



REGIONAL PLAN ASSOCIATION, INC.

... a research and planning agency supported by voluntary membership to promote the coordinated development of the New York-New Jersey-Connecticut Metropolitan Region.

New Jersey Committee
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NEWS RELEASE

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FOR INFORMATION CALL:
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NOTE TO THE EDITOR:

The attached letter to Senator Anthony J. Grossi, co-sponsor of the Tri-State Transportation bill (with Senator Charles W. Sandman), contains comments by Ernest Erber, Areas Director, Regional Plan Association, on 13 objections to "Tri-State" widely circulated by the Morris County Board of Public Transportation over the signature of its chairman, Thomas T. Taber.

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August 5, 1964

The Honorable Anthony J. Grossi
State Senator
27 Church Street
Paterson, New Jersey

Dear Senator:

In response to your request of July 14 that I comment on Thomas T. Taber's thirteen objections to the legislation which would give the present Tri-State Transportation Committee status as a Commission through an interstate compact (S-222), I have given consideration to each of Mr. Taber's points and I shall, within reasonable space limitations, endeavor to answer them. Since some of his objections relate to the structure and function of government and others to the broad field of regional planning theory and practice, a brief condensed series of answers is not always possible. However, the gravity of the subject warrants the time I give to a detailed reply and, I hope, warrants your time in reading a lengthy letter.

I repeat each of Mr. Taber's objections within quotation marks and comment upon it.

"1. In a Tri-State Pact, the other two States can out-vote New Jersey, and on matters which directly concern New Jersey, but not the other two States."

This is untrue. The bill provides that, "No action of the Commission shall be effective or binding unless a majority of each party State's representatives who are present at such commission meeting shall vote in favor thereof." The previous sentence requires that at least three members of each of the party states be present before business can be transacted. No state, therefore, can be out-voted by the other states. It seems incredible that this very plain and prominent provision should have escaped the notice of Mr. Taber.

"2. The Governor's right of veto is not sufficient protection for the citizens of New Jersey."

In view of the provision discussed above, the Governor's right of veto is an additional safeguard and not the primary one. The veto provision gives the Governor 10 days after receipt of the minutes of a meeting to veto any action by Tri-State with which he disagrees. Since such action could only be taken with the vote of a majority of New Jersey representatives, the veto provision serves the purpose of making sure that the position taken by a majority of New Jersey representatives is in accord with the Governor's policy. It also gives each state 10 days to study and reflect upon the decision taken so that they might reconsider and change their vote by means of the Governor's veto. (Incidentally, New Jersey is a member of some nine interstate agencies established by compact covering such subjects as sanitation, bridges, water control, etc. In none of these agencies does the decision-making procedure give New Jersey greater protection than is provided for in the Tri-State compact. If the voting procedure in these agencies has ever resulted in disadvantages to the State of New Jersey, it has apparently not come to public notice...)

"3. No representation by, or for, the ten New Jersey counties concerned, is provided."

This is an interstate compact, not an inter-local agreement. It is the instrument of three sovereign states.

There is considerable confusion in our state which results in viewing New Jersey as a federation of counties, rather than as a sovereign state. The counties (and municipalities) are not sovereign; they are creatures of the state; sub-divisions of the state for purposes of orderly administration of local affairs.

To be consistent, Mr. Taber should ask that the counties also be represented in the Highway Department, in the Dept. of Conservation and Economic Development, and in other departments and agencies of the state which plan the state's public works projects in transportation and other matters.

Each of the ten New Jersey counties concerned are advisory to Tri-State through the Local Cooperating Committee composed of freeholder directors.

"4. Federal representation for Aviation and Highways is provided, but none by the Interstate Commerce Commission which deals with trains and buses."

Mr. Taber should know that the I.C.C. is a regulatory agency with a quasi-judicial function and is not involved in planning. The I.C.C. could

hardly participate in Tri-State's planning the future of a railroad's branch operation, for example, and then sit as a trial board to take evidence and render a verdict on the same matter.

In any case, the federal agency responsible for rail and bus planning in metropolitan regions is already represented on Tri-State. This agency is the Urban Transportation Division of the Housing and Home Finance Agency. It is the agency responsible for the administration of the newly adopted Mass Transit Law, under which some \$375 million in federal funds are available to urban areas.

"5. Although the State Highway Department is represented on the Commission, the Board of Public Utilities Commissioners, which regulates trains and the buses is not."

