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## **NCSL Standing Committee on Transportation High-Speed Rail Working Group**

Hearing on High-Speed Passenger Rail at NCSL Spring Forum

April 9, 2010—Marriott Wardman Park Hotel—Washington, D.C.

### **Hearing Summary**

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For more information about this hearing or the NCSL Working Group on High-Speed Rail, please contact Jaime Rall ([jaime.rall@ncsl.org](mailto:jaime.rall@ncsl.org) or 303-856-1417) or Molly Ramsdell ([molly.ramsdell@ncsl.org](mailto:molly.ramsdell@ncsl.org) or 202-624-3584), NCSL staff to the group.

Audio recordings of the hearing (including Q&A sessions), written testimony and other supporting materials are available on the NCSL Web site at <http://www.ncsl.org/?TabId=20139>.

More information about the working group, NCSL's rail policy, and high-speed rail issues generally is available on the NCSL High-Speed Rail Resources Web Page, at <http://www.ncsl.org/?TabId=19767>.

## Overview

The NCSL High-Speed Rail Working Group, an activity of the NCSL Standing Committee on Transportation, conducted a high-speed rail public hearing on April 9, 2010, at NCSL's Spring Forum meeting in Washington, D.C. As part of its policy development process, the working group invited testimony from several high-profile federal, state and private sector rail experts and stakeholders.

Formed in late 2009 and co-chaired by Senator Malcolm Smith (N.Y.) and Senator Dennis Nolan (Nev.), the working group provides a forum for state legislators and legislative staff to exchange ideas on the development, financing and implementation of high-speed rail. In addition, this group has been charged with further developing NCSL's state-federal policy on high-speed rail.

## Hearing Agenda

Welcome by Chair of the NCSL Standing Committee on Transportation

- *Senator D. Scott Dibble, Minnesota*

Opening Comments by Co-Chairs of the High-Speed Rail Working Group

- *Senator Dennis Nolan, Nevada*
- *Senator Malcolm Smith, New York*

Testimony and Q&A

- *Polly Trottenberg, Assistant Secretary for Transportation Policy, U.S. Department of Transportation*
- *D. Randall Peterman, Transportation Analyst, Congressional Research Service*
- *Frances Bourne, Director—Intergovernmental Relations, Government Affairs, Amtrak*
- *Leo Penne, Program Director for Intermodal and Industry Activities, American Association of State Highway and Transportation Officials (AASHTO)*
- *Art Guzzetti, Vice President—Policy, American Public Transportation Association (APTA)*
- *Jennifer Macdonald, Assistant Vice President of Government Affairs, Association of American Railroads*
- *Dwayne Sampson, President—New York Chapter, Conference Of Minority Transportation Officials (COMTO)*
- *Randal O'Toole, Senior Fellow, Cato Institute*
- *Robert Puentes, Senior Fellow and Director, Metropolitan Infrastructure Initiative, Metropolitan Policy Program, Brookings Institution*
- *Petra Todorovich, Director, America 2050*
- *Robert Poole, Director of Transportation Policy, Reason Foundation*
- *Deb Warner, Vice President—Public Policy and Government Relations, Greater Syracuse Chamber of Commerce, representing the High-Speed Rail Coalition of New York*
- *Thomas Hart, Vice President—Government Affairs and General Counsel, U.S. High-Speed Rail Association*

Closing Comments by Co-Chairs of the High-Speed Rail Working Group

## Summary of Welcome and Opening Comments

*Senator D. Scott Dibble (Minn.)*, chair of the NCSL Transportation Committee, remarked on recent high-speed rail activities—starting with the proposed surface transportation authorization bill and the \$8 billion in federal recovery act grants. Remarkable activity and interest has been generated, and states are responding to the federal vision. It is time to become active, engaged, and intelligent. This hearing will provide important information, which will help states be well-positioned to develop the intercity rail system as resources continue to be made available over the coming years.

*Senator Dennis Nolan (Nev.)*, co-chair of the NCSL High-Speed Rail Working Group, thanked everyone participating in this discussion. He said that he appreciated the opportunity to co-chair the working group, especially because Nevada is interested in introducing high-speed rail to the southwest. High-speed rail can be one solution to relieve key bottlenecks, such as Interstate 15 at the California-Nevada border.

*Senator Malcolm Smith (N.Y.)*, co-chair of the NCSL High-Speed Rail Working Group, was first introduced by Stuart Brody, as he was in New York to receive a recovery act grant award from the Federal Railroad Administration. Sen. Smith arrived subsequently, and expressed how encouraged he is by the Obama administration's commitment to high-speed rail.

## Summary of Testimony<sup>1</sup>

*Polly Trottenberg, Assistant Secretary for Transportation Policy, U.S. Department of Transportation*

USDOT is committed to build a multimodal transportation system that moves people and goods efficiently, creates jobs and economic opportunities in the U.S., enhances energy independence and fosters livable communities. There has been a dramatic shift in federal transportation policy towards investing in passenger rail and working with the states to build an intercity rail network. The vision is a comprehensive national rail plan that addresses regional needs, interactions with freight railroads, and integration with transit. USDOT is currently looking for input from states on the national rail plan, as well as on governance models for multistate corridors, building capacity and expertise, sustainable funding sources, and planning and evaluation tools. USDOT will soon put together its principles for surface transportation authorization, including how to structure the intercity passenger rail program and how to fund it. It is hoped that the nationwide excitement about high-speed rail will translate into political support for funding it.

*D. Randall Peterman, Transportation Analyst, Congressional Research Service<sup>2</sup>*

The two points to make, from the standpoint of the states, are 1) the benefits of high-speed rail are uncertain for the U.S., and 2) the costs are likely to be high, with no certain source of funding. The most frequently cited benefits of high-speed rail—reduced highway and airport congestion, reduced energy consumