

Transit Cooperative Research Program

Sponsored by the Federal Transit Administration

RESEARCH RESULTS DIGEST

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Subject Areas: IC Transportation Law
and VI Public Transit

Responsible Senior Program Officer: Gwen Chisholm

Legal Aspects of Transit and Intermodal Transportation Programs

This digest describes the progress and status of TCRP Project J-5, "Legal Aspects of Transit and Intermodal Transportation Programs," for which the Transportation Research Board is the agency conducting research. Individual studies are managed by James B. McDaniel, Counsel for Legal Research Projects, serving under the Technical Activities Division of the Transportation Research Board. Mark Norman is the director of this division.

BACKGROUND

The Transit Cooperative Research Program (TCRP) was established in 1992 to provide a continuing program of applied research on transit issues. The program is sponsored by the Federal Transit Administration (FTA) and carried out under a three-way agreement among the National Academies (the Academies), acting through its Transportation Research Board (TRB); the Transit Development Corporation, an educational and research arm of the American Public Transportation Association (APTA); and the FTA.

INTRODUCTION

The Intermodal Surface Transportation Efficiency Act (ISTEA) and the Transportation Equity Act for the 21st Century (TEA-21), in reauthorizing federal assistance for surface transportation programs through the 1990s, call for adoption of new concepts and techniques in planning, funding, constructing, and operating these programs. This adoption affects the institutional framework laws and administrative processes, as well as engineering and operational elements of these programs. The nation's transit agencies need to have access to a program that can provide authoritatively researched, specific, limited-scope studies of legal issues and problems having national significance and application to their business. A program meeting a need for dealing with legal problems arising from highway programs was inaugurated in 1969 under the National Cooperative Highway Research

Program. It has been maintained with continuation funding since that time with strong support and approval from the constituency it serves.

A need for a comparable program in the Transit Cooperative Research Program is sharpened by the emphasis that ISTEA and TEA-21 put on intermodal projects. To make the partnership among transit, highways, and, in some instances, waterways work well, attorneys for each mode need to be as familiar as possible with the legal framework and processes of the other modes. Research studies in areas of common concern are needed to determine what adaptations are necessary to carry on successful intermodal programs. Transit attorneys have noted that they share common interests and responsibilities with highway and water transport agencies in several areas of transportation law, including

- Environmental standards and requirements;
- Construction and procurement contract procedures and administration;
- Civil rights and labor standards; and
- Tort liability, risk management, and system safety.

In other areas of the law, transit programs may encounter legal problems and issues that are not shared with other modes. Examples include compliance with transit-equipment and operations guidelines, FTA financing initiatives, private-sector programs, and labor or environmental standards relating to transit operations. Emphasis would be on research of current importance and applicability to transit and intermodal operations and programs.

THE TCRP LEGAL RESEARCH PROGRAM

The *TCRP Legal Research Digest* series reports on legal issues associated with transit and intermodal law. Each document is intended to provide transit attorneys with authoritative, well-researched, specific information that is limited in scope. The studies focus on legal issues and problems having national significance to the transit industry.

Each year, 500–800 attorneys nationwide are involved in transit-related work; yet, there is no centralized collection of information on which they can depend. The *TCRP Legal Research Digest* series provides transit-related legal research on a wide variety of legal topics.

Selection of Topics

TCRP Project Panel J-5 meets each year to select topics using funds from the upcoming fiscal year. The membership of this committee is given in Table 1. Current funding allows for initiation of approximately four study topics per year.

The following factors are considered in the selection process for study topics:

- The study topic should be widespread enough to generate broad interest.
- The study topic should be timely and critical to the transit community at large.
- The quality and quantity of information already available on the subject should suggest a need for the study topic.
- Ongoing research or a potential forthcoming release of significant information should not render the legal research digest obsolete.

Candidate topics are suggested by members of the J-5 project panel, members of the transportation legal community, and other sources, including the Amalgamated Transit Union, the FTA, APTA, and transit officials.

Legal topics may be submitted by anyone at any time. However, the deadline for submittals for consideration in the FY2003 program is June 1, 2003. As an option, legal topics may be submitted electronically by e-mail to TCRP@nas.edu. Proposals should be brief (i.e., one or two

paragraphs), but there is no specific limit on length. They should describe the problem and identify the parts to be covered by the legal research digest. The proposed research should consume no more than approximately 400 hours of professional time.

Conduct of the TCRP Legal Research Topics

Throughout the year, following the J-5 project panel's selection of topics, study topics are initiated in the order of priority assigned by the panel.

Following the J-5 panel meeting, the TRB issues a request for offers to conduct the research. The request for offers is sent to approximately 350 transit attorneys, and an author is selected on the basis of qualifications. An agreement is negotiated with potential authors to research the study topic and submit a draft final report. The draft is reviewed by the TRB Counsel for Legal Research Projects. If approved by this counsel, the draft report is then reviewed by the J-05 project panel. Comments from those reviews are incorporated into the final report, which is subsequently published as a legal research digest.

