S. HRG. 108–970

INTERCITY PASSENGER RAIL FINANCE

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

JUNE 5, 2003

Printed for the use of the Committee on Commerce, Science, and Transportation

U.S. GOVERNMENT PRINTING OFFICE

85–625 PDF WASHINGTON : 2013

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

JOHN McCAIN, Arizona, *Chairman*

TED STEVENS, Alaska
CONRAD BURNS, Montana
TRENT LOTT, Mississippi
KAY BAILEY HUTCHISON, Texas
OLYMPIA J. SNOWE, Maine
SAM BROWNBACK, Kansas
GORDON H. SMITH, Oregon
PETER G. FITZGERALD, Illinois
JOHN ENSIGN, Nevada
GEORGE ALLEN, Virginia
JOHN E. SUNUNU, New Hampshire

ERNEST F. HOLLINGS, South Carolina, *Ranking*
DANIEL K. INOUYE, Hawaii
JOHN D. ROCKEFELLER IV, West Virginia
JOHN F. KERRY, Massachusetts
JOHN B. BREAUX, Louisiana
BYRON L. DORGAN, North Dakota
RON WYDEN, Oregon
BARBARA BOXER, California
BILL NELSON, Florida
MARIA CANTWELL, Washington
FRANK R. LAUTENBERG, New Jersey

JEANNE BUMPUS, *Republican Staff Director and General Counsel*
ROBERT W. CHAMBERLIN, *Republican Chief Counsel*
KEVIN D. KAYES, *Democratic Staff Director and Chief Counsel*
GREGG ELIAS, *Democratic General Counsel*

SUBCOMMITTEE ON SURFACE TRANSPORTATION AND MERCHANT MARINE

KAY BAILEY HUTCHISON, Texas, *Chairman*

TED STEVENS, Alaska
CONRAD BURNS, Montana
TRENT LOTT, Mississippi
OLYMPIA J. SNOWE, Maine
SAM BROWNBACK, Kansas
GORDON H. SMITH, Oregon
GEORGE ALLEN, Virginia

DANIEL K. INOUYE, Hawaii, *Ranking*
JOHN D. ROCKEFELLER IV, West Virginia
JOHN F. KERRY, Massachusetts
JOHN B. BREAUX, Louisiana
RON WYDEN, Oregon
BARBARA BOXER, California
FRANK R. LAUTENBERG, New Jersey

CONTENTS

INTERCITY PASSENGER RAIL FINANCE

THURSDAY, JUNE 5, 2003

U.S. SENATE,
SUBCOMMITTEE ON SURFACE TRANSPORTATION AND MERCHANT MARINE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10 a.m. in room SR–253, Russell Senate Office Building, Hon. Kay Bailey Hutchison, Chairman of the Subcommittee, presiding.

OPENING STATEMENT OF HON. KAY BAILEY HUTCHISON, U.S. SENATOR FROM TEXAS

Senator HUTCHISON. Good morning. I'm very happy to see all of you. This is the second hearing that the Commerce Committee has had pertaining to Amtrak reauthorization and today the Subcommittee is going to examine the financing issues for intercity passenger rail. I support Amtrak. I believe we can have a viable national passenger rail system. Unfortunately, we're not realizing that goal. Outside the Northeast Corridor, trains seldom run on time and service is abysmal. Lateness is often measured in days, not hours. Several years ago, when airlines' on-time rate fell below 75 percent, it was considered a national emergency. At Amtrak, on-time records under 50 percent are business as usual.

Rail critics point to low ridership as the reason why we starve the national system. I contend that starvation is a big part of the reason for low ridership. In the Northeast, a passenger can board a train at Union Station and reasonably expect to be in New York City, about 225 miles away, in less than 3 hours. If one of my constituents buys a ticket from Austin to Forth Worth, a trip 38 miles shorter than D.C. to New York, the best she can expect is a ride of 4½ hours.

The Texas Eagle meets its schedule 35 percent of the time, so we are going to try to improve service on the national system, but it will require creative thinking and innovative financing. We can't continue to fund Amtrak just enough to keep it going until the next crisis. What we must look at is private investment, state participation, and the cooperation of the freight railroads all being critical to achieving service upgrades. We will never have a better opportunity to accomplish this goal than now, in the reauthorization cycle. That is why I plan to introduce legislation to bring the national system up to Northeast Corridor standards.

In Texas, most trains are forced to operate at less than 30 miles per hour because of track conditions and freight operations. The national system needs at least $40 billion in capital improvements to allow both freight and passenger trains to meet a reasonable schedule. The Northeast Corridor requires approximately $10 billion to avoid an increased risk of accidents and a systemwide slowdown. Passenger rail should have the same commitment that we give to our highways and mass transit programs, and I believe Amtrak must meet these objectives to avoid deterioration of our rail system.

Making this investment will include leveraging capital and that is what I think is going to be the key ingredient. Municipal bonding and private investment are necessary components of any plan to restore and improve rail infrastructure. Making the investment will upgrade freight operations throughout the country and improve passenger service. In exchange for investment in upgrading the tracks, the freights must agree to allow Amtrak to meet its schedule.

I realize the critical role played by freight railroads in the American economy. I know this industry has seen better days. That is why I urge them to work with us to achieve a mutually beneficial solution. If we work together, freight railroads will enjoy capital improvements that they could not otherwise hope to afford as we secure the future of passenger rail in this country. It should be a win-win situation.

I agree with Amtrak's critics that the railroad stewardship of the national system has been inadequate, and I was deeply disappointed to see Amtrak's proposed 5-year capital plan call for nearly all of its capital budget to be spent in the Northeast Corridor. The national system deserves more than the crumbs left over after the Northeast Corridor needs have been met. We must be required to have an 80 percent on-time arrival rate, and once that has happened, we think that it can fairly be evaluated from a cost-benefit perspective. If Amtrak is unable to meet this performance requirement on a route 80 percent on-time delivery, that route should be open to other operators for bidding.

We must decide whether we want to create a viable national system or settle for a single rail corridor providing ever-deteriorating service to only one sector of the country. When President Eisenhower put the national highway system in place, he asked for the commitment of everyone for the entire system. That is what I think we should require for Amtrak today, not just the Northeast Corridor, but it will also be in the best interest of the Northeast Corridor if we have a full national system.

Thank you, and I would like to now turn to the distinguished Ranking Member of the Committee, Senator Hollings.

STATEMENT OF HON. ERNEST F. HOLLINGS, U.S. SENATOR FROM SOUTH CAROLINA

Senator HOLLINGS. Thank you very much, Madam Chairman. Let me commend you on having this hearing, and particularly your leadership on this score. As you well know, we have before the Committee a bipartisan bill of authorization for Amtrak with 32 co-sponsors, and we are delighted to yield to your leadership and work with you on fashioning your bill. Let's see if we can get something really done.

Let me ask consent that I include my prepared statement. I'm sorry for the conflict. I have to go to another one.

Senator HUTCHISON. Without objection.

Senator HOLLINGS. The frustration is that with this Administration, quite candidly, we keep meeting and we don't get anything from them. I don't know whether Mr. Rutter has a national plan for a national passenger rail system, but we will see and listen.

I've been on this Committee now since we joined with Transportation, even before the Transportation assignment was given to us. We've got a dedicated system for air, we've got a dedicated funding for the highways, we've even got it for the Coast Guard, the inter-waterways system and everything else of that kind, but when we come to the rail, we go down off on this tangent of privatizing, and by reference, we don't have to print the book, let me ask that this "Amtrak Privatization: The Route to Failure," by the Economic Policy Institute, be included.

Senator HUTCHISON. Without objection.

[The information previously referred to is retained in the Committee files.]

Senator HOLLINGS. I thank the Chairman. As you can see, we've tried privatization. In fact, when I was here, the private rails came to us and said, "for Lord's sakes, take it. We'll give you the equipment and everything else. We can't run it." They'd had it in the early seventies and turned it back over to us.

I have studied all of the Japanese, French, German, British, and other systems and if you can find me one that operates at a profit, I will be glad to adopt it. We can't find one. There isn't such a thing. The privatization, if you go to London, which I've just come through, there's complaint after complaint after complaint of everything being a disaster there, that so-called privatization. We can use private assistance of a combined effort, fine, but let's stop kidding ourselves and continue now.

This has been now 2 years going on 3 years that we have danced around the fire. We've talked about a passenger rail system. Your leadership has really called for a national system that I believe in. Otherwise, the President has got an outstanding individual in Mr. Gunn, who's ready, willing, and able to run one. If we don't give him the assistance, rather than each year struggling to give him enough to keep up, repair the equipment or keep a few lines going and not knowing where he's going and everything else, someone of that caliber is just going to leave us.

So we've reached a critical point here on the Committee and in the Congress for really providing for a national rail system, find out how we're going to get a dedicated support of funds for it, so I thank you, and yield.

Thank you, ma'am.

[The prepared statement of Senator Hollings follows:]

PREPARED STATEMENT OF HON. ERNEST F. HOLLINGS,
U.S. SENATOR FROM SOUTH CAROLINA

We are now facing a transportation crisis that is going to force us to decide how we are going to save passenger rail service in this country. Until now, we have been supporting our passenger rail system with piecemeal legislation that year after year provided money for Amtrak to survive but never thrive. The last time we reauthorized Amtrak, in 1997, the legislation did nothing to strengthen passenger rail but outlined a self-fulfilling prophecy for Amtrak's critics to use against the passenger railroad. We agreed to language requiring Amtrak to be profitable, imposing a business model on a public service. The business model is is not appropriate for transportation services, which is essentially a government function. Yesterday, the Economic Policy Institute issued an insightful analysis of Amtrak privatization, written by Professor Elliott Sclar of Columbia University, which I would like to provide for the record.

Now, we hear a lot about how Amtrak's problems come from years of mismanagement, corporate inefficiencies and poor routing. But Amtrak's problems were not created by mismanagement, inefficiencies, and bad routes. They were created by us and our lack of commitment to properly invest in Amtrak's infrastructure and a whole transportation system so vital to our country. David Gunn has worked wonders to cut costs, eliminate waste, and improve Amtrak's credibility. But even if he finds a way to manage the railroad without wasting so much as a paper clip, he cannot perform enough miracles to make Amtrak live up to its potential until passenger rail receives strong Federal support and steady infrastructure funding.

I understand that we are not here today to talk about Amtrak in particular. We are here to talk about how we are going to pay for intercity passenger rail travel. But whether it is Amtrak or some other intercity passenger rail operation, the issue is the same. Our passenger rail system needs two things. The *second* thing it needs is long-term planning, because it is only through a long-term planned funding stream that we will be able to get it the *first* thing it needs, which is money.

In the past 50 years, we have given strong Federal leadership and extensive funding to develop our interstate highway system and our aviation system. Between 1971 and 2001, we invested over $570 billion of Federal funding in our highways and in our aviation system. At the same time, we spent a mere $25 million on passenger rail. In fact, the amount of funding that *only* the aviation industry has received during the last two Fiscal Years is almost double the funding that has been invested in passenger rail over the last 30 years. Why, then, is everyone so surprised and dismayed that Amtrak is in a deep financial crisis? If passenger rail is to succeed, it must be a real Federal priority. We must invest in the development of its infrastructure using Federal dollars to support both capital and operating needs like we have done in the other modes of transportation.

High speed passenger rail has proven to be effective between Washington, D.C. and Boston where Amtrak's Northeast Corridor relieves the pressures of congestion on highways and at airports, and provides a more balanced system of transportation alternatives. In fact, as many people choose to take the train as the plane between New York City and Washington, D.C., and the majority of travelers between Washington and Philadelphia choose the train over flying (83 percent v. 17 percent).

Passenger rail also provides security through transportation alternatives. Of course, we all know the great service Amtrak was able to provide for the Northeast Corridor after September 11 when airports were closed (and remember, National Airport was closed for weeks) and American travelers in the East were desperate for an alternate means of transportation. We need to determine how we should invest in our passenger rail infrastructure in the Northeast and then duplicate its success in the rest of the country.

For our passenger rail system, we have neglected to furnish a long term, stable funding source like we did for aviation, highways and transit systems. Without a major Federal commitment, national passenger rail service will be a thing of the past. Congress is being presented with a number of ideas for financing rail passenger service in the future. There are tax credit bonds, tax credits, a rail trust fund, and loan guarantees. In the last Congress, I introduced the National Defense Rail Act, S. 1991, which received the approval of this Committee in a vote of 20 to 3. I have re-introduced The National Defense Rail Act, S. 104, in this Congress with bi-partisan support of more than 30 cosponsors. This legislation provides for the development of high-speed rail corridors, which are the building blocks of a national passenger rail system, and it fully funds Amtrak operations. My legislation would be funded through general revenues, but I am interested in working with Chairman Hutchison on how we might provides long term financing for a national high speed rail system.

There are those who argue that we can best achieve success if we restructure our passenger rail system through privatization. Privatization initiatives used in other countries are often touted as holding the secret to Amtrak's future success. However, we must not be led to believe that the privatization of Amtrak will decrease the Federal cost of passenger rail. Many countries in Europe and in the Pacific Rim have highly successful and effective passenger rail systems. But every first-rate passenger rail system in the world—whether it is public, private or something in between—has been expensive to build and to maintain. Those countries with first-rate passenger rail systems have them because they have chosen to invest the funds necessary to build them and run them. We must carefully examine any privatization proposal that tends to show we can save and even strengthen our passenger rail system "on the cheap." We must ensure that any privatization scheme does not exacerbate the already delicate financial condition of passenger rail in this country, or worse, do so at an unacceptable cost to safety and service, as our friends in Britain have unfortunately experienced. After it was privatized, British Rail experienced tragic accidents, insolvency, and increased public subsidies, all the while private investors received returns on their investments in the failing rail operation.

The time is now for the Congress to take strong leadership in preserving and expanding our passenger rail infrastructure, just like it nurtures our interstate highway system, our aviation system, and our transit systems with constant and sufficient funding. We have a world-class highway system, a world-class aviation system, and we are investing steadily in developing world-class transit systems for our cities. It is time for us to commit to having a world-class passenger rail system.

Senator HUTCHISON. Well, I certainly thank you for the interest that you have had and the commitment that you have had to Amtrak, and I do hope we can fashion a financing bill such as mine that will create the leverage needed to really have tracks that can work, or alleviate the freight railroads' problems of having Amtrak on their tracks, so I thank you for your interest, and hope that you will work with me on the legislation that combines everything with reauthorization.

Senator Lautenberg.

STATEMENT OF HON. FRANK R. LAUTENBERG, U.S. SENATOR FROM NEW JERSEY

Senator LAUTENBERG. Thank you, Madam Chairman. That wording always bothers me, but I don't know what else to call you except "friend," so thank you, Madam Chairman.

I appreciate the fact that we're holding this hearing today, and I believe that the single most important task for this Subcommittee this year is to address the passenger rail needs of our country. For too long, the Federal Government has been sitting idly by as a chronically underfunded national rail system has slowly deteriorated.

The last passenger rail reauthorization mandate from this Committee to Amtrak in 1997 was simply unrealistic, and Amtrak was asked to do something that no railroad in the world does, as Senator Hollings has just said—operate at a profit. And I believe in American innovation, but we've never given Amtrak the proper tools to perform such a miracle, and I've said it in the past, and I will say again, I believe passenger rail is a vital component in the transportation system of this country, and I, too, Madam Chairman, would hope that we could bring rail service to other parts of the country. Obviously, coming from New Jersey, the Northeast Corridor sits right in front of my office all the time, and the volume of traffic that's carried and the congestion that otherwise ensues begs for an investment of serious proportion, but for too long, Lilliputian thinking has prevented us from truly making a meaningful investment when it comes to interests in rail.

The Administration's SAFETEA proposal continues its theme by not addressing passenger rail infrastructure. Unless their forthcoming proposal on Amtrak contains *real* money to address *real* service needs, the traveling public will continue to lose out. The public pays for this neglect, by the way. $72 billion a year is the cost of highway congestion, measured in wasted fuel, wasted time, according to the Texas Transportation Institute, and that was in 1999.

The importance of rail service became apparent in the Northeast long ago as we dealt with the myriad transportation planning and congestion issues that many other states are just now facing. These states are joining us Northeasterners in looking to the Federal Government to provide leadership needed to ensure that passenger rail is made a priority in our transportation system.

Some claim that privatization is the answer to Amtrak's problems, but I think Senator Hollings adequately handled it. The birth of Amtrak came from private hands, and there is still this notion that the private sector can do things cheaper and more efficiently. Well, I spent more than 30 years in the private sector, and I'm aware of what wonderful things can be accomplished, but talk of privatizing rail passenger service is simply putting the cart before the horse. Without sufficient infrastructure no railroad, including Amtrak, can sustain.

Have we learned nothing from other developed countries, Great Britain, Argentina, Australia, and Mexico? These countries, looking for cheap solutions for passenger rail service, paid more in the end. Japan and Germany, France and Sweden, those countries that invested in the necessary passenger rail infrastructure now have world-class systems, and those systems have paid dividends to their societies in ways that we can't even begin to imagine.

Here in our country, the private sector was eager to rid itself of passenger rail service in 1970. That's why we have Amtrak. The Federal Government bailed out the freight railroads because they couldn't provide passenger, or didn't want to provide passenger rail service and make a profit doing it, and I haven't heard any of the freight railroads banging down the door of the Department of Transportation asking to be able to run trains again. They couldn't make money doing it 30 years ago. They still can't today.

Railroads are highly complex operations. Running a railroad safely and efficiently costs money, but we have to realize this isn't going to change. The Federal Government needs to step up, take charge with a strong program to support passenger rail service. The states are interested, the traveling public is interested, and we risk paying more if we wait until another time when we have no other choice, no other choice, I point that out, but to invest.

And all we have to do is look back to 9/11 and remember that horrible day and the consequences of that attack, but we have to remember that Amtrak was the only means of transportation between Washington and New York that was available that day. It was tragedy upon tragedy, people separated from their families, people doing important work to come from Washington and help solve the problem, there was no other way to get there. You could try it on the highway, but the chances of getting through were almost nil.

So we have to remember that rail service is an important aspect of our transportation system, and you cannot avoid it, and when we wake up to the fact one of these days, and I hope it isn't a tragedy that brings us to the point, but one of these days we're going to look back and say why didn't we, when we had a chance to build a railroad that made sense at prices a heck of a lot less than they're going to cost years from now. We ought to get on with the task, and I look forward to hearing from our witnesses. Thank you, Madam Chairman, for indulging us.

Senator HUTCHISON. Thank you, Senator Lautenberg, for your long-time support of Amtrak. Of course, you're vitally affected in the Northeast Corridor, but you've always helped look at a full national system, which I think is going to be essential for all of us, and except for having a very bad basketball team, you're very good on Amtrak issues.

[Laughter.]

Senator LAUTENBERG. I take back all of the nice things I said.

[Laughter.]

Senator HUTCHISON. One to zero.

[Laughter.]

Senator HUTCHISON. Senator Wyden.

STATEMENT OF HON. RON WYDEN, U.S. SENATOR FROM OREGON

Senator WYDEN. Thank you, Madam Chair, and having gone to school on a basketball scholarship, I'm not going to touch this basketball brawl, but I will say I'm very much looking forward to working with you, Madam Chair, on these issues. You have been just exceptionally helpful over the years as we have tried to come up with a plan for a nationwide system. It's very clear that people in this country, particularly in Texas and Oregon and other areas, don't want our communities to become transportation sacrifice zones where we see significant amounts of transportation dollars paid into the system and then get very little service in return, and you have really been a coalition-builder. I'm looking forward to working with you and our good friend from New Jersey as well.

It's pretty clear, Madam Chair, that the country suffers from a chronic transportation deficit disorder, and I am of the view that it really threatens to paralyze our transportation system and our economy. What we've got to do is come up with a way to provide a transfusion of new funds to reverse this trend. Amtrak is going to need billions of dollars—$2 billion per year—certainly a big increase from the $721 million.

The list goes on and on with respect to transportation needs. I've come to the conclusion that a real premium, Madam Chair, ought to be put on coming up with new, creative ideas to come up with additional revenue for transportation. Senator Jim Talent and I have found one, we believe, and I'm just going to discuss it briefly, but I'm anxious to work with you and Senator Lautenberg in the days ahead.

What Senator Talent and I have introduced in the last few weeks is a program to issue $50 billion worth of bonds that would fund transportation projects in all modes of transportation, including rail, highway, transit, airport and waterway infrastructure. Under the Talent-Wyden legislation what we would issue are Build America bonds so that we could get the American people involved in building our infrastructure.

I see, for example, our kids, and I know you have a youngster as well as I do, getting involved in our country's future when their parents and their grandparents give them a Build America bond that would be part of an effort to generate some additional money for transportation needs in our country. As I got involved with Senator Talent in this area, one of the things that I was struck by is that the Federal Government is about the only governmental entity on the planet that really isn't using a bonding capability in a creative way.

We issue bond for state governments, we issue bonds for local governments, we issue all kinds of bonds, other than the Federal Government playing an activist role in the transportation area. At a time when we have these huge needs for capital investment I see America, the Build America bonds providing a significant chunk of additional money on top of what is already out there in a way that I think the private sector and the bond market will react well to, and will also give us a chance to involve every citizen of this country in a way to help bring about the positive changes that our transportation system needs.

So I intend to ask some of our witnesses, some of whom already have been meeting with Senator Talent and myself about this issue, what they think, but I did want to discuss it just briefly this morning. I look forward to working with you and Senator Lautenberg on it. We've had an awful lot of battles over the years between regions, between modes of transportation. This is something that can bring different parts of the country together. It is consistent with the view that you and I have talked about that we need a national transportation system.

It is bipartisan. We've gotten good reactions so far from business groups, labor groups, groups across the philosophical spectrum, and I look forward to working with you on it.

Senator HUTCHISON. Well, thank you, Senator Wyden. I do think we need the leverage of public financing. Just straight cash outlays are not going to be enough, and I would love for you and Senator Lautenberg and Senator Talent to look at the bill that I have drafted that also has $50 billion of financing backed with the rail tax that is already in place—4.3 cents—and Mr. Hamberger will have a few things to say about that, but it is a tax that is in place, and we believe that by leaving it there and having that be the backup for the revenue bonds or the municipal bonds that we would then be able to sell them easily and leverage that money, and give back to the railroads better trackage and perhaps get Amtrak out of their hair in some places, which they would also think is positive, so I think we have a lot of ideas, and I think the time is here for bold ideas.

No longer do any of us want to continue to have Amtrak coming to Congress at the very last minute trying to get in supplemental appropriations and just living shoestring to shoestring. We need to fix this in a way that gives the capability to succeed, and that's what I would like to do as Chairman of this Subcommittee.

With that, let me call on our first witness, and we want to hear fully from you. We will have a 5-minute light. If you can stay within that, it would be good, but certainly we have taken time, and we want to hear fully from you, so Mr. Allan Rutter, who is the Federal Rail Administrator.

STATEMENT OF HON. ALLAN RUTTER, ADMINISTRATOR, FEDERAL RAILROAD ADMINISTRATION

Mr. RUTTER. Thank you, Madam Chairman. As one UT graduate to another, I appreciate the invitation to appear before your Subcommittee this morning. I've submitted written testimony, and I ask——

Senator HUTCHISON. Does this mean that you agree with me about Senator Lautenberg's team?

[Laughter.]

Mr. RUTTER. Well, the team I was cheering for last night was not the Nets, let's just put it that way. I've submitted—actually let me rephrase that. Yes, absolutely.

[Laughter.]

Mr. RUTTER. I'm not really sure why I missed that one. I will ask the testimony we have submitted already be entered into the record. Before responding to questions about that testimony, let me say a few things about the purpose of this hearing and our vision at the Administration for the future of intercity passenger rail.

First, any discussion about funds for intercity passenger rail inevitably gets to the question, why don't we have dedicated funding for rail when we have it for other modes? Why shouldn't rail have funding that's above the vagaries of the annual appropriations process? I think it might be instructive to spend a minute reviewing the circumstances that previous Congresses were responding to in creating dedicated funding sources.

In 1956, with the creation of the interstate highway system and the highway trust fund, Congress was considering how to accommodate 76 million licensed drivers who were generating 631 million vehicle miles. As a comparison, in 2002, Amtrak provided 368 million vehicle miles.

In 1970, Congress created the aviation trust fund because there were 169 million commercial airline enplanements, 2 billion vehicle revenue miles, and 108 billion passenger miles. In 2002, Amtrak generated 5.4 billion passenger miles.

And in 1982, when public transit got its first dedicated penny into the mass transit account, there were 8 billion unlinked passenger trips. In 2002, Amtrak ridership was 23 million.

I think the relative scope of those transportation services explains why there might not have been a dedicated source of passenger rail funding to date, and we all need to also remember the trust funds themselves do not necessarily guarantee against year-to-year fluctuations. Highway funding is in flux due to the changing revenue-aligned budget authority that has proved unpredictable. Aviation trust funds are dwindling as incoming passenger tax revenues have contracted, just as commercial aviation has struggled.

We're wrestling and struggling with the same facts that have led you to hold this hearing. Where is the money going to come from for passenger rail?

As for a rail trust fund, not only would the current level of passenger traffic probably not support a trust fund for passenger rail, taxing freight railroads to create a trust fund frankly would exacerbate the competitive disadvantage railroads already face relative to motor carriers, and a rail shipment tax would likewise lead to a seismic shift in modal shares of total freight volumes which not only will leave railroads in dire financial shape, but could result in even more highway congestion as more trucks hit the roads.

Well, what about bonds, or TIFEA, or even our own RRIF program? All of these mechanisms require repayment of principal and some level of interest. Few passenger rail operations, current or planned, will generate sufficient operating revenues to support debt repayment on top of operating and maintenance cost. Tax credit bonds are appealing to just about everybody but the folks responsible for the Federal Treasury, as the Treasury bears a disproportionate share of the cost of that kind of debt.

What you're left with is general funds and annual appropriations, and frankly, each additional billion dollars for passenger rail has to come out of another Federal transportation program to fit within those budget allocations, a very tough choice for Congress to make. As more money within the transportation budget goes to passenger rail, whose airport won't get expanded, what highway projects won't get built, and whose transit property will wait for a new light-rail line?

If money is that tight, and the choices of those modes are so dear, we believe we should invest some energy into getting more out of the money we spend, or want to consider spending. We're the first Administration in decades willing to propose a fundamentally new structure for delivering passenger rail. We are proposing a completely new program for Federal and State capital for passenger rail projects. We've heard from a number of states that we've been talking to as we're completing our legislation that 50 percent Federal capital dollars is better than what they have now, which is zero percent.

We're proposing a capital partnership that offers the potential for multiyear capital projects that makes States' dollars go farther. We want to invest those dollars in a national passenger rail program that offers incentives for better choices. We want to offer Federal and State lawmakers more accurate information about what current services actually cost, how to control those costs, and what kinds of investments would be necessary to reduce operating subsidies of those services and provide higher quality service.

We foresee a system that encourages choices for services that take people where they want to go when they want to get there using better technologies, operating newer equipment with higher reliability and more frequency. We see a system that maximizes the talents and contributions of the thousands of Amtrak employees that know how to operate, maintain, and staff passenger trains, and they'll be doing that regardless of the organizational structure chosen.

Six years ago, the FRA produced an examination of the commercial potential for better passenger rail services and it outlined the circumstances under which travelers could choose passenger rail. Now, when we consider traveler's choices among modes now, much has changed since then. Rural highways are experiencing double digit increases in motor carrier volumes which makes long distance driving more difficult. Air quality conformity problems mean that many urban areas cannot make the kinds of highway investments that might lead to reduced urban congestion. Security considerations and a contracting aviation industry means that air travel takes longer, may cost more, or just not be available.

All of this means that passenger rail has the potential and the possibility for competing better among travelers' modal choices in a number of major intercity markets. We want to create a system that offers a more competitive, higher quality passenger rail product. As we struggle with where to find the money, let's not lose sight of what better system that money could be used to produce.

Thank you.

