

# New York as a Cough-In

By Ross Sandler  
and David Schoenbrod

The coming increase in transit fares will have a severe, immediate and detrimental effect on public health. The political facts are equally clear: subsidies for auto users continue as usual, while the transit rider is saddled with an additional tax.

The state and Federal Governments both estimate that a transit fare increase of 15 cents (43 per cent), to 50 cents, will result in a loss of riders amounting to about 10 per cent, or 600,000 trips per day.

Past evidence indicates that 20 per cent of the lost riders will still make the daily trip but by means other than mass transit.

This means about 37,000 additional cars entering the central business areas of Manhattan, of which about 9,000 will enter in the morning rush hour, 7 A.M. to 10 A.M.

Additional vehicles increase emissions as well as congestion, which itself increases pollution.



New York's severe congestion is such that even these few additional autos will cause an immediate increase of 15 per cent to 20 per cent in carbon-monoxide pollution.

The Federal Environmental Protection Agency reacted to the fare increase by declaring that it will "detrimentally affect the public health and welfare of people living and working in the entire metropolitan New York area."

By now all of us know what that means. Carbon monoxide is deadly in large doses and has been associated with dizziness, headaches, nausea, general fatigue, impairment of memory and loss of muscle control at lesser concentrations. Carbon monoxide can harm pregnant women and reduce the size of babies at birth.

A California study showed that an increase in death rates occurred on days of highest atmospheric carbon-monoxide concentrations.

Supporters of the fare increase accept the increase as necessary. They are wrong. There are other means to raise as much, or more, cash for mass transit without suffering public-health evils; one of these unused revenue measures is required by Federal law.

Under the Clean Air Act of 1970, the Mayor and Governor were required to prepare a practical plan to abate New York City's air pollution. Gov. Nelson A. Rockefeller and Mayor John W. Lindsay signed the plan in

April, 1973, and the Federal E.P.A. approved it in June, 1973.

The plan seeks to decrease private-vehicle use and to increase use of alternative modes of transportation, especially mass transit.

A key element—tolls on the free Harlem and East River bridges—was



explicitly intended to raise funds for mass transit while also serving as an incentive not to use cars.

The toll plan would, if fully carried out, ultimately raise \$175-million for mass-transit subsidies—about \$40 million more than the 15-cent fare increase.

The city and state agreed to have tolls fully operational by last Jan. 1. But Mayor Beame and Governor Carey refused to act and, as a result, they are in violation of Federal law. A suit is now pending in Federal district court to hold the Mayor and Governor in violation of their toll responsibilities.

The plan also suggested other revenue measures, among them parking taxes of \$180 million. Again the Mayor and Governor have not acted.

Raising the fare is not necessary. Charging bridge tolls is only one of several options to raise funds for mass transit, including the option of increased direct state subsidies through a regional transportation tax.

Mayor Beame and Governor Carey chose instead to tax the transit rider directly, the most regressive revenue measure available. The poor will suffer economically more immediately from the choice, but rich and poor alike shall together suffer the health effects.



The decision on the transit fare came without forewarning and without public debate. It could and should have been made with full consideration of its widespread implications. The Mayor and Governor chose instead to seize a political opportunity to raise fares under the cloak of the city's fiscal crisis. To suggest that their choice was necessary is not true, and even worse, allows the Governor and Mayor to avoid responsibility by hiding behind a smokescreen.

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THURSDAY

AUGUST 28, 1975

The Metropolitan Transportation Authority board should increase the fare to 55 cents rather than cut essential service and maintenance from the subway and bus budget, as it now plans. Governor Carey promised the money needed to hold the fare at 50 cents until Jan. 1, 1982, but his lack of performance means that passengers will encounter less reliable service and dirtier subways in the months ahead — and a fare increase to 70 cents in 1980 or 1981. Riders will end up paying more for worse service unless the board exercises its independent authority to stop the political flimflam.

