attributed to the cost of providing accessibility ['76 H641-33, pp. 225f].

Abzug questioned the low comparative cost attributed to Cleveland's alternative transit service by Ronis: "...he operates a little system, so it costs a certain amount of money. But if you had a meaningful system, it would cost a lot more money." Many of her arguments were less pragmatically oriented. In reaction to Patricelli's presentation, she said: "I am very troubled by the testimony this morning. I think it is a reversal of national policy...." Elaborating, after the testimony of Ronis, Abzug asked:

What we are talking about is, is it possible to create or move in the direction of creating, which was always the intention of this legislation, a way of moving into an integrated society in which people who happen to be handicapped and elderly can participate?... Now, there are costs -- social costs are enormous -- and we either pay the price or our society goes down.... Do we consign these people to the junkpile of despair?... You are trying to get out of the whole thing. And I don't think that is fair. I think it is wrong. So I am not going to ask you a bunch of questions. I just want to tell you...I philosophically disagree with the approach that is taken here today ['76 H641-33, pp. 18, 215f].

The quandary of committee members caught in the crossfire of arguments was well exemplified by Rep. Shuster, whose own mother had been wheelchair bound for thirteen years. He told Hedinger:

I just want to emphasize I certainly want to support better transportation, and transportation accessibility for the handicapped, and I am troubled by the cost involved, and I am troubled by the disagreement as to what is best, and I assure you I will continue to wrestle with this ['76 H641-33, pp. 16, 213-215, 233, 397; quote from p. 233].

On July 27, 1976, barely a month after the close of these hearings, UMTA adopted revised bus specifications which effectively cancelled the requirement for development of Transbus. Under the new specifications, the floor height of buses purchased with Federal assistance could be 24 inches after employment of a "kneeling" feature; Transbus, in contrast, envisioned a 22-inch floor height prior to "kneeling" for passenger entry, and 12 to 17 inches while kneeling. During the summer, suits were filed against UMTA and DOT, not only by a national coalition of E&H groups, but by AM General Corporation, one of three bus manufacturers who had developed the Transbus prototypes, on the basis that General Motors had made an agreement with DOT which had had the effect of cornering the bus market for GM's RTS 2 "interim" bus. A meeting between UMTA and APTA on Jan. 4, 1977, confirmed the change in specifications ['77 S241-34, pp. 452, 485-488].

This development was a major setback for both E&H lobbyists and their Congressional supporters. But 1976 was also an election year, and the Republican administration which had opposed the enactment of many accessibility provisions was defeated. The 94th Congress ended without further floor consideration of either H.R.3155 or S.662, but even before the election, the staff of the Senate Committee on Banking, Housing and Urban Affairs had begun communicating with the Democratic candidate's transition team on elements of new legislation to replace these bills ['77 S241-34, p. 394].

On Jan. 12, 1977, Sens. Williams, Kennedy, and John Heinz of Pennsylvania introduced S.208 [123 CR (1/12) S549]. Just six days later, the Seventh Circuit Court of Appeals rejected arguments by UMTA and DOT,

remanding a case for reconsideration in view of Transbus developments ['77 S241-34, p. 488]. In February the new Secretary of Transportation, Brock Adams, announced that the question of mandating Transbus would be reconsidered. A public hearing was scheduled for Mar. 15, and a final decision was promised no later than May 27 ['77 S241-34, pp. 446, 449, 488; S.Rept. 95-183, p. 12]. This was the situation when Adams appeared in late February among the witnesses at three days of hearings held by the Subcommittee on Housing and Urban Affairs (Williams presiding) to discuss S.208.

The proposed amendment of UMTA '64, Sec. 16 (Sec. 10 of S.208 as reported) had almost the same content as the comparable section of the bills of the preceding session, though several identically-worded subsections appeared in different order. The only significant changes had occurred in new Subsec. 16 (b), which had been divided into two parts. In implementing the national policy of transportation accessibility, the Secretary of Transportation was to require the following:

- (1) Effective immediately, any new vehicle, station, building, or other structure for any new rapid rail system or for any new extension to an existing rapid rail system if the extension forms a usable segment, and any other new vehicle integrated with such a system when feasible shall be subject to accessibility standards issued by the Secretary. Standards issued under this paragraph shall insure accessibility by elderly and handicapped persons.
- (2) The Secretary shall require that mobility for elderly and handicapped persons is available in each urbanized area requesting a grant or loan under this Act. The Secretary shall determine that this requirement is being met if the applicant demonstrates detailed plans for meeting this requirement: either by the provision of a wheelchair accessible regular fixed route system within a reasonable time period or in the alternative provision of a substitute service that provides comparable coverage and service levels

as is provided by the regular fixed route system. In order to assure such effective mobility the Secretary shall prescribe the use of all or such portion of such grants or loans as are necessary to be utilized for the purchase of wheelchair accessible buses or other step entry vehicles ['77 S241-34, pp. 29f].

The effect of the change from prior bills was to differentiate more clearly between the immediacy and rigidity of accessibility requirements for rail vehicles, on the one hand, and for buses, on the other.

"Mobility" was explicitly adopted as the goal for urban wheeled transit, and apparently only good-faith efforts and indications of progress were to be required in the short run. Comments submitted to the subcommittee by DOT approved the new provisions as being consistent with the regulations already published, and as allowing local option in designating the specific type of E&H transportation services to be provided ['77 S241-34, pp. 405, 454]. Similar statements were made on behalf of APTA and the Southeast Pennsylvania Transit Authority (SEPTA) ['77 S241-34, pp. 263, 369, 463].

The hearings were not free from controversy, however. Leonard Arrow of Environmental Action, Inc., censured DOT for "writing, and postponing, and rewriting" its accessibility regulations, and blamed the Department's indecision on domination by General Motors. GM took the accusation seriously enough to submit several documents designed to counteract Arrow's "numerous erroneous and questionable references," with a cover letter requesting that the materials be placed immediately after Arrow's statement in the committee record. One of the documents went so far as to bring up, for purposes of refutation, the suggestion that GM had aided the Nazis in World War II! GM also explicitly took a position opposing

the production of Transbus ['77 S241-34, pp. 79-86, 91-94, 101, 119f]. The duplicity of the Urban Mass Transportation Administration, not excluding its present leadership, was asserted by Sieglinde Shapiro of the Pennsylvania Disabled in Action. A statement submitted by the Eastern Paralyzed Veterans Association offered further criticism, and told the committee: "you have the opportunity to correct the mess that UMTA has created ..." ['77 S241-34, pp. 486, 557].

Dennis Cannon, representing both the Southern California Rapid Transit District (SCRTD) and the California Association of the Physically Handicapped (CAPH), accused UMTA of "sabotage" of his district's efforts to purchase accessible buses. Cannon also described his investigation into an article in an APTA publication which claimed that "a fair amount of research" had led to its conclusion that paratransit services were preferable to implementation of general accessibility. The article's author, William Farrell of the Long Beach Public Transportation Company, was quoted by Cannon as having told him "there's no research"; rather, Farrell's agency had decided to enter the paratransit field to head off competition for funds from a "do-gooder" private company that was contemplating providing the service. Moreover, the quotes continue, the alternative transit system that had been set up was "really not doing the job." Cannon claimed that Farrell had said he wrote his article at the request of Bill Stokes of APTA, "so we could use these articles as a club to hit Congress over the head to stop this accessibility nonsense." Summing up, Cannon stated: "Now that is the kind of garbage that's emanating from the transit industry in regard to specialized services" ['77 S241-34, pp. 494-496].

Significant developments indicated by the transcripts of these hearings include the increasing occurrence of assertions that Transbus would provide better -- and faster -- service, not only for the handicapped, but for all riders, and that system-wide accessibility would in fact be cheaper than providing special alternative E&H transit. Some statements of the latter type were even made by officials of transit agencies ['77 S241-34, pp. 72, 484, 487, 494f, 500, 557, 559; see also S.Rept. 95-183, pp. 12f].