[The prepared statement of Mr. Rutter follows:]

PREPARED STATEMENT OF ALLAN RUTTER, ADMINISTRATOR, FEDERAL RAILROAD ADMINISTRATION

Chairman Hutchison and members of the Subcommittee, I appreciate this opportunity to appear before you today to discuss rail finance, focusing on equipment and infrastructure investments for intercity passenger rail service. I will be brief.

In order to discuss rail finance, the Administration has focused on two questions that first must be answered: what intercity rail passenger service should America have and who decides this type of service? The answers to these questions strongly affect the answer to the question of how to finance intercity passenger rail service in this country.

The present Amtrak route system has changed little over Amtrak's thirty years of existence, seemingly locked in place by history and politics. That is starkly anomalous in America's transportation system. What other transportation company or mode of travel has changed its routes and service so little in the last thirty years? Most transportation providers have changed their systems dramatically over that time span in response to changes in travel patterns driven by economics and demographics. If Amtrak's system were not so ossified, perhaps Amtrak would serve more passengers today than it did thirty years ago. It appears that moving decision-making on routes and service closer to the customers would be a very good thing.

This observation appears to be borne out wherever states have taken a strong role in determining what routes will be operated to serve their citizens, what kind of equipment should be used, what kind of service should be provided, and on what schedule. The states of California, North Carolina, and Washington are all excellent examples of states stepping up to the plate and meeting this challenge, paying for what they want above and beyond what Amtrak would otherwise provide, and getting noticeably better rail service for their citizens as a result. Citizens have responded to those investments: three California state-supported routes have attracted 2.35 million riders in the first seven months of this Fiscal Year, almost 44 percent of the total ridership for the same period on the Northeast Corridor Acela, Metroliner and Regional services.

The Administration proposes to build on the examples set by these states to reform and strengthen the Federal role in passenger rail to mirror much more closely the current Federal program supporting mass transit. The Federal Government would continue to define rail safety standards and enforce them. The Department of Transportation would provide capital grants directly to states and interstate consortia of states that want passenger rail. State government agencies would determine the level of passenger services needed and the price for such service, and contract with third-party operators to provide long-distance and corridor trains. The same program would apply to legacy long distance routes, current and new corridor services—at higher speeds or not. To the extent that states' service choices require operating subsidies, state governments would be required to provide that subsidy.

It is possible that in the early part of the authorization cycle, the Federal Government would provide limited subsidies for corridor and long distance trains, and fund the capital backlog for certain passenger rail projects. By the end of the authorization cycle, however, state governments would be responsible for at least 50 percent of needed capital investment for all intercity passenger rail service—similar to Federal capital investments in the Federal Transit Administration's "New Starts" program. Similarly, by the end of the authorization period all rail operational costs will be borne by riders or states or state rail consortiums.

We believe this an appropriate division of state and Federal transportation responsibilities. It reflects the way the Federal Government handles other transportation programs. After an appropriate transition period, only services states are willing to pay for would be continued.

Like other Federal programs that invest in transportation, intercity passenger rail service would require careful thought and planning up front before either the states or the Federal Government make significant investments. Intercity passenger rail service should be part of state transportation plans already required by Federal surface transportation legislation. Careful passenger rail planning should go a long way toward overcoming the long-term problem that our modes of intercity passenger transportation, which were conceived independently for the most part, do not interrelate well. States, however, have a powerful interest in enabling their citizens to navigate our transportation system seamlessly. The states that do so stand to reap considerable economic advantages, such as being more attractive as a location for businesses. A sound planning process should also help make sure that intercity passenger rail service goes where people want to travel, when they want to go, and at an appropriate price.

This may result, for example, in a lot more attention being paid to some of the submarkets along long distance routes, instead of the points of origin and of final destination for these routes. As I understand it, on many long-distance routes few passengers travel the entire length of the route. Instead, most passengers start and stop at intermediate points along the way. It would make sense for a state or two neighboring states having a submarket that attracts a lot of passengers to want more service on that part of the longer route and to invest accordingly. North Carolina is doing that between Charlotte and Raleigh. Oregon and Washington are doing that between Eugene, Portland, Seattle and Vancouver, British Columbia. Those states are reaping significant benefits from doing that and we should help them.

In many places, states may decide that it is more important to have fast, frequent, timely, and reliable service in relatively short corridors that have a lot of business travel. In such corridors, rail can compete effectively with air and highway for business travelers. The Northeast Corridor, where Amtrak is the dominant carrier, is the best illustration of that prospect. Especially where airports and highways are already overcrowded and land is so scarce that it will be hard to build more airports or highways, it is especially important to make full use of existing rail capacity. Since states will be making the key decisions about whether to build additional airports or highways, it makes sense to have them make key decisions about passenger rail service and if it should be expanded, reduced, or eliminated altogether. Then the states can comprehensively plan the best ways to get their citizens from one place to another without needless constraints on modal choice.

Another part of effective planning for transportation systems is compliance with environmental laws. Before major Federal funding decisions can be made, without regard to the type of funding used, assessments of environmental impacts must be completed, environmental impact statements or findings of no significant impact prepared, and all necessary permits obtained. State governments are very familiar with these processes and have learned to negotiate them successfully. They can be expected to handle compliance with the environmental laws as quickly and efficiently as it can be done. California, North Carolina and Virginia, and Florida are doing that very effectively right now for the additional rail service they are seeking with higher speed rail projects.

Thorough planning also involves thorough discussions and negotiations with the freight railroads which own the rights-of-way and tracks over which most of the Nation's current and future passenger rail services operate outside the Northeast Corridor. Passenger rail services pose significant operational challenges for freight railroads, and expansions of current services or new service on intercity corridors should not impair the current capacity for carrying freight, lest such investments will lead to increased congestion of our highways by more trucks. Better yet, states considering passenger rail investments should make capacity improvements that benefit both passenger and freight users to maximize the congestion relief afforded by the projects. Policymakers may need to decide whether the current pricing mechanisms of passenger rail access at incremental costs will lead to the most efficient use of public and private infrastructure assets.

Of course, it is also important to provide funding for intercity passenger rail service in a way that best assures that the taxpayers get their money's worth. The standard grant agreement relationship used by the Federal Government to provide most financial assistance affords reasonable controls on and accountability by recipients. Properly used, grant agreements make clear what the public will get, when the public will get it, and what it will cost. Reasonable and workable financial controls are used. All aspects of the program are "in the sunshine" and audited. This is a prudent means of seeing that Federal funds are well spent and produce the benefits intended by the Administration and Congress. This kind of thorough financial planning is also mirrored in proposals in the Administration's surface transportation reauthorization ("SAFETEA," mentioned below), in which states are required to develop financial plans for Title 23 projects over $100 million.

This Administration has a strong record of support for innovative financing for surface transportation projects, as the recently introduced Safe, Accountable, Flexible, and Efficient Transportation Equity Act ("SAFETEA") reauthorization proposal demonstrates. The Transportation Infrastructure Finance and Innovation Act (TIFIA) established a Federal credit assistance program that is already available for intercity rail projects. SAFETEA proposes to expand the use of TIFIA credit assistance by broadening eligibilities to include private freight rail facilities and reducing the project size threshold for TIFIA projects to $50 million from $100 million. States would be allowed to impose user charges on federal-aid highways, including the Interstate System, provided that such charges were part of a program to relieve congestion and/or improve air quality. Transportation projects (highway facilities and surface freight transfer facilities) will be eligible for tax-exempt private activity bonds, exempted from a state's private activity ceilings, encouraging private operation of transportation projects. States will be given more freedom to use innovative project delivery methods such as design/build, which are often a key in setting fixed prices for projects to attract private investment.

One of the common threads in most innovative financing mechanisms for surface modes—state revenue bonds, toll roads, TIFIA, Grant Anticipation Revenue Vehicles—is that most of these financial instruments require repayment. Debt instruments used for transit and road construction either pledge dedicated tax revenues, dependable funding streams from Federal or state programs, or reasonably expected revenues from transportation facility users.

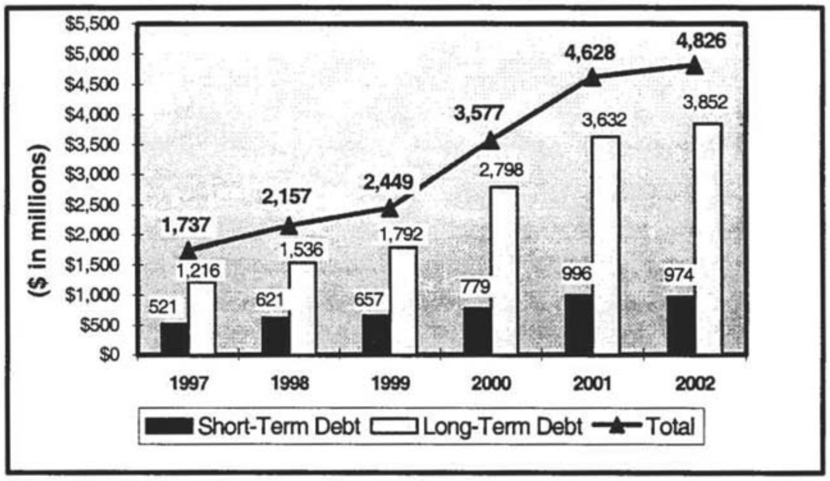
Various kinds of debt instruments are proposed from time to time to fund intercity passenger rail service. The Administration does not think dedicated debt instruments are suitable for this purpose. Unlike most other transportation debt financing mentioned above, intercity passenger rail does not generate adequate cash flows to service significant additional debt, nor is it supported by reasonably anticipated, long-term dedicated funding streams from the Federal Government. We believe that there may be corridors in which passenger rail services can cover costs of operations and maintenance, but few corridors will generate revenues sufficient to provide adequate coverage beyond operating and maintenance expenses to repay interest and principal of debt raised for project capital costs.

Let me also speak in general terms about tax credit bond financing, even though such matters are not our agency's primary responsibility (and such matters are considered by tax-writing committees in the Congress). As an example of the concept, you may wish to learn more about Qualified Zone Academy Bonds *http://www.ed.gov/offices/OESE/SST/qzab.html*), a program that offers limited amounts of tax credit bonds for equipment and rehabilitation of schools in empowerment zones and enterprise communities or schools serving a student population of which at least 35 percent are eligible for free or reduced-cost lunches. These are the only form of tax credit bond currently allowed. This program, by limiting the total term of the bonds, currently to fifteen years, roughly splits the cost of a qualifying project in half. The Federal Government pays the interest (through tax credits) and the local school district repays the principal. (As you can see, this equal sharing of financial exposure is similar to the kind of financial participation we contemplate in a federal/state capital partnership for intercity passenger rail). The total size of the Qualified Zone Academy Bond program is limited to $400 million per year in new issues, and only certain qualified buyers can purchase these bonds (lending institutions such as banks and insurance companies). These provisions limit the administrative complications and costs to the Treasury of these financial instruments.

If larger amounts of tax credit bonds are issued, the permitted holders of these bonds would likely have to be expanded to include, for example, individuals and mutual funds, thus making them much more complex and increasing the administrative burdens placed on the Internal Revenue Service. If longer terms of maturity are considered for intercity passenger rail purposes, then the overall exposure of the Treasury is increased relative to any matching funds from passenger revenues or state participation. If the tax credit debt is issued in an amount that not only covers capital costs but is also used to create sinking funds from which principal is eventually repaid as interest accrues in the sinking fund then the Treasury is effectively footing the entire bill for the capital costs. Further, because there is very little liquidity in the market for these bonds the market would impose a significant premium, thereby reducing the amount of actual funding and raising the effective costs to the taxpayers of using this funding mechanism compared to more traditional means. For these reasons, the Administration would oppose such a financing mechanism for intercity passenger rail.

Before Congress considers more debt for intercity passenger rail, Congress should consider the difficulty Amtrak is having with the enormous debt it has already incurred. Amtrak's total debt grew from $1.7 billion in 1997 to $4.8 billion in 2002. Figure 1 illustrates the growth in Amtrak's total debt.

Figure 1
Amtrak Short-Term and Long-Term Debt
(Source: U.S. DOT Inspector General)



Because of this increased debt, naturally Amtrak's annual debt service has grown substantially, adding a large up-front cost to its business plan. Annual debt service requirements (principal and interest) are forecasted to be $278 million in FY 2004 (up from $111 million in 1997). This means that debt service will consume over 15 percent of Amtrak's requested FY 2004 appropriation of $1.8 billion. Amtrak's accumulated debt is a significant burden weighing down future passenger rail development. The FRA is not surprised by this massive debt and calls for its accelerated retirement. In 1983, Amtrak was unable to pay the debt service on $880 million in loans guaranteed by the Government under section 602 of the Rail Passenger Service Act. FRA paid $1.119 billion to honor its guarantee of principal and interest on Amtrak's debt, and in return the Federal Government was given a lien on Amtrak's assets and given $1.119 billion of preferred plus to one share of preferred stock for each dollar of future financial assistance given to Amtrak. That preferred stock has a par value of $10 billion. So you can see that our past experiences with passenger rail debt, necessarily colors our current view that future financing for passenger rail depends on shaky promises of project revenues or future funding dependability.

That is not to say that we are opposed to the involvement of the private sector in passenger rail development, either in service delivery or financial participation. Indeed, earlier testimony before this committee demonstrated our confidence in the ability of the private sector to become involved in a number of ways in providing passenger rail services to state governments. We are convinced that the private sector may be interested in pursuing commercial applications along the Northeast Corridor, and such commercial uses may provide income streams for future corridor capital projects. Yet, we have listened to many commuter rail agencies and freight railroads that use the Northeast Corridor and the states that support such operations, and they have cautioned us against private ownership and control of the Corridor. We are taking these comments and concerns under consideration as we continue drafting reauthorization legislation for the national passenger rail system.

Thank you again for the opportunity to appear before this committee. I will be happy to answer any questions you may have.

Senator HUTCHISON. Thank you very much. Mr. Ed Hamberger, representing the Association of American Railroads.

STATEMENT OF EDWARD R. HAMBERGER, PRESIDENT AND CHIEF EXECUTIVE OFFICER, ASSOCIATION OF AMERICAN RAILROADS

Mr. HAMBERGER. Thank you, Madam Chair. On behalf of the AAR, I am grateful for the opportunity to present freight railroads' views concerning passenger railroading and the ways to finance it. At the outset, let me emphasize that freight railroads agree that passenger rail can play a role in alleviating highway and airport congestion, decreasing dependence on foreign oil, reducing pollution, and enhancing mobility and safety.

At the same time, it is important for policymakers to remember that our freight rail system is a tremendous national asset that moves more freight more efficiently and at lower rates than any other system in the world. Freight railroads are responsible for moving 42 percent of our Nation's intercity freight goods, and therefore freight railroad already plays a key role in congestion mitigation by taking trucks off the highway, improving air quality, and saving energy, because we are, according to Government studies, at least three times more fuel efficient and environmentally friendly than our friends in the trucking industry, so policymakers must find a way to provide the passenger rail service that America wants and needs without placing operational or financial burdens on the freight rail system. In other words, to improve passenger rail at the expense of freight rail will not accomplish the laudable goals that this Committee seeks.

Freight railroads are wiling to work with the relevant Government entities both at the State, local, and Federal levels to determine if and where a public-private partnership is appropriate. Consistent with my opening comments, of course, such a partnership must accommodate freight capacity.

A number of proposals have been put forth regarding how public funding could be made available for passenger rail-related projects, such as expansion of the CMAQ program, congestion mitigation air quality program, or expansion of the RRIF program that Administrator Rutter referenced. We support both of those approaches, and we also believe, consistent with Senator Wyden's opening statement, that a thorough evaluation of the various bond financing concepts being discussed must go forward expeditiously.

We have adopted a series of principles regarding the future of passenger rail service to ensure that future development of passenger rail will not harm the ability of the freight rail industry to serve its customers. We will analyze the various proposals using these principles. There are six of them. I will run through them quickly.

1. Passenger rail cannot exist without significant Government subsidy. Amtrak came into existence because freight railroads were losing several hundred million dollars annually running passenger trains. No passenger system in the world covers both operating and capital cost.

2. Freight railroads should receive full compensation for the use of their assets by passenger operators. Today, we do not. Amtrak statutorily has access on an incremental cost basis. A recent analysis by the AAR shows that in 2001 Amtrak payments failed to cover freight railroads' variable costs by $240 million systemwide,

so I point this out because there is already a cross-subsidy built into the statute where the freight rail is already subsidizing passenger rail over $200 million annually.

3. Freight railroads should not be expected to further subsidize intercity passenger rail service either through new taxes or the diversion of existing taxes, including the infamous 4.3 cents per gallon deficit reduction fuel tax and, of course, that does deserve special mention. It is in the energy bill that has passed the House, immediate repeal beginning January 2004.

The Senate Finance Committee adopted an amendment offered by Senator Lott to immediately repeal that 4.3 cents, again in January 2004, and an amendment offered to divert that into a trust fund was defeated soundly 16 to 4, and the reason for that is because I think people agree with Administrator Rutter that such a tax merely exacerbates the already tilted playing field on which we find ourselves competing for business with the trucks, so we hope that this Committee will endorse the Finance Committee action.

And just to divert a second, Madam Chair, the various bond proposals that are floating out there, I'm not the expert that some of our future witnesses are from Wall Street, but it seems as though there is a way to accommodate a bond proposal without using the 4.3 cents as the revenue stream, or a charge on rail freight, so I would ask that as you put together your bill, that you might take a look at that and see whether or not there is a way to accommodate it without using the 4.3 cents. It appears that, at least from the financial side of the house, that there is a way to do that.

4. Safety requirements and the integrated nature of railroading necessitates that intercity passenger rail be provided by one entity, and we believe that entity should be Amtrak. A subsidiary part of this principle, Amtrak's right of access, preferential access rates and operating priority should not be transferred or franchised.

5. The obligations of passenger railroads, notably those under the Railroad Retirement Act and the Railroad Unemployment Insurance Act, must not be shifted to the freight rail industry and its employees.

6. And finally, future high-speed passenger rail corridors should be separate, dedicated, and sealed. A mix of heavy, slow-bulk commodity trains running with high-speed passenger trains does not work from either a safety or an operational standpoint. High-speed trains require different levels of track maintenance, and so we suggest that high-speed requires a sealed, dedicated right-of-way.

Fashioning a realistic, fair, and workable solution to the serious financing problems facing passenger rail in the U.S. is, indeed, a difficult mission, but we look forward to working cooperatively with this Committee, the Administration, Amtrak, rail labor, and other stakeholders to achieve this worthy goal.

Thank you.

[The prepared statement of Mr. Hamberger follows:]

PREPARED STATEMENT OF EDWARD R. HAMBERGER, PRESIDENT AND CHIEF EXECUTIVE OFFICER, ASSOCIATION OF AMERICAN RAILROADS

On behalf of the members of the Association of American Railroads (AAR), I am grateful for the opportunity to present freight railroads' views concerning passenger railroading and ways to finance it.

It is important to note at the outset that freight railroads agree that passenger rail has a role in alleviating highway and airport congestion, decreasing dependence on foreign oil, reducing pollution, and enhancing mobility and safety. Freight railroads will continue to work reasonably and cooperatively to help passenger rail succeed.

We also know that passenger rail is extremely costly. Indeed, funding passenger rail has always been difficult—and continues to be so today, when budget constraints present enormous challenges to all levels of government.

Freight railroads believe very strongly, though, that it is *not* the responsibility of our nation's privately-owned freight railroads to subsidize passenger rail. Indeed, as you consider the future of passenger rail in this country, we urge you to keep in mind that, while passenger railroading is important to our country, it pales in comparison to the importance of freight railroading. Our freight rail system is a tremendous national asset that moves more freight, more efficiently, and at lower rates than any other system in the world. The safe and cost-effective transportation service that freight railroads provide is critical to the domestic and global competitiveness of our nation. Freight railroads are responsible for 42 percent of our nation's intercity freight transportation service (measured by ton-miles).[1] Therefore, policymakers must find the most effective way to provide the passenger rail service that America wants and needs, but without burdening the freight rail system—operationally, financially, or in any other way.

Freight railroads are willing to work with the relevant government entities to determine if a public-private partnership is appropriate. It is important to recognize, of course, that in such circumstances any public-private partnership must provide a replacement of freight capacity and a fair return on the private freight railroad assets used for public purposes.

Overview of Passenger Rail in the United States

Any passenger rail system that operates on or crosses freight rail facilities is of interest to freight carriers. This applies especially to commuter rail[2] and intercity rail.

Commuter rail, which provides passenger rail service between a central city and its suburbs or an outlying region, is offered in 20 or so U.S. cities. In 2002, commuter rail accounted for approximately 1.5 million unlinked passenger trips per business day, or 411 million trips for the year. Millions of these trips were on tracks that are actually owned by freight railroads but over which a commuter railroad has operating rights.

Most existing commuter railroads plan to increase the frequency of their service, and several plan to extend existing lines or add new ones. In addition, in approximately 30 metropolitan areas throughout the country, entirely new commuter rail operations have been proposed. The vast majority of existing commuter passenger operators that want to expand their service, as well as nearly all proposed new commuter operations, hope to use freight railroad facilities for their operations.

Amtrak is the sole provider of intercity passenger rail service in the continental United States. Amtrak operates over more than 22,000 route miles, carries more than 23 million passengers annually, and serves more than 500 stations in 46 states and the District of Columbia. Amtrak is also the nation's largest contract provider of commuter rail service, serving an additional 54 million commuter passengers per year in California, Connecticut, Maryland, Massachusetts, and Virginia. Amtrak has 22,000 employees.

Amtrak could not exist without the facilities and services of freight railroads. Amtrak owns approximately 730 route-miles, primarily in the Northeast Corridor bounded by Boston and Washington. Nearly all of the remaining 97 percent of Amtrak's system consists of tracks owned and maintained by freight railroads. Freight carriers also furnish other essential services to Amtrak, including train dispatching, emergency repairs, station maintenance, and, in some cases, police protection and communications capabilities.

So far, 11 corridors have been designated by the U.S. DOT as high-speed intercity rail corridors. Like Amtrak, these commuter and high speed proposals would involve service over existing freight lines, or acquisition of part of a freight railroad right-of-way to permit construction of passenger tracks.

[1] By contrast, Amtrak accounts for approximately 0.3 percent of intercity passenger travel nationwide.

[2] Commuter rail is distinct from *heavy rail* (also known as "subway" or "elevated rail") and *light rail* (also known as "streetcar," or "trolley car."). Although most issues involving freight railroads and passenger rail involve intercity or commuter rail, to the extent that heavy or light rail operations also involve freight railroads in some fashion, the points made in this testimony apply to them as well.

The map below illustrates the extent of existing and proposed passenger rail service in the United States and how it overlays the national freight rail network.

Passenger Rail History

As you deliberate the future of U.S. passenger rail service and ways to finance it, it might be helpful to reflect briefly on the history of passenger railroading and the conditions that led to the creation of Amtrak and other passenger rail carriers.

Well into the 20th century, railroads were the primary means by which both people and freight were transported in this country. In 1930, for example, the rail share of both the intercity freight and passenger markets was around 75 percent. Over time, though, a number of factors, especially the enormous expansion of our nation's highway system and the development of commercial aviation—both accomplished with the help of hundreds of billions of dollars in government subsidies—brought enormous competitive pressures to bear on passenger railroading.

In fact, by the 1930s, passenger railroading had become clearly unprofitable. By the late 1950s, private railroads were losing $750 million per year (nearly *$4 billion* in today's dollars) in fully distributed costs on passenger service, according to an Interstate Commerce Commission (ICC) study.[3] In fact, a noted transportation scholar wrote "it is no exaggeration to say that by 1958 railroad passenger service had demonstrated itself to be the most uneconomic activity ever carried on by private firms for a prolonged period."[4] These massive losses continued largely because state and federal government regulators often refused railroad requests to eliminate passenger trains no matter how much money the railroads were losing.

By the late 1960s, railroads had managed to obtain regulatory approval to discontinue many purely local trains and were pursuing the elimination of major trains that comprised the basic elements of the national passenger rail network. By 1970, passenger rail ridership had plummeted to just 11 billion passenger-miles (an 88 percent decline from its 1944 peak of 96 billion) and the cumulative "passenger deficit"—the losses that government regulators forced privately-owned railroads to bear through mandated passenger operations—had reached many billions of dollars.

Unfortunately, the massive passenger losses, in combination with unrelenting competition for freight business from subsidized trucks and barges, led to railroad bankruptcies, line abandonments, deferred maintenance, service deterioration, and general financial decline. In 1970, the largest U.S. railroad, the Penn Central, went into bankruptcy. At the time, it was the largest bankruptcy of any company in U.S. history. Not coincidentally, the Penn Central was also the largest passenger railroad in the country.

In response to the crisis in passenger rail, in 1970 Congress passed The Rail Passenger Service Act of 1970 (RPSA). RPSA was a reaction to the real possibility that the United States would soon have no intercity passenger rail service at all, and a recognition that passenger rail losses were a serious threat to the viability of freight railroading. Given the huge financial pressure they faced, it is no surprise that when the RPSA created Amtrak, railroads welcomed the opportunity to rid themselves of their hopelessly unprofitable passenger obligations.

---

[3] Interstate Commerce Commission, "Railroad Passenger Train Deficit, Report Proposed by Howard Hosmer, Hearing Examiner, Assisted by Robert A. Berrien, Fred A. Christoph, and Raymond C. Smith, attorney advisers," Docket No. 31954, 1958.

[4] George W. Hilton, *The Transportation Act of 1958,* Indiana University Press, 1969, p. 13.

However, the RPSA exacted a hefty price from freight railroads for permission to exit the intercity passenger rail business.

First, freight railroads were required to capitalize Amtrak in cash, equipment, or services. These payments to Amtrak totaled $200 million (approximately $750 million in today's dollars).

Second, the RPSA authorized Amtrak to operate wherever it wished over the privately-owned freight rail network. Amtrak was also granted the power to force freight carriers to convey property to it (subject to constitutionally-mandated "just and reasonable" compensation) if the property were necessary for intercity rail passenger transportation.

Third, the RPSA explicitly ordered freight railroads to grant preference to Amtrak trains over their own freight trains and all other customers.

Fourth, the RPSA gave the ICC the authority to intervene if Amtrak and the host freight railroad could not agree on the compensation due the owner for Amtrak's access. A 1973 ICC decision that ordered Amtrak to pay a rate of compensation greater than incremental or avoidable cost was overridden by a 1973 amendment to the RPSA, which allowed Amtrak to pay just the incremental costs of the owning freight railroad caused by Amtrak's use of the tracks.[5]

Railroads that refused to accept the statutory terms offered in the RPSA were required to continue their passenger operations—despite any losses they would incur—for at least four more years. Thereafter, they could seek relief before regulatory agencies, but received no guarantee that they would be permitted to discontinue unprofitable service at that point. All but a few of the railroads accepted the terms of the RPSA and immediately turned over passenger operations to Amtrak, rather than face continuing losses and the uncertainty of the regulatory process.

Access to Freight Rail Facilities by Passenger Railroads

As noted above, by law freight railroads must grant Amtrak access to their track upon request and give priority status to Amtrak trains. Amtrak pays fees to freight railroads to cover the incremental costs of Amtrak's use of freight railroad tracks, but these fees do not come close to covering the full costs borne by the host freight railroads associated with the operation of Amtrak trains over their tracks.

In fact, a recent analysis by the AAR found that in 2001 alone Amtrak payments to freight railroads were approximately $240 million *less* than the variable costs to the freight railroads associated with hosting Amtrak service.

This figure substantially understates Amtrak's full cost responsibility for a number of reasons. First, it does not consider delay and opportunity costs. Operation of Amtrak trains over freight lines creates major scheduling difficulties, since Amtrak trains must be given priority, the typically higher passenger train speeds necessitate passing slower freight trains, and disturbances in one part of the rail network ripple through the system and disrupt freight operations elsewhere. Second, railroads' fixed costs (costs that do not vary with traffic levels) are excluded. Any company that wants to continue to operate must recover both its variable and fixed costs. Third, the additional costs to freight railroads associated with the higher level of liability inherent in passenger operations were not included. Fourth, a portion of Amtrak's route system is operated over freight railroads that were not participants in the study, and therefore their costs were not included.