Officials traditionally promise to save the fare but duck the less-popular question of how to raise the money by urging Congress to pay. The inevitable deficits are hidden by cutting service and maintenance until it's politically

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## For a 55-cent fare — now

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opportune to declare a huge fare increase, such as the 42 percent hike in 1970 and the 44 percent hike in 1975. This is the worst kind of fare policy for family budgets and maintenance of transit service.

Past M.T.A. boards, appointed by the Governor, have cooperated in this sham despite their statutory duty to safeguard the system. Board meetings were short, sweet and unanimous. Now, however, with new faces on the

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# Subways: Cash & Carey

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By Ross Sandler and David Schoenbrod

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board, disagreements and budget problems have begun to come out. But the board has far to go.

The board recently acknowledged a \$10 million gap for the fiscal year that started July 1. But the gap in the funding needed for decent service is actually closer to \$70 million. The M.T.A.'s budget cuts out \$13.3 million in bus runs, bus cleaning and summer subway service although the city recommended more service to relieve overcrowding even before the gasoline crunch.

The budget also omits \$9.2 million needed to wash subway cars more often than every seven weeks and continue periodic repainting of stations and elevated structures.

Most serious of all, the budget denies the transit engineers' request for a \$47.8 million program to overhaul subway cars every 180,000 miles that was "temporarily" stopped several years ago. Failure to do routine maintenance will mean fewer cars to carry people and more trains that get stuck in the tunnels.

The gap will worsen when the labor contracts expires next March. The projected inflation in wages and other costs means that the deficit will increase to about \$225 million in the year beginning July 1, 1980, and go higher still the next year. By contrast, the flap over the weekend half-fare involved only \$10 million in annual savings.

Fulfilling the Governor's promise to

hold the fare until 1982 requires an extraordinary effort, but state officials have done little except call for Congress to pay. The Governor also relies on Washington to fund 80 percent of the \$800 million capital program to repair the damage done by inadequate maintenance in the past. For over a year, he has taken personal credit for getting that money, but has yet to produce a Federal dollar.

With its obvious economic problems, the M.T.A. board can follow through on its call for decent transit and fiscal integrity only by taking actions that will be unpopular with the Governor and can at best win grudging acceptance from the public.

First, it should immediately present the Governor with the bill for his promise. The M.T.A.'s fiscal plans now understate maintenance needs and ignore the inevitable wage increase.

Second, if the money is not forthcoming, the board should begin to increase the fare in small steps, with inflation, to fund adequate maintenance and service.

Third, the board should work to keep down the total cost of the new labor contract by seeking substantial improvements in work rules.

Fourth, the board must press for a permanent state revenue measure to fund its operating and capital deficits.

No M.T.A. board has ever dared to take such initiatives, but all of them are necessary and today is a time of

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particular opportunity. Transit ridership has increased in the last two years and people now recognize that inadequate transit has played a substantial role in the exodus of jobs from the city.

With leadership, the transit system can spur an economic revival by making New York the only city where most people can get to work comfortably without having to deal with the gasoline crunch.

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NEW YORK, FRIDAY, APRIL 14, 1978

## Tunnel Vision, Too

By Ross Sandler  
and David Schoenbrod

So the 50-cent transit fare has been "saved" again. But what about the transit system? Governor Carey and Harold L. Fisher, the Metropolitan Transportation Authority chairman, whom he appoints, have once again focused on postponing a fare increase without a whisper about the reality of transit finances.

Years of bad management have undermined transit service, ruined its equipment, driven away riders and increased the fare. This spiral will continue until someone accepts the responsibility for transit finances and management.

To "save" the fare, politicians have made the Transit Authority defer so much repair and replacement of equipment that it would cost \$1 billion annually for a decade to catch up, according to official estimates.

With only \$140 million available annually for such rehabilitation, transit officials estimate that twice as much is required to upgrade decaying signal and power systems and do other work essential for safety and reliability.