Perhaps most significant was the evidence of increasing co-operation between elderly and handicapped pressure groups. Shapiro represented not only her own Pennsylvania Disabled in Action, but also like-named organizations in Baltimore, New York, and New Jersey; in addition, she spoke for PVA, ACCD, COPH, UCPA of Pennsylvania; NPF of the Washington area, National Caucus of the Black Aged, National Council of Senior Citizens, and Pennsylvania Association of Older Persons--a total membership, she claimed, of over 5 1/2 million. Speakers for the Grey Panthers and PVA had intended to accompany her, but had been forced to cancel out at the last minute ['77 S241-34, p. 480]. The coalition bringing suit against UMTA in Pennsylvania in summer of 1976 had included many of the same groups--not to mention the amicus curiae briefs submitted by SCRTD and the State of California ['77 S241-34, p. 487]. ACCD spokeswoman Jan Jacobi gave the committee a partial list of her organization's constituent groups, including NAPH, PVA, UCPA, American Council of the Blind, Council for Exceptional Children, Council of State Administrators of Vocational Rehabilitation, Epilepsy Foundation of America, National Association for Retarded Citizens, National Association of the Deaf, and Teletypewriters for the Deaf ['77 S241-34, p. 500].

The committee reported S.208 on May 16, 1977. On May 19 (earlier than promised), Secretary Adams issued his "Transbus Mandate," i.e., reversed the policy adopted by the preceding administration and issued orders that after Sept. 30, 1979, departmental funds for buses would be spent only on vehicles meeting Transbus specifications (slightly modified through an agreement with APTA). Until then the regulations as already published would apply, with local option as to the means of providing E&H transportation accessibility. Consequently, when the bill came up for floor debate in June, Sen. Williams (praising the "dynamic" new Secretary of DOT) offered a committee amendment to delete all of Sec. 10, "because the committee language is no longer necessary." The Transbus Mandate itself was reprinted in the Congressional Record following Williams' comments. The bill--now entirely devoid of any E&H transportation accessibility provisions--passed by voice vote [123 CR (5/16) S7663; (6/23) S10558-81]. No House vote was ever taken on S.208. Some of its provisions (not related to the subject of this study) were enacted as part of a different bill which became law in November of 1977 [S.Rept. 95-857, p. 4]. Since its extensive amendment for UMTA '64, Sec. 16, had already been deleted, perhaps there was simply too little of the bill left to warrant further consideration.

In January of 1978, the Carter administration offered its Surface Transportation program, subdivided into bills parcelled out among different committees. Sen. Williams introduced the mass transportation portion as S.2441, and the Committee on Banking, Housing and Urban Affairs held hearings on it in early March. As reported on May 15, the bill contained "many features and provisions considered by the committee

and approved by the Senate in recent years." One was the often-suggested expansion of the definition of "handicapped person" in UMTA '64, Sec. 16 (d), to include the wheelchair bound and semiambulatory. S.2441 provided that the revised definition would be consolidated with all the amended Act's other definitions in Sec. 12, and that it might be modified for purposes of Sec. 5. Another amendment to UMTA '64 was a proposed change in the source, though not the percentage, of funds for Abzug's grant and loan program of Sec. 16 (b); apparently only a more secure source of funding was sought [S.Rept. 95-857, pp. 1f, 23f].

In March, H.R.11733 was introduced by Rep. Howard and others, and was referred to the House Public Works and Transportation Committee. Like S.2441, it included provisions relating to the 2% set-aside of Sec. 16 (b) -- in this case leaving the source unchanged -- and revising and relocating the definition of "handicapped person." In its original form, the House bill also included a separate definition of "elderly person," but this was absent in the ultimate version. Other sections revealed growing concern for the costs of providing transportation accessibility. The Secretary of DOT was directed to assist operators in estimating the costs of making rail mass transit systems accessible through retrofitting, and also to evaluate the making of light rail and commuter rail systems accessible; pending completion of the evaluation, grants to such systems were to be permitted without requirement of wheelchair accessibility [S.Rept. 96-1485, pp. 57f, 65f].