Non-Amtrak passenger rail operators, including commuter operators, do not have the same statutory rights as Amtrak regarding access to freight-owned track. Instead, they must first reach agreement with the owning freight railroad on a wide variety of engineering, operational, and legal issues—such as hours of operations, the number of passenger trains, access fees, liability provisions, and many others—before they can begin passenger service. Often, where freight railroad system capacity is available, mutually beneficial arrangements are negotiated and agreement is reached. Just last week, the Burlington Northern and Santa Fe Railroad and Sound Transit agreed on a plan that will result in the start of commuter rail service between Everett, Washington and Seattle later this year.

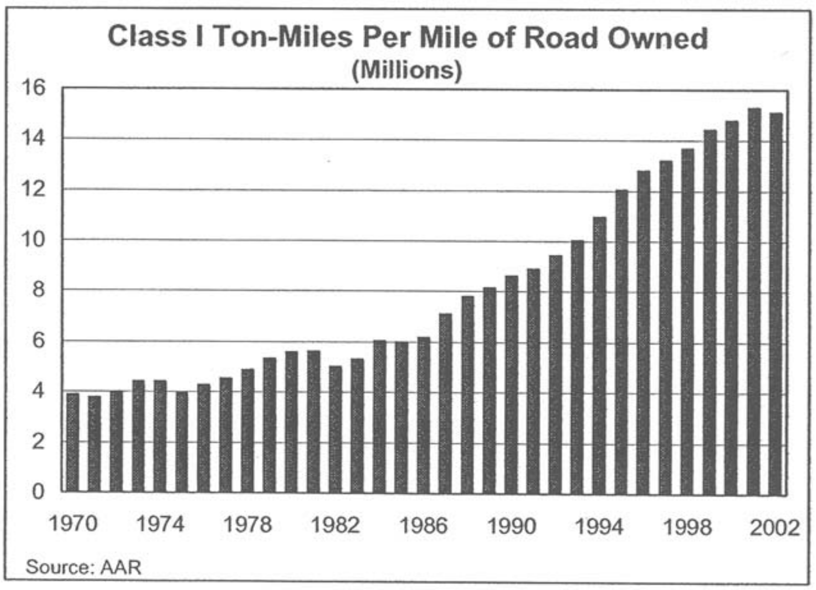
Capacity issues have become increasingly important in recent years. In contrast to, say, 30 years ago, when the U.S. rail network had significant surplus capacity

[5] Incremental (or avoidable) costs are those direct costs which result from additional traffic/volume or which would be eliminated by the discontinuance of traffic or a particular activity. Fully distributed (or fully allocated) costs include a proportionate share of both variable and fixed costs (including the cost of capital necessary to provide the service) allocable to the traffic or service in question. As discussed later, freight railroads must reimburse Amtrak at a fully allocated cost level for the use of Amtrak's Northeast Corridor, even though Amtrak only reimburses freight railroads at the substantially lower incremental cost level for the use of their facilities.

(and, not coincidentally, most U.S. railroads were in serious financial difficulty), today U.S. freight railroads operate networks that are carefully designed to match capacity with existing traffic levels or traffic levels expected in the near future. The intensely competitive environment in which freight railroads operate does not allow them the luxury of operating redundant main lines or a network of lightly-operated branch lines.[6]

At the same time that rail mileage has been falling, rail traffic has been increasing. Rail ton-miles—the movement of a ton of freight one mile, a standard measure of freight volume—rose from 919 billion in 1980 to 1.51 trillion in 2002, a 64 percent increase. The concurrent rationalization of low-density rail mileage and increase in traffic volume mean that the rail network is used far more intensively and far more productively today than in the past. Capacity constraints mean that many freight corridors have no capacity available for new or expanded passenger operations; in other corridors, expected increases in freight traffic will consume available capacity, precluding passenger operations, unless capacity is expanded.

Ton-miles per mile of road owned, a measure of freight traffic density, illustrates the capacity issue. This metric has risen from 3.9 million in 1970 (when Amtrak was established) to 15.1 million in 2002—a 288 percent increase. Largely because of this enormous increase in the intensity of infrastructure utilization, train "slots" on major freight corridors have become increasingly valuable.



Moreover, because rail customers often no longer carry large inventories at their plants, railroads must meet their customers' requirements for "just-in-time" or more predictable freight arrival. Consequently, asset utilization has become a crucial management tool and rail infrastructure, crews, communications, and customer satisfaction have come to depend on precise and efficient operations.

Thus, when passenger trains fill prized corridor "slots" at bargain prices, the result is a major cross-subsidy from freight to passenger service. It also limits the overall size of certain freight rail markets (because slots are not available to freight trains) and affects the reliability freight railroads can offer their customers. Indeed, priority status by passenger railroads results in detrimental impacts on the numerous freight trains on and approaching the corridors traveled by the passenger carrier that are typically much greater than simply the value of the "slot" occupied by that carrier.

---

[6] Prior to passage of the Staggers Rail Act of 1980, regulatory strictures made it very difficult for railroads to dispose of unwanted or excess lines. Between 1980 and 2002, Class I railroads reduced their miles of road owned by approximately 65,000 miles. Many of these former Class I miles were taken over by short line or regional railroads, rather than abandoned completely.

It is interesting to note that when freight railroads run freight trains over the Northeast Corridor, which is owned by Amtrak, Amtrak charges the freight railroads fully allocated costs, not just incremental costs. In fact, the fees that freight railroads pay Amtrak are many times greater (on a per car basis) than the fees which freight railroads must accept from Amtrak. Thus, railroads are prohibited by statute from treating Amtrak the same way that Amtrak treats freight railroads. Freight railroads should be fully compensated for Amtrak's use of their property as Amtrak is compensated for use of Amtrak's property.

Funding Capacity Enhancements

The addition or expansion of passenger operations on freight-owned facilities requires a thorough analysis of the effect that passenger service would have on existing and future freight operations, and the investments needed to ensure safe operations that do not impede the owning freight railroad.

Funding is, of course, a critical—and sometimes controversial—issue. Each specific case must be evaluated based on its unique circumstances and merits, but in general freight railroads should be expected, and are willing, to pay for infrastructure investments that truly benefit them and that they actually want. Conversely, there is no reason to expect freight railroads to pay for investments that do not benefit them or that they do not want.

This is a crucial point. As profit-driven entities, freight railroads cannot afford to make investments that yield primarily public benefits, and the benefits of passenger rail are primarily public benefits. Freight railroads have no shortage of potential infrastructure investment projects, but financial markets provide stern discipline to ensure that investments are made only where they will provide a reasonable promise of a direct economic benefit to the investing railroad. This discipline is necessary and appropriate in a market economy, but it discourages investments—including investments in capacity that would benefit passenger railroads—that would yield significant public benefits (*e.g.,* congestion mitigation, emissions relief, enhanced mobility, improved highway safety), but only limited or no direct financial benefits to the railroad.

A number of proposals have been put forth regarding how public funding can be made available for passenger rail-related projects. For example, funding for the Congestion Mitigation and Air Quality Improvement Program (CMAQ) could be increased, as could the amount of loans and loan guarantees available through the Railroad Rehabilitation and Improvement Financing (RRIF) program. Freight railroads support both of these approaches. The AAR also supports a thorough evaluation of the Transportation Finance Corporation concept recently presented by the American Association of State Highway and Transportation Officials (AASHTO), and similar proposals, some of which will be discussed today. Railroads do not yet have a position on these proposals, which are new and the details of which are still being ironed out.

To repeat a critical point I made earlier, freight railroads should not be considered obligated to fund passenger rail service or suffer negative effects on their own operations because of passenger rail. That is a primary reason why freight railroads strongly oppose the creation of a "rail trust fund" to finance passenger rail if money for the trust fund is to be derived from freight railroads and/or their customers and suppliers.

Future Public Policy Directions

Freight railroads cannot afford, and should not be expected, to subsidize others at the expense of their own needs. To this end, freight railroads respectfully suggest that you adhere to a series of principles regarding the future of passenger rail service. These principles call for future rail passenger public policy to acknowledge the extreme capital intensity of railroading and to ensure that railroads' investment needs can be met.

Policies which add to freight railroads' already enormous investment burden, such as further saddling them with support of passenger rail infrastructure needs, or which reduce their ability to provide the quality service needed by their freight customers, must be avoided. To do otherwise would undercut our nation's freight rail capabilities and be counterproductive in addressing our country's congestion, environmental, safety, and economic concerns. After all, the goal of reducing pollution and highway congestion by expanding rail passenger service will not be realized if passenger trains interfere with freight service and force freight onto the highways.

The freight railroad principles are outlined below.

1. Passenger rail cannot exist without significant government subsidization

Our nation's railroads learned the hard way how difficult it is to recover the full costs of passenger railroading. No comprehensive passenger system in the world operates today without significant government assistance. Once policymakers in the Administration, Congress, and the various states agree on the nature and scope of passenger railroading in this country, they must be willing to commit public funds on a long-term basis commensurate with that determination.

2. Freight railroads should receive full compensation for the use of their assets by passenger operators

The special statutory privileges regarding its relationship with freight railroads that Amtrak has enjoyed over the past 30 years—*i.e.,* Amtrak's statutory right of priority access to freight railroads' tracks at incremental cost—have amounted to a significant, mandatory, and inequitable subsidization of intercity passenger operations by freight railroads. An incremental cost basis does not come close to reflecting the full market value of Amtrak's access to the owning railroad's tracks because it does not cover the full operating, capital, opportunity, and other costs freight railroads incur in hosting Amtrak trains.

3. Freight railroads should not be expected to further subsidize intercity passenger rail service, either through new taxes or the diversion of existing taxes (including the 4.3 cents per gallon deficit reduction fuel tax)

If policymakers determine that passenger service provides essential public benefits, then the costs of the passenger service (including the costs of maintaining and, where necessary, building new rights-of-way to passenger-rail standards) should be borne by the public, not by freight railroads. For 30 years, freight railroads have subsidized Amtrak. Forcing them to continue to do so, or forcing freight railroads to subsidize other types of passenger rail, would seriously hinder freight railroads' ongoing efforts to provide safe, efficient, and cost-effective freight transportation service.

Indeed, to force freight railroads to subsidize passenger operations would be supremely inequitable. Freight railroads are suppliers to passenger rail. As such, they should be treated the same as those who supply locomotives, passenger cars, diesel fuel, electricity, and provisions for dining cars. Nor should freight railroads be held to a loftier "public interest" standard. Highway contractors are not required or expected to bid below cost because highways are in the public interest. The same rules should apply to railroads.

The 4.3 cents per gallon deficit reduction fuel tax paid by railroads deserves special mention. This tax should be repealed—not diverted to any other purpose—so that freight railroads can channel these funds into needed infrastructure and equipment. Diverting this tax to fund passenger rail would perpetuate the inequities faced by freight railroads, because they would continue to derive no benefit from a tax they pay but their primary competitors do not.

Forcing freight railroads to shoulder an inappropriate liability burden is another form of subsidization that should be avoided. It is almost inevitable that some accidents will occur on railroads, despite railroads' best efforts to prevent them. An accident involving passenger trains—which are generally far lighter than freight trains, often travel at much higher speeds, and, most importantly, have passengers on board—is far more likely to involve significant casualties than a similar accident involving only freight trains. Passenger operations also bring more people onto railroad property, resulting in a corresponding increase in risk. These risks make freight railroads extremely reluctant to allow passenger trains on their tracks without adequate protection from liability.

4. Safety requirements and the integrated nature of railroading necessitate that intercity passenger rail be provided by one entity—Amtrak. Further, Amtrak's right of access, preferential access rates, and operating priority should not be transferred or franchised.

One of Amtrak's fundamental purposes was to amalgamate several hundred disjointed passenger trains operated by more than 20 individual carriers into a coherent intercity passenger rail system. It was envisioned that a single carrier would yield greater efficiency and innovation. This approach remains just as sensible today.

Moreover, the terms and conditions by which Amtrak uses freight-owned tracks were set by Congress more than 30 years ago under circumstances vastly different from today. As noted above, at that time freight railroads were given the proverbial offer they could not refuse: in order to be able to stop losing hundreds of millions of dollars per year on passenger trains they were forced by the government to operate, freight railroads accepted special, non-compensatory terms covering Amtrak's use of their tracks that under other circumstances would have been unacceptable. No such *quid pro quo* exists for non-Amtrak passenger service, so other passenger operators are not entitled to the treatment legislated for Amtrak. Moreover, freight railroads did not agree to an "open door" policy and balkanized structure that would allow any number of state, regional, or local entities to claim access to their assets.

Further, freight railroads knew that Amtrak's obligations were, in essence, the obligations of the United States and that Amtrak would be operated safely and professionally. Should Amtrak intercity services be transferred to other passenger operators, it is unclear under what circumstances the transfer would be made and what characteristics would apply to the operators. For example, private entities might have different degrees of financial backing; public authorities might or might not enjoy the full faith and credit of their sponsoring states; and some prospective passenger rail operators might be less committed to safety and sound operating standards than Amtrak.

If others are asked to provide Amtrak-like services, freight railroads must retain the right to negotiate terms (at arms length, free of governmental intervention) under which those providers will gain access to the freight railroad's right of way. Proposals to summarily grant passenger carriers other than Amtrak access to freight facilities ignore the fundamental fact that freight railroads' rights-of-way are private, not public. In the absence of agreement through voluntary negotiations, freight railroads should not be forced to allow passenger operators to use their assets any more than any other private business should be forced to allow another company to use its assets without its consent or at non-compensatory rates.

In fact, freight railroads view the granting of statutory access to other passenger operators to be a "taking" of private property, which requires just and reasonable compensation under the Constitution.

5. The obligations of passenger railroads, notably those under the Railroad Retirement Act and the Railroad Unemployment Insurance Act, must not be shifted to the freight rail industry and its employees

Railroad employees and retirees are not covered by Social Security. Instead, they are covered by Railroad Retirement, a government sponsored and managed pension plan funded by payroll taxes on railroad employers and employees. Railroad Retirement covers the full rail industry, including freight, Amtrak, and commuter railroads; rail labor and trade organizations; rail lessor companies; and miscellaneous railroad affiliates.

Like Social Security, Railroad Retirement is a pay-as-you-go system: payroll taxes from current employees are used to provide current retiree benefits. Railroad Retirement is also a pooled system in which all rail participants contribute at the same statutory rates, all rail industry employees receive standardized retirement and survivor benefits based upon their years of service and earnings, and participating employees are assured of benefits regardless of the fate of their particular employers.

The integrity of such a system depends upon *all* participating entities contributing based on the current number of active workers employed. It would be inequitable for passenger railroads (Amtrak alone accounts for approximately 10 percent of the total rail industry work force) to suddenly be granted special relief from a pooled, pay-as-you-go system. Simply removing Amtrak or other passenger railroads from the Railroad Retirement system, in whole or in part, would force the remaining participants—primarily freight railroads and their employees—to shoulder the burden of maintaining the viability of the system.

6. Future high-speed passenger rail corridors should be separate, dedicated, and "sealed"

Amtrak's existing high-speed Northeast Corridor operations have proven popular over the years, and many envision high-speed rail service to be a primary component of future intercity passenger rail operation elsewhere in the nation. High-speed rail passenger service is an integral part of passenger rail operations in countries around the world, including France, Germany, and Japan. Where high-speed rail exists, however, governments have supplied the massive amounts of funding it requires.

Given the huge expense involved, the expansion of high-speed passenger rail service throughout the United States presents formidable challenges. To operate safely, high-speed passenger rail operations require the construction of separate, dedicated tracks. Further, grade crossings must be eliminated (either through closure or through the construction of highway underpasses or overpasses). These are exceedingly expensive undertakings and will require firm, long-term commitments by the appropriate authorities, since they are necessary for successful implementation of high-speed projects.

Summary

This Committee and others in Congress have before them a difficult mission: to fashion a realistic, fair, and workable solution to the serious financing problems facing passenger rail in the United States. In reaching that solution, we strongly urge you to incorporate the principles detailed above. Doing so will help ensure that freight railroads continue to play a vital role in our nation's economic prosperity and global competitiveness. Freight railroads look forward to working cooperatively with this Committee, with Amtrak, and with others to achieve this worthy goal.

Senator HUTCHISON. Thank you very much. Let me just say, on the revenue stream, we certainly would like to look for all options. This would not be a new tax, and I would not support a new tax on freight, but I do think that if we can offer something in return to the railroads for the use of this tax that would increase the efficiency of the railroads, I think we need to try to work together, rather than just throwing down everything that is so far being proposed. We need some positive input, rather than just being against everything, or we'll be right where we have been.

Mr. HAMBERGER. I agree, and as I said, we do want to work with you and the Committee, and we think the idea of public-private partnerships, and we hope to be able to announce a major one in Chicago later this month, where the freight railroads, the passenger railroads, the community come together and we pay for the benefits that the freight railroads receive, and the public pays for the benefits the public receives in the form of congestion mitigation and increased passenger service, so we think that might be a better model than the 4.3 cent revenue stream, but we certainly want to work with you and the staff to see if that works.

Senator HUTCHISON. Thank you. Mr. Jeff Morales.

Senator LAUTENBERG. Madam Chairman, may I introduce Jeff Morales for a minute?

I look at Jeff Morales with a considerable amount of pride. He got much of his training at the Lautenberg office. You can tell by the whip marks on his back.

[Laughter.]

Senator LAUTENBERG. But we're very proud of Jeff Morales, who started at a fairly low level doing transportation work for me in my office with the Appropriations Committee and authorizing committees as well, and we're very pleased to see Jeff Morales here in this very important post that he has in California, and my hope is that he hasn't forgotten his old friends.

[Laughter.]

Senator HUTCHISON. Well, thank you very much for adding that introduction, and with that, Mr. Morales is the Director of the California Department of Transportation.

STATEMENT OF JEFF MORALES, DIRECTOR, CALIFORNIA DEPARTMENT OF TRANSPORTATION (CALTRANS)

Mr. MORALES. Thank you, Madam Chairman. Senator Lautenberg, thank you for both the training and for the good words, and I assure you, anything I say is not meant to come at the expense of the Northeast Corridor. I will not bite the hand that once fed me.

California has the largest and the most successful State-supported intercity passenger rail program in the country. Over the last few years, rail ridership in California has continued to grow, and is leading the Nation. Three of the five busiest Amtrak corridors in the country are in California, and this is happening in spite of a sluggish economy and in spite of the sense that Californians would never get out of their cars. This year, one of every five Amtrak riders nationally will be on a California train. State-supported intercity rail service saved 265 million vehicle miles of travel and 4½ million gallons of gasoline in 2002 in California.

The state has made major operating and capital commitments to rail. In 2002, the state paid Amtrak $67.8 million in operating costs. This was 53 percent of payments from all states. The state has provided $1.7 billion in capital funds since 1976. This has been enabled by several things, including the passage of two general obligation bond measures and the commitment of State public transit account funds. Last year, Governor Davis signed a bill that puts on the ballot in November 2004 another bond measure that would provide $10 billion if approved by the voters, $9 billion of that going for the development of a high-speed rail system and $1 billion to continue to support commuter and intercity rail service, and Madam Chair, I would tell you that that bond measure absolutely anticipates and assumes both Federal support and a private investment in order to make those projects go forward.

Governor Davis has been particularly supportive of intercity rail, dedicating close to $600 million in the last 4 years. Our investments are targeted at making rail more competitive with other modes as a way of helping relieve congestion. For example, we have over $300 million of improvements in the Los Angeles-San Diego Corridor, and our goals there are to increase frequencies and ridership by over 50 percent and reducing travel time to under 2 hours.

I would like to raise several issues that I hope the Subcommittee will consider as it moves forward. A key issue is the relationship between private freight railroads and passenger rail service. That relationship is unique in many ways in transportation, and does need to be recognized as we move forward. As you know, Federal law gives Amtrak unique rights to access freight railroads at incremental cost. Thus, Amtrak has a significant competitive advantage. As long as this remains the case, true competition in passenger rail will not be possible, as other providers have to negotiate with the railroads for access, with no guarantee of getting it at all, and almost certainly at a higher price.

We're conducting a study on competitively bidding intercity rail service to see if California could benefit under current law. The study will also look at how to best position us to continue our rail service in the event Amtrak is significantly restructured, or even liquidated. The study will also identify any potential changes to Federal law that we might want to propose.

The Chair raised several issues about the relationship with freight railroads, and again I think it's critical that we recognize, as we make investments in their systems, we do need to get the cooperation to ensure that passenger service gets its fair share.

While California has stepped up to the plate and delivered, I do not suggest or support the idea that the Federal Government should not have a role in California's passenger rail system. If the Federal Government invests in any corridors, it should be willing to invest in our productive corridors. Improved mobility in California has national benefits, and relieving congestion in California is just as worthy a goal as it is elsewhere. An ongoing, stable, Federal source of funding, capital funding, is necessary to allow California to keep pace with demand and growth. Stable Federal funding is also essential for the incremental development of high-speed service on key routes throughout the Nation.

Additionally, we recommend that the Subcommittee consider the issue of equity in states' payments to Amtrak. Amtrak has a new policy that all states will make operating payments on the same basis. We hope the Subcommittee monitors Amtrak's timeliness in equalizing state payments.

Finally, we believe the Congress should continue to increase the flexibility of Federal transportation funding. In California, intercity rail service augments commuter rail and provides congestion relief to parallel interstate routes such as I–80 in the Sacramento to San Francisco Corridor, and I–5 in San Diego. In those multimodal corridors, intercity rail projects should be given the same Federal funding opportunities now offered to commuter and urban rail capital projects, and total funding should be increased to accommodate intercity passenger rail needs.

In closing, Madam Chair, let me just say much of what California is doing, and we're proud of what we're doing and we'll continue to do it, but it underscores, frankly, the lack of a national cohesive financing policy for rail, and we greatly appreciate the Committee's approach on this and its efforts to develop such a national policy, and look forward to working with you on it.

Thank you.

[The prepared statement of Mr. Morales follows:]

PREPARED STATEMENT OF JEFF MORALES, DIRECTOR,
CALIFORNIA DEPARTMENT OF TRANSPORTATION (CALTRANS)

Good morning, Madame Chairwoman and members of the Subcommittee, my name is Jeff Morales. I am the Director of the State of California's Department of Transportation. Thank you for giving me the opportunity to testify today.

Introduction

Today, I would like to give you some thoughts on intercity passenger rail finance as it relates to state-supported Amtrak service in California. But first, let me introduce you to the exciting intercity rail program we are running in California in partnership with Amtrak. California has, by far, the largest state-supported intercity passenger rail program today, both in terms of dollars and riders, and is considered by many to be the model in State-supported intercity passenger rail service. The bottom line is our performance. Particularly over the last few years, rail ridership in California has continued to grow, and is leading the Nation. This is happening in spite of a sluggish economy, and the sense of many that Californians will never get out of their cars. This year, close to one of every five Amtrak riders nationally will be on one of California's trains.

As a side note, I would also like to point out that we are seeing tremendous growth on our commuter rail lines in California. Although this is not the subject of today's hearing, these lines work in conjunction with our Amtrak-operated service, and are an increasingly important part of our overall transportation system.

Amtrak operates three routes for the state: the Pacific Surfliner, San Joaquin, and Capitol Corridor Routes. In FFY 2002, the Pacific Surfliners and Capitol Corridor had the highest and second highest ridership, and the San Joaquins had the fourth highest ridership of all Amtrak routes outside of the Northeast Corridor. California's three state-supported routes had almost 3.6 million combined riders in FFY 2002. This was 47 percent of the ridership on all corridor trains outside of the Northeast Corridor, and 16 percent of total Amtrak ridership in FFY 2002. In FFY 2003, we expect to carry over 4.0 million passengers or nearly 20 percent of total Amtrak ridership.

In order to make our program successful, the state has committed major operating and capital funds to the program. On the operating side, California contributed

$67.8 million in operating payments to Amtrak in FFY 2002. This was 53 percent of the total payments that all states made to Amtrak in FFY 2002.

On the capital side, California has provided an unprecedented amount of funds to intercity passenger rail service. The state has provided $1.7 billion in capital funds since 1976. California is the only state that has designed and bought its own equipment that is now used on most of the state-supported trains. Governor Davis has shown particularly strong support for intercity rail, as he believes it is one of the keys to congestion relief. Under Governor Davis, close to $600 million has been dedicated to intercity rail capital.

Description of California's Three Routes

Now, I would like to give you a little history and description of our Routes. In 1971, the year Amtrak was formed, Amtrak started by running three trains on the Pacific Surfliner Route (then called the San Diegans) in southern California, from San Diego to Los Angeles. California got involved when the state began supporting the route in 1976 with a State-supported addition of a fourth train. Over the years service has increased significantly. Service was added in 1988 on the north end of the route from Los Angeles to Santa Barbara. Currently, the state covers about 67 percent of the net cost of operations for this Route, while Amtrak covers the remaining 33 percent. This is the only corridor route in California where Amtrak entirely supports a portion of the service.

Today, the route is the fastest growing corridor in the country with 11 round-trips between San Diego and Los Angeles, and a 12th round-trip operating on weekends.

Four trains extend north to Santa Barbara weekdays and five on the weekends, with one daily train extending further north to San Luis Obispo. Ridership in FFY 2002 was 1.7 million. Ridership has been particularly strong in FFY 2003. From October 2002 through April 2003 ridership was almost 24 percent higher than the same prior year period. This impressive ridership increase is mostly due to "Rail 2 Rail," an innovative joint ticketing and marketing program with Metrolink—the commuter rail service on the same corridor.

California also has a north-south route called the San Joaquins. Amtrak service on this route started in 1974 with one round-trip between Oakland and Bakersfield. The state started supporting the route in 1979, and a second round-trip was added in 1980. In 1999, the first round-trip to terminate in Sacramento was added. There are currently four round-trips from Bakersfield to Oakland, and two round-trips from Bakersfield to Sacramento, for a total of six daily round-trips. The route has an impressive dedicated feeder bus network that connects riders to Los Angeles and further south, as well as to more rural communities throughout the State. In SFY 2001–02, almost 65 percent of all San Joaquin passengers used at least one connecting bus. Ridership in FFY 2002 was over 730,000. Ridership in FFY 2003 from October 2002 through April 2003 was almost 9 percent above the same prior year period.

Our newest route is the Capitol Corridor, serving the northern metropolitan area of the State. The state started service on this Route in December 1991 with three round-trips between Sacramento and San Jose, and one trip extending to Roseville. In July 1998, responsibility for administering the Capitols was transferred to the Capitol Corridor Joint Powers Authority (CCJPA). The state now provides funding and oversight to the CCJPA. Today, the Capitol Corridor has twelve weekday round-trips and nine weekend round-trips between Sacramento and Oakland. One daily train extends east to Auburn, and four weekday trains extend south to San Jose with six on the weekends. Ridership in FFY 2002 was almost 1.1 million. The Capitol Corridor added three weekday round-trips in SFY 2002–03. Ridership in FFY 2003 from October 2002 through April 2003 was almost 7 percent above the same prior year period.

Ninety-eight percent of the state's population lives in counties served by the three routes and their connecting bus networks. The state Department of Transportation estimates that as a result of state-supported intercity rail service, 265 million vehicle miles and 4.4 million gallons of gasoline were saved in 2002. These statistics illustrate that intercity rail travel in California provides a true alternative to auto travel, not just a token option.

California's Capital Support for its Intercity Passenger Rail System

As I mentioned earlier, since 1976, California has provided $1.7 billion in capital funds for track, signal and station improvements. $749 million of these funds went to the Pacific Surfliners, $403 million to the San Joaquins, $196 million to the Capitol Corridor, $107 million for maintenance and layover facilities and other projects, and $274 million for rolling stock. Starting in the early 1990s, with the passage of two general obligation bond measures, capital funding increased dramatically. Without these capital projects, the expansion of California's intercity passenger rail ridership from 1.3 million in SFY 1979–1980 to 3.6 million in FFY 2002 would not have been possible. Capital projects are necessary to expand track capacity for additional frequencies, improve service reliability, and reduce train running time so that rail service is competitive with the auto.