Where in S-222 did Mr. Taber read that the Board of Public Utilities Commissioners cannot be represented on Tri-State? Nothing in the bill prevents such representation. It is entirely within the option of the Governor to decide who shall represent the state, except that the bill stipulates that "at least three ... are state officers or employees engaged in State planning, highway or other transportation activities."

"6. Federal employees should not be on a State Commission, and particularly so when the Commission plans to deal with the Federal Agencies whose employees are members of the Commission. This creates a conflict of interest, immediately."

Mr. Taber fails to mention that the federal representatives "shall not be entitled to vote on any action of the commission." Their presence serves to provide a continuing liaison between the federal agencies involved in urban transportation and the party states. It might be illuminating to Mr. Taber to know that representatives of the federal Bureau of Public Roads are assigned to each state highway department to serve a similar liaison function. In at least one interstate agency in which New Jersey is a member -- the Delaware River Basin Commission -- the federal government is represented with a vote. The alleged conflict of interest can hardly exist if the purpose of Tri-State is to coordinate the federal interests with those of the three states and their local subdivisions.

"7. Three of the five New Jersey representatives are to be State employees, engaged in planning and highway activities, and only two (hopefully) independent, or citizen, representatives are to be appointed. This causes an unbalanced Commission, and one which cannot possibly be objective and unbiased. See Item #3, above. The citizen

"representatives should have no self-serving interest in the matters to be considered, and should be able to out-vote the State and Federal employees, who do have self-interest in them."

The bill does not require the appointment of any citizen representatives, it only permits it, if such is deemed advisable by the Governor. Metropolitan transportation is a highly complex subject. Very few citizens could take the time to immerse themselves in the studies required to make a meaningful contribution on this vast and comprehensive subject.

Based on Mr. Taber's desire to have citizen appointees out-vote state officials, it would be consistent for him to favor citizen boards in all state departments, such as Highway, Treasury, Health, Defense, Institutions and Agencies, etc., empowered to out-vote the departments heads. And why not a citizen board to out-vote the Governor?

Mr. Taber's recommendations on this score, together with his views on county representation, indicate that he has failed to grasp the essential nature of Tri-State as an agency through which state officials confer together to arrive at joint plans for a portion of their respective states, plans which they would otherwise arrive at by a departmental process within each state unilaterally.

State officials have been involved in such joint planning for the metropolitan region for a long time. How else does Route 78 happen to run from the Rockaways in Long Island to Warren County, or Route 95 from Greenwich, Conn. to Trenton, or Route 287 from New Brunswick to Suffern and on to join Route 95 at the Connecticut boundary? Tri-State would make formal that which has been informal; make public that which has been off-the-record; make scientific that which has too often been guesswork.

"8. Transportation by rail - a matter of extreme importance to the ten counties involved - is not represented adequately, if at all on a free, unbiased basis."

Mr. Taber is complaining about the present ad hoc Tri-State committee and not about S-222. The latter has no provisions to curtail representation from the states by those especially interested in rail transportation. This is a matter for the Governor to decide in naming the state's representatives.

However, Mr. Taber's complaint about the present composition of Tri-State is also misdirected. Two out of the four representatives from New Jersey represent rail interests -- Dwight R. G. Palmer and Herbert A. Thomas, Jr. Mr. Palmer is responsible to the Governor for New Jersey's rail improvement program, established pursuant to statutes, and is given over \$8 million annually by the Legislature to preserve and improve rail commuting. Mr. Thomas is directly in charge of administrating this program and bears the title of "Director, Division of Railroad Transportation."

Mr. Taber's use of the modifiers "adequately", "free", and "un-biased" suggest that he is displeased with the appointment of those persons who now represent New Jersey's rail interests. It is his right to voice his displeasure. But he does not contribute to an understanding of S-222 if he persists in confusing his pique over governmental appointments with the statutory provisions of proposed legislation.

"9. If this Bill was properly titled it would be: "TRI-STATE HIGHWAY AND LAND-USE PLANNING COMMISSION", as it does not appear to be concerned with determining the NEEDS and DESIRES of the public, in the matter of mass transportation. The Commission will give the public what it thinks the public should have."

