

Analysis of Legislative Proposals of China's Comprehensive Transportation Law

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Abstract

Comprehensive transportation has become an indispensable and important part of our country's contemporary economic and social development. At present, our country's law on the development of comprehensive transportation and adjustment of comprehensive transportation relations is still in its infancy. Since our country's comprehensive transportation development practice and related theoretical research are not mature, there are not many legislative experiences available for reference in this field. This article attempts to provide a certain reference and reference for the drafting and formulation of our country's comprehensive transportation law by analyzing the necessity, feasibility and principle of the legislation.

Key words: Comprehensive transportation law; Legislative proposals; Analysis

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With the rapid development of China's transportation construction, transportation legislation has made great progress. As early as November 2016, the Ministry of Transport issued the "Implementation Opinions on

Improving the Comprehensive Transportation Regulation System". The implementation opinion has clearly proposed to formulate a comprehensive transportation promotion law, and explained the legislative purpose and legislative focus. That is to say, "from the perspective of administrative management, the comprehensive transportation law mainly regulates the overall planning, overall coordination and mutual integration of comprehensive transportation development." The legislative work of the comprehensive transportation law is put on the agenda of the transportation department. This article analyzes the necessity, feasibility and principle of comprehensive transportation legislation.

1. LEGISLATIVE NECESSITY

1.1 The Rapid Development of Comprehensive Transportation Requires Legal Regulations and Guarantees

Promoting the construction of a modern comprehensive transportation system, constructing an internal and external transportation corridor network, building a modern and efficient inter-city transportation, creating an integrated and integrated transportation hub, and promoting the development of low-carbon intelligent and safe transportation services require the regulation of comprehensive transportation laws and guarantee. In particular, the current comprehensive transportation has not yet fully integrated development, and the lack of adequate coordination with the development and utilization of land and other resources, the protection of the ecological environment, etc., so that the development of comprehensive transportation must have a complete legal system and legal system norms and guarantees. Therefore, the establishment and improvement of comprehensive transportation laws have a unique standardization and guarantee function for the rapid development of comprehensive transportation and the

construction of a convenient, smooth, efficient, safe and green modern comprehensive transportation system. Moreover, the comprehensive transport law should play a role of standardization and guarantee in the proper meaning of the implementation of the comprehensive transport development goals proposed in the national “13th Five-Year Plan”.

It can be seen that the establishment and improvement of the comprehensive transportation legal system is an internal need to meet the rapid development of comprehensive transportation, and is the most ideal way to regulate and guarantee the development of comprehensive transportation. It is irreplaceable for the construction of a modern comprehensive transportation system that is convenient, smooth, efficient, safe and green.

1.2 The Needs for the Improvement of the Current Comprehensive Transportation Law in China

While China’s comprehensive transportation has developed rapidly, our country’s current comprehensive transportation laws are still not perfect. Compared with the requirements for the construction of modern comprehensive transportation systems, there is still a large gap, and it cannot fully adapt to the new development of modern comprehensive transportation. The current comprehensive transportation legal system is mainly composed of laws that adjust single transportation methods and transportation ports. Some of these current laws are not perfect themselves, and some have not been revised and perfected for a long time. Some contents have seriously lag behind the development of practice.

The specific performance is the following three aspects. First, there are defects in the comprehensive transportation legal system structure. Second, the content of the comprehensive transportation legal system is flawed. The current single transportation methods and the legislation of the transportation ports themselves are not perfect. The current comprehensive transportation legal system has flaws. Third, there is a lack of necessary and sufficient coordination between comprehensive transportation laws and related laws.

2. LEGISLATIVE FEASIBILITY

The feasibility of China’s comprehensive transportation law legislation is shown in the following three aspects.

2.1 The State Attaches Importance to Favorable Policy Guidance for Comprehensive Transportation Development

Laws and policies are two important institutional arrangements for realizing the rule of law. The Eighteenth National Congress of the Party emphasized that ruling the country according to law is the basic strategy for the party to lead the people in governing the country, and

the rule of law is the basic way to govern the country. The status and effectiveness of the law is higher than the policy. However, tedious procedures such as legislative argumentation, legislative planning, drafting, and deliberation of laws are prone to cause lag. In order to solve the problem of lagging laws, the formulation and implementation of laws are inevitably affected by policies. This is because policies and laws are an integral part of the superstructure of society and are of equal importance to state management. The relationship between policies and laws is as follows: policies guide the formulation and implementation of laws; mature policies are transformed into laws through practice, and their implementation is guaranteed through the force of law. In a legalized country, policy legitimacy is the fundamental political requirement. Therefore, when constructing a new legal system, the influence of national policy orientation cannot be ignored.

In the past, our country’s comprehensive transportation development policies reflected the country’s emphasis on comprehensive transportation development, but at the same time, these policies were more embodied in principle and often lacked specific supporting special plans. Our country’s current comprehensive transportation development policy is more operable and more in line with the needs of the country’s comprehensive transportation practice development, which greatly enhances the national policy’s strength and attention to comprehensive transportation development and provides a policy basis for comprehensive transportation legislation.

2.2 Basic Support of Current Comprehensive Transportation Laws

At present, our country has formed its own legal system in the fields of waterway, highway, railway and civil aviation. Especially in the field of water transportation, although the “Shipping Law” has not been formulated, it has formed the “Maritime Law”, “Port Law”, “Law Law”, “Maritime Traffic Safety Law”, “Inland River Traffic Safety Management Regulations”, “International Maritime Regulations”, etc. Although the legal systems of various single transport and transport port stations are not perfect and do not reflect the characteristics of integrated transport, the accumulated legislative experience and results provide a certain basic support for the establishment of a programmatic comprehensive transport law. When our country formulates a comprehensive transportation law with the nature of the basic law in the future, it can make full use of the basic supporting role of the existing single transportation methods and the transportation port standing method. Some provisions can be made for basic matters and special matters of various single modes of transportation and transport ports in order to effectively control the legal system of various single modes of transportation and transport ports to solve the coordination problems between the comprehensive

transport law and related laws on the development and utilization of land and other resources, ecological environmental protection and other related laws.

2.3 Foreign Comprehensive Transportation Legislation Experience Can Be Used for Reference

The construction and improvement of the comprehensive transportation legal system is mainly realized by the state through the formulation of corresponding laws. In developed countries, comprehensive transportation laws occupy an important and indispensable position in the transportation legal system. Due to the complexity of integrated transportation, no country in the world has formulated a codified comprehensive transportation law that comprehensively and specifically regulates all modes of transportation and transport ports. Some countries or regions usually construct comprehensive transportation laws through a series of related laws system. However, some countries or regions have programmatic basic laws on comprehensive transportation to control the comprehensive transportation legal system. This type of legislative model is particularly prominent in countries such as the United States and Australia. As a country that has attached importance to comprehensive transportation legislation earlier, these two countries have formulated a series of laws on integrated transportation to regulate and guarantee the development of integrated transportation.

Taking the experience of US legislation as an example, in order to achieve the development of a safe, reliable, efficient, green and sustainable integrated transportation system, the US transportation law has continuously expanded the scope of adjustments through legal amendments to ensure integrated transportation integration and sustainable development. The successful experience and advanced practices are worthy of reference for our country. As the basic law of comprehensive transportation, the "Transportation Comprehensive Law of 2010" in Victoria, Australia, is a way to guide the law of various modes of transportation, which is worthy of reference for our country. In addition, in order to realize the development of green transportation, the EU transportation law has adopted a series of transportation policies covering transportation infrastructure, planning, construction, use, maintenance and management to ensure the integrated development of integrated transportation, which is worthy of reference for our country.

Due to the different national conditions of various countries, our country has not yet achieved a high degree of legalization in the field of comprehensive transportation. Drawing on successful foreign legislation experience and advanced practices must avoid blind transplantation and absorption under the premise of basing on my country's national conditions and in line with the country's overall economic and social development needs.

3. LEGISLATIVE PRINCIPLE

As for general legislation, it is only after the legislative practice is relatively mature that it starts to regulate the legislation, so the legislation has a certain lag. However, this legislation is when the comprehensive transportation development practice is not yet mature, so this legislation has certain exploratory and advanced nature. At the same time, the legislative orientation of comprehensive transportation law guidance rather than regulation also determines that it is different from general legislation in the design of legal systems and legal provisions.

3.1 Combinations of Prospect and Feasibility

Legislation needs to be forward-looking, that is, to have certain foresight or anticipation of future development trends and development requirements, and to have flexibility in some new fields, new formats, and new methods that may emerge. On the other hand, the legislation should also fully consider the feasibility and economic rationality of the implementation measures. For example, the requirements for environmental protection must not only consider the future requirements, but also be based on reality, and should not be too high or too low.

3.2 Fairness and Efficiency Are Equally Important

When designing the legislative system, we must not only focus on improving efficiency, but also embody the fairness of industry and social development. That is, we must not only solve the problem of resource allocation optimization, but also eliminate the imbalance in development between regions, highlight the coordinated development of urban and rural areas, and give priority to the development of public transportation, attach importance to the construction of slow-moving systems and other facilities that reflect social equity.

3.3 Make Overall Plans and Pay Attention to Coordination

In the legislation, the idea of overall planning should be fully reflected, not only to ensure the unified planning and management, but also to recognize the complexity of the integrated transportation system. It is also impossible for a department to perform all its related responsibilities completely after the functions are integrated. In legislation, the interests and responsibilities of all parties must be well coordinated.

3.4 Guide Is the Main, and Control Is the Supplement

As for the means of promoting development, we should try our best to adhere to the principle of mainly using economic adjustment means and supplementing with regulatory measures. Legislation needs to give more consideration to industrial policies, reasonable pricing mechanisms, encouraging fair competition, government preferential subsidies and other economic guidance or incentives. The restrictive and normative measures should not emphasize excessively.

4. CONCLUSION

The comprehensiveness of the comprehensive transportation system and the development level of comprehensive transportation are recognized as the embodiment of comprehensive transportation strength. While the rapid development of integrated transportation provides huge benefits for economic and social development, its own development also faces a series of outstanding problems that need to be solved. Due to many factors in the historical and practical development process, our country has not yet established a theoretical system of comprehensive transportation legislation, or a complete comprehensive transportation legal system. The specific suggestions for perfecting our country's comprehensive transportation law proposed in this article have important theoretical reference value for the improvement of our country's comprehensive transportation legal system and the formulation of comprehensive transportation laws in the future.

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