Sec. 323 of the bill, authored by Rep. Shuster, called for a re-evaluation of the May, 1977, Transbus Mandate, in the interest of greater flexibility. Shuster would later decry the "rather vituperative attack"

to which he had been subjected, as "not being understanding of and in sympathy with the problems of the handicapped," even though he had a family member "who is a double amputee and is confined to a wheelchair..." [124 CR (9/28) H10995-7].

Rep. Biaggi, not a member of the committee working on H.R.11733, was nonetheless disturbed by Sec. 323. Finding an ally in Rep. Claude Pepper (Florida), he arranged extensive discussions with DOT officials. On Sept. 14, UMTA announced revised specifications for accessible buses, specifications allowing use of either a ramp or a lift, but requiring the low floor height of the Transbus prototypes. Committee members, including Shuster and subcommittee chairman Howard, were content with the compromise. In House floor debate of Sept. 28 they supported Biaggi's successful motion to delete Sec. 323. The bill itself carried, 367-28 [124 CR (9/28) H10990-11017].

On the same day, the Senate debated and passed S.2441 (reference also being made to the aforementioned developments in the Transbus controversy), then postponed it indefinitely and incorporated its content into the current highway bill, S.3073, which had been debated in August (this bill had no E&H provisions of its own, so its development has not been discussed heretofore) [124 CR (9/28) S16394-429, S16434-40]. On Oct. 3, the Senate substituted S.3073 for all except the enacting clause of H.R.11733 and passed the amended bill by voice vote; conferees were appointed. A unique combination of four Senate committees and two House committees reported out specified titles of the omnibus bill [124 CR (10/3) S16987-91; H. Rept. 95-1797, pp. 60f, 134f], which was finally signed into law on Nov. 6 as the Surface Transportation Act of 1978.

In the law as enacted, the rail retrofit evaluation provisions were retained, combined into two subsections of Sec. 321. A change in phrasing in the final sentence of UMTA '64, Sec. 16 (b), was apparently made only to correct an obsolete cross-reference. Sec. 308 of the 1978 law repealed Sec. 16 (d) of UMTA '64, transferring the definition of "handicapped person" there to Sec. 12 (c) (4) and giving it its current wording:

The term 'handicapped person' means any individual who by reason of illness, injury, age, congenital malfunction, or other permanent or temporary incapacity or disability, including any person who is wheelchair bound or has semiambulatory capabilities, is unable without special facilities or special planning or design to utilize public transportation facilities and services effectively. The Secretary may, by regulation, adopt modifications of this definition for purposes of section 5 (m) of this Act.

Rehabilitation, Comprehensive Services, and Developmental
Disabilities Amendments of 1978
Nov. 6, 1978 P.L. 95-602 92 Stat. 2955

Sec. 504 of RA '73 amended as to coverage, implementing regulations, and Congressional oversight; Civil Rights Act remedies applied; ATBCB membership and authority increased.

While the amended Urban Mass Transportation Act was being made consistent with the amended Federal-Aid Highway Act, the amended Rehabilitation Act was also being shaped into the form it would have when DOT issued final regulations based on its Sec. 504. Like the other omnibus bill signed into law on the same day in 1978, this collection of amendments developed under several bill numbers and over a period of years. Similar contentions and controversies arose, influenced by many of the same external events.

The process may be said to have begun in February of 1976, when the Subcommittee on the Handicapped of the Senate Committee on Labor and

Public Welfare opened five days of hearings on implementation of programs for rehabilitation, employment, and transportation under RA' 73. Familiar names among the witnesses at these hearings include PVA's John Lancaster, Harold Russell of PCEH, Dennis Cannon of CAPH, architect Edward H. Noakes (representing the National Center for a Barrier Free Environment), and several representatives of organizations of the blind and of the deaf. Also sending speakers were UCPA, ACCD, National Association of Retired Citizens, Indiana Department of Mental Retardation, and Epilepsy Foundation of America. Kent Hull of the National Center for Law and the Handicapped presented a review of court decisions and pending lawsuits under Sec. 504. Testifying as the parent of a handicapped child was Washington Redskins quarterback Billy Kilmer ['76 S541-64, 65, 66].

In 1977 the same committee, now re-named the Senate Committee on Human Resources, held more hearings, and others were conducted by the House Committee on Education and Labor [S.Rept. 95-89, p. 1; 124 CR (9/20) S15547; '78 H341-21]. A White House Conference on Handicapped Individuals (called for by a title of the Rehabilitation Act Amendments of 1974) met in May, the same month in which DOT's Transbus Mandate was issued. The bill that was apparently the earliest form of what ultimately became the 1978 law (S.1712) was introduced in June. In September the Justice Department issued an opinion, at the request of HEW, taking the position that Sec. 504 applied only to State and local agencies receiving Federal funds, not to departments and agencies of the Federal government itself [124 CR (5/16) H3969f; (9/20) S15547]. Several court cases relating to the implementation of Sec. 504 were decided in 1977, though no clear pattern was established by the decisions rendered. Most

interestingly, in Lloyd v. Regional Transportation Authority, the Seventh Circuit Court of Appeals based its ruling in favor of the handicapped plaintiffs on the parallels in language between Sec. 504 of RA '73 and Sec. 601 of the Civil Rights Act of 1964 [CBO, Urb. Trans., pp. 87-90].

HEW issued guidelines for Federal agencies' implementation of Sec. 504 in January of 1978, patterned in fact after the implementing regulations for Title VI of the Civil Rights Act [44 FR 31444]. Beginning this same month, and resuming in April, the Select Subcommittee on Education of the House Committee on Education and Labor held hearings, which led to the introduction (by subcommittee chairman Brademas and others) on May 1 of H.R.12467, a committee bill amending certain sections of RA '73 ['78 H341-65; H.Rept. 95-1149, pp. 6-8, 20, 40; 124 CR (5/1) H3392].

Meanwhile, Sens. Randolph and Stafford and other members of the Human Resources Committee had introduced S.2600 on Feb. 28, and their Subcommittee on the Handicapped held hearings in March [124 CR (2/28) S2516; S.Rept. 95-890, p. 1]. Both bills were reported out in mid-May [124 CR (5/15) S7462, H3948; H.Rept. 95-1149; S.Rept. 95-890].

The House bill was immediately taken up for debate. Its text included a further refinement of the definition of "handicapped individual" in Sec. 7 (6) of RA '73--a definition which had already been expanded by the 1974 amendments to include not only persons actually and currently handicapped but also those with a record of having been handicapped and those merely regarded as being handicapped. Now certain exclusions, for purposes of Sec's. 503 and 504, were added, with the implication that employers would not be compelled to hire alcoholics and drug abusers [124 CR (5/6) H3961]. Another provision of the bill would

have amended Sec. 502 by enlarging and strengthening the Architectural and Transportation Barriers Compliance Board, also re-naming it the Architectural, Transportation, and Communications Barriers Compliance Board. The reason for the proposed name change was made explicit by Rep. James M. Jeffords of Vermont. A totally deaf Ph.D. candidate, Ed Corbett, had worked part-time with the staff of the Education and Labor Committee for the past year, monitoring Federal agencies' progress in implementing Sec. 504. The new understanding of problems faced by the deaf which contact with Corbett had created, said Jeffords, led the committee to propose the re-naming of the Board and a concomitant expansion of its area of responsibility [124 CR (5/16) H3969].

Jeffords claimed authorship of another committee amendment, revising Sec. 504 in response to the Justice Department decision of September, 1977, by making its requirements explicitly applicable to all Federal agencies; the amendment would also direct each agency to promulgate appropriate implementing regulations [124 CR (5/16) H3970]. During the course of this House debate, which led to the bill's passage, 382-12, Jeffords also expressed his long-standing concern that the Federal government should help pay the costs of implementing Sec. 504. Others suggested that the long lapse between the passage of RA '73 and the issuance by HEW of guidelines for implementing regulations had in fact been caused by the Department's reluctance to impose the high anticipated costs of handicapped accessibility on educational institutions. Via amendment to Sec. 503, the bill authorized some financial assistance for impacted authorities [124 CR (5/16) H3969f, H3974f, H3983].

