

Nancy, Larry, and Rob,

We have discussed the contents of the SFWG Report on Available Options here at FRA (including input from Paul Nissenbaum and Karen Hedlund), and would like to offer the following feedback.

The SFWG has taken a limited approach to what it has considered. Discussion of what a corporation (or other entity) could or couldn't accomplish is presented separate from the parallel analysis of management of equipment (undertaken by another subgroup), when the issues involved in management of the equipment to be acquired may have a significant impact on the desirable structures (including corporations) that could be created. Some of the conclusions or analysis in the report may benefit from a more thorough analysis of these management issues, and how they can be addressed under different structures.

In addition, a major limitation of the report perspective is driven by the phrase "Amtrak and States participating in the Committee may enter into agreements...and may establish a corporation..." in Section 305(c). Since the legislation allows Amtrak and the States to establish a corporation, the report focuses on the complexity of getting the state legislation necessary to create such a corporation as a major obstacle and expense to the Next Generation Equipment Committee acting to create such a corporation. While this may in fact be the case from the perspective of the NGECE members, it does not prevent such a corporation, created through other means or mechanisms, from having the NGECE, the States, or Amtrak as its customers. The value of such a corporation would be best considered in the broader context of regional and national needs related to management of rolling stock.

FRA is committed through its recently executed cooperative agreements to working with the States and the 305 Committee to better define the structures necessary for proper ownership, management, and maintenance of equipment to be procured. The special conditions attached to the cooperative agreements included the following language:

Section 6. Project Property Ownership, Management, and Maintenance

- a. Equipment Ownership, Management, and Maintenance Plan (the Plan). One of FRA's goals through the provision of funding in this Agreement is to develop a rolling stock and related equipment (Equipment) ownership, management, maintenance, and deployment structure that ensures appropriate allocation of Equipment and that allows for adjustments in Equipment deployment as the Grantee's or co-applicant's, as applicable, passenger rail service demand changes over time, including potential seasonal adjustments. (i) Contents of Plan. The Plan will address Equipment ownership, management, and maintenance, including, but not limited to, the following: ownership structure; management responsibilities; assignment rights; Equipment maintenance, including overhaul and life cycle preventative maintenance over the service life according to industry best practices; financial terms for ensuring adequate operating funding for operations and maintenance of the Equipment, as well as adequate funding for overhaul of the Equipment over its service life according to industry best practices; and with respect to multi-state equipment pools, terms of deployment and redeployment between corridors and the equitable allocation of pooled Equipment resources. The Plan shall also be consistent with the Fleet Management Plan developed for the Project. (ii) Development of Plan. The Plan shall be developed by the Grantee and co-applicant/co-beneficiary States, as

applicable, in collaboration with the PRIIA 305 Committee, or such similar entity; the PRIIA 305 Committee or similar entity may establish a subcommittee or task force for such purposes. The final Plan shall be completed within one (1) year of the execution of this Agreement, and shall be submitted by the Grantee to the FRA for prior review and approval.

- b. Equipment Ownership, Management, and Maintenance Agreement. Following FRA's approval of the Plan, if the Grantee is acquiring equipment for shared benefit with co-applicant/co-beneficiary States, the Grantee represents that an Equipment ownership, management, and maintenance agreement consistent with the FRA-approved Plan will be developed and executed with participating states that shall: (a) define the ownership structure of the Equipment; (b) define the management responsibility for the Equipment; (c) define how the Equipment will be assigned and reassigned; (d) define how the Equipment will be deployed and redeployed; (e) define how the Equipment will be maintained; and (f) provide for other conditions consistent with the Plan and FRA requirements. Such agreement shall be executed within three (3) years of the execution of this Agreement or prior to initial Equipment delivery, whichever is earlier, and shall be submitted by the Grantee to the FRA for prior review and approval.

A few edits that may be additionally helpful follow:

1. In the question titled "What are the strategic goals of an entity as stated in Section 305(c)?" the Administration's goals are presented. The FRA goals go beyond developing a viable intercity passenger rail equipment manufacturing industry in the US, to a broader list. Here is the list we have been using in a number of presentations and meetings up to this point:
 - Re-establish a competitive manufacturing base and supply chain in the passenger rail industry
 - Create high quality domestic jobs in high speed rail
 - Procure intercity passenger rail equipment better matched to the needs of the state corridors
 - Minimize lifecycle costs consistent with maintaining the equipment in a state of good repair
 - Provide for renewal and enhancement of equipment throughout the commercial life
 - Manage and deploy equipment in a flexible manner within and potentially across regions based on market demand

Consider whether any of this content is relevant for inclusion in the paper as a whole.

2. In describing TTX and the freight model, a statement is made that interchange between railroads that characterizes freight equipment is less relevant to passenger equipment, as it tends to be contained within a given route structure. This and the discussion that assumes any broad sharing of passenger equipment would lead to inconsistency of fleet seems unnecessarily dismissive of the possibility that a common fleet within a given car type could indeed be shared across routes and regions, and moved from one part of the country to another as service and fleet needs grow and change over time.
3. Tone at the bottom of pages 14 and on pages 15 that states as unknown whether contracting with a 305(c) entity or having a 305(c) entity own equipment would be cost effective or efficient leads the reader to think that it is likely not. While the specifics are unknown, isn't there room for the possibility that such a structure could indeed be more cost effective or efficient, and is there any analysis from other experience (i.e. international) that would suggest that it may be? Are the experiences that suggest that it might not?

Overall, the general tone is that it would be very hard to create such a corporation, that such a corporation may be costly, and that the legislative process may be prohibitively difficult. FRA understands that these conclusions may indeed be reached, but we have also put in place a process by which to consider the issues more thoroughly over the next year with our grantees, and we look forward to receiving additional feedback from the NGEN as key stakeholders in that process.

FRA welcomes the chance to comment on this report. Given the process by which we are committed to working on ownership, management and maintenance arrangements, we request that we not be listed as formal team members on the report, although reference to FRA as having provided comments on the draft would be entirely appropriate.

Please contact me if you need any additional clarification on these comments. I did not have Reuben Vitner's email address. Please forward to him as appropriate.

Chad Edison

Transportation Industry Analyst

U.S. Department of Transportation
Federal Railroad Administration
Office of Railroad Policy and Development
1200 New Jersey Ave SE
Mail Stop: 20 W38-211
Washington, DC 20590

Telephone: (202) 493-1303
chad.edison@dot.gov