It is not clear how a more accurate title of the bill would make it "more concerned with determining the needs and desires of the public." Tri-State is spending millions of dollars in vast surveys and computerized analysis to determine the needs and, insofar as it is discernable, the desires of the public. In the end, Tri-State will, in Mr. Taber's words, "give the public what it thinks the public should have." What is wrong with this? They certainly should not give the public what they think the public should not have. And what is it that they will give the public? Plans -- carefully worked-out, comprehensive plans. The public will have ample opportunity to say what it thinks about such plans. The other day Tri-State proposed a plan for improving lighterage in the Port. Mr. Taber was critical of the plan and his criticism was widely published in the press. Before the Legislature acts on any legislation to authorize the lighterage project there will be a round of public discussion, hearings and legislative debate.

Does Mr. Taber presume to know the "NEEDS and DESIRES of the public?" Prominent citizens of his county have voiced views on rail commuting vs. express buses that are diametrically opposite those of Mr. Taber. Obviously there are many "publics" and they have different desires and different needs. The purpose of Tri-State's study is to determine what these different needs and desires are and to compose feasible plans to accommodate them.

Why Mr. Taber believes that the proper title of S-222 should be "Tri-State Highway and Land-Use Planning Commission" is not made clear. I can only guess. He evidently believes that highways will receive more than a reasonable share of attention in composing plans for a coordinated transportation system. There is no evidence to support his a priori judgment. To date, Tri-State seems to have been almost pre-occupied with rail and water transportation. One of its first major research reports deals with an inventory of the rolling stock and other equipment owned by the commuter railroads in the metropolitan region. This was the first comprehensive report ever compiled on this subject. I would have assumed that Mr. Taber, as a railroad buff, would have been delighted with it.

It should also be noted that a very large part of Tri-State's budget to date has gone for demonstration projects involving rail commuting.

Mr. Taber is evidently of the opinion that "land use" is not a proper concern of a regional transportation plan. S-222 expresses the point-of-view on the relationship of transportation and land use that has emerged as a result of several decades of experience and the investment of millions of dollars in inadequate studies.

The close inter-relationship of transportation and land use on a regional scale was first established in the 1920's by the "Plan for New York and Its Environs," the study which launched our Regional Plan Association. However, almost 25 years passed before official agencies succeeded in breaking out of the old straight-jacket, in which the engineers wore blinders to remain oblivious to the impact their transportation projects would have on land use and how the latter would alter population and job locations to create completely new transportation loads.

Transportation engineers used to defend their shortsightedness by arguing, with a measure of justification, that they had to stick with transportation as a constant which influenced variables, such as where people would live or work, but that they would be lost if they sought to take into account the latter changes to modify transportation decisions. To do the latter would make everything a variable, including transportation and they would have more balls in the air than they could juggle.

The computer has changed all this. Beginning with the Detroit regional study in the early 1950's, computerized studies in the Chicago, Washington, Pittsburgh and Philadelphia metropolitan regions have made increasingly sophisticated correlations of the multitude of factors whose interplay shapes urban growth.

Tri-State is programming the most advanced correlation yet undertaken. Such a correlation permits Tri-State to make long-range land use plans by a deliberate choice of transportation decisions designed to yield a rational relationship of population, employment and open space with modes of movement of people and goods.

Instead of saying "we will provide a new transportation route and we do not care what it triggers in the way of land use," Tri-State will seek to anticipate what will be triggered and will design the transportation facility to produce a certain land use potential.

In doing this, Tri-State is following the directives of the Congress of the United States which said that federal highway funds would be given to the states only if their plans were part of "a continuing comprehensive transportation planning process" and that transportation should be planned "with due consideration to their probable effect on the future development of urban areas."*

*Section 9, Federal-aid Highway Act of 1962 (Chapter I of Title 23, V.S. Code). This law establishes July 1, 1965 as the cut-off date for states that have failed to base their highway plans upon comprehensive regional plans.

In spelling out the meaning of the federal law on this matter, the Bureau of Public Roads has defined "comprehensive planning" as follows:

"Comprehensive - the comprehensive character of the planning process requires that the economic, population and land use elements be included; that estimates be made of the future demands for all modes of transportation both public and private for both persons and goods; that terminal and transfer facilities and traffic control systems be included in the inventories and analyses; and, that the entire area within which the forces of development are interrelated and which is expected to be urbanized within the forecast period be included." Source: Instructional Memoranda, Bureau of Public Roads, March 27, 1963.

The recently adopted "Urban Transportation Act of 1963" (the Williams' Bill for federal aid to urban transit) also contains a requirement for "the comprehensive planned development of the urban area" as a condition for eligibility for funds. As with the Highway Act, the administrators of this law will require that public transportation be planned on the basis of a land use forecast.