Based on the HEW guidelines, DOT issued a new version of its NPRM on June 8. A series of public hearings and a 90-day comment period were to follow (later to be extended to Oct. 20), preparatory to the definitive formulation of the Department's "504 Regulations" [44 FR 31444]. In September, the Senate debated S.2600, which made no changes in Sec. 504 of RA '73, but added new sections within the same title. Part of the new Sec. 505 followed up a suggestion that had been made during consideration of earlier legislation (as was mentioned in both the committee report and floor debate), namely the explicit application of the remedies of Title VI of the Civil Rights Act to violations of Sec. 504. Another part of Sec. 505, whose authorship was claimed by Sen. Cranston, provided for subsidies for legal fees to plaintiffs in "504" suits. Like the House bill, the Senate bill amended Sec. 502 to increase the membership and powers of the ATBCB, though not in precisely the same ways; the expansion of the Board's title and functions to include "communications" was not adopted. Floor amendments further increased both the membership (adding a Department of Justice representative) and authority (bestowing the right to initiate suits on its own behalf) of the Board.

In the course of Senate debate on S.2600, Sen. Jennings Randolph delivered something very like a valedictory address. He described his personal experience of having spoken with several hundred handicapped persons or persons working for the handicapped during the course of the 95th Congress, calling it "a very moving experience for me." Citing his own record in the field of handicapped legislation since 1936 and his "deep and personal commitment" to the cause, he described the program under discussion as possibly his "legacy for posterity." Cranston told

of a recent office visit from several of his handicapped constituents, one of whose trip to Washington had included "toppling over in the metro." The Senate passed S.2600 by voice vote, then substituted its text for that of H.R.12467 and passed the latter 81-1 [124 CR (9/20) S15536-78, S15590-7, S15609f; (9/21) S15647-74].

With the co-operation of the House Subcommittee on Health and the Environment, the subsequent conference dealt not only with H.R.12467, but also with the Developmental Disabilities bill, H.R.12327 (which itself had no provisions relevant to this study). Therefore the bill reported from conference committee, passed, and signed on Nov. 6 bore the composite title of Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 [124 CR (9/26) H10842; H.Rept. 95-1780].

The law as enacted [see its Secs. 118-122] incorporated the House bill's revision of the definition of "handicapped individual," clarified somewhat further. The ATBCB retained its name, as in the Senate bill, but its new membership and duties were a composite of the two houses' versions. Application of Civil Rights Act remedies to violations of Sec. 504 was retained. Finally, the amended text of Sec. 504 was henceforth to include a cross-reference to the very Act which amended it:

No otherwise qualified handicapped individual in the United States, as defined in Section 7 (6), shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to

appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.

CONCLUSION

Legislative requirements for mass transportation accessibility for the elderly and handicapped have developed incrementally over a little more than a decade. The cumulative effect of these steps would have been difficult to anticipate. The applicability of ABA '68 to the buildings of urban transit systems was purely incidental to the purposes of that Act. Local controversy over the inaccessibility of METRO subway stations led to a 1970 amendment and to a focusing of interest on the law's transportation implications, though accessibility of vehicles continued to be disavowed as a legislative goal. The militancy of Washington-area organizations of the handicapped, fired by this struggle, was maintained partly because of the continuing resistance of METRO authorities to station accessibility.

E&H lobbyists found powerful Congressional allies. Certain individuals and committees appear to have represented these group interests with genuine zeal. Struggles for power within the houses of Congress and between the legislative and executive branches were often fought in connection with bills concerning mass transportation and the needs of the elderly and handicapped. Only rarely did debate and discussion focus equally on both. More frequently, either a transportation-oriented law would have a little-debated E&H provision tacked onto it at some stage in the legislative process, or an Act primarily concerned with rehabilitation or employment of the handicapped would be given some provision incidentally applicable to transportation.

The 1970 Biaggi amendment establishing transportation accessibility for the handicapped as national policy was added in House floor debate

after legislation lacking any E&H provisions had gone through hearings in both chambers and had been passed by the Senate. Further amendments to the Urban Mass Transportation Act were added in 1973 in what amounted to a power-play by the House Committee on Public Works. The Vanik amendment, intended to modify the Civil Rights Act, was added to the Rehabilitation Act at a late stage, again without careful debate. Its language would ultimately bring the enforcement mechanisms of the Civil Rights Act into the area of handicapped transportation accessibility. The critical inclusion of wheelchair bound persons among those for whom transportation accessibility is required was added to Acts regulating both the Federal Highway program and the Urban Mass Transportation program by amendments passed in later years. In the former case, this significant expansion was hardly debated at all; in the latter, the issue was the attainment of consistency with the former.

Weak opposition from the transit industry was surprising during the early legislative history. Apparently the operators were more concerned in the early 1970's with achieving increased capital assistance and new operations assistance. They needed the support of groups dependent upon transit, even though they were aware of the possible consequences. The sincerity and seriousness of members of Congress who repeatedly espoused such measures should not be questioned, nor unfairly discounted because of the personal experiences with handicaps of close connections with affected persons that were often mentioned.

Empathy with the handicapped and concern for the elderly is widely shared in American society. At the same time, such personal sympathies may have combined with the piecemeal development of E&H accessibility

legislation to conceal the magnitude of the impact these laws could ultimately have on the society and its public transportation systems. Opposition was quiescent and amendments were seldom analyzed. Even Rep. Vanik himself, the author of Sec. 504, has been quoted as saying: "We never had any concept that it would involve such tremendous cost" [CBO, Urb.Trans., p. 86]. It is certainly true that supporters of most of the provisions discussed in this study severely and unrealistically discounted the costs their application could impose.

REFERENCES

Abbreviated citations within brackets refer to United States Government Documents of several types.

Text and discussion of DOT "504 Regulations" in the Federal Register, e.g.:

[44 FR 31447]

This means Volume 44, page 31447 (specifically, the issue of May 31, 1979).

Study by the U.S. Congressional Budget Office, e.g.:

[CBO, Urb. Trans., pp. 84f]

This means Urban Transportation for Handicapped Persons: Alternative Federal Approaches (November, 1979), pages 84 and 85 (in Appendix A, pp. 81-93, on history of Sec. 504).

Debates in the Congressional Record:

- (1) Bound volumes by volume and page(s), e.g.:

[119 CR 33807-10, 34694]

This means Volume 119 (93rd Congress, 1st Session, 1973), pages 33807 through 33810 and page 34694.

- (2) Volumes not yet bound (at this writing) by volume, date, and temporary page number(s), e.g.:

[123 CR (7/29) H8165]

This means Volume 123 (95th Congress, 1st Session, 1977), proceedings of July 29, House debates, page 8165.

Committees reports, e.g.:

[S.Rept. 92-1103, pp. 4f]

This means Senate Report no. 1103 of the 92nd Congress, pages 4 and 5 (it is in fact a report of the Senate Committee on Banking, Housing and Urban Affairs, dated September 8, 1972).

Transcripts of hearings (cited indirectly, since no standard direct system exists):

- (1) Hearings since 1970 via the Abstracts of the Congressional Information Service (CIS), e.g.:

['76 H641-33, p. 394]

This means hearing(s) of the House Committee on Public Works and Transportation, cited via the 1976 CIS Abstracts, hearing(s) no. 33, page 394 of the published transcript (in fact, hearings of June 2, 10, 15, and 17, 1976, before the Subcommittee on Surface Transportation).

- (2) Hearings prior to 1970 via the Monthly Catalog of United States Government Publications, e.g.:

['70 MC 3892, p. 12]

This means item no. 3892 in the 1970 Monthly Catalog, page 12 of the published transcript (in fact a hearing of December 9, 1969, before the Subcommittee on Public Buildings and Grounds of the House Committee on Public Works).