And \$200 million more for each of five years is needed to bring conditions encountered by bus and subway passengers up to reasonable standards. We make this tentative estimate in the absence of any official, financially feasible program. We have in mind more buses, renovating most subway stations, and rebuilding the older subway cars to provide air-conditioning, reduced noise, functioning doors and graffiti-resistant paint. Cleaner, brighter conditions, and television surveillance cameras, would also make the subways safer.

The state estimated in January that in 1978-79 there would be, without a wage increase, an operating deficit of \$51.2 million. This deficit would require a five-cent fare increase or extreme reductions in service or maintenance. The recent wage settlement adds \$49 million in annual operating costs to be met by increased subsidies. But where will the money come from to cover the original projected \$51.2 million deficit?

When faced with transit money needs, past governors have said they would get the money from Washington next year. This year, however, Congress will divide up Federal transit funds for the foreseeable future. Yet, Governor Carey has so far failed to lay the groundwork for success.

First, he has not personally joined in the Washington legislative battle in which he could make a difference. The Carter Administration proposes no real dollar increase in national transit funding and no relief from the discrimination against the seven largest transit cities. The Transit Authority, serving almost 30 percent of the nation's transit riders, would get only 11 percent of the fare subsidies. Capital funds would go largely for new rail systems, not rehabilitation.

The Congressional transit subcommittee chairmen, Representative James J. Howard and Senator Harrison A. Williams Jr., both New Jersey Democrats, seek a better deal for the older rail systems, but Governor Carey's spokesman initially applauded the Carter bill.

Second, the state has not informed New York's Congressional delegation of bottom-line money needs. The lack of any realistic financial plan for transit confirms the view that New York State does not know what it's doing.

Third, the Governor has not shown Congress that the state has stretched its own resources. While Governor Carey plans a \$700 million state-tax cut, state transit aid has failed to keep pace with inflation and is allocated on an anti-city formula.

The Governor has not said whether he will get the new money for the transit wage settlement from the state budget or Washington. Neither has he responded to a state advisory panel that has recommended four transit-financing mechanisms. Nor has he granted Mayor Koch's request to trade in Westway for almost a billion dollars in transit-rehabilitation funds. Instead, the Governor prefers to spend this available transportation money largely on a landfill while he hides a staggering shortfall in transit-rehabilitation funds. Lacking a program or priority for transit funding, he cannot expect to shift the burden to Congress, which is tired of being dubbed the big spender.

M.T.A. Chairman Fisher said recently that riders would stick with his system regardless of the fare or service because auto drivers are "rubber-oriented" and other people are transit riders. By putting transit riders down as mindless, he lets himself off the hook for the inadequate transit conditions that force people into cars, despite the highest car operating costs and slowest traffic speeds in the country, and helps to push other people and their jobs out of the city.

Owning up to the consequences of transit deterioration and the system's financial needs is the first step. The system is a state system, but the Governor would like to go to the voters in November as the savior of the fare, and let the transit managers take the rap on service. That is a formula for electoral success and transit ruin.

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Editorial Page

# Congress Must Spell Out Where the Burdens of Clean Air

By DAVID SCHOENBROD

My efforts to make the Clean Air Act work, both as a litigator for a major environmental group and as a law teacher, have convinced me that the act's basic structure is unsound. The same fault runs through the 1970 legislation, the 1977 amendments and the Reagan administration's proposals for reform.

They all would legislate policy goals rather than rules of conduct. The 1970 act, for instance, ordered the Environmental Protection Agency to set numerical air quality goals sufficient to protect health and said that these goals should be attained no later than 1977. However, the act did not itself set controls on the smokestacks and traffic that make the air dirty, although it did place emission limits on new cars. Congress put the job of choosing the controls on conduct largely on EPA and the states.