Those who have never thought of land use as anything but a local zoning ordinance are understandably puzzled that legislation for a regional transportation agency should provide for land use studies as an essential, related and co-equal function with transportation itself. However, a little thought should make it clear that the larger, over-all land use configuration resulting from population densities, housing construction, retailing patterns and employment distribution is determined by economic laws to which local zoning adapts. Land values reflect and shape residential desirability, commercial location, and industrial utility. However, underlying all other factors is the time-distance factor in the transportation of people and goods. Transportation, therefore, is a prime lever in determining land use on the metropolitan scale.

It is only after regional economic and transportation factors have determined that there can be such a community as Madison, N.J., that Mr. Taber's local planning board can begin to regulate land use on the micro-scale of the municipality in the form of zoning. If Mr. Taber's local board were moved bodily into Hoboken, which regional forces have cast in a different mould, they could stand on their heads and zone to their heart's content, but they could not make of it another Madison.

"10. The Commission should definitely not have 'Sovereign Immunity', to put it above the Courts; the right of appeal by the public; and to make it a bureaucratic, and probably arrogant, 'Super-State'. It does not have to report to the public, nor is it mandatory that its accounts be regularly audited."

I am not an attorney and, therefore, do not presume to any authoritative knowledge of the legal implications of "sovereign immunity". I do know that the State of New Jersey enjoys "sovereign immunity". S-222 would make Tri-State "an instrumentality of the party States exercising a governmental function." Why would Mr. Taber want to deprive our state of any of its inherent rights when it acts in consort with two other sovereign states? If our Commissioner of Highways is protected by "sovereign immunity" when he acts as an official of the state in the exercise of his lawful duties, why should he be stripped of it when he sits down with the officials of three states to formulate transportation plans and administer demonstration projects?

Mr. Taber's charge that Tri-State does not have to report to the public is simply not true. S-222 provides that "the Commission shall report annually to the Governors and Legislatures of the party States with respect to its operations and finances and shall provide such financial reports as shall be required from time to time under the laws of the party States." Mr. Taber should know that any official report filed with the Governor and Legislature pursuant to statute is a public record.

As to audits, S-222 provides that "each of the party States reserves the right to require such audit or audits as such State may from time to time consider proper." In addition to state audits there will, of necessity, be audits by the federal Bureau of the Budget since federal funds are involved.

"11. The limitations of the Commission are not defined; its powers are too broad; it should not have the right of condemnation; nor the right to refuse to produce its files and records. Anything cloaked in secrecy, and kept from the public, is suspect."

S-222 does define the legal limitations within which the Commission is to operate. Mr. Taber's "bill of particulars" names only two powers which he holds to be "too broad": the right of condemnation and the alleged secrecy of files and records.

The right of condemnation is not granted to the Tri-State Commission by S-222. It is referred to in the paragraph entitled "Contingent functions", where in it is made "subject to the future enactment of concurrent legislation." This whole paragraph could be dropped without any effect upon Tri-State's present function, which is planning.

To the best of my knowledge, there is nothing in S-222 which makes the files and records of Tri-State inviolate. Tri-State's files and records obviously cannot be open to any citizen who walks in off the street. In this sense, the files and records of every agency of government are "secret". Orderly administration would be impossible were every citizen to have access to official files and records when and as he pleased. Those of Tri-State would be as accessible or as inaccessible as the files or records of any other division of state government.

"12. To what extent the Commission will interfere with, over-ride, or supersede, Municipal, and County Planning Boards and Agencies, is not known, but as written, S-222 poses a dangerous threat to the long-established "Home Rule" policy of New Jersey, and the right of the local homeowner, as represented by his municipal Planning Board, to make the community in which he has invested his life-savings, and seeks to raise his family, the kind of community he wants it to be."

Mr. Taber is saying here that S-222 gives the Tri-State Commission the power to "interfere with, over-ride, or supersede" local planning boards and that the only question is "to what extent" they will do it. No language in S-222 can be construed, even by the broadest interpretation, to give the Commission any power whatsoever over local boards. The only language in the bill which refers to Tri-State's relations to local boards is paragraph 1 (b) of Article IV. It reads as follows:

"The Commission shall also act as liaison to encourage co-ordination among and between all agencies and entities, governmental and private, charged with or having a substantial interest in the planning or providing of transportation and other related public facilities within any part of the compact region, or in the regulation of such facilities or of their services, or in the solving of problems connected with transportation and land use and development. In furtherance of this function, the commission is authorized to report to the party States on the regional implications of any transportation plan or program and other related development plans or programs proposed by any such agency or entity."

I do not know what Mr. Taber understands by "the long-established 'Home Rule' policy of New Jersey." The structure and function of government is determined, in the last instance, by law, and not by "policy". Our state constitution grants the power to regulate land use through zoning solely to the municipalities and the Legislature cannot grant this power to Tri-State or to any other body.

It is well for Mr. Taber to speak for the local homeowner and his efforts to guide the community along the lines he desires. I am also a local homeowner in New Jersey and, as a professional planner, I have spent many years working with municipal planning boards. I believe that I appreciate the local interest as much as the next man. However, I am also thoroughly aware of the handicaps under which local planning operates. The local board is forced to work with blinders that limit its vision to the town boundaries. Does Mr. Taber know what will be the likely impact of Expressway Route 24 on Madison? He is fortunate if he even knows its final alignment. Does he know whether express buses will operate on the expressway? What will be their impact on rail use? What will be the ultimate use of the Great Swamp, which is adjacent

to Madison? What will be the impact of Route 287 on the area between Madison and Morristown? Or to what extent the forthcoming changes in time-distance for travel in Northern New Jersey will rearrange the present pattern of employment location and quality residential areas and possibly induce a part of Madison's homeowners to relocate, with a consequent restructuring of its population in several decisive categories?

Could not Mr. Taber's local board do a better job of planning for the future of its community if Tri-State's batteries of computers yielded information that would lift even a small corner of the veil which now conceals the shape of development during the next few decades? And if Tri-State's studies resulted in long-range regional plans that could give local planning a sense of certainty, would not "home rule" decisions take on more meaning rather than to remain so largely a shot in the dark, as is the case now?

"13. The Bill definitely does not protect the rights and interest of the thousands of taxpayers who reside in the ten New Jersey counties involved in the proposed legislation."

This is Mr. Taber's summary conclusion. But it rests upon a misreading of the bill, a misunderstanding of the nature of state government and interstate compacts, and a lack of familiarity with the current generation of computerized, comprehensive metropolitan regional plans.

Mr. Taber sees the transportation solution in the restoration, improvement and extension of rail service. Regional Plan Association has been beating the drums for such a rail program since the late 1940's (and on another level since 1929). However, RPA has invested \$1½ million in research over the last five years to look into the future of this metropolitan region. Our documented findings spell out what we have learned about economic, population and land use trends. A reading of these findings cannot fail to impress upon the objective reader that the one billion dollars required to modernize our commuter railroads would solve only one aspect of the transportation problem, that of getting commuters into Manhattan and into some of the employment centers located en route, such as Newark, White Plains or Brooklyn. However, only 9% of those who go to work from homes in Northeastern New Jersey are employed in Manhattan. The population of New Jersey's nine Northeastern counties was about 4½ million in 1960. It will be nearly 7½ million in 1985. Where will these additional three million live? Where will the additional one million jobs required to support them be located? In large part the location of the new homes and new jobs will be determined by the additions and improvements made to our transportation network, including road, rail, air and water. We can either do it piecemeal and haphazardly -- foreseeing nothing and struggling from one transportation crisis to another -- or we can prepare a transportation plan which takes into account the impact it will have on population, employment and land use and will use transportation planning as a land planning lever.

Many of our citizens are made uncomfortable by the knowledge that

3 million more people and the economic growth to provide one million more jobs is forecast for Northern New Jersey, with all its implications for far-reaching changes. They prefer to find comfort and security by lulling themselves into the belief that it just will not happen. Tri-State, therefore, is very upsetting to them because its very existence is predicated upon the assumption that it will happen. They would like to abolish Tri-State and occupy themselves with partial studies designed to yield solutions in terms of yesterday rather than of tomorrow. Such obscurantism might be comforting to them, but it will prove disastrous to our State.

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Since the contents of this letter will be of interest to many others concerned with this issue, may I feel free to make copies available to them? I shall assume that I have your consent unless I hear from you to the contrary.

The documents which you forwarded for my comment are enclosed herewith as you requested.

Sincerely yours,

(signed)

Ernest Erber
Areas Director
Regional Plan Association

EE:jvc

Enc.

cc: Thomas T. Taber