Governor Davis has strengthened the state's commitment to intercity rail by proposing close to $600 million for intercity rail capital. $146 million was designated to construct 14 miles of triple track between Los Angeles and Fullerton on the Pacific Surfliners. An initial $28 million has been reserved for the design and environmental work on "run-through" tracks at Los Angeles Union Station. This project will also benefit the Metrolink commuter trains that use Union Station. Also, $92 million is proposed to construct double tracks on the San Joaquins over three significant portions of the route.

Equipment Program

The state also has an unusual and impressive equipment program. California is the only state that has designed and bought new intercity rail equipment. In the mid-1990s, the state pioneered the California Car design that allows faster loading and unloading, shorter dwell times at stations, and greater accessibility for disabled passengers. This design was used as the basis for Amtrak's new Pacific Surfliner fleet. California currently owns a fleet of 88 cars and 17 locomotives. The state supplies all of the 78 cars and 17 locomotives in the northern California fleet used on the Capitols and San Joaquins. Also, the state supplies 10 of the 50 cars used on the Pacific Surfliners. As I mentioned earlier, the state has spent $266 million to date for rolling stock. As the initial California Cars are aging, California has started a heavy equipment overhaul program, with $10.8 million budgeted in SFY 2001–02 and 2002–03.

California's System is a Significant Part of the National System

Now that I have been able to describe to you California's intercity passenger rail system, I am sure that you realize how key it is to Amtrak's larger system. As I mentioned earlier, California's 3.6 million riders made up 16 percent of Amtrak's total FFY 2002 ridership. California helps the national system by contributing riders to the long-haul trains. Almost 100,000 passengers transferred between California's three routes and long-haul trains in FFY 2001, and contributed $12.1 million in passenger revenue to the long-haul trains. These trains are the Coast Starlight, California Zephyr, Southwest Chief, and Sunset Limited. California's financial contribution to Amtrak is also significant. California's operating payments of $63.1 million reduced Amtrak's total full cost operating loss of $772.2 million by 8 percent in FFY 2001.

Issues California Would Like the Subcommittee to Consider in its Discussions on Intercity Passenger Rail Finance

I now have a few thoughts on issues California would like the Subcommittee to consider in its discussion on intercity passenger rail finance.

Freight Railroads. A number of issues relate to the interrelationship between private freight railroads and intercity passenger rail service. As you know, under Federal law only Amtrak has the right to access freight railroads for intercity passenger rail service at incremental cost. Thus, Amtrak still has a significant competitive advantage over other potential service providers. The importance of this fact cannot be overemphasized. Until all service providers have the same access rights to railroads as Amtrak, true competition will not be possible, as other providers have to negotiate with the railroads for access—with no guarantee of getting it at all, and almost certainly at a higher price.

Because California has spent significant funds to improve private railroad infrastructure for use in passenger rail service, the state would not employ a service provider that does not have long-terms rights to operate on a railroad. We believe to address these significant issues of equal access to freight railroads and stability of service, changes to current Federal law are necessary.

As mentioned above, California has spent significant funds making capital improvements to freight railroads to provide additional intercity passenger rail capacity for new trains and to increase passenger speeds. Unfortunately, while passenger service has increased according to the State's agreements with the freight railroads, freight service often has used much of the additional capacity, leading to dispatching delays and poor on-time performance for the intercity rail passenger service. This is an issue that needs to be addressed cooperatively by state and Federal Government, Amtrak and the railroads.

We would like to point out that the state has a good partnership with the Burlington Northern Santa Fe (BNSF), although we are still resolving issues with on-time performance. The State's relationship with the Union Pacific has improved in the recent past.

In order to address some of the issues just mentioned, California has contracted with R.L. Banks and Associates to conduct a benefit/cost feasibility study on competitively bidding intercity rail, in order to determine if there are methods whereby competitive bidding could benefit California under current law. The study will also look at how to best position California to continue intercity passenger rail service in the event Amtrak is restructured or liquidated. The study will additionally identify any changes in Federal law that would be needed. The study is planned to be completed by the end of 2003.

Federal Role in Intercity Passenger Rail Service. Another set of issues California is concerned with relates to the Federal role in intercity passenger rail. As I mentioned earlier, California's extraordinary intercity passenger rail capital program has made California Amtrak service possible. However, while California has stepped up to the plate and delivered, I do not suggest or support the idea that the Federal Government should not have a role. If the Federal Government invests in any corridors, it should be willing to invest in our productive corridors. Improved mobility in California has national benefits, and relieving congestion in California corridors is just as worthy a goal as helping address problems in the Northeast and elsewhere. Consequently, an ongoing stable Federal source of capital funding is necessary to allow California Amtrak service to just keep pace with population growth. Stable Federal capital funding is also absolutely essential in order to allow the incremental development of high-speed rail service on key corridor routes throughout the Nation.

In a similar vein, California cannot continue to be required to increase its responsibilities to Amtrak for operating costs. It is essential that long haul trains continue to be exclusively the responsibility of the Federal Government. The states will not be able to pick up funding of the long haul services.

Additionally, we recommend that the Subcommittee consider the issue of equity in states' payments to Amtrak for intercity rail operating services. Amtrak has begun to address this issue with its new policy that all States will make operating payments on the same basis. We hope the Subcommittee monitors Amtrak's timeliness in equalizing states' payments.

In this era of scarce funding at all levels—Federal, state and local—we believe the Federal Government needs to continue to increase opportunities for flexible transportation funding. While ISTEA and subsequent legislation opened the transportation funding playing field considerably, intercity passenger rail funding was notably left out of this game. Unfortunately, intercity passenger rail is still not being given access to flexible transportation funding in the latest draft of SAFETEA. In California, intercity rail service augments commuter rail and provides congestion relief to parallel Interstate routes such as 1–80 in the Sacramento to San Francisco Corridor and 1–5 in San Diego. In essence, intercity service has become a corridor management tool. We believe that in multimodal corridors, intercity passenger rail capital projects should be given the same Federal funding flexibility and opportunities as is now offered commuter and urban rail capital projects and that total funding should be increased to accommodate intercity passenger rail needs.

Here is an example to point out the effect of the lack of funding flexibility. As Director of Transportation, I cannot use Federal highway funds on the Capital Corridor that serves the 1–80 corridor or the Pacific Surfliner route that serves the 1–5 corridor to relieve congestion on those interstate routes. The state should have that option.

Conclusion

We appreciate the Subcommittee's initiative in convening this hearing. I would like to leave you with three key points from California's point of view. First, California has made a significant capital and operating investment in its intercity passenger rail system. We urge the Senate to ensure that this investment is protected as changes are considered to the relationship between passenger and freight rail and as Amtrak's future is considered. Second, we believe that a continuing and stable source of Federal funding for both capital and operating needs is necessary to successfully operate the national intercity rail passenger system. The sooner the issue of funding can be resolved, the better for the system. Finally, there has been much discussion about introducing competition to Amtrak. If Congress takes this route, we recommend that current law be changed to allow states, and by extension their franchisees, to access freight railroads at incremental cost.

I want to thank you again for the opportunity to testify today before this Subcommittee, and would be happy to answer any questions.

Senator HUTCHISON. Thank you. I will say California has led the way in state support, because they haven't had the luxury of the Northeast Corridor support of Amtrak, and you're not dealing with as bad a situation as the rest of the country with the freights, but you certainly have had to overcome obstacles, so we will look forward to working with you to strengthen the whole system.

Mr. Robert Serlin, the President of the Rail Infrastructure Management.

STATEMENT OF ROBERT SERLIN, PRESIDENT, RAIL INFRASTRUCTURE MANAGEMENT, LLC

Mr. SERLIN. Good morning, Madam Chairman, distinguished Members of this Committee. My name is Robert Serlin. I am President of Rail Infrastructure Management, an entity organized to analyze opportunities for investment in the rail industry and to provide the public sector a partner with whom to develop innovative passenger rail solutions. As we look into the future of intercity passenger rail services, I believe that there are three major, immediate challenges facing Amtrak.

The first challenge is to end the recent experience of almost regular financial crises. In this regard, I think that Mr. David Gunn, working with the Department of Transportation and Congress, deserves much credit.

The second challenge is to restore the infrastructure to a state of good repair, and the third, perhaps most ambitious challenge, is to find a way to revitalize rail passenger service in the Northeast.

The basic station pattern in the Northeast was laid out in the 1920s and the 1930s, and ridership has basically been flat throughout Amtrak's history. The Northeast Corridor is the most densely populated passenger corridor in the world. It has the potential for dramatically increased ridership, which will have a strong positive effect on Amtrak's financial results.

Though most passenger railroads are owned by the public sector, the magnitude of capital required has unfortunately grown to a level well beyond that achievable through annual Federal or State appropriations. Future investment in passenger rail will require blending of public and private sectors, and as Secretary Jackson has said, a new business model. Secretary Mineta, Deputy Secretary Jackson, and Administrator Rutter have developed a set of principles that are a solid basis for a legislative proposal, and are consistent with my views.

Amtrak currently manages two very different and in some ways conflicting businesses, the first providing passenger rail service, the second managing the 600 miles of owned infrastructure primarily located in the Northeast. The second business, the infrastructure, consumes significant Amtrak resources. It has been estimated that approximately 65 percent of Amtrak's cash losses are infrastructure-related. Therefore, the blue ribbon panel put together by Bud Schuster, the Amtrak Reform Council, and others have proposed separating Amtrak into two separate federally owned corporations.

The separation of passenger transportation from infrastructure would free Amtrak to focus on its core competency and would liberate resources, both Federal and State, to be spent in a targeted manner to enhance the passenger rail system throughout the country.

I believe that an infrastructure financing plan can be created and funded using nonappropriated funds generated from a combination of existing financial instruments. It's clear that financing is the key to creating a successful rail infrastructure company. Financial markets have developed to a point where almost any financing requirements can be addressed through a variety of products. Many, if not most of these products do not require Federal appropriations.

The market for risk continues to grow. In this particular case, factors that will be critical for a successful public-private partnership will include clear public policy, a realistic timeframe, credible operational plans, and accountability. By using available financial instruments, I believe the Federal Government will succeed in attracting the private sector to address this challenge.

Now, we've heard much about the pitfalls of the British experience. Our experience in the United States, however, indicates that bifurcation works and is successful. Amtrak only owns a little more than 2 percent of the total route miles over which it operates. The other 98 percent is owned and is dispatched by others. To the best of my knowledge, nobody claims that Amtrak's operations over its nonowned tracks is either unsafe or unsuccessful. Nonetheless, the U.K. does provide instructive lessons, some good, some bad.

In 1995, the U.K. Government privatized British Rail, creating Railtrack to manage the infrastructure. It also created a number of train service franchises, franchise holders that were licensed to run trains. These franchise holders brought focused private sector market experience to regional and long distance franchises, and by and large thrived. Ridership grew approximately 70 percent in 5 years, while over $4.3 billion was invested in new passenger rolling stock.

Ultimately, Railtrack failed, mostly because it had failed to invest in its core business, the rail infrastructure. Instead, it focused on developing center-city London real estate. It's in everybody's interest for the national rail passenger system to succeed. The approach I've outlined here will mean better service and greater passenger usage. The precedents exist for utilizing the best of private and public resources. We have seen this approach work in freight programs, we have seen it work for toll roads. By funding and reinvesting in the Northeast Corridor, we could create a living and working business model that will serve as an example for the 11 other designated high-speed rail corridors.

Thank you for providing the opportunity to testify, and I welcome your questions.

[The prepared statement of Mr. Serlin follows:]

PREPARED STATEMENT OF ROBERT SERLIN, PRESIDENT, RAIL INFRASTRUCTURE MANAGEMENT, LLC

Good morning Madame Chairman and distinguished members of this committee. My name is Robert Serlin. My background has been developing business solutions for revitalizing capital-intensive transportation and basic commodities businesses. I appreciate the opportunity to testify before the Subcommittee today.

I am a President of Rail Infrastructure Management, LLC, an entity initially organized in 1997 to analyze opportunities for investment in the rail industry and to provide the public sector a partner to develop innovative rail passenger solutions.

The need for such an effort was identified in a report produced by the so-called Blue Ribbon Panel—the “Working Group on Intercity Rail Passenger Service”—which was convened in 1997 by House Transportation and Infrastructure Chairman Bud Shuster to address Amtrak’s organization and financial structure.

There has rarely been a time when the topic of passenger rail deserved as much focus from a public policy perspective as the one in which we live. Our highway capacity fails to meet demand and further highway build-out in urban areas is unlikely, population growth continues, and the airline industry struggles to identify an economically viable business model. Yet, the one truly scalable means of transportation—the passenger railroad—a transportation mode that can be fast, safe, environmentally desirable, and consumer friendly, has been ignored or minimized.

As we look at the future of inter-city passenger rail service, I believe that there are three major, immediate challenges facing Amtrak.

The first challenge is to end the recent experience of almost regular financial crises. In this regard, I think that Mr. David Gunn, working with the Department of Transportation and Congress, deserves much credit.

The second challenge is to restore the infrastructure to a state of good repair.

The third and most ambitious challenge is to find ways to revitalize rail passenger service in the Northeast. The basic station pattern in the Northeast was laid out in the 1920s and 1930s and ridership has been basically flat for much of Amtrak’s history. The Northeast Corridor is the most densely populated corridor in the world. It has the potential for dramtically increased ridership, which will have a strong positive effect on Amtrak’s financial results.

Though most passenger railroads are owned by the public sector, the magnitude of capital required has, unfortunately, grown to a level well beyond that achievable through annual Federal or state appropriations. Future investment in passenger rail will require a blending of the public and private sectors and, as Secretary Jackson has said, “a new business model.”

We have recently seen innovatively financed infrastructure projects such as the Alameda Corridor in Southern California. Several states are seeking ways to work in partnership with the Nation’s freight railroads to develop other new corridors. These publicly owned rail infrastructure corridors will need to be maintained and operated in accordance with Federal laws and regulations. Amtrak has strived to be a catalyst for change, but being chronically short of funds, it can only offer moral support and limited equity.

Stakeholder Needs Guide Solutions

I am going to focus my comments here on Amtrak, though they are equally applicable to the other eleven DOT-designated high speed rail corridors.

A solution cannot be created without first identifying the stakeholders and understanding their needs. The interests of critical stakeholders such as labor and the states, as represented here today by Mr. Sonny Hall and Mr. Joseph Boardman, Chairman of the Transport Workers Union and Commissioner of NY State’s Department of Transportation respectively, must each fully be taken into account and incorporated into any such public-private partnership. The vested commuter carriers and the freight railroads with operating rights are also key stakeholder. Amtrak, another critical stakeholder, must be able to run its high speed trainsets at up to 150 mph, and connect New York and Washington in as few as two hours.

The Federal Government is, perhaps, the most important stakeholder. Secretary Mineta, Deputy Secretary Jackson and Administrator Rutter have developed a set of principals that are a solid basis for a legislative proposal and are consistent with my views.

Solution is Contained in the Blue Ribbon Panel’s Report

Amtrak currently manages two very different and, in some ways, conflicting businesses:

- The first, providing passenger rail service, operating trains for many constituencies and markets over 23,000 route-miles in 46 states.
- The second, managing the 600 route-miles of owned infrastructure, primarily located in the Northeast, which represents an integral part of the Northeast states regional transportation system.

This second business, the infrastructure, consumes significant Amtrak resources. It has been estimated that approximately sixty-five percent of Amtrak’s cash losses are infrastructure-related. Therefore, the Blue Ribbon Panel, the Amtrak Reform Council and others have proposed separating Amtrak’s operations into two separate, Federally owned corporations.

Under such a proposal, each corporation would control its respective assets. Amtrak would retain the rolling stock, shops, reservation system, and operating rights over the Nation's freight network. Amtrak would continue to run its trains throughout the Nation and the Northeast Corridor. Freed of the owned infrastructure, the cost of operating specific rail services could more easily be quantified since each service would be largely a variable cost enterprise and unburdened by infrastructure allocations. Amtrak could more easily attract new capital since it would be easier to match revenues to costs.

The separation of passenger transportation from the infrastructure would free Amtrak to focus on its core competency and would liberate resources (both Federal and state) to be spent in a targeted manner to enhance the passenger rail system all across the country.

Financial Approach

Based upon figures published in oversight reviews and independently conducted surveys of potential private sector investors, I believe that an infrastructure financing plan can be created and funded using non-appropriated funds generated from a combination of existing financial instruments.

It is clear that financing is the key to creating a successful rail infrastructure company. The financial markets have developed to a point where almost any financing requirement can be addressed through a variety of products. Many, if not most of these, do not require a Federal appropriation.

The market for risk continues to grow rapidly. In this particular case, factors that will be critical for successful public-private partnership will include: (i) clear public policy; (ii) realistic timeframe; (iii) credible operational plans; and (iv) accountability. Let me talk about each of these briefly.

- Public policy needs to address the parameters and requirements of what must be done. In this case, it would include separating passenger transportation services from infrastructure management.
- A reasonable time-frame must be stipulated, such as between thirty and fifty years, given the investment required to reverse the deferred maintenance and turn an operating profit. Profitability can only be achieved by removing chokepoints in the infrastructure that constrain train through-put, limit maximum speed and make journey times non-competitive. Our projections indicate that it will take between thirteen and fifteen years to reach cash breakeven.
- A framework for supervising the infrastructure manager and the relationships between the multiple infrastructure-users must be found. The solution should use existing entities, such as the Federal Railroad Administration and the Surface Transportation Board. Guidelines for accountability should be explicitly laid out under current FRA safety regulations and applicable portions of the Railway Labor Act.
- Accountability can be provided both through the mandates of the enabling legislation and the private financial markets. The enabling legislation can create a framework that, for example, establishes operational and safety requirements, preserves existing passenger rail relationships, recognizes labor's role, and perhaps even provides additional funding for Amtrak and other regional organizations contemplating new rail passenger corridors. Private financial markets impose financial discipline and performance requirements.

By using available financial instruments, I believe that the Federal Government will succeed in attracting the private sector to address this challenge. It will succeed in making available appropriateable funds that can be spent on the national passenger rail system where need and public purpose demand.

Not the British Experience

We have heard much about the separation pitfalls experienced in the United Kingdom. Our experiences in the United States, however, indicate that bifurcation works and is successful. Amtrak only owns a little more than two percent of the total route miles over which it operates. The other ninety-eight percent is owned and dispatched by others. To the best of my knowledge, nobody claims that Amtrak's operations over its non-owned tracks is either unsafe or unsuccessful.

Nonetheless, the U.K. does provide instructive lessons: some good and some bad. In 1995, the U.K. government privatized British Rail creating a publicly traded company called Railtrack to manage the infrastructure. A number of train service franchise holders were licensed to run trains. They brought focused, private sector marketing experience to the regional and long distance franchises and, by in large, thrived. Ridership grew approximately seventy percent in five years while over $4.3 billion was invested in new passenger rolling stock.

Railtrack ultimately failed because it did not invest adequately in its core business—the rail infrastructure. Instead, it focused on developing center city London real estate. Factors attributable to Railtrack's demise include:

- initial planning that did not match reality: for example, the company encouraged increased track usage before completing the infrastructure improvements and maintenance necessary to support such an increase;
- no government regulatory framework: Railtrack did not operate under any operating regulatory agencies such as our Federal Railroad Administration. This resulted in adversarial relationships between the track users and the track manager; and
- a legal system unsuited to making infrastructure management decisions: under British law, Railtrack's leadership was personally liable for the actions it took and, therefore, outsourced all essential operating functions. This resulted in a chaotic response to a string of major derailments in 2001.

In the United States there currently exists a regulatory system with over one hundred years of history to prevent these pitfalls. In addition, it is understood that infrastructure improvements, including third tracks, new bridges, tunnels and stations, need to be made before ridership can be allowed to increase.

Conclusion

I am not here to judge whether Amtrak could or could not have done a better job. I am impressed with Mr. Gunn's efforts to impose financial discipline on Amtrak and to focus Amtrak on its primary operating mission. But nonetheless, Amtrak's structural problems remain.

It is in everyone's interest for the national rail passenger system to succeed. The approach I have outlined here will mean better service and greater passenger usage.

The precedents exist for a solution utilizing the best of private and public resources. We have seen this approach in new freight projects. We have seen it in private toll roads. And in essence, we see it in the construction and landside operations of airport facilities. The challenge is to optimize that mix by letting the private sector address issues, such as infrastructure, that need in excess of ten years to be implemented.

This will necessitate that the private and public sectors each acknowledge the importance of the other and that each permit the other to do their work. I agree with DOT's Inspector General, Mr. Ken Mead, who said before you a little over a month ago: "Allowing an infrastructure company to operate "like a business" may mean relinquishing control over . . . which capital investments are made."

I would be the first to acknowledge that this is but a small part of fixing the larger puzzle of creating the best national passenger rail service possible. By funding and reinvesting in the Northeast Corridor, we can produce a living and working business model that will serve as an example for the other eleven designated high speed corridors.

Thank you for providing me the opportunity to testify and I welcome questions you might have.

Senator HUTCHISON. Thank you, Mr. Serlin.

Mr. Sonny Hall, President of the Transport Workers Union of America of the AFL–CIO.

STATEMENT OF SONNY HALL, PRESIDENT, TRANSPORT WORKERS UNION OF AMERICA, AFL–CIO; PRESIDENT, TRANSPORTATION TRADES DEPARTMENT, AFL–CIO

Mr. HALL. We as well, Madam Chairman, will be summarizing our report, which we've already submitted.

Chairman Hutchison, Ranking Member Inouye, and Members of the Subcommittee, my name is Sonny Hall, and I'm the International President of the Transit Workers Union, TWU, and as well President of the Transportation Trades Department, AFL–CIO, TTD, and appear today in both capacities.

TWU represents workers at Amtrak and in the freight rail industry, and TTD consists of 35 AFL–CIO unions across the entire transportation industry. Thank you for inviting me to testify today and for seeking new and innovative ways to fund passenger rail service.

Transportation labor has long argued that our nation must make a serious and long-term financial commitment to Amtrak. We must recognize that Amtrak is a public service, just like highways, just like transit and other infrastructure that should serve the public's transportation needs and not be driven by profit motives.

Understandably, there's a desire to look for new ways to increase the pot of money available, but in this current debate we must not forget how we got here. Amtrak was created in response to the financial bleeding of the Nation's freight rail carriers in trying to operate passenger rail. In plain English, Amtrak was nothing less than a bail-out of failing private passenger rail operations, an acknowledgement that there was no profit to be made here.

The 30 years that have followed have been filled with one financial crisis after another. Amtrak has struggled to secure enough funding to simply remain in operation. Through these many dark days, Amtrak workers have repeatedly made the sacrifices needed to keep the trains running, but regrettably some have chosen to scapegoat Amtrak workers, saying they are part of the problem. This is not only untrue, but deeply offensive to those who have made years of sacrifice.

As part of my testimony, I am submitting a report by noted economist Thomas Roth which decisively concludes that labor costs at Amtrak have remained constant over the past 21 years and have actually declined in real dollars. In fact, Amtrak wages have lagged far behind cost-of-living increases and trail the raises of freight and commuter rail workers. Just as the myth that Amtrak can exist without subsidies must end, so, too, must the myth and the scorn it breeds that Amtrak workers have made too much and too little sacrifice.

Transportation labor will insist that jobs and livelihoods of Amtrak employees are not ignored or cast aside. As well, it's imperative that new collective bargaining agreements are completed without further delay, contract agreements that are already 3–1/2 years delayed, and of course any new financing mechanisms must protect the rights of the men and women who have built this railroad and have done everything they can and more to keep it running. The entire labor movement would strongly mobilize against any legislation that turns its back on Amtrak workers.

I want to call the Committee's attention to a study released yesterday by the highly regarded Economic Policy Institute. The report, "Amtrak Privatization: The Route to Failure" challenges the myth that the solution to Amtrak's problems is to privatize the system. I understand that EPI has submitted a copy of this report for the record, and I urge members of the panel to use it as a guide as you consider various passenger rail legislative proposals.

As chronicled in the EPI study, privatization of Amtrak is hardly the answer. In the mid-1990s, the British Government privatized passenger rail, and what happened? Rampant delays in service, higher accident rates, shoddy maintenance, and increased fares. Things got so bad that England has been spending the last few years trying to re-nationalize the system and the political party that came up with the idea to privatize in the first place has promised that if they get back into power they will surely not do it again.

The EPI report questions how breaking up into a number of pieces would make things any better. Amtrak is drowning under a deficit, struggling to turn around a significant deferred maintenance crisis, already paying substandard wages, and is subject to an unprejudicial and highly volatile funding source. What EPI recommends, and the transportation labor endorses, is instead of privatizing Amtrak or reshuffling the deck chairs in a bureaucratic shell game, we should tackle the problems head-on by making a strong, long-term financial commitment to Amtrak.

TTD has specifically endorsed the $1.8 billion that Amtrak is seeking for Fiscal Year 2004, and we would hope that all Senators who are looking at a new funding plan would support this request as a baseline level. We must be crystal clear in rejecting the fable that Amtrak can and should make a profit. Every other mode of transportation receives Government support to survive. Why do we insist on holding Amtrak to a higher standard?

As the EPI study points out, highways receive 43 times the funding level that rail receives, and I think these are significant numbers, and all certifiable. Aviation receives 20 times as much, and transit, which EPI candidly refers to as the other stepchild in the Federal budget, received eight times as much Federal support. Overall, passenger rail received just over 1 percent of all Federal transportation dollars and about one-third of 1 percent of combined Federal, State, and local spending. Amtrak must be given the same chance to succeed that our nation's highways, air and water transportation systems have appropriately been given over the years.

This concludes my testimony. I hope we can work together to fund and support Amtrak's system that serves the interests of the passengers, communities, and workers, and I'll add, I know we can work together.

[The prepared statement of Mr. Hall follows:]

PREPARED STATEMENT OF SONNY HALL, PRESIDENT, TRANSPORT WORKERS UNION AND TRANSPORTATION TRADES DEPARTMENT, AFL–CIO

Chairman Hutchison, Ranking Member Inouye and members of the Subcommittee, my name is Sonny Hall and I am International President of the Transport Workers Union (TWU) as well as President of the Transportation Trades Department, AFL–CIO (TTD) and appear today in both capacities. TWU represents workers at Amtrak and in the freight rail industry and TTD consists of 35 affiliated unions across the entire transportation industry, including the 12 rail unions that make up our Rail Labor Division.[1]

Let me first thank you Chairman Hutchison for inviting me to testify today on this extremely important and timely subject. This Committee has a history of seeking the views of transportation workers and their unions and I applaud you for including us in your deliberations over the future of Amtrak. We might not always agree, but I think including us in this critically important debate will only enhance this Committee's consideration of how to improve and support passenger rail service across America.

[1] The following TTD affiliates are members of our Rail Labor Division: American Train Dispatchers Department/BLE; Brotherhood of Locomotive Engineers; Brotherhood of Maintenance of Way Employes; Brotherhood of Railroad Signalmen; Hotel Employees and Restaurant Employees Union; International Association of Machinists and Aerospace Workers; International Brotherhood of Boilermakers, Blacksmiths, Forgers and Helpers; International Brotherhood of Electrical Workers; National Conference of Firemen & Oilers/SEIU; Sheet Metal Workers International Association; Transportation · Communications International Union; and Transport Workers Union.

The Committee has called this hearing to discuss ways to finance intercity passenger rail service. We applaud your leadership in tackling this difficult issue. Transportation labor has long argued that this country needs to make a real, long-term financial commitment to Amtrak and to recognize once and for all that passenger rail service is a public service—not a "for-profit" endeavor. Unfortunately, Congress and this Administration have failed to provide Amtrak the level of support it needs to succeed as a viable national rail passenger service. In short, Amtrak suffers from too many years of chronic under-funding and any solution considered by Congress must reverse what has been throughout Amtrak's existence wildly unrealistic transportation policy.