To receive notice of the solicitations for authors, e-mail your information to James B. McDaniel at jmcdaniel@nas.edu.

Studies in Progress as of July 2002

Work is currently underway on the topics listed in Table 2. Questions on these topics should be addressed to James B. McDaniel, TRB Counsel for Legal Research Projects (jmcdaniel@nas.edu and 202-334-2934).

Available Publications

The TCRP legal research digests that have been completed under this project are listed in Table 3. Copies of these digests can be obtained by writing to the TRB Publications Office (2101 Constitution Avenue, NW, Washington, D.C. 20418); by calling the office at 334-3213; or by visiting the TRB bookstore online at <http://www.trb.org/trb/bookstore>. Please send check orders to Lockbox 289, Washington, D.C.

TABLE 1 TCRP Project Panel J-5

	Name	Affiliation
Chair	Dennis C. Gardner	Ogletree, Deakins, Nash, Smoak & Stewart, Houston, TX
Member	Arthur P. Berg	Port Authority of New York & New Jersey, New York, NY
Member	Richard W. Bower	Carmichael, CA
Member	Dorval Ronald Carter, Jr.	Chicago Transit Authority, IL
Member	Clark Jordan-Holmes	Stewart, Joyner & Jordan-Holmes, P.A., Tampa, FL
Member	Alan S. Max	City of Phoenix, AZ
Member	Robin M. Reitzes	City of San Francisco, CA
Member	Rita M. Maristch (Liaison)	Federal Transit Administration, Washington, D.C.
Member	Kristin O'Grady (Liaison)	American Public Transportation Association, Washington, D.C.
Member	Sharon Greene (Liaison)	TCRP Oversight and Project Selection (TOPS) Committee

TABLE 2 TCRP Legal Research Studies—In Progress as of July 2002

Topic No.	Title
5-04	Compilation of Transit Law (10 chapter review of transit law, published as Volume 5 of <i>Selected Studies in Transportation Law</i>)
6-01	Integrated Transit Operations and Maintenance and the Use of Private Contractor (terminated)
6-02	A Guide to the Americans with Disabilities Act for Transit Lawyers
6-03	Compilation of Labor (13c) Decisions (index and 13c decisions, published as Volume 6 of <i>Selected Studies in Transportation Law</i>)

TABLE 3 Published TCRP Legal Research Digests

Digest number	Title, topic number, pages, price
1	Strategies to Facilitate Acquisition and Use of Railroad Right of Way by Transit Providers (Topic 1-06), 16 p., \$12.00
2	Successful Risk Management for Rideshare and Carpool-Matching Programs (Topic 1-07), 24 p., \$12.00
3	State Limitations on Tort Liability of Public Transit Operations (Topic 1-04), 18 p., \$6.00
4	Transit Labor Protection—A Guide to Section 13(c) Federal Transit Act (Topic 1-01), 32 p., \$13.00
5	Legal Issues Associated with Intermodalism (Topic 1-03), 22 p., \$12.00
6	Requirements that Impact the Acquisition of Capital-Intensive Long-Lead Items, Rights of Way, and Land for Transit (Topic 1-05), 24 p., \$13.00
7	The Impact of Civil Rights Litigation under Title VI and Related Laws on Transit Decision Making (Topic 3-02), 24 p., \$14.00
8	Transportation Service Agreements: A Preparation and Reference Guide for Transit Attorneys (Topic 1-02), 40 p., \$15.00
9	Strategies to Minimize Liability under Federal and State Environmental Laws (Topic 3-05), 20 p., \$15.00
10	Restrictions on Speech and Expressive Activities in Transit Terminals and Facilities (Topic 2-01), 36 p., \$16.00
11	Potential Tort Liability for Transit Agencies Arising Out of the Americans with Disabilities Act (Topic 2-02), 40 p., \$16.00
12	The Zoning and Real Estate Implications of Transit-Oriented Development (Topic 3-03), 50 p., \$17.00
13	Report on Innovative Financing Techniques for Transit Agencies (Topic 3-01), 41 p., \$16.00
14	Treatment of Privacy Issues in the Public Transportation Industry (Topic 4-02), 29 p., \$16.00
15	Impact of the Family and Medical Leave Act of 1993 on the Transit Industry (Topic 4-01), 39 p., \$18.00
16	Drug and Alcohol Testing—A Survey of Labor-Management Relations (Topic 3-04), 61 p., \$22.00
17	Guide to Federal Buy America Requirements (Topic 5-03), 29 p., \$16.00
18	Federal and State Licensing and Other Safety Requirements for Commercial Motor Vehicle Operators and Equipment (Topic 5-01), 90 p., \$18.00

These **Digests** are issued in order to increase awareness of research results emanating from projects in the CRP. Persons wanting to pursue the project subject matter in greater depth should contact the Cooperative Research Programs Staff, Transportation Research Board, 2101 Constitution Ave., NW, Washington, DC 20418.

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