This arrangement invited trouble. Congress had announced the good news of clean air and left the EPA and the states to break the bad news—how the cleanup burden would be allocated. This burden would fall not just on seemingly anonymous corporations but also on people whose jobs, driving habits and family budgets would be touched. The act provided the EPA and the states no principles with which to apportion these costs and inconveniences among states, industries, firms or groups of citizens. It is no wonder that the states and EPA under all administrations have failed to march to the statutory beat, especially since vigorous enforcement brought stern reproaches from the congressmen who voted for the statute almost unanimously but whose constituents must now bear the cleanup cost.

The legal duty of the EPA and states to reduce emissions to meet air-quality goals depended on science's ability to relate emissions to air quality. But the mathematical models involved are imprecise and open to manipulation. "Often a company finds it cheaper to hire modelers and lawyers than to put in pollution-control equipment," according to former EPA Administrator Douglas Costle. State and federal officials routinely accepted projections of compliance with the act that they knew to be false, before the Reagan administration took office.

Is the problem that the act requires officials to protect health regardless of cost? While air-quality goals were theoretically supposed to protect health absolutely, they were set from the beginning with an eye to cost. And when these compromise goals weren't met by the 1977 deadline, Congress extended it to 1982 or 1987, depending on the pollutant. The failure to meet the 1982 deadline requires legislation to grant a

new postponement, but the legislative process is stalemated. The administration's proposal isn't to restructure the act or jettison the theoretical mandate to achieve health-based clean-air goals, but to have Congress delegate to the administration the discretion to grant further postponements.

The act's structure is bad for both the environment and the economy. Calculating the controls theoretically needed to meet air-quality goals is inherently complex and made more so by the continuing failure to meet deadlines, by amendments to the act and by new scientific data. As a result, decisions to build plants and efforts to control old ones must go through a process so arcane that EPA can't keep track of what it requires. The system breeds uncertainty and delay.

The sponsors of the 1970 act said that they wrote a statute to take discretion away from federal and state agencies because the public had grown to distrust how officials used their power. But the 1970 act required stronger controls on the use of cars and some industries than the public would support and so gave rise to the 1977 amendments that again enlarged official discretion. The Reagan administration supposedly has a conservative distrust of administrative power, but its approach would enlarge that power still further. Such discretion provides fertile ground for the sort of scandal that has already rocked the EPA.

Congress and the president could enact a clean air law that is balanced yet avoids the broad discretion and overwhelming complexity of existing law. Motor vehicles, electric generating stations and other large industrial boilers account for from half to almost all of the emissions of the major pollutants. A statute could set emission limits on these sources and more. Such legislation would give industry clear instructions and give EPA workable requirements to enforce.

Politicians have avoided legislating rules of conduct rather than abstract goals because the abstractions allow them to be for health, the economy, the environment and regulatory reform all at once, without the contradictions becoming too evident. A rule of conduct, in contrast, tangibly reveals one's priorities. It strikes a balance between clean air and the cost of making it cleaner and it decides upon whom the cleanup burden will fall.

Legislating rules of conduct would require compromise, which is exactly what Congress has avoided so far by repeatedly promising that perfectly healthy air will be delivered at some future date. With each promise, the act has grown longer and more complex. It has become too cumber-

some for the legislative process to proceed with coherently. Yet congressmen and administration officials blame their year failure to revise the law on the supposed intransigence of environmentalists and industry instead of admitting the workability of their own opportunistic approach. In my experience as an "environmentalist" lawyer, I often found that the lawyers on the other side could agree on the need for compromise and, indeed, on the basic form that it might take. But few lawyers and organizations cannot adopt pollution-control rules that bind the nation. That takes official decisions, decisions that Congress refuses to make and prevents the EPA from making by ordering it to act through an overly complex and artificial statutory format. So the opposing sides in environmental conflicts must play out their roles under the law. As a result, I have been called unreasonable and obstructionist by the Journal, among other publications, while my opponents are labeled anti-environmental and obstructionist in other quarters.

Until there is a clean-air law that speaks to conduct rather than abstract goals, public health and regulatory reform will continue to serve as buzz words that mask the failure of Congress and the president to do their jobs by making legislation that resolves the core issues of policy.

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