As I will discuss in more detail, yesterday the Economic Policy Institute (EPI), a highly respected Washington, DC-based think tank, released a study that debunks the myth that the solution to Amtrak's problems is to privatize the system. It is our understanding that EPI has submitted a copy of this report for the record and I urge members of the panel to review it and to use it as a guide as you consider various passenger rail legislative proposals.

We have long understood that calls to privative Amtrak, or to insist that the carrier somehow turn a profit, are simply a way to expect the impossible from a national rail system and in the end use the operation's financial distress to call for its elimination. From a transportation policy perceptive, as well as from a labor perspective, we find this result unacceptable and we are heartened by the fact that so many Members of this Committee agree with us. We sincerely hope that EPI's in depth analysis of the perils of privatization will allow this Committee and other policy makers to close the book on this dangerous experiment and instead properly direct attention to more sensible solutions.

I know there is a great deal of interest on this Committee, and from many members of this panel, in finding new and innovative ways to fund national passenger rail service. As we have in other sectors of transportation, we support finding new ways to attract badly needed capital for passenger rail infrastructure, and I will discuss this issue in more detail later in my testimony. But let me say now that we need to first and foremost support the national passenger rail system we have today. And as we look to the future, we must remember the history behind Amtrak's creation and the financial hardship inspired by many years of neglect and inadequate Federal investment. Moreover, we must learn from that experience as we venture to make Amtrak a successful national railroad operation.

Amtrak was created three decades ago with a simple goal in mind: to establish a modern, efficient intercity passenger railroad that can provide a truly national network of passenger transportation. Amtrak was charged with operating and revitalizing intercity passenger rail service and integrating such service into our national transportation system because it was clear in the late 1960s that freight carriers were unable and unwilling to sustain the severe financial losses associated with operating passenger rail service. Simply stated, Amtrak was created in response to the financial bleeding associated with the rail passenger operations of the Nation's freight rail carriers. In plain English, Amtrak was nothing less than a bailout of failing private passenger rail operations.

Unfortunately, the history of Amtrak is filled with one financial crisis after another as the carrier has struggled to secure adequate funding simply to remain in operation. Amtrak workers have made repeated sacrifices to help the railroad survive through some of its darkest days, including efforts in the past to eliminate or slash Amtrak's Federal funding. Amtrak workers have taken the brunt of the railroad's financial hardships year after year. But, regrettably, some have chosen to scapegoat Amtrak workers, saying they are part of the problem. This is not only untrue, but deeply offensive to those who have made years of sacrifice.

Several weeks ago, rail labor released a study on Amtrak wage data prepared by noted economist Thomas Roth. The report, which I am submitting as part of my testimony, definitively demonstrates that labor costs at Amtrak, including wages and benefits, have remained constant over the past 21 years and have actually declined in real dollars. In fact, Amtrak wages have lagged far behind cost-of-living increases. Amtrak employees earn well below the prevailing rates of their counterparts in the freight and commuter rail industry.

A typical Amtrak worker today earns on average 22 percent less than a worker performing the same job on a freight railroad. It is also significant that as a percentage of total operating expenses, Amtrak's employment costs have not increased in almost 20 years. Just as the myth that Amtrak can exist without subsidy must end, so too must the myth—and the scorn it breeds—that Amtrak workers make too much and sacrifice too little.

We were happy to hear Mr. Gunn testify recently that Amtrak's workers' wages are not the problem. Amtrak employees have been without a new contract for three and one-half years, and are grossly underpaid. In fact, Amtrak employees have not had a wage increase in this century, and since their contracts became amendable 1999, have received a COLA built in to the old contract of a total of 59 cents per hour. Over that four year period, that works out to a little over a penny per month.

Ms. Chairwoman and members of this Committee, rail labor wants Amtrak to succeed. We want Amtrak to prosper. However, we also must respect and properly acknowledge the frontline men and women who do their best every day to move people safely and efficiently from one end of this country to the other over tens of thousands of miles of railroad track. As TTD's 35-member Executive Committee resolved earlier this year, "As Congress and the President secure Amtrak's future, transportation labor will insist that the jobs and livelihoods of Amtrak employees are not ignored or cast aside and that new collective bargaining agreements are completed without further delay."

As chronicled in the EPI study, privatization of Amtrak is hardly the answer. We need only look at Great Britain's failed experiment to see what can happen when we allow a public service to be hijacked by private interests. Beginning in 1994 and ending in 1996, British Rail, motivated by the zeal for broad privatization of various public services, was transformed from a publically run service into a "competitive" railroad market. The story of British Rail underscores the threats of ideologically driven policy experiments such as rail privatization. British passengers were saddled with increased fares, shoddy maintenance practices, and dangerous cost cutting including excessive job reductions. This resulted in higher accident rates, deteriorated service and coordination problems within a maze of poorly managed providers. And the British people were left with an operational meltdown of unprecedented proportions.

By 1999, with problems mounting, the government began to undo the privatization experiment and sought to disengage the so-called market model. In the end, as pointed out by EPI, Britain will have a system that looks a lot like Amtrak—but better funded. I should note, and this fact is cited in the EPI report, that the Conservative shadow Secretary of Transportation recently pledged to voters that if the Torries are returned to power, they will never attempt to re-privative the rail system.

Let me also comment on proposals put fourth by the Amtrak Reform Council, the Administration and others that would solve Amtrak's problems by breaking up the system and dividing various responsibilities. ARC's proposal, for example, would slice Amtrak into component operations and then turn to some very complicated contracts to ensure basically the same service that Amtrak provides today. Besides raising transaction costs (a major problem with British Rail) and creating additional layers of bureaucracy, I am not sure what will be accomplished by this or other models following a similar course. Is Amtrak run perfectly today? No. There are of course areas for improvement and we want to work with the carrier and this Committee on that effort. But how is dividing the franchise into various parts inherently any better then the current framework? Amtrak is drowning under a deficit, struggling to turn around a significant deferred maintenance crisis, already paying substandard wages to employees and subject to unpredictable and highly volatile funding sources. These are the issues that deserve the immediate attention of this Committee.

We understand that some members of this Committee and other interests are pursuing new ways to fund transportation projects, including inter-city passenger rail. In particular, focus has turned to bonding initiatives that are designed to raise billions of dollars for capitol and related improvements. Obviously, we welcome any attempt to increase the pot of money available and to create the operational, maintenance and construction jobs so badly needed in America. But these initiatives must be carried out responsibly and the interests of employees must be protected. First and foremost, any funding plan must adhere to existing and longstanding employee protections. Any of the funding initiatives would be Federal in nature and the inclusion of labor standards is consistent with longstanding and successful transportation policy previously enacted on a bipartisan basis. We would be forced to oppose such legislation if the interests of employees are not protected.

In addition, we urge against speculative funding proposals as a substitute for supporting our existing national rail system—Amtrak. TTD has specifically endorsed the $1.8 billion that Amtrak is seeking for FY 2004 and we would hope that all Senators who are looking at new funding plans would support this request as a baseline level. Let us mobilize to reject the principle that Amtrak must make a profit because it is that basic notion that has doomed Amtrak to failure for three decades. As EPI points out in explicit detail, highways receive 43 times the Federal funding that rail receives; aviation receives 20 times as much; and transit—which EPI candidly refers to as "the other stepchild in the Federal budget"—receives 8 times as much Federal support. Since 1971, Amtrak has received about $21 billion in Federal dollars—less than the $23.6 billion that highways received in 1999 alone. And overall, passenger rail receives just over 1 percent of all Federal transportation dollars and about one-third of one percent of combined federal, state and local funding. What is clear is from these figures is that Amtrak must be given the same chance to succeed as our Nation's highway, air and water transportation systems have been given over many decades.

Again Madam Chairman, thank you for allowing transportation labor the opportunity to present our views on the future of Amtrak and inter-city passenger rail service. This issue is critically important to us, not only for the jobs that such a service creates and supports, but because we agree with you and many of your colleagues that national passenger rail service is an integral part of our overall transportation system. I hope we can work together to fund and support an Amtrak system that serves the interests of passengers, communities and workers.

Senator HUTCHISON. Thank you, Mr. Hall. Mr. James Query, the Senior Vice President of Lehman Brothers in Philadelphia.

STATEMENT OF JAMES (ROCKY) QUERY, SENIOR VICE PRESIDENT, LEHMAN BROTHERS

Mr. QUERY. Thank you, Chairman Hutchison, Senator Lautenberg, for the invitation to participate in this discussion this morning. Again, my name is James "Rocky" Query. I'm a Senior Vice President, as you said, in the Public Finance Department of Lehman Brothers, an international investment banking firm. The firm has been very active through the years as one of the largest providers of investment banking services both to governmental as well as corporate clients in the transportation industry.

Over the last 20 years or so, I've had the opportunity to develop financing programs on behalf of a number of the largest transportation agencies in the country across all sectors, including highways, transit, airports, marine ports, as well as intercity passenger rail, and of perhaps particular relevance to this Subcommittee I've previously executed transactions and provided financial advisory services for Amtrak.

Presently, my colleagues and I at Lehman Brothers are also members of a private consortium led by Fluor Daniel and Bombardier, which is one of two finalists selected by the Florida High Speed Rail Authority to develop new high-speed passenger rail service between Orlando and Tampa as the first phase of the development of a statewide high-speed intercity rail system in Florida.

I appreciate the opportunity to comment on funding requirements and financing alternatives that you're considering. The efforts and the discussion this morning recognize the growing demand rather than stagnant demand or declining demand, but increasingly rapidly growing demand for reliable intercity passenger rail service across the country. It's not only travelers, clearly, in the Northeast Corridor who continue to be highly dependent on such service.

As service levels grow on the West Coast, as has been described, the essentiality of intercity rail in that corridor continues to grow as rapidly, if not more rapidly, than it has in the Northeast Corridor, as you've said so clearly this morning as well. Across the country, both in Texas as well as Florida, throughout the Midwest, throughout the Southeast, transportation planners and policymakers are all looking to passenger rail service as a way to address growing congestion concerns faced by their transportation network, and clearly, as has already been stated this morning as well, September 11 demonstrated that just a series of corridors is not sufficient, either. The importance of maintaining a national passenger rail transportation system is very definitely an essential part of a diversified and well-balanced transportation system.

I would emphasize several elements that would be most beneficial from my perspective in establishing a funding framework and particular financing tools that could be most helpful in addressing these needs. First, I would emphasize the importance of establishing a reliable source of long-term funding and funding formulas for intercity passenger rail projects. This is in my opinion the single most important measure the Subcommittee could take to support capital funding for such projects.

In 1997, when Congress passed the Taxpayer Relief Act, it provided a multiyear funding package for Amtrak, and that was the first time in Amtrak's history, I believe, that that had actually taken place. Ideally, capital-intensive infrastructure programs such as rail are best supported, obviously, by a dedicated source of ongoing revenues, but if you can't have a dedicated source of revenues, a multiyear package of funding is the next best thing, and Amtrak was able to take that multiyear commitment in the 1997 legislation, and it became an essential ingredient in Amtrak's ability to establish an investment credit rating that enabled it to use the markets effectively to achieve cost-effective financing for the improvements in the high-speed rail service in the Northeast Corridor that allowed for the electrification of the system up to Boston and expanding service in the corridor.

The second important point would be eliminating the disparity in available funding for intercity rail projects compared to other surface transportation modes such as highway and transit. I fundamentally agree with the comments made this morning with regard to how beneficial it would be to states like California. I think from sitting in the seat of the director of transportation in any state to be faced with a situation where if you fund highways or fund transit you know there will be 80 percent matching funds coming, but if you fund something that is called intercity rail there's no funding coming. It makes it very difficult, I think, from both a transportation planning perspective as well as budget planning purposes.

The challenge in simply adding intercity rail to the existing programs, though, clearly is that trust fund resources are viewed by many as inadequate already to meet just the needs of highway and transit alone. Simply adding a new category of eligible spending will only increase the level of competition between modes for available funds.

Third, the framework provided by current State transportation improvement plans from my perspective provides perhaps the most effective mechanism for establishing priorities among competing highway and transit projects, so by allowing states to take the lead through their transportation improvement plans, and identifying and developing specific projects, can be an effective way to establish intercity rail priorities as well.

Fourth, a recognition that intercity rail projects are different than transit projects—they often cross state lines, just by way of example, and so funding programs should encourage State efforts to act collectively by allowing them to combine resources to meet matching fund requirements.

Fifth, intercity rail projects should enjoy the same access to tax-exempt financing as is currently enjoyed by other transportation modes such as airports and seaports. Most capital spending for intercity rail is done by Amtrak or the freight railroads, none of whom have the ability to issue tax-exempt debt. Congress could provide for the issuance of exempt facility, tax-exempt debt, free from volume cap restrictions for qualifying passenger rail projects, as is presently allowed for airport and seaport projects.

Sixth, tax credit bonds can be a highly effective way for the Federal Government to provide long-term capital funding support for intercity rail needs. The experience with tax credit bonds to date in the context of the QZAB program for school construction projects from my perspective should be viewed as encouraging, rather than discouraging. Clearly, the dollar volumes that are being discussed are quite different, but the use of QZAB bonds continues to grow, as does the private investor support for such projects. Recent proposals for using the tax credit bond mechanism for transportation projects all share a number of key provisions that will increase the level of investor interest and market receptivity for such programs. Some of those key features are the ability to separate the tax benefits themselves from the repayment of principal, so-called stripability.

Other key factors for effectiveness will be including an appropriate interest rate formula to establish the level of tax benefit, and provisions regarding the potential risk of recapture of tax benefits from investors should project sponsors fail to comply with program requirements.

Seventh, outside of the Northeast Corridor, passenger rail service is dependent on the conditions of rail and right-of-way owned and maintained by private freight rail companies. Finding adequate capital to meet the service levels required for passenger traffic is difficult for these companies as well. Access to tax-exempt financing for projects on private right-of-way which have been included in a State transportation improvement plan, as well as measures to address liability concerns, could be very helpful incentives to encourage greater freight rail investment and necessary upgrades for passenger rail service.

And then last I would say, in terms of public-private partnerships, these can very much be an effective mechanism for development of new passenger rail projects. As I mentioned, Lehman Brothers is currently a member of a consortium that is one of two finalists who have proposed a plan for the Florida High Speed Rail Authority. Our proposal utilizes a unique combination of public and private sector funding for the system, rolling stock as well as infrastructure. Very importantly, our proposal depends upon the availability of tax credit bond support totaling nearly $2 billion over the next 6 years. In conjunction with the issuance of tax credit bonds, Fluor Daniel and Bombardier will be placing private capital at risk to help fund system capital as well as operating costs.

So as you evaluate other public-private initiatives that may be proposed such as the one described by either the AAR or rail infrastructure management, for example, we would encourage you to recognize that intercity rail projects, like all other public transportation modes, will require some level of ongoing public support, and this operating and capital subsidy is not evidence of management failure in any way. Long-term, reliable Government support is a necessary ingredient for dependent and efficient public transportation system. The task clearly is one of providing the necessary support in the most cost-effective fashion.

I've not tried to comment on all of the financing proposals that have been made, but I welcome any specific questions, and thank you again for your efforts to address this issue.

[The prepared statement of Mr. Query follows:]

PREPARED STATEMENT OF JAMES (ROCKY) QUERY, SENIOR VICE PRESIDENT, PUBLIC FINANCE DEPARTMENT, LEHMAN BROTHERS

Chairman Hutchinson and Distinguished Members of the Subcommittee:

My name is James (Rocky) Query. I am a Senior Vice President in the Public Finance Department of Lehman Brothers, an international investment banking firm. The Firm is one of the largest providers of investment banking services to governmental and corporate clients in the transportation industry. Over the last twenty years I have had the opportunity to develop financing programs on behalf of a number of the country's largest transportation agencies serving all transportation sectors including highways, transit, airports, marine ports and intercity passenger rail. Of particular relevance to the Subcommittee, I have previously executed transactions and provided financial advisory services for Amtrak. Presently, my colleagues and I at Lehman Brothers are also members of a private consortium led by Fluor Daniel and Bombardier which is one of two finalists that have been selected by the Florida High Speed Rail Authority to develop new high speed passenger rail service between Orlando and Tampa, Florida as the first phase of the development of a state-wide high speed intercity rail system.

I appreciate the opportunity to comment on funding requirements and financing alternatives that you are considering to address the capital needs for conventional and higher speed passenger rail service. The Subcommittee's efforts recognize the growing demand for reliable intercity passenger rail service across the country. Travelers in the Northeast Corridor continue to be highly dependent on such service. As service levels grow on the West Coast, the essentiality of intercity rail service in that corridor has grown as well. The high priority placed on funding for passenger rail service by groups such as the National Governor's Association, the States for Passenger Rail Coalition, the National League of Cities and other municipal organizations is the best evidence that a broad-based group of transportation planners and policymakers in the Midwest, the Southeast, Florida and Texas are all looking as well to new passenger rail service to address growing congestion concerns faced by their transportation networks. Beyond the demonstrated demand for improved rail service in select corridors, the events of September 11th also emphasized for many, the importance of maintaining a national passenger rail transportation system as part of a diversified and well-balanced transportation system.

As this Subcommittee considers the funding framework and financing tools that can best address these needs, I would emphasize several elements that would be most beneficial:

First, establishing a reliable source of long-term Federal funding and funding formulas for intercity passenger rail projects is the single most important measure this Subcommittee could take to support capital funding for such projects. In 1997, Congressional passage of the Taxpayer Relief Act provided a multi-year funding package for Amtrak. Ideally, capital intensive infrastructure programs such as rail are best supported by a dedicated source of ongoing revenues. Multi-year funding is the next best thing. The multi-year funding provided to Amtrak in the 1997 legislation was an essential ingredient in Amtrak's ability to establish an investment grade credit rating that enabled it to achieve highly cost-effective financing for the improvements in high speed rail service in the Northeast Corridor that were launched over the past few years.

Second, eliminating the disparity in available funding for intercity rail projects compared to other surface transportation modes such as highway and transit is essential. Highway and transit projects established as priorities in a state's transportation improvement program receive similar levels of Federal matching support under existing trust fund formula programs. The same should be true for intercity passenger rail priorities as well. The challenge, of course, is that trust fund resources are viewed by many as inadequate already to meet the needs of highways and transit alone. Simply adding a new category of eligible spending will only increase the level of competition between modes for available funds.

Third, the framework provided by current state transportation improvement plans provides an effective mechanism for establishing priorities among highway and transit projects. Allowing states to take the lead through their transportation improvement plans in identifying and developing specific projects can be an effective way to establish intercity rail priorities as well.

Fourth, intercity rail projects often cross state lines. Funding programs should encourage state efforts to act collectively by allowing them to combine resources to meet matching fund requirements.

Fifth, intercity rail projects should enjoy the same access to tax-exempt financing as is currently enjoyed by other transportation modes such as airports and seaports. Most capital spending for intercity rail is done by Amtrak or the freight railroads, none of whom have the ability to issue tax exempt debt. Congress could provide for the issuance of exempt facility tax exempt debt free from volume cap restrictions for qualifying passenger rail projects as is presently allowed for airport and certain seaport projects.

Sixth, tax credit bonds can be a highly effective way for the Federal Government to provide long-term capital funding support for intercity rail needs. The experience with tax credit bonds to date in the context of the QZAB program for school construction projects should be encouraging. Use of QZAB Bonds continues to grow as does the private investor support for such projects. Recent proposals for using the tax credit bond mechanism for transportation projects have shared a number of key provisions that will increase the level of investor interest and market receptivity for such a program such as the ability to separate the tax benefits from the repayment of principal (strippability). Other key factors that will determine effectiveness include the interest rate formula that will be adopted to establish the level of tax benefit and provisions regarding the potential risk of recapture of tax benefits from investors should project sponsors fail to comply with program requirements.

Seventh, outside of the Northeast Corridor, passenger rail service is dependent on the conditions of rail and right-of-way owned and maintained by private freight rail companies. Finding adequate capital to meet the service levels required for passenger traffic is difficult for these companies as well. Access to tax-exempt financing for projects on private rail right-of-way which have been included in a state transportation improvement plan and measures to address liability concerns could be helpful incentives to encourage greater freight rail investment in necessary upgrades for passenger rail service.

Eighth, public private partnerships can be an effective mechanism for development of new passenger rail projects. As I mentioned, Lehman Brothers is currently a member of a consortium led by Fluor Daniel and Bombardier that is one of two finalists who have proposed a plan to the Florida High Speed Rail Authority to provide high speed passenger rail service between Orlando and Tampa, Florida as the first phase of a state-wide system. Our proposal utilizes a unique combination of public and private sector funding for the system rolling stock and rail infrastructure. Importantly, our proposal depends upon the availability of tax credit bond support totaling nearly $2 billion dollars over the next six years. In conjunction with the issuance of tax credit bonds, Fluor Daniel and Bombardier will be placing private capital at risk to help fund system capital and operating costs.

As you evaluate other public private initiatives that may be proposed, such as the one described by Rail Infrastructure Management, we would encourage you to recognize that intercity rail projects, like all other public transportation modes, will require some level of ongoing public support. Operating and capital subsidies are not evidence of management failure. Long-term reliable governmental support is a necessary ingredient for any dependable and efficient public transportation system. The task is one of providing the necessary support in the most cost-effective fashion.

A number of specific measures have been proposed for the Subcommittee's consideration. I have not tried to comment on all of the financing measures that have been proposed, but I welcome any specific questions you may have . Thank you again for your efforts to address this important issue.

James (Rocky) Query is a Senior Vice President with Lehman Brothers, an investment banking firm. He is a member of the Firm's Public Finance Department responsible for its work with many public transportation agencies in several sectors including highways, transit, intercity rail and airports. He has more than twenty years of industry experience and has worked with many of the country's largest rail programs. He has previously served as financial advisor and underwriter for transactions on behalf of Amtrak. Lehman Brothers is currently a member of a consortium led by Fluor Daniel and Bombardier which has proposed to develop high speed rail service between Orlando and Tampa Florida as the first phase of the development of a state-wide high speed rail system.

Senator HUTCHISON. Thank you very much, Mr. Query.

Senator Lott needs to leave, and Senator Lautenberg has agreed to let him take his time, and I will certainly defer until after you've left.

**STATEMENT OF HON. TRENT LOTT,
U.S. SENATOR FROM MISSISSIPPI**

Senator LOTT. I thank you very much, Madam Chairman. Mainly I wanted to thank you for having this hearing. I want to thank the witnesses for being here. It's been very interesting, and we're looking for some answers and some solutions. Unfortunately, a lot of people come to us and say, don't do this, don't do that, don't do something else, we can't do this, we can't do that. We're looking for answers here on what we can do.

I think Mr. Query, maybe you did begin to touch on specifics that we should consider, but we thank all of you for being here. I continue to be a supporter of Amtrak. I think we should have a national rail passenger system, not one that is just on the Eastern Seaboard, although obviously that is very important. I think we just are going to have to make up our minds what are we going to do to fund it, and if we're not prepared to fund it, then probably we should go ahead and cut our losses now.

I don't advocate that. I think we should try to find a way to get this done without it interfering with a viable freight service or other things that are being discussed here, and I think the Administration is going to have to help us come up with some solutions and make tough decisions on how we're going to do that, and I know that Chairman Hutchison is going to be looking for some ideas that we can put together in legislation and act on this year, and I just wanted to thank you for having this hearing.

Senator HUTCHISON. Well, thank you, Senator Lott. I certainly—I have a bill that is another way to finance infrastructure. I think we must do something bold or we are going to be continuing to try to catch up, and run and catch up, and run and catch up, and never catch up, so that is my goal, and I look forward to working with you on that.

Senator LOTT. Thank you.

Senator HUTCHISON. Thank you. I'm going to defer my questions until Senator Lautenberg and Senator Smith have had a chance to talk, because I appreciate their interest in the hearing, and then I will have a few questions at the end.

Senator Lautenberg.

Senator LAUTENBERG. Thank you, Madam Chairman. That's very generous of you in view of the threat that the Nets bring to San Antonio, and it is gallant.

The testimony that we heard is all good, not good good, if you know what I mean, but all interesting, let's say, and there are enough differences of view to muddy up the issue, not intentionally, but, because these are points made with a degree of validity. However, it comes down to just a couple of things, and I think, Madam Chairman, we have got to kind of resolve this. We have to drop the notion that passenger rail service can support itself. I think you've said it, and it has to be understood it's a service.

Neither can aviation support itself, and we certainly don't expect the highway system to be carried entirely by taxes that are derived within a particular state. That's the investment in our democratic society, to try to provide as much pollution-free travel as we can and reduce as much congestion time as we can. If we start there and say, look, we are hopelessly entangled with passenger rail service, and all you have to do is look at the statistics, don't look at Amtrak's balance sheet or operating statement as directly as one might when looking at a company. We know that lots of companies fail, and government, when they try government-type services. Where else has passenger rail gone private and done well? I can't think of it, unless it's a tourist attraction into the Land of the Jungle, or something like that, but otherwise it just doesn't happen.

Second, revenues. The source of revenues for airlines is considerably diminished in these tough years and months, so what's the answer there? Have the Government bail out the airlines. You don't hear me protesting it. I must tell you, there are questions about it, but the fact of the matter is, we need aviation. We need those airplanes flying overhead very day, and if we didn't have them simply on the Northeast Corridor I would think we would need some 10,000 flights additionally passing overhead to carry people from Boston and New York to Washington. So we pony up to the bar, as they say, when these crises arise.

I do think there are other ways, and I commend the Chairman. The Chairperson tries to help by thinking through ways of new financing, but remember, when you borrow you've got to pay back, and you pay not only principal, but you pay interest, so if you take $50 billion worth of bonding and you extended that over 25 years, which is a reasonable period of time, you're looking at $2 billion a year minimum of principal payments, and what's the interest? If the interest is 4 percent, you've got another couple of billion dollars worth of interest that come due on a regular basis.

So with that lecture, forgive me, I want to just ask a couple of questions here. Mr. Hamberger, I know the DOT projects annual domestic freight volumes substantially higher, basically double, to increase to 22½ billion tons by 2020. How is the railroad industry going to keep up with the infrastructure improvements that it needs to sustain that amount of traffic?

Mr. HAMBERGER. Well, thank you for that question, Senator, because it does go right to the heart of this issue that we're discussing today, and that is the freight railroads need to continue to expand their capacity to upgrade their lines so they can get more efficient use out of the capacity that is there, and what we have been doing over the past 5 years, we've reinvested 18.3 percent on average for the past 5 years, 18.3 percent of all revenues have been reinvested back into the infrastructure of this industry, and I'm pleased to say that with the announcements that were made for Fiscal Year 2003, the industry has continued that, and in fact a number of companies have even increased beyond that, so we recognize that the business is there, and we're investing to try to get more of it onto the freight railroads.

Senator LAUTENBERG. Mr. Hamberger, this sharing of facilities with passenger rail is obviously one that perplexes or at least alienates the freight carriers, and we're using the same highway in lots of places, and there are no other rights-of-way. How do we do it beside cooperation? We can't say that, OK, they've got to pay more and more and more. The freight railroads are doing pretty well these days.

Mr. HAMBERGER. Well, let me just go to the point of whether or not we're alienated, and in fact I think it is a little known fact that in 2002, 400 million riders rode commuter rail passenger service. A great majority of that was on freight rail property. In fact, our members every day are trying to work with local communities.

I know one of our members just signed a Memorandum of Understanding with the two Senators from the State of Washington and the Governor of Washington for the Sounder Transit out in Seattle-Tacoma, and so in fact I believe that we are good corporate citizens. We recognize the right-of-way is in existence, and what we try to do is sit down with the local leaders and accommodate both the need for passenger and the need for freight, and I guess the idea is that that needs to be done on an arm's-length negotiating basis, as opposed to having it just imposed from on high, and so we do try to recognize that that is—to your point, that that is a valuable asset for the community and for the public, and that we try to work with the local communities to accommodate both.

Senator LAUTENBERG. AASHTO estimates that total freight rail capital investment cash needs will be somewhere $175 billion to $195 billion over the next 20 years. The private rail industry will only be able to provide up to $142 billion based on the AASHTO statement. The remainder of somewhere, $50 billion, would require public investment. Where might that come from?

Mr. HAMBERGER. Well, there are two, I think, answers to that. One is, those are projections as to what our industry will invest and given the rate of return and what can be accomplished, there's always the possibility that there will be more private investment, but I think as you take a look at that bottom line report, and it was a great report written by AASHTO, what it says is that the private sector will invest at a certain level, $142 billion, because that is the economically defensible rate of return to invest to get that much more business, that much more capacity, but the report goes on to say that freight rail itself has public benefits, that freight rail has public benefits in congestion mitigation, clean air, fuel use improvement, and that what it calls for is a public-private partnership, a new partnership where, if the public wants to achieve those public benefits, then that delta would be a public investment, and we certainly are willing and ready to work with, as that report calls for, a new partnership.

Senator LAUTENBERG. Who is the public that is investing, as you describe it?

Mr. HAMBERGER. Well, AASHTO calls for a new partnership between the States, the local governments, and the Federal Government and the private sector.

Senator LAUTENBERG. So Government contributions?

Mr. HAMBERGER. For the public benefits, exactly. We can be expected to invest up to the level and then we would——

Senator LAUTENBERG. You helped enormously to straighten out the definition. If we give it a different name, it is still a public investment. It is still subsidy and it still is required by what is a profitable industry. And by the way, I'm not saying give up your profits. I'm saying, go for it, and see whether you can get that source, but don't deny that Amtrak and the other passenger rail carriers don't need the same kind of funding source. They don't have the same advantage of revenue that the freight carriers do.

Listen, nobody's the bad guy in this thing. That is not the suggestion at all, but we have to recognize that we are going to defend the ability of rail passenger service to operate in this country, and it's going to be a fight to the end that we're going to conduct. People are entitled to have that kind of service, and every time we open a new line, whether it's a commuter line, rail service, or other, people come. They say: "build it, and they will come." Well, they do come, and we've got to find a way, Mr. Rutter, to include this in surface transportation reauthorization legislation.

We don't see anything in SAFETEA about it, and I don't know whether The Administration feels that passenger rail service is an integral part of our national transportation network, but I think it is.

Thank you for your indulgence.

Senator HUTCHISON. We can go around for a second time if you would like to, but I would like to give Senator Smith a chance to speak as well.

STATEMENT OF HON. GORDON H. SMITH, U.S. SENATOR FROM OREGON

Senator SMITH. Thank you, Madam Chairman. I have an opening statement. I would like to include it in the record.

Senator HUTCHISON. Without objection.

Senator SMITH. It focuses on the problems railroads are having with capital investments, and how critical it is that we do what we can to help our rails to continue to operate and to make those investments.

[The prepared statement of Senator Smith follows:]

PREPARED STATEMENT OF HON. GORDON H. SMITH, U.S. SENATOR FROM OREGON

Thank you Chairman Hutchinson. I appreciate you for holding this hearing on a very important issue to my state of Oregon and our country.

Oregon is fortunate to be served by two Class I freight railroads, 19 shortlines, and Amtrak. One of my concerns about the rail industry is that the carriers—particularly shortline and regional railroads—are not earning enough to properly maintain their track and equipment. As we all know, railroads are extremely capital intensive.

To assist smaller railroads, I sponsored legislation last year to establish a capital grant program to rehabilitate and improve the track infrastructure of Class II and III railroads, including projects to handle 286,000-pound railcars. Although the bill was reported out of this Committee last year, it did not have the opportunity to be considered on the Senate floor. I would like to announce my plans to introduce similar legislation this month.

As this hearing considers intercity passenger rail finance, one area of improvement I would like to see is more equitable participation by *all* the states in supporting Amtrak. In the Pacific Northwest, the states of Oregon and Washington provided $16.5 million in operating support in 2002.

In addition, according to Amtrak, since 1992, Amtrak, the states of Washington and Oregon, and their freight partners have committed more than $600 million in track and signal upgrades, train equipment and station improvements on the Pacific Northwest Rail Corridor. Many other states with Amtrak service, however, contribute nothing. As we debate the future of Amtrak, I hope we can devise a system whereby all states make a fair contribution to supporting intercity passenger rail service.

Senator SMITH. A question I have for Mr. Rutter relates to the 13 states that are contributing annually over $125 million in operating support for Amtrak in their corridors, but it's my understanding that many states that have Amtrak going through it do not contribute, and I'm wondering if the Administration's proposal gives any kind of requirement to them that they do contribute to Amtrak. For example, Oregon and Washington together have invested over $600 million in the Cascade Corridor over the past 10 years, and I'm wondering what Oregon's required capital contribution would be under the Administration's proposal, whether it will increase or decrease.

Mr. RUTTER. Well, there are two questions there. One is about operating support and putting a level playing field in place for all States, and our proposal, in focusing Federal funding on capital assistance, presumes that at the end of a gradual transition after 6 years that the difference between the revenues generated by passenger service and those expenses would be covered by states, whether it's state-supported now or not state-supported now.

We think all of those services should have that difference between revenues and expenses covered by the states, and to the capital need is that while I can't give an exact number of how much Oregon would benefit, we would like to see those states like Oregon, California, Washington, North Carolina, others that are investing in capital improvements, have a Federal partner to match those dollars so that those state dollars could be leveraged and go that much farther.

Senator SMITH. Thank you, Madam Chair.

Senator HUTCHISON. Mr. Rutter, I just heard that exchange, and it just seems to me that the emphasis in the Administration is more toward the Federal Government phasing out rather than becoming a partner with states, and my question to you is, is that not the case, and if so, are you looking at a long-term commitment from the Federal Government that would stay in place, because so far I haven't seen very much concrete that would have a lasting impact. It looks to me like everything is meant to be phased out toward the end.

Mr. RUTTER. Well, I appreciate the question. We do have as a part of the bill we are in the process of drafting a commitment to long-term Federal-State partnership on the capital front. We think one of the ways we can help address helping states address those operating subsidies is part and parcel of our idea of separating the Northeast Corridor from Amtrak operations elsewhere.

One of the things we've noticed in trying to allocate costs by route is that about half of Amtrak's expenses can't be assigned to an individual route. Some of that may be shared services that a number of different routes bear, but we think that an awful lot of those overhead expenses are expenses that have to do with keeping up the Northeast Corridor, and if we were to put accurate accounting on what it takes to manage the corridor, then what's left is operating expenses that are not as huge a lift to make.

The other thing to consider is that not every long-distance train of those 17 is equivalent. There's an awful lot of both Western and Eastern trains that are close to covering their avoidable costs, which is what I think we focus on that subsidy difference being, so that when we talk about migrating to a system where those subsidies are made up by states and groups of states, the actual per-passenger subsidies won't be as huge as they are right now, and some illustrations of that are that the Silver Star service between the Northeast and Florida has an avoidable cost, or avoidable loss per passenger of only $1.64. The Crescent, Senator Lott's line, is about $10.66 per passenger avoidable loss, those losses that can be allocated to the route itself.

So we think that if the overhead costs are properly assigned to where they're being generated——

Senator HUTCHISON. Would you go back for me and define avoidable loss again?

Mr. RUTTER. The best way that we know how, given the amount of accounting information we can extract from Amtrak, and that's getting better, since we now have a grant relationship with them, is those costs associated with the operation of that particular route that, absent that route, those costs wouldn't be there. We think that's a more accurate assessment of what that route actually incurs in terms of cost, and we would like to see the need for having an equivalency across states so that all of them are being asked to bear that same proportion, that if California and Washington and Oklahoma are paying for that avoidable cost difference, then other states should do so, but on the same calculated basis.

Senator HUTCHISON. Where do you factor in the abysmal on-time problems in that, where people cannot gauge within 10 hours that they're going to be able to go 300 miles? How do you factor that in? Is that an avoidable——

Mr. RUTTER. It certainly has to do with the amount of revenues that are generated by that particular route against the expenses that route incurs, and one of the benefits to looking at route-by-route comparisons on that basis is that you be able to consider what kinds of capital investments might be necessary to maybe improve the on-time service of a particular route, and is that amount of investment going to generate the kinds of revenue that close the gap between those expenses and revenues? It might, in certain instances. In some other instances, where you've got expenses that are twice as much as the revenues that are being generated now, it might be more difficult to make that happen.

Senator HUTCHISON. I just hope that when you're trying to make these comparisons, that you will have a factor that can be quantified with this issue of time. How do you know how many people are not riding because they cannot possibly assume that they're going to be at a destination within a 2- to 5- to 10-hour timeframe, and to compare a California system where there is relatively good on-time delivery versus one of these long-haul routes that has UP/SP, which is not cooperating, and have abysmal on-time records, so how are you going to factor that in?

Mr. RUTTER. Well, part of the factoring in is, the circumstances that California has achieved that on-time performance is by making capital investments. Because there's no Federal partner, they made all those investments themselves.

If you look at trying to increase the on-time performance on other routes owned by freight railroads, you're going to have to consider what kinds of investments would be necessary to get better throughput for both passenger trains and for freight, and is that amount of investment going to be borne by the amount of additional revenue you'd achieve through additional riders.

It's important to note that Amtrak operates on about 16 percent of the Class I system, but that percentage of the Class I system carries about 30 percent of the total freight, so Amtrak currently operates on freight lines that are very busy freight lines, and so whatever we do to increase the amount of capacity for those routes would have to be done in a way that acknowledges the fact that you can't impair the existing capacity of the freight moving on there.

Senator HUTCHISON. Let me just ask, going to the next step, which is to try to get the capital infrastructure, and I think states certainly should step up to the plate and have some reasonable requirement to share in those costs, but I think we are going to have to have funding for capital at the Federal level, and I think my approach is to try to get some leverage of Federal and State dollars through private investments, of bonds, so my question to you and to Mr. Query is, you mentioned in your statement the tax credit bond financing, and that was also mentioned by Mr. Query, and I would just like for you to expand on whether you think that would be a feasible approach, and how do we assure that we have enough of a basis that these would be attractive bonds to be sold? I mean, I love Senator Wyden's idea, but you do have to sell these bonds, and someone has to be willing to buy them.

Mr. RUTTER. I will defer to Mr. Query. The extent of my expertise on tax credit bonds is about exhausted in the testimony I submitted. What I would say, though, is that as this Committee is considering those kinds of instruments I would certainly be willing to go talk to Treasury Secretary Snow, who's got some railroad background of his own, about putting some people in contact with you to better understand Treasury's overall outlook about tax credit financing, the ways that they're encouraged by it and the ways that they want to build some controls in.

Senator HUTCHISON. Mr. Query.

Mr. QUERY. Chairman Hutchison, one thing that I tried to emphasize in the testimony occasionally, the QZAB program, which really is the best example so far of how tax credit bonds would operate, is pointed to many as being discouraging, because in fact the transactions have been quite small, and the total amount of bonds that have been issued under that program very slowly grew to any significant level and was far below what was originally estimated.

Rather than take that as discouraging, I actually take it as encouraging. It's an example simply of the fact that a program takes time to grow, and markets take time to grow as well.

With regard to the tax credit bond mechanism itself, the investor base for that particular structure I think is both large and will develop quite well. There are clearly issues in any new offering like this, but we're actually very confident, and I think our confidence is shared by other major market participants as well that there should be a very ready market of institutional investors, large institutional investors for securities like this.

Senator HUTCHISON. Any other comments from anyone else on that subject?

[No response.]

Senator HUTCHISON. If not, did you have another round of questions, Senator?

Senator LAUTENBERG. If I might. Thanks again for your indulgence, Madam Chairman.

The question that I wanted to ask is to see whether or not we can turn some reality onto the proposals. Mr. Query, you still see tax credit bonds as a viable instrument for financing, and I know you've had a lot of experience and I know Lehman has a lot of experience in that regard. What about the question I raised before? Now you're saying that the tax credit would therefore be a contribution from the Federal Government to the operation, and the ability to repay the principal on these would have to derive from the railroad's capacity to earn something significant above their expenses in order to do that. Is that not the case?

Mr. QUERY. Senator, in various tax credit proposals there have been different mechanisms established for repayment of principal, and I think those mechanisms clearly need just as much focus as the interest component, how the tax credit is actually delivered as well. Some of those, the old high-speed rail proposals of a couple of years ago focused on the state matching contribution as being the source of repayment of that principal amount when it came due. Others have used a portion of the amount that's being raised upfront as a set-aside to essentially repay that principal amount when it comes due 25 years in the future.

Senator LAUTENBERG. They can be serially issued so that there is another issue, and the repayment of principal comes in smaller issues as time goes on, because we know very well that issuing bonds as a routine rarely includes, I shouldn't say rarely, but occasionally doesn't include full repayment of the principal, but rather it begets another issue.

We do it in the Federal Government all the time, so it does make sense, but one thing, and I think Senator Hutchison said it, and that is that there has to be some outright grants as well. I'm reminded here that in aviation there was a terrible event that occasioned much of this. Some of it was overexpansion, $18.2 billion in bail-outs provided to aviation since 2002, and it was done in a flash because we wanted to keep those folks operating.

Mr. Serlin, it's suggested that maybe we could find a private company to divide the two companies into capital and operating companies. Wouldn't that present a particular situation that has Amtrak capital and Amtrak operations competing for the same dollars? I mean, when someone hears Amtrak here, they're going to say, oh, Amtrak, capital separated from operations, what does it all mean, and included in the same question is, why aren't there firms that know how to run railroads? The freight, the Class I freight railroads, why don't they jump at the chance to operate the Northeast Corridor? Do you think they would be interested in taking over that part of it?

Mr. SERLIN. Senator, they might be.

Senator LAUTENBERG. You proposed that.

Mr. SERLIN. Correct. They might be, but the growth opportunity here is very different from the targeted growth opportunity of the freight railroads. What you have here is the opportunity to expand the rail passenger system. The Northeast Corridor is the highest density corridor of any in the world, bar none, yet the station pattern, the layout, the operational techniques have remained exactly the same for almost the last three-quarters of a century.

The techniques which the freight railroads have are freight-oriented. What we have here is the opportunity to build new passenger stations, integrate them with the highway system, attract people from the suburbs and bring them to the rail and increase the use of the rail infrastructure, which is a very different business from the freight business.

Senator LAUTENBERG. But the fact of the matter is that there are, and I'm for upgrading that infrastructure, heaven knows, and I've seen it done where we've done it now at Newark. There's a stop on the main line that enables passengers to go to Newark Airport, the same thing with Baltimore, the same thing with Route 128, just south of Boston.

Those things are happening, but you can't send out a rinky-dink railroad and ask people to be joyful about getting there when either it's late or missed its target because the signal system isn't working properly, or the equipment is just too old and too tired to continue functioning. I used to run a fairly good size corporation, and I like joint ventures, as long as we own the joint.

[Laughter.]

Senator LAUTENBERG. And so it is with other, I think, private people connected with Government, a Government partner, you pay and we'll spend, and it is a nice theory, but I'm not sure how it all works.

Mr. Hamberger, why do you think that the Class I freights aren't happy, or aren't just standing at the gate waiting to jump on passenger rail service and get it going?

Mr. HAMBERGER. Obviously, there is a history here that goes back to the creation of Amtrak in the seventies, but I will point out that many of our members do operate, under contract, commuter rail operations, where they are the contractor but not the owner, if you will, of the service, so they do operate under contract with local service providers.

But if I might, Madam Chair, I would like to make sure I did not leave a misimpression when Senator Lautenberg and I were discussing earlier the AASHTO bottom line report. The additional public investment that the AASHTO report calls for is to achieve public benefits and we are not requesting that. We do not consider it a subsidy. It is not something we seek, because we believe that we will be creating an investment pool of our own that will address the growth of traffic as economically feasible for us to attract, so you characterized it as a subsidy there at the end. That is not the way we see it. We see it as a public investment overlay on top of the economic investment that the private sector would be making.

Senator LAUTENBERG. I like your language. We get to the same thing. Thanks very much, Madam Chairman.

Senator HUTCHISON. Well, I know that we have spent a lot of time here. I just have a couple of other points. One, I want to just talk for a minute, Mr. Hamberger, about, I do think we are all looking for the same end. We want better infrastructure, and the freight rails would like to have the ability to use their own tracks and not have all of the hassles of passenger rail on their tracks, and it just seems to me that we ought to be able to come up with a formula in which there is a Federal role, there is a state role, and with some backing of the bonds from the tax that is already in place we might be able to leverage more than the railroads could do on their own.

By putting out cash you get maybe a foot, but by leveraging that with the tax-exempt bond market, which you would not have access to without the Federal Government role, you could go 2 feet, and it just seems to me that together we could work on something, and frankly I took the 4.3 cents because it is a tax in place. I only wanted to take half that, but then my bill would have to go to the Finance Committee, so I'm certainly willing to talk about some way to work with you where we could do more with the railroads than they can do on their own, and the railroads would also get a partial repeal of the tax. I just couldn't do it in my bill because of the bureaucracy in the U.S. Senate.

So I would hope that there would be an open mind that would allow some creativity, allow some strength for the infrastructure, because we can talk about little dollars and we're going to go a little way. We are never going to solve the problem that we have with trying to make an infrastructure with capital improvements that will be substantial enough to really provide bypasses, which David Gunn mentioned in the last hearing we had, that would allow freight in its congested areas to have bypasses, and not have to worry about the deference to the passenger rail.

So I would hope we could open this dialogue and work together in a way that is beneficial for the freight rail and also combines all of the potential resources to make a solid system that is national and not just a Northeast Corridor, or even a Western Corridor. I know many mass transit systems have done more at the local level than the older systems, which are more federally supported, and I think in the case of California you've done that with rail as well. But I do think there should be a Federal role here that does give some commitment, just as we have had in highways and for airports, and we have not ever had that for passenger rail, and we're just trying to find a way to have a strong system, so I will just end it there, and if there is any further comment please take this opportunity.

Mr. HAMBERGER. I guess just for the record, Madam Chair, I need to get on the record that it is our belief that the freight system needs as much revenue as it can possibly get to invest to meet the demands that Senator Lautenberg was talking about, and we believe that that money should be returned to the freight railroads for investment to meet our customers' needs, but having said that, obviously we want to sit and work with you to see if there are other options that are out there.

But with respect to the 4.3, it is our hope that the Senate will follow the House and pass the repeal later this year.

Mr. MORALES. Senator, if I could, just to follow on your last point, I really want to reinforce that, and I think part of this whole process really needs to include a recognition on a policy level that passenger rail is a viable and an important part of a balanced transportation system and needs to be looked at the same way we look at highways, at aviation, at transit. We are absolutely using investments in intercity rail as a way of managing our entire system. The difference is, we know we can make plans, we can make investments on the highway side, on the transit side with reasonable assurances that money will be there. We can't make those same assumptions on the rail side, and we ought to be able to.

Senator HUTCHISON. That's a very good point. I thank all of you for your time. I think this has added one more layer of information to the record, and I hope we can produce an Amtrak reauthorization that is not just another Band-Aid, but rather a vision and a commitment to the future.

Thank you.

[Whereupon, at 11:50 a.m., the hearing was adjourned.]

APPENDIX

PREPARED STATEMENT OF ROSS B. CAPON, EXECUTIVE DIRECTOR, NATIONAL ASSOCIATION OF RAILROAD PASSENGERS

The National Association of Railroad Passengers is a non-partisan organization funded by dues and contributions from approximately 16,000 individual members. We have worked since 1967 to support improvement and expansion of passenger rail, particularly intercity passenger rail.

The Association's central point about a new source of funding begins at page 5 of the statement I filed in the record of the full committee's April 29, 2003, hearing—a Railroad Finance and Development Corporation that issues tax credit bonds. I will not repeat that here.

I. Operating Grant Requirements for National Network (Long-Distance) Trains

We believe that this should remain a 100 percent Federal responsibility. Some have suggested that Amtrak should be treated the same as transit commuter systems, requiring states or localities to pick up all the operating costs. Transit systems are local and started by local initiative. Amtrak began because of a Federal initiative. It provides interstate service, and the Federal Government should have the responsibility for any operating costs not covered by revenues.

Our view does not change in light of new analysis showing remarkably low, short-term costs for some of these trains. As previously indicated, it is a challenging task to maintain *existing* state funding programs for intercity passenger rail—programs focused on short-distance trains which were initially added solely because a state or states agreed to offer partial financial support for them. States now are being pressed to provide full funding for those trains.

It is not realistic to superimpose on that pressure the requirement that states also fund long-distance trains. The likelihood of getting every state along any given route to provide funding is small, as is the likelihood of getting states to agree on a proper cost allocation method or, in some cases, the right schedule. The most economic schedule for such trains must be set around providing attractive times at the endpoints. That includes the need to take into consideration proper connections with other long-and short-distance trains at those endpoints. Yet, by definition, some points must be served in the middle of the night.

When Secretary Mineta many months ago was asked, "what if a state refused to pay," he answered that the train could run closed-door through that state. That is not practical. Suppose every state but Colorado agrees to fund the Chicago-Bay Area "California Zephyr." Having the train skip Denver (as well as Glenwood Springs and Grand Junction) simultaneously would make the train vastly less useful to the other states along the route, and—as a consequence—drive up the amount of operating losses they would be required to pay. Or imagine Illinois not agreeing to pay for any long-distance trains. The system could not function even if Illinois stood alone.

It makes much more sense to press Amtrak to operate the most efficient national system possible, and to allow states to proceed with what many of them have wanted to do for a long time—improve short-distance corridors. Those improvements, incidentally, will benefit the long-distance trains as well. The most dramatic, recent example of this is the rail/rail grade separation in Los Angeles used by Metrolink commuter trains, Amtrak's San Diego line, and Amtrak's *Southwest Chief* But almost every long-distance train stands to benefit from one or more corridor projects—and these projects often address the most congested segments of the long routes.

It is, however, reasonable to expect states and localities to pay for stations.

II. On-Time Performance of Amtrak Trains

It will be difficult for new legislation to produce better on-time performance if the track owner acts like it doesn't care. In any event, any legislation should take into account the subject's complexities.

First, it should be noted that On Time Performance (OTP) on the California corridors is far from ideal. To be sure, lateness normally is not calculated in terms of hours. On the other hand, riders who think they are taking a trip whose total duration is a few hours have much higher OTP expectations. On June 9, 10 and 11, I rode three Capitol Corridor trains and two *San Joaquins* with the following results:

- June 9: The 3:45 pm *SJ* from Bakersfield on June 10 originated only two minutes late but departed Stockton (where I got off) 34 minutes late.
- June 10: The 12:30 pm Capitol Corridor train from San Jose left on time but departed from Emeryville (50 miles later, where I got off) 33 minutes late.
- Train 538 (3:30 Oakland-to-Sacramento) left Emeryville 3 minutes late, Martinez 7 minutes late—the only satisfactory trip out of the five.
- The 4:05 pm from San Jose departed Martinez 47 minutes late and arrived Sacramento 39 minutes late.
- June 11: The 6:35 am *San Joaquin* departed Sacramento two minutes late and arrived Bakersfield one hour 48 minutes late. The bulk of the delay was due to vandalism—the train struck some debris on the tracks. However, the train was 31 minutes late leaving Wasco—the last station before hitting the debris (and the last station before Bakersfield).

My understanding is that the two Capitol Corridor trains from San Jose were delayed by Union Pacific freight problems, including two trains with "outlawed crews," that is, trains which needed relief crews under the Hours of Service Act before they could proceed. On the San Joaquin Corridor, a tremendous growth in BNSF freight traffic followed—and partly consumed–state-funded capacity investments.

When Amtrak OTP percentage figures are reported, they generally indicate simply the percentage of runs that reached final destinations within x minutes of the scheduled time, where x = 30 minutes for long-distance trains, and lesser amounts (sliding scale based on miles traveled) for short-distance trains.

However, this percentage figure does not tell much about service quality. Consider these two situations, based on operating 14 trains per week (seven in each direction) on a long distance route.

Example A

All trains operate between 31 and 45 minutes late—0 percent on-time performance. Average minutes late per trip is roughly 38 minutes.

Example B

12 trains operate either on-time to the minute or less than 30 minutes late two trains are six hours late. The route has an 86 percent on-time performance. Average minutes late per trip is roughly 60 minutes.

The two calculations produce opposite results. Notice that the average minutes late method more closely reflects passenger satisfaction levels, while the Amtrak calculation is at odds with those levels.

For Example A, the Amtrak calculation has the worst possible result (zero percent on time) even though, if that long distance route actually achieved that type of performance consistently, the on-time issue would barely be on anyone's radar screen. Related issues:

1. Incentives for railroad performance. With a simple yes-or-no on-time calculation, as soon as the train is so late as to make it fall outside the 30 minute window, the railroad loses any incentive to handle the train decently, and the train could get later still. When total minutes of delay are counted, the railroad has an incentive to continue to deliver the best possible performance no matter how late the train gets.
2. At how many points is on-time performance counted? Amtrak schedules (not unlike those for intercity buses and airlines) typically are strung with recovery time before major cities, to allow for a limited amount of delay while keeping actual performance closer to expectations for the majority of customers. Depending on the size of the recovery time, however, this can mean substantial lateness at intermediate points even when the train is on-time at major points.
3. Does the railroad respond to incentives? So far, some like BNSF do respond, UP does not. That BNSF cares is evident from their big operations center in Fort Worth. All the dispatchers face about six huge screens of data—one of which is devoted to various measures of Amtrak trains' on-time performance on BNSF. That is one of many ways BNSF top management tells its people that it cares about earning the incentives for good on-time performance that are built into Amtrak's contracts with most railroads.

4. The significance must be considered for different causes of delay. For example, in Amtrak's contracts freight railroads generally are not liable for minutes of delay associated with causes like malfunctioning Amtrak passenger cars and locomotives. Other causes are treated differently, including the vandalism problem cited above, where arguably neither Amtrak nor the railroad is to Name.
5. The suggestion that a route be "open for competitive bid" if a certain level of OTP is not achieved implies that most causes are Amtrak's fault and that things will get better if another operator is assigned. A top priority of the freight railroads is to insure that Amtrak's track access rights are *not* transferred to anyone else. Certainly, in the unlikely case that the railroads are defeated on this issue, it's not clear why Union Pacific would provide better service to a different operator. In fact, it may be worse.
6. Evaluating true causes of dispatching delays. The following issues impact the quality of handling Amtrak trains get from dispatchers:
   (a) Relationship of track capacity to total traffic on the line
   (b) Attitude of host railroad's top management towards passenger trains
   (c) Attitude of dispatchers towards passenger trains
   (d) Skills of dispatchers
7. The analysis of capital investment needs for chokepoints should be independent and should consider the factors in #6. It would be unfortunate if a publicly funded investment program rewarded railroads that did a poor job of handling Amtrak trains and penalized railroads who did a good job.

PREPARED STATEMENT OF THOMAS SIMPSON, EXECUTIVE DIRECTOR, RAILWAY SUPPLY INSTITUTE, INC.

The Railway Supply Institute appreciates the opportunity to provide this committee with our suggestions on financing intercity passenger rail and addressing other railroad infrastructure needs.

Earlier this year, RSI endorsed the creation of a private, non-profit, federally chartered corporation authorized to issue tax-credit bonds for capital investment in rail-related infrastructure not generally eligible for transportation trust fund expenditures under TEA 21.

Under our proposal this corporation would provide financial support for capital projects that:

- Develop higher speed intercity rail corridor passenger services, including infrastructure and equipment;
- Meet the backlog of capital needs on the Northeast Corridor Infrastructure;
- Provide efficient rail access to ports;
- Support development of intermodal terminals, transloading facilities and rail access thereto;
- Facilitate high frequency rail access to airport terminals;
- Enhance capacity on the Nation's rail freight network designed to enhance security, reduce congestion, improve air quality and improve efficiency;
- Support the capital needs of short line and regional railroads for infrastructure improvements to serve rural and smaller communities and accommodate 286,000-pound freight cars;
- Support relocation and/or consolidation of rail lines and facilities in urban areas.

Financing

Modeled on existing federally chartered entities such as Fannie Mae, RFDC would be authorized to issue up to $50 billion in Federal tax credit bonds to states and public/private partnerships to finance eligible rail-related capital projects. Specific criteria to be included in the RFDC's authorizing legislation would govern project eligibility, selection, financing and repayment obligations.

RFDC would establish a principal sinking fund to secure payment of the principal at maturity. A 20/30 percent non-federal match (depending on what the current interest rates may be), contributed by state, localities or other project participants, would form the primary basis of the sinking fund for each bond issuance, supplemented by additional Federal contributions as may be required.

Governance

This corporation would be governed by a Board of Directors appointed by the President of the United States. The function and authority of this corporate entity would be subject to the oversight of the Congressional committees of jurisdiction.

Transportation Finance Corporation

This is a variation of the AASHTO approach that proposed to create a Transportation Finance Corporation (TFC). This concept is designed to help create more balance in both transportation policy and funding by creating a Railroad Finance and Development Corporation (RFDC) to help finance those capital projects that are not currently covered by the guaranteed spending programs created by TEA 21 and AIR 21. The non-covered programs include passenger and freight railroads, short line railroads, ports, high-speed rail and MagLev projects. The creation of the RFDC would enhance the prospects of projects that do not have the benefit of guaranteed funding.

This proposal would place the RFDC within the jurisdiction of the Congressional authorizing committees that currently have oversight responsibility of these non-guaranteed programs (even though the legislation is in part a tax bill and would need to be enacted by the tax committees), providing the authorizing committees with the legislative authority to create the structure of the organization, establish guidelines for the allocation of the resources generated by the proceeds from the sale of the bonds and establish standards for projects eligible for funding with these proceeds. The authorizing committees already have a long list of rail needs that they have been unable to fund through the authorization process because no matter how much is authorized there is no room in transportation appropriations to fund these needs out of the 30 percent of funds left over after guaranteed spending programs are addressed.

Paying the Principal

The idea of a RFDC removes some of the concerns expressed by states over accumulating more debt financing that arose when bonding authority was proposed to deal with Amtrak's needs. In this case there will be a separate, federally chartered corporate entity designed much like Fannie Mae, the successful Federal National Mortgage Association, which would sell the bonds and administer this program. The RFDC would be set up as a federally chartered corporation governed by a Board of Directors appointed by the President of the United States. The RFDC could have the authority to sell up to $50 billion in bonds. The Board would select a Chief Executive Officer and appropriate staff. There are a number of ways that can be devised to repay tax credit bond principal. As mentioned, AASHTO uses a sinking fund with a portion of the bond proceeds. The original Amtrak proposal assumed states would contribute matching funds (30 percent) deposited into escrow accounts/sinking funds to secure principal repayment.

The point here is that the sponsor/borrower would be responsible for principal repayment only—effectively providing zero percent borrowing. From the government's prospective, this is cheaper than a grant over the short-term and from the borrowers perspective, much more cost-effective than conventional borrowing or credit instruments like RRIF. The present value of $100 borrowed is about $70 while the budgetary cost to the government (tax revenue lost) is about $30.

Much of the costs associated with a proposal of this nature could be offset. The Center on Budget and Policy Priorities has indicated that the Senate passed tax provisions that were dropped from the recently enacted tax bill included measures to close abusive corporate tax shelters that could produce significant revenue enhancers that could help cover losses associated with other tax measures. As *The Washington Post* has reported, the Senate Bill "included provision to crack down on abusive corporate tax shelters, combat some accounting scams such as those pursued by Enron Corp., prevent U.S. companies from moving their headquarters to post office boxes in offshore tax havens such as Bermuda and limit grossly inflated deferred compensation plans for corporate executives." The Senate provisions would have saved more than $25 billion. *All* of these provisions were dropped in conference and are available to help address the much needed rail infrastructure improvements we are concerned about.

Why We Need This Proposal

Despite significant investments in highways and aviation, the American economy continues to lose billions of dollars each year as a result of traffic congestion. It has been estimated that aviation delays alone costs the U.S. economy about $10 billion per year today and by 2015 it will be over $30 billion per year. That is a total of more than $150 billion over the next decade. The cost of congestion on highways is even more staggering. Creating a funding mechanism like the TFC for non-guaranteed transportation programs that are designed to help reduce congestion on highways and at airports could substantially reduce the cost in delays to the U.S. economy, help stimulate job growth and help balance our transportation system.

Most states are facing the prospect of large budget deficits. Nationally, it is now estimated that state deficits for the coming Fiscal Year will be $80 billion. There is little prospect that states will have the resources to undertake transportation infrastructure projects like high-speed rail in this environment without a Federal partner. In fact, Florida's governor is seeking a special election to overturn the state approved initiative to build a high-speed train across the state. States are now looking to the Federal Government for assistance for critical infrastructure needs that provide a public good. The concept of a RFDC provides a reasonable and cost effective alternative to traditional grants or revenue sharing for states. It also encourages the type of public/private partnerships that are essential if we are to meet the needs of those surface transportation projects that are not covered by the guarantees provided in TEA 21 and AIR 21.

Knowledgeable railroad experts continue to express concern over the future of freight railroads because of their inability to cover their cost of capital. Most of the big freight railroads will admit that this is a problem. Maintaining the status quo for the freight railroads according to some officials will result in one of two things: the industry will be forced to shrink OR the Federal Government will be forced to take over the railroad infrastructure at a very high cost. There is a real fear that railroads may be up against the same kind of crisis they went through in the 1970s when many of them faced bankruptcy. In an environment where a significant amount of government support pays for the transportation infrastructure of their competition, railroads cannot afford to continue to only use private funds to finance their infrastructure needs, especially for projects that provide a public good. Financial markets require railroads to only make infrastructure investments where there is a reasonable rate of return and discourage investments where the primary benefit is for the public good (fuel conservation, air quality, congestion relief, safety and security). Some policy makers are proposing the creation of a Rail Trust Fund that would use the revenues from the railroad fuel tax to fund it. A concept like the RFDC proposal would result in a source of capital assistance for rail projects that have a public benefit and *would not* depend on the fuel tax revenues as a source of funding. In addition, it has the potential of helping the Federal Government avoid a huge bailout in the future if the Class I railroads continue to have constraints on how much they can devote to infrastructure spending. Also, infrastructure investments in rail projects that result in a public good and help attain public policy goals like cleaner air, less congestion on highways, creation of jobs and a stimulus to the economy, is good public policy.

Ports have been clamoring for more efficient on dock railroad freight access to their facilities that would assist them in avoiding the high cost and congestion of shipping goods by truck in and out of ports. In testimony before Congress recently, the American Association of Port Authorities indicated that some forecasts show that imports and exports will increase eightfold by 2040. This kind of growth would mean about 10,000 more trucks a day just along the I–95 corridor. That is a truck about every 270 yards between Miami and Boston! This funding mechanism would set in place a way for ports to shift more of their connecting traffic to rail and help avoid that kind of highway congestion. In addition, it could help address much needed security measures at our ports by using the RFDC to fund demonstration projects on new security technology in connection with the rail infrastructure improvements.

The short line railroads have a significant infrastructure problem. They cannot afford the cost of capital to upgrade their tracks to handle heavy freight cars to serve shippers along their lines. There is no Federal program in place to assist them primarily because there are no funds in the transportation appropriations process available. If these low density lines, that play such an important part in connecting rural areas to the national rail freight network, cannot get some assistance for their infrastructure needs they may eventually face abandonment.

There are many deserving high-speed rail projects that are on the shelf due to lack of funding. States will not be able to carry this burden alone. They need a Federal partner. Every industrialized nation in the world has made significant investments in high-speed rail, leaving the United States far behind in the development and implementation of this technology. And, it is this technology that can do the most to alleviate congestion on highways and at airports.

Finally, Amtrak has significant infrastructure costs in the NEC that will require much more support from the Federal Government than they have been able to provide in the past. Now Amtrak is asking for $1.8 billion in Federal funding, much of which is for infrastructure costs in the NEC. This level of funding will be very difficult to obtain through the appropriations process. Creating a RFDC would relieve Amtrak of the burden of finding all its infrastructure needs for the NEC in the appropriations process and allow the NEC states to play a larger role by seeking funds from the RFDC for capital projects in the Northeast Corridor. The RFDC could provide resources for the NEC infrastructure leaving Amtrak to depend on the appropriations process for its operating subsidy.

Conclusion

- The appropriations process has become a less dependable source of funding for rail infrastructure since the enactment of guaranteed spending laws;
- There is an enormous need for rail passenger and freight infrastructure capital that may not have a high rate of return on the investment but would address such public policy issues as security, congestion relief, safety and security;
- Amtrak may not be able to obtain the $1.8 billion it needs to operate the national system and invest in its infrastructure out of the annual appropriations process;
- Increasing the fuel tax or using the revenues from fuel taxes paid by railroads to cover rail infrastructure costs does not appear to be a realistic alternative;
- There is a growing interest among policy makers to use the tax code, especially tax credit bonds, as a funding source for transportation infrastructure when funding is not available through the appropriations process;
- There is a strong public policy argument to provide a more equitable policy among all transportation modes by creating a funding mechanism for those modes of surface transportation (railroads) that are not protected by guaranteed spending programs;
- States are facing large deficits and will be unable to address critical infrastructure needs and are unable to assume any additional debt;
- The United States has fallen behind the rest of the industrialized world in preserving and improving its rail infrastructure; and
- The idea of a Railroad Finance and Development Corporation financed by tax-credit bonds for non-covered transportation programs has the potential of creating a coalition of all those who benefit from the proceeds to get this done in a way that is good for them and good for the country. Unlike proposals that would use the proceeds from Federal diesel fuel taxes, taxes on rail equipment, commuter ticket taxes, etc., this concept would not divide the transportation community—it would unite it.

Thank you for the opportunity to provide this committee with the views of the Railway Supply Institute.

WRITTEN QUESTIONS SUBMITTED BY HON. ERNEST F. HOLLINGS TO ALLAN RUTTER

There is no record of Mr. Rutter's response to Senator Hollings' questions.

Question 1. Your testimony indicates that states with passenger rail service going through them will have to fund the Federal subsidy at a 50/50 match. This is unprecedented and wrong; no other transportation system within the United States has a match of 50/50. Most transportation programs have a match of 80/20 for states included. Moreover, your testimony indicates that the Administration will expect states to bear all rail operational costs by the end of the authorization cycle. Are states required to bear all of the costs of operating airports? Transit systems? How will the Administration's vision for financing passenger rail work with states' current and future deficits? Will this plan not cause states to raise taxes to fund passenger rail?

Question 2. The Administration seems to envision transitioning our passenger rail system into piecemeal corridor operations funded largely by states or consortiums of states. What happens when one state along a needed corridor cannot, or will not, contribute the necessary funding to maintain and operate its portion of the corridor? For example, one obvious corridor would extend south of Washington, D.C. to Florida. But this corridor would necessarily have to cross South Carolina. What if South Carolina simply cannot afford to support this kind of investment? What would happen to that corridor? Would the folks in Virginia and in Florida have to suffer because the folks in South Carolina cannot afford to tax themselves for railroad service?

Question 3. In your testimony, you seem to criticize Amtrak for changing so little and becoming so "ossified" that it no longer serves the most needed rail markets. You compare Amtrak to other modes of transportation which you imply have been more agile and flexible. This criticism seems unfair considering that other modes of transportation have received massive infusions of Federal money on a dependable basis, allowing them to make changes as they became necessary. More importantly, other modes of the transportation are not so dependent on infrastructure owned by other companies. Because any passenger rail operation in this country, whether run by Amtrak or by a state, will most likely have to operate in cooperation with freight railroads over freight railroad tracks, what would you suggest is changed so that future passenger rail operations do not become ossified? If states raise taxes to develop a passenger rail corridor, how agile do you think they will be in changing those corridors?

Question 4. You state that unlike other transportation debt financing, intercity passenger rail does not generate enough cash flow, nor does it have a Federal long-term dedicated funding stream, to service significant debt. I couldn't agree with you more. Highways don't generate cash flow, but they have a wonderful Federal long-term dedicated funding stream. If we can establish a funding stream for passenger rail, just as we have done for highways, aviation, and transit, wouldn't passenger rail then have greater access to debt financing that would allow it to become more competitive in the transportation market?

Question 5. Regarding tax credit bonding for passenger rail, if bonds were sold by a centralized non-Federal entity, wouldn't Treasury's only exposure be to the cost of the tax credits? And if the tax credit rate is fixed for the life of the bonds, and a non-Federal entity issues them, wouldn't Treasury's cost be rather predictable?

Question 6. If the Administration believes passenger rail is a priority, does it have any meaningful proposals for funding along the traditional lines? What other mechanism do you see within the Federal Government to raise the adequate funds needed to cover the capital backlog on the Northeast Corridor, the infrastructure improvements for high speed rail in new corridors and improvements to services currently operated by Amtrak? And how much would all of that cost? Certainly, you can't expect the annual appropriation process to cover this amount?

Question 7. You mention that the lack of funding dependability for Amtrak has soured the DOT's experiences with Amtrak and debt. Isn't the answer then to develop a dependable funding source?

Question 8. Can you discuss the cautions from states and freight railroads that you have received regarding separating the NEC infrastructure for private operation and control?

Question 9. In your testimony, you raise California as an excellent example of a state that is taking a proactive role in supporting passenger rail. Are the services that California is subsidizing the type of services that you consider to be based on "sound economics"? If not, what service in the U.S. is?

Question 10. You mention that operating support for passenger rail should not be a Federal responsibility, yet through the FTA, essential air service, and FAA air traffic control, the Federal Government is providing direct operating support for our other modes. Why should passenger rail be different?

Question 11. You mention the importance of proper planning to the success of passenger rail service. Under your new plan for Amtrak, would the FRA offer direct assistance or grants to states for passenger rail planning? Or would you support making this activity specifically eligible under current TEA–21 planning programs?

Question 12. You say that since states already make the key decisions about their airports and highway facilities, they should have similar power over passenger rail decisions, in effect leveling the playing field. However, isn't it unreasonable to expect choices to be made on the basis of transportation utility alone when there is inequity between Federal support for the different modes, with highways receiving an 80/20 match, while rail would receive only 50/50?

RESPONSE TO QUESTIONS SUBMITTED BY HON. ERNEST F. HOLLINGS TO EDWARD R. HAMBERGER

Question 1. There have been a number of proposals that could result in numerous passenger rail system operations using freight rail lines. Currently, the freight railroads deal with one passenger carrier for long-distance routes. If we follow a course of action where long-distance routes are franchised to various operators, how do you think the freight railroads will react?

Answer. The AAR believes that safety requirements and the integrated nature of railroading necessitate that intercity passenger rail be provided by one entity. Therefore, freight railroads do not support "franchising" to various operators.

Our opposition to "franchising" is based on a number of factors. First, one of Amtrak's fundamental purposes was to amalgamate several hundred disjointed passenger trains operated by more than 20 individual carriers into a coherent intercity system. It was envisioned that a single carrier would yield greater efficiency and innovation. This approach remains just as sensible today.

Second, railroads are an interconnected, interdependent network. This means that events or problems at one particular point—say, a derailment near Tulsa, or a delayed freight train caused by a conflict with a passenger train near Los Angeles—can have serious ramifications hundreds of miles away. To operate a rail network of the scope we have in this country is enormously difficult and complicated. That task is made even more difficult with the addition of passenger trains, which generally travel at different speeds and have substantially different scheduling, operational, and infrastructure needs than freight trains. In order to operate the entire rail network as efficiently as possible, it is crucial that all parties are, to borrow a phrase, "singing from the same hymnbook"—in terms of consistent operating practices, reliable communications channels, the development of healthy working relationships with appropriate personnel, and so on. In our view, it is far more likely for this to happen with a single operator than with a variety of franchisees.

Third, when Amtrak was created, freight railroads knew that Amtrak's obligations were, in essence, the obligations of the United States and that Amtrak would be operated safely and professionally. Should Amtrak services be picked up by others, it is unclear what the circumstances would be. For example, private entities may have different degrees of financial backing. Public authorities may or may not enjoy the full faith and credit of their sponsoring states. Some prospective passenger rail operators may be less committed to safety and sound operating standards than Amtrak. Serious labor issues could arise. Clearly, the status quo would be altered in respects that are impossible to know beforehand.

Finally, freight railroads view the granting of statutory access to other passenger operators to be an unconstitutional "taking" of private property.

Question 2. If Congress were to charter a non-profit company to issue tax credit bonds to provide grants to states for rail infrastructure capital projects on a matching basis, do you think the freight railroads would be supportive of such an idea? Would railroads be willing to partner with states in providing matching funds for projects on a voluntary basis?

Answer. This type of financing mechanism for public-private partnerships appears to hold promise and is clearly worthy of further investigation.

Question 3. Amtrak has the statutory right to operate over the freight lines with a statutory grant of movement preference over freight traffic. If successors to Amtrak do not have similar advantages, how efficient will the integration of passenger traffic with freight traffic be?

Answer. There is a potential tradeoff to be made. As important as passenger rail may be, in this country it is minor in comparison to the importance of freight railroading. To arbitrarily superimpose passenger operations on the freight rail network without regard for the needs of freight service would compromise safety and hamstring the efficiency of the Nation's freight railroads, thereby jeopardizing their ability to provide the efficient, cost-effective freight transportation service that our Nation desperately needs.

That said, the absence of a statutory grant of movement preference over freight traffic does not mean that the efficiency of the integration of passenger traffic with freight traffic needs to suffer. Just as freight railroads work diligently with commuter railroads (who do not have statutory Amtrak-like preferences) to provide efficient, problem-free commuter rail service, so too would they work diligently to ensure that intercity passenger operations are integrated with freight operations as smoothly and efficiently as possible.

Question 4. Currently, Amtrak is charged with incremental costs for operating over freight lines. How likely is it that this practice would continue if Amtrak operations are distributed to other passenger carriers?

Answer. I cannot say how likely it would be for any successors to Amtrak to be charged only the incremental costs for operating over freight lines, since that is ultimately a public policy decision to be made by Congress. I can say, though, that freight railroads strongly oppose such an arrangement and would work strenuously to see that it is not adopted. As noted in my testimony, the fees Amtrak pays to freight railroads do not come close to covering the full costs borne by host freight railroads associated with the operation of Amtrak trains. A recent very conservative analysis by the AAR found that in 2001 alone, Amtrak payments to freight railroads were approximately $240 million less than just the variable costs to the freight railroads associated with hosting Amtrak service. The total subsidy to Amtrak from freight carriers, which would include delay costs, opportunity costs, and a portion of freight railroads' fixed costs, is considerably higher.

Simply put, freight railroads should receive full compensation for the use of their assets by passenger operators. Just as highway contractors are not required or expected to bid below cost because highways are in the public interest, nor should freight railroads be required or expected to accept less than full compensation for the services they provide.

Question 5. In your testimony, you mentioned that freight and passenger operators (other than Amtrak) have reached operating agreements where mutually beneficial arrangements have been negotiated. You gave as an example the BNSF and Sound Transit in Washington State. How long is the agreement good for? What happens to the agreement if BNSF's traffic volume changes on the line? Do Sound Transit trains have preference over BNSF's trains on the line?

Answer. I am not privy to all the details of the agreement between BNSF and Sound Transit. Agreements of this type often contain sensitive commercial information which the parties consider confidential. I respectfully suggest that this question is best directed to the parties involved.

Question 6. The railroads favor the repeal of the 4.3 cents per gallon deficit reduction fuel tax so that they can channel the funds into needed infrastructure. Would the railroads endorse a plan to channel the tax into an endeavor that would benefit freight railroads, passenger rail, and enhance public safety, such as the closing of highway rail grade crossings on designated high speed corridors?

Answer. The deficit reduction fuel tax currently costs freight railroads more than $170 million per year. This tax should be repealed—not diverted to any other use.

Freight railroads should be expected, and are willing, to pay for what truly benefits them and what they actually want. Conversely, there is no reason to expect freight railroads to pay for what does not benefit them or what they do not want.

Freight railroads respectfully disagree that the closing of highway rail grade crossings on high-speed corridors constitutes a significant benefit to freight railroads. It has long been recognized authoritatively that highway-rail grade crossings, by their very nature, are primarily motorists' responsibilities. The Federal Highway Administration's own regulations today stipulate that "projects for grade crossing improvements are deemed to be of no ascertainable net benefit to railroads and there shall be no required railroad share of the costs." [1] (For more information on this point, please see my June 27, 2002 testimony to the House Subcommittee on Highways and Transit, which is attached.)

Freight railroads believe that the safety *of passengers* requires high-speed passenger rail operations to operate over separate, dedicated tracks on which grade crossings have been eliminated, either through closure or through the construction of highway underpasses or overpasses.

Freight railroads are also unequivocally opposed to a "railroad trust fund" to help cover the costs of rail infrastructure projects, highway-rail grade crossing improvements, or any other purpose. A rail trust fund would be inherently inefficient, since railroads would provide substantial resources to the fund, only to have the government dole the money—minus inevitable bureaucratic overhead—back out. A trust fund would lead to substantial government interference in, and loss of railroad control over, billions of dollars of rail spending. And while Class I freight railroads and/or their customers would undoubtedly be the primary source of rail trust fund revenue, the pressure to use these funds to finance non-Class I projects—including passenger rail, highway-rail crossing traffic control devices, or short line railroad infrastructure—would be tremendous.

If government policymakers determine that these types of projects provide public benefits worthy of support, then policymakers must be willing to commit public funds commensurate with that determination, rather than rely on major freight railroads to cross-subsidize these efforts to the detriment of their own needs.

Question 7. Your statement says that proposals to grant passenger carriers other than Amtrak access to freight railroads' assets, such as freight facilities and rights-of-way, will be viewed by railroads as a "taking" of private property. Would the railroads make the same argument under legislation that requires freight railroads to donate portions of their unused rights-of-way for passenger operations to construct separate track lines?

[1] See Code of Federal Regulations, Title 23, Chapter 1, Section 646.210.

Answer. Yes. Like any other for-profit entity, freight railroads properly expect to be compensated for use of their assets.

Question 8. How much does it cost to build one mile of track suitable for carrying a passenger train at 79 mph? Does this number include the costs of signals and turn-outs? How much does it cost to maintain one mile of Class 6 track?

Answer. The cost to build and maintain a particular stretch of railroad track, like the cost to build and maintain a particular stretch of highway, can vary enormously depending on variables such as location, topography, climate, whether it is entirely new construction or a rehabilitation of existing lines, and many other factors. Consequently, it is difficult to answer this question with specificity.

That said, as a rule of thumb, excluding right of way costs, a cost somewhere in the neighborhood of $2 million per mile is a plausible average cost to build one mile of track suitable for carrying a passenger train at 79 mph. This figure would support some level of signaling and turnouts, but would not include the extensive signaling or turnout installation often required. This figure would also not include extensive cutting and filling to achieve a level, straight roadbed, or the construction of tunnels, bridges, or flyovers.

Estimating the cost to maintain one mile of Class 6 track, is a highly speculative exercise. In addition to the variables identified above, the cost to maintain track will, in part, be dependent upon the quality of the original materials and components installed, the age and condition of the structures and their remaining life, the density and frequency of service over the line, axle weights of the equipment traversing the track, the speed of the trains, track curvature and gradient, underlying soil conditions and drainage quality, the frequency of bridges and culverts, etc. Due to the many criteria which can materially impact maintenance costs, per mile annual cost requirements can be widely variant. For instance, a high quality, new section of track which has been expertly installed and which supports a very low density of traffic may theoretically require as little as $10,000 per mile per year to maintain—not much more than the cost of safety inspections and small levels of repair work. On the other hand, heavily used track that is not new and may be subject to certain locational or operating conditions could necessitate annual maintenance outlays of $100,000 or more. Indeed, there is no readily identifiable upper limitation on the annual per mile cost that may be essential for safe and efficient train operations.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. ERNEST F. HOLLINGS TO JEFF MORALES

Question 1. You mention the tremendous capital and operating support that California has poured into Amtrak service in your state. Why is California the leader in this respect?

Answer. In part because of Amtrak's focus on the Northeast Corridor, California recognized early on that if it wanted to have intercity rail, it was going to have to make it happen. This focus has expanded under the Davis Administration, as we are viewing rail as a valuable tool to help alleviate congestion and provide an alternative to driving. To the credit of California voters, The state has had the funds and the public interest in investing in intercity passenger rail. A major investment came in June 1990 with the voter's passage of Proposition 108—The Passenger Rail and Clean Air Bond Act of 1990 for $1 billion and Proposition 116—The Clean Air and Transportation Improvement Act of 1990 for $2 billion. $223 million in Proposition 108 funds and $506 in Proposition 116 funds have been used for intercity passenger rail capital. (The rest of the bond funds were used for commuter rail and mass transit projects.)

The state has also reserved other funds for intercity rail passenger capital projects. Since 1988, $531 million in State Highway Account (SHA) funds have been expended or reserved. The SHA is funded primarily from state gas taxes and motor vehicle weight fees. Also, over the life of the program $239 million in Public Transportation Account (PTA) funds have been expended or reserved—almost $100 million of that since 2000. The PTA is funded from sales tax on diesel fuel and a portion of the sales tax generated from excise tax on gasoline. Since 1999 almost $50 million in General Funds, all for rolling stock, has been reserved. Finally, the new Traffic Congestion Relief Program includes $200 million for intercity rail capital. Under Governor Davis, close to $600 million has been dedicated to intercity rail capital.

The PTA was designated as a trust fund for transportation planning and mass transportation purposes under Proposition 116. Since that time, the Account has served as a reliable source of operating, administrative and marketing funds for intercity rail.

In addition to funding, California has geography and population that give rise to successful intercity rail passenger routes. All of California's routes go from one major population center to another, with significant population centers at midpoints of the routes. All three routes are over 100 miles in length, which is a distance that is appropriate for intercity rather than commuter rail service. The routes have significant recreational, tourist and business destinations, as opposed to simply commuter destinations. The characteristics of the California routes are similar to the characteristics of the Northeast Corridor (NEC) routes that make those routes successful. However, NEC operations are federally funded, unlike the California routes that are primarily state funded.

Question 1a. Do you believe other states can, could, or should follow your state's lead?

Answer. Most other states have either not chosen to pursue increased intercity rail service, or have been able to gain that largely through Federal investment, via Amtrak. Several other states have state-supported intercity passenger rail programs, including: Illinois, Maine, Michigan, Missouri, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, Vermont, Washington and Wisconsin. While I recognize that increased state support for intercity rail is a difficult choice for some states, I also note that it is exactly the choice that Californians have stepped up to the plate and made. A combination of increased flexibility of Federal transportation funding and new funding along the lines of what is being discussed by the Committee likely would result in more states making that decision.

Question 1b. What about other states on your border like Nevada and Arizona?

Answer. Although much smaller in relation to California, Oregon and Washington are the two states that have made investments most like ours. California has studied and had discussions with the state of Nevada about service between the San Francisco Bay Area and Reno. A study on extending the Capitol Corridor Route to Reno is being conducted, and will explore the possibility of joint California/Nevada funding for the service.

Amtrak has developed a proposal for Los Angeles—Las Vegas service. However, Amtrak budget constraints have delayed the start of service.

Question 1c. What keeps them from making similar investments?

Answer. I want to be careful in not speaking for my counterparts in other states. But, in general, I would say that two things probably factor into their decisions. One, they may not see the need for increased passenger rail service. Two, they may benefited from Amtrak investment of Federal funds that kept them from having to choose to dedicate state funding.

Question 2. Can the services that California currently supports ever be profitable?

Answer. The performance on each of our routes continues to improve, and we will continue to work to improve on that record. However, while certain segments of the routes may approach or reach full cost-recovery, it is not realistic to assume that intercity passenger rail service can be profitable. Further, it is important to note that our investments in passenger rail, both intercity and commuter, are as part of an integrated transportation system. A benefit of increased ridership on the Capitol Corridor route, for example, is reduced congestion on Interstate 80 between Sacramento and Oakland. Therefore, we are getting returns from our investments that do not show up in a traditional measurement.

Question 2a. How much does the level of required operating support factor into your decision to subsidize trains?

Answer. There is a balance in this equation. On one hand, increased service generates new ridership, a key goal of our program. On the other hand, cost is a major limiting factor in deciding to operate new service. As discussed above, operating funds come entirely from the PTA. In years when the economy is such that PTA funds are up, there is more opportunity to expand services. The operating budget for FY 2003 for state-supported service is $73.1 million. The operating budget has increased considerably over the years as the result of expansion of service, and Amtrak increasing the share of costs that states are required to pay for state-supported service. With the State's current budget crisis and the high level of the existing intercity rail operating budget, opportunities for expansion are much more limited than in the recent past.

Question 2b. What other factors determine whether your state should invest in passenger rail?

Answer. In addition to funding availability, a number issues factor into a decision to increase intercity rail service

- *10-year Capital and Operating Plan*—the state develops its operating and capital program for expansion. However, occasionally Amtrak may offer an expansion opportunity that California will consider because it is cost-effective.
- *Demand*—the state monitors demand based on current ridership levels and ridership modeling. (The state and Amtrak have joint ownership of a state-of-the-art ridership model for the California intercity rail routes.)
- *Capital Improvements*—the necessary track, signal, and station improvements have to be in place for expansions to be possible. Also, adequate equipment has to be available.
- *Railroad Agreement*—the state must have secured agreements with the operating railroad before service can be expanded. Often specific track projects to provide increased capacity on the private railroads are linked to agreements for intercity rail service levels.
- *Local Support*—virtually all new or expanded service in California has come with a base of support from local communities along the route.
- *Legislative and Executive Branch Support*—this support is necessary to start or expand service.

Question 2c. How does the state define success for passenger rail service?

Answer. As noted earlier, we are increasingly using passenger rail as a tool for managing congestion in key corridors throughout the State. That contribution is a component of our success in improving mobility. In looking specifically at the rail service, the state uses performance measures in three categories: usage, cost efficiency, and service quality. The main measure to assess usage is route ridership. Secondary measures include passenger mile per train mile (PM/TM). The main measure to evaluate cost efficiency is farebox ratio. Secondary measures include yield, and train expense per passenger mile. Service quality measures include on-time performance, customer satisfaction index scores, and percent of California car equipment available for revenue service.

Question 2d. How should the Federal Government determine success and where and how to invest in passenger rail?

Answer. First, and consistent with my previous answer, I would encourage the Federal Government to look at passenger rail as a complement to other modes, and evaluate its success accordingly. In addition, We would recommend that the Federal Government use similar measures and criteria as discussed in 2.b. and 2.c. above.

Question 3. I believe California is also looking to make investment in the existing freight rail infrastructure in order to reduce congestion and the number of trucks on the road. Do you see a need for a greater Federal partnership with states for rail infrastructure investments, both passenger and freight?

Answer. Yes, in California there is a great need for capital improvements on freight railroads. The state needs to have a partnership with the Federal Government in order to handle this problem. To the extent that freight rail can continue to carry freight and expand capacity to carry freight, this will relieve truck congestion and roadway wear on public roads and highways. Class 1 mainline railroads have particular need for capacity expansion through double tracking projects on heavily used segments. Shortline railroads have a need for infrastructure upgrades to accommodate the new 286,000-pound railcars.

As far as passenger rail, if the Federal Government invests in any corridors, it should be willing to invest in productive corridors. Improved mobility in California has national benefits, and relieving congestion in California corridors is just as worthy a goal as helping address problems in the Northeast and elsewhere. Consequently, an ongoing stable Federal source of capital funding is necessary to allow California Amtrak service to just keep pace with population growth. Stable Federal capital funding is also absolutely essential in order to allow the incremental development of high-speed rail service on key corridor routes throughout the Nation.

Question 4. If Congress were to charter a non-profit company to issue tax credit bonds to provide grants to states for rail infrastructure capital projects on a matching basis, do you think California would be interested in taking advantage of such an opportunity?

Answer. Without having the benefit of the particulars of such a proposal, I would say that there is no question that new Federal investments in rail could have a tremendous benefit in California and elsewhere. Since we have been willing to dedicate state funding to such projects, we would welcome the opportunity to leverage our funds to accelerate and expand rail improvements.

Question 5. What would California's rail system look like today if the state had not invested the ample funds that it has over the past 20 years?

Answer. The service and ridership would be a fraction of what they are today. The only portion of the system that supported by Amtrak as "basic system service" is 33 percent of the Pacific Surfliners. Without any state support, Amtrak would probably be running around six Los Angeles—San Diego trains in California. There would be no Capitol Corridor or San Joaquin service and probably no Pacific Surfliner service north of Los Angeles.

Question 6. What percentage of California's total transportation budget is dedicated to rail projects?

Answer. It's important to keep in mind that we have record levels of investment underway. The California Department of Transportation's entire budget in 2002–03 was $8.9 billion: $3.7 billion for capital outlay (41 percent); $3.0 billion for state operations (34 percent); and $2.2 billion for local assistance (25 percent).

The Division of Rail's 2002–03 operating budget was $95.5 million: $73.1 million for operations; and $22.4 million for support, including administration, marketing and equipment overhaul. $55.7 million in rail capital projects were programmed for 2002–03.

Thus, rail operations were 3.2 percent of the Department's operations budget ($95.5 million/$3.0 billion). Programmed rail capital projects were 1.5 percent of the total capital outlay budget ($55.7 million/$3.7 billion). In addition, we have other projects that do not show up as direct rail capital projects, but that are intended to benefit rail. For example, we are building park and ride facilities, and providing freeway access to passenger rail stations with the intent of making them more accessible and successful.

Question 7. How would California's state-supported service be affected by the shutdown of Amtrak's long distance trains?

Answer. Discontinuance of Amtrak long-haul routes that travel through California would increase costs and reduce riders and revenues on California state-supported routes. Also, all train service would be lost in certain parts of the state.

- Costs to California state-supported routes would increase because, those fixed costs that are now shared between long-haul services and State-supported services would have to be borne entirely by the State-supported routes, to the extent the costs could not be eliminated. The higher fixed costs would be for maintenance facilities, stations, crew bases and Amtrak Western Regional overhead costs.
- The state-supported services act to extend service on some of the long-haul routes in California. For example, the Coast Starlight terminates in Los Angeles. Passengers can transfer from the Coast Starlight to the Pacific Surfliner to travel south to San Diego. If the long-haul routes were terminated, the State-supported services would lose the ridership that now transfers from the long-haul trains to the State-supported trains. Almost 100,000 passengers transferred between California's three routes and long-haul trains in FFY 2001. These riders provided almost $1.4 million in ticket revenues to state-supported trains.
- From a service perspective, California would lose its only rail service in the far north part of the state (from the Bay Area north through Redding, and into Oregon) and north/south service on the coast from San Jose to San Luis Obispo—on the daily Coast Starlight. The daily California Zephyr provides the only service in California from Sacramento to Reno. The daily Southwest Chief provides the only service through from Los Angeles to east to Needles. And the three times a week Sunset Limited provides the only through service from Los Angeles to the southeast corner of the state and into Arizona.

RESPONSES TO WRITTEN QUESTIONS SUBMITTED BY HON. ERNEST F. HOLLINGS TO ROBERT SERLIN

Question 1. Your proposal calls for a private organization to lease the Northeast Corridor (NEC) from the U.S. DOT and then be allowed to issue $15 billion in tax credit bonds to fund infrastructure development. Based upon these investments and the organization's management of the NEC, the organization would be expected to generate a profit after some period of time. Why shouldn't the government make this investment on its own, or through a government-chartered non-profit corporation, thereby making the same investments but without the premiums a private organization would charge for profits?

Answer. The IMO proposal is a response to the U.S. Government's difficulty in directly appropriating the funds needed to restore the Northeast Corridor to a state of good repair. When the history of Amtrak appropriations is compared to authorizations, Amtrak rarely gets half of what it is authorized.

The government could make the $15 billion investment required to restore and upgrade the NEC infrastructure through annual appropriations, but it would require a major and sustained commitment by Congress and the Executive Branch in a display of unity that has not been present in recent years. Furthermore, it is extremely critical that the appropriations be front-end loaded, since rail infrastructure projects require three to five years of intense activity before results are evident.

Unless the entire $15 billion were appropriated in the first one or two years of a ten year program and available until expended, the current practice of doing piecemeal improvements, parsed to match the various tradeoffs of the budget resolution and demands of the other transportation modes, would continue. Under these conditions, it would be excessively risky to undertake the required infrastructure investments since funding would be dependent on a series of annual appropriations and subject to each year's variable influences. We have structured our proposal to represent what amounts to a private sector funded "intercity rail trust fund" to solve one piece of the Nation's rail needs. The IMO proposal permits Congress to fund the NEC infrastructure at the levels it requires while avoiding "anti-deficiency" restrictions.

It also will allow Amtrak to maintain national rail service within annual appropriations bounds that we have been told by many in government are achievable.

There are increasing numbers of examples of public/private partnerships that have successfully taken advantage of the strengths of each partner to benefit the undertaking as a whole. In this instance, the traveling public and the many governmental users of the NEC would benefit from a neutral, professional infrastructure manager committed to long-term improvement and growth, and responding quickly to market-driven demand, while relieving the Federal Government of on-going funding obligations and the day-to-day responsibility for managing the infrastructure.

Question 2. A market economy is based upon competition between providers of goods and services to keep services up and prices low. Many groups are advocating at least some privatization of rail passenger service as a means to make it more competitive, the premise being that competition *within* the industry would keep services up and prices low so that passenger rail can effectively compete in the transportation market. The RIM proposal would turn over the development and maintenance of the NEC infrastructure to a single Infrastructure Management Organization ("IMO"). Who would be the IMO's competitor within the industry?

Answer. With regards to the award of the concession, under the enabling legislation, the award of the IMO role will be through an open competition managed by the Surface Transportation Board.

With regards to the competition on the NEC, currently there is no rail competition. The competition is the highway. The IMO's challenge is to create competition to the highway and to draw people from their passenger cars into the train cars.

The U.S. Government would continue to be the sole owner of the infrastructure regardless of whether Amtrak or another government entity manages it. The IMO is the agent for the U.S. Government in funding and implementing the needed infrastructure investments.

As part of the enabling legislation, the Federal Government will specify those conditions it feels are necessary to ensure appropriate economic safeguards for existing and future TSPs. The NEC will be a transportation infrastructure "platform" similar to the Interstate Highway system, air traffic control system, and ports and waterways, with equal and open access to all potential TSPs. This model is consistent with the competitive market economy model. It is more open to, and in fact is dependent on, supporting existing TSPs than the current model, while promoting additional TSPs, with the attendant market benefits from increased competition, increased service and lower prices.

Question 3. Under the RIM proposal, the main incentive for the IMO to operate profitably is to make the company attractive on the investment market, because without investors, the company cannot exist. This system works well if investments needed by the company lead directly and quickly to profits for the investors. What happens when investments necessary to effectively operate the company run counter to the needs of investors to capture a good return on their investments? Might this not lead to cuts in services and maintenance that could endanger the safe and efficient operation of passenger rail, as happened in Great Britain?

Answer. With regards to the British model, please see the response to *Question 5.*

Under the IMO model, investors are likely to be restricted to major institutional participants looking for long-term results. The enabling legislation will mandate that investors cannot take returns until the operation reaches break-even, which is assumed to be around fifteen years after becoming the IMO. Given the timeframes, it is in the investor's interest to maximize investment in the infrastructure to increase operating capacity and throughput. Increased safety and efficient operations are essential to increasing traffic volume. The enabling legislation would, in effect, make it impossible for the IMO to be publicly traded, thus avoiding the quarterly earnings pressure.

Question 4. Under the RIM proposal, how would passenger rail in the NEC be able to compete profitably in the transportation industry with a one-time $15 billion investment while its nearest competitors (airlines and highways) continue to receive massive government investment year after year?

Answer. Under the IMO proposal, for the first time, intercity rail is put on the same basis as the other modes. The $15 billion is being used to offset years of infrastructure underfunding. No other mode has had the same underfunding for such an extended period of time.

Amtrak has done a formidable job of growing its marketshare of common carrier trips in the Northeast and we believe that the IMO plan is the foundation for further growth by both Amtrak and commuter carriers.

Question 5. The RIM proposal would split a fully integrated railroad into several parts, separated by geography and by function. The first step would be to carve off the rail infrastructure owned by Amtrak (mostly in the NEC) creating a separate government corporation, the National Railroad Infrastructure Corporation (NRIC). The NRIC would turn over the maintenance of the track infrastructure to an IMO and actual rail operations to various Transportation Service Providers (TSPs). In Britain, the infrastructure was turned over to an infrastructure manager (Railtrack), the trains were turned over to rolling stock leasing companies (ROSCOs), and the operations were turned over to train operating companies (TOCs), all of which sought to make a profit. The result was poorer service, higher prices, and decreased safety. RIM claims that its proposal is not based on the British model, but the similarities in the NEC are striking. How does the RIM proposal differ from the British model?

Answer. During Railtrack's tenure, the United States and Britain differed significantly in their regulation and management of the railroad industry. The most important difference was the U.S.'s extensive body of safety regulations contained in Title 49 of the Code of Federal Regulations and enforced by the FRA Office of Safety. Britain had no such body of regulations and only now, in 2003, has it formed its first independent safety organization.

Another major difference is that under British law, the officers of Railtrack were personally liable for the decisions they made. In order to minimize personal liability, Railtrack's managers contracted out virtually every railroading task and function. This resulted in Railtrack not having the core railroading competencies necessary to evaluate and respond wisely to problems, such as the derailments in 2001.

Railtrack instead became a developer of its owned rights-of-way and station properties—a real estate developer. In contrast, the NEC has little or no developable real estate.

Furthermore, by the enabling legislation, the IMO will be a statutory railroad and will be obligated to use Amtrak's existing, experienced infrastructure workforce. That workforce knows the NEC, and the rules and regulations to effectively and safely manage the railroad. Whereas Railtrack viewed itself as a property manager first and a railroad second, the IMO can only be—and will be—a railroad.

The creation of the ROSCOs in the UK was an unnecessary complication. Under the IMO plan, Amtrak will continue to own and manage all of its own rolling stock as well as its maintenance of equipment yards and facilities.

Currently, about 98 percent of Amtrak's route miles are owned, managed, and dispatched by other railroads functioning as an IMO with regard to Amtrak. Far from "splitting a fully integrated railroad into several parts", the RIM proposal would, in fact, result in all of Amtrak's train operations being under a uniform arrangement for the first time since 1976, when Amtrak acquired the NEC.

Both the IMO and Amtrak would be subject to the Federal Railroad Administration, which would continue to monitor and enforce all aspects of safety. Also, where applicable, the IMO would be subject to the Surface Transportation Board for rate-setting and schedule protection.

Additionally, as indicated above, the proposal is funded by long-term investors, which would not be allowed to take any distributions for about fifteen years, eliminating the pressure for quick returns. These conditions will be written into the enabling legislation.

Question 6. The infrastructure that Amtrak owns in the NEC is actually its best asset and revenue generator. Yet the RIM proposal would remove this asset from Amtrak, for the benefit of private investors, and intercity rail operations in the rest of the country would go to the other government-owned corporation, the National Railroad Passenger Corporation (NPRC). How is NPRC to be funded? Would it be funded entirely by government subsidies? How much money would be required each year to continue operating the NPRC?

Answer. Intercity rail operations in the rest of the country would continue to be the responsibility of Amtrak, whose formal corporate name is the National Railroad Passenger Corporation (NRPC). Mr. Gunn has said that the long distance trains lose about $300 million annually. The IMO cannot influence this. Even with Amtrak paying an annual access fee for use of the NEC, it is expected that Amtrak would continue to require Federal funding at a level not significantly different from this $300 million level, depending on Mr. Gunn's success in continuing to improve Amtrak's operations.

The NEC infrastructure may be Amtrak's most visible asset, but it is the NEC trains, which would remain with Amtrak, that are the significant revenue generator. The infrastructure is an enormous financial burden, over $1 billion annually, utilizing figures derived from Amtrak president, David Gunn. Since Amtrak's annual appropriation has seldom matched it's funding request, the NEC infrastructure has historically been underfunded as available monies have been diverted into non-NEC priorities, including rolling stock and facility maintenance.

As part of the proposed legislation the IMO would furnish Amtrak $2 billion, assume its infrastructure-secured debt and absorb the loses associated with the infrastructure. This will give Amtrak breathing room to redesign its accounting systems and restore its rolling stock to "like-new" condition.

In any event, the need for Amtrak appropriations would be significantly reduced from the $2 billion currently being requested, Amtrak's interest and principal payments will be lower, and Amtrak will have the funds furnished to it by the IMO.

Question 7. Under the RIM proposal, who would own existing NEC assets? Who owns the improvements?

Answer. The Federal Government would own all the NEC assets and as well as all the improvements to those assets, regardless of the circumstances under which the management contract with the IMO might be terminated.

Question 8. For the tax credit bonds, who is the issuer? What is the term of maturity for the bonds? How is the amount of tax credit established? How is principal of tax credit bonds to be repaid?

Answer. The IMO proposed "tax credit bonds" are not traditional tax credit bonds that cost the government more each year. They are one-time tax credits to which taxpayers funding a loan on behalf of the Federal Government to the IMO shall be entitled. The tax credits are a loan from the public sector to the private sector, NOT a grant as is traditionally the tax credit case.

A bond issued by or on behalf of the IMO in favor of the government secures the repayment at the end of the concession period—fifty years—of the tax credit loan. The bond is a third-party secured, strippable, negotiable, investment grade instrument transferred to the government at the time the tax credits are utilized. The bond guarantees repayment of the tax credit loan to the Federal Government.

The Federal Government can either hold or monetize the guarantee instrument.

Question 9. What level of private investment is assumed aside from the investment made by holders of the tax credit bonds? What rate of return is assumed for such investment?

Answer. Over the concession lifetime, it is estimated that the private sector will invest between $30 billion and $50 billion. Of that amount, roughly the first $13 billion will be derived from tax credit sources. Investments will be project specific, and the rate of return will depend upon market conditions at the time and the precise nature of the investment. Different investments and different investment instruments have various target rates of return, which are time and market specific.

Question 10. Does the RIM proposal assume that access charges will be paid by the intercity, commuter and freight rail companies? How will access charges be set? Who will establish access priorities for dispatching and on what basis? What access charges are projected? How do projected access charges for intercity passenger rail service compare to existing annualized infrastructure costs paid by Amtrak?

Answer. The legislation will mandate that all agreements, be they with commuter agencies, freight railroads or anyone else, must be assumed "where is, as is".

All users of the infrastructure will pay access fees. Amtrak will pay an access fee for use of the NEC equivalent to that which it has negotiated with the commuter carriers for similar services. Based upon Mr. Gunn's Congressional testimony the owned infrastructure cost burden is over $1 billion annually. Amtrak's access charges would be a small fraction of that figure.

Under the legislation: commuter carrier rates and service patterns will be protected and, where applicable, the Surface Transportation Board will have oversight to assure access to the infrastructure under fair and reasonable terms and conditions. The freight carriers would continue to have the same protections they currently do.

Currently, dispatching priorities are established by the Multi-use Timetable Committee that creates the official operating timetable. This would continue. When trains are late or there are extra movements, dispatching will give preference to trains that are on schedule according to the operating timetable.

Question 11. Who establishes priorities for infrastructure investment? What keeps you from spending $15 billion on real estate, transmission right-of-way, and freight service improvements?

Answer. The enabling legislation will mandate that the IMO develop and maintain a rolling five year capital plan of improvements requested by individual states, the TSPs and the United States. This plan will be required to be transmitted annually to all affected parties.

The IMO will identify those projects and improvements that are consistent with optimizing use of the infrastructure and by setting the IMO's investment in each such request, if any. If the IMO declines to fund a project or improvement, then it may be totally funded by the requestor(s) in which case the IMO shall be legislatively obligated to implement the project or improvement, provided that the requested project or improvement does not injure or diminish any other TSP's ability to perform or deliver contracted rail service.

Additionally, the IMO will be mandated to file an annual report with the President and Congress, no later than February 15 each year, summarizing its operations, activities, and accomplishments. The report will include a discussion of the state of infrastructure and a summary of major projects and programs accomplished. Furthermore, the enabling legislation will require the re-establishment of the Northeast Corridor Safety Committee as a forum for all stakeholders to voice concerns and share requirements.

The enabling legislation will also prohibit the IMO from investing in equities, non-high quality debt and, in any form, a related party or a related party transaction. The only way the IMO can make a sufficient amount of money to survive the full fifty year concession period and provide its investors a return, is by investing in the passenger rail business and infrastructure. In fact, the enabling legislation will mandate that the IMO may *only* invest in activities consistent with the purposes of the enabling legislation.

The NEC is, was and will be a passenger railroad. Under the enabling legislation, the concession is revocable unless the IMO invests appropriately in the passenger infrastructure. Additionally, the IMO will have limited borrowing ability since it will not be able to use the Government's assets as collateral. Thus, if it does not earn a return on its investments, it will be out of business. The train throughput volume, and therefore the money (*i.e.,* return on investment), is in the passenger business.

Despite Amtrak's aggressive marketing efforts, non-transportation income is on the order of $50 million per year. Today there is little, if any, developable real estate and, in the event that the IMO does identify and capitalize on a real estate opportunity, the long-term benefits therefrom will flow to the owner of the real estate—the Federal Government.

Freight revenue from NEC usage is not significant due to post-Conrail spin-off investments by the affected carriers in their own infrastructures.

Question 12. Why can private management be assumed to have greater success in developing ancillary revenues from activities such as power, real estate and freight service?

Answer. The success of the IMO neither can nor should be dependent on its successful development of ancillary revenues. Furthermore, the IMO could not survive on the ancillary revenues. Additional revenue from ancillary sources, such as freight traffic, is expected to be minor. Most assets with potential ancillary revenue generating value have already been sold or leveraged by Amtrak and its predecessors, including most of the major stations and longitudinal utility occupancies.

The IMO only makes money through increased utilization of the infrastructure. Through judicious investment in the infrastructure, the IMO must make the infrastructure more convenient to use and more easily accessible. Only by causing more trains to move more people can the IMO survive and prosper.

Question 13. What assumptions have been made regarding the repayment of existing obligations outstanding on existing NEC assets?

Answer. Under the enabling legislation, the IMO will assume the obligation to fully repay all non-Federal Government infrastructure-secured debt. It will not be allowed to refinance that debt or obtain new debt using the infrastructure as collateral.

Question 14. Why is management of infrastructure separate from operations more effective and less costly from either the government's or the consumers' perspective?

Answer. Under the enabling legislation, separation of the infrastructure management from train operations and passenger services will permit Congress to achieve its infrastructure development goals, while eliminating the need for Congress annually to appropriate funding to maintain the NEC infrastructure. Almost 98 percent of the route-miles over which Amtrak operates are owned and maintained by third parties. From the perspective of Amtrak and, thus the Federal Government, Amtrak carries the infrastructure management fixed cost. These fixed costs, estimated at $1 billion per year, are virtually the same, whether managing 2 percent or more of the total Amtrak system. Separation of functions will permit both components to focus on their core areas of expertise. This will make the management of each function more effective.

As evidenced by other modes, consumers can expect costs to go down as traffic and transportation options increase.

Question 15. Separating operations from infrastructure has been problematic elsewhere (Great Britain). By way of example, if you build new stations, different train sets may be required, requiring different staffing for any operating company. How is this type of issue managed?

Answer. New stations will be constructed to assure compatibility with existing NEC equipment standards—standards that are followed by all NEC users. In addition, the APTA/FRA intercity and commuter standards will be used as the basis for qualifying new rolling stock using the infrastructure.

From the IMO's point of view, it is indifferent to the type(s) of equipment the TSPs operate as long as the operators and equipment are run in a safe manner complying with the industry standards.

Station staffs will be addressed on a station specific basis under existing collective bargaining agreements.

Question 16. What is the assumed total capital cost just for maintenance of existing system over the next fifty years?

Answer. It is assumed that the IMO will spend on maintenance, deferred maintenance and improvements between $30 billion and $50 billion over the next fifty years. After the first year, the enabling legislation will mandate that no less than an average of $600 million be spent on the infrastructure per year. Should the IMO fail to invest $600 million per year in the infrastructure or allow utility levels to decline, the concession is revocable.

Question 17. What impact will the RIM proposal have on existing contracts with commuter railroads, utilities, local governments and other third parties?

Answer. The enabling legislation will mandate that all existing contracts be assumed and honored by the IMO. Consequently, there should be absolutely no effect on the contracts with commuter railroads, utilities, local governments and other third parties. As the state of good repair is restored, the commuter railroads can be expected to experience greater reliability.

WRITTEN QUESTIONS SUBMITTED BY HON. ERNEST F. HOLLINGS TO SONNY HALL

There is no record of Mr. Hall's response to Senator Hollings' questions.

Question 1. In your testimony, you referenced the Roth report on worker wages. It seems to me that the Roth report confirms what you have been saying for years—that Amtrak workers make less than their counterparts and have sacrificed to keep Amtrak going. What effect is this having both on the workers you represent and Amtrak itself?

Question 2. How do labor costs on Amtrak compare to labor costs on freight railroads and commuter railroads?

Question 3. The Roth report consistently shows that workers on other railroads earn more money than do Amtrak workers in comparable jobs. Are workers on other railroads better trained?

Question 4. Do the cost-of-living raises built into Amtrak workers' contracts generally keep pace with the rate of inflation?

Question 5. We continue to hear a lot of talk that Amtrak would operate much more efficiently if we simply privatized the system. I know Britain recently experimented with this policy. Could you share your views on what we can learn from the British rail experience?

Question 6. Transportation labor has come to this Committee in support of major infrastructure bills for other modes. Landmark reauthorization bills have come out of this Committee to improve our highways, transit systems, airports and other modes. Why is it that we can't do the same for Amtrak that we do for highways, transit, airports and other modes?

Question 7. Mr. Hall, I found your comments about Amtrak workers having to sacrifice to keep Amtrak operating very disturbing. Unfortunately, there seems to be a trend going on here. We have seen airline employees having to bear the brunt of management's mistakes. Workers gave back million. I know as the union president representing a large sector of workers at American Airlines that you understand this problem well. I think the problem here is that we keep blaming workers instead of focusing on solving institutional problems. What do you think?

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. ERNEST F. HOLLINGS TO JAMES (ROCKY) QUERY

There is no record of Mr. Query's response to Senator Hollings' questions.

Question 1. From the market's perspective, who should be the issuer of potential tax credit bonds be?

Question 2. Would states rather be able to issue tax credit bonds or tax-exempt bonds?

Question 3. Can states currently use tax exempt bonds for intercity rail projects? If they can, why don't they do it more often?

Question 4. Doesn't current law allow for the issuance of exempt facility bonds for high speed rail projects? How do you suggest that current law be changed?

Question 5. Given the experience with the QZAB program to date, are you concerned about the size of the investor market for billions of dollars in proposed tax credit bond issuance?

Question 6. Are there particularly problematic issues facing states who might want to use tax credit bonds for intercity passenger rail projects? For investors?

Question 7. If Congress were to charter a non-profit company to issue tax credit bonds to provide grants to states for rail infrastructure capital projects on a matching basis, do you think the financial markets would interested in taking advantage of such an opportunity? By having a single issuer and issuing sizable amounts of bonds, do you believe such bonds can be handled efficiently in the market?

Question 8. If a sinking fund, made up of state matching funds and a small portion of bond proceeds, was managed by this nonprofit corporation to repay the bonds upon maturity, would the markets view this as a sufficiently sound way to ensure bond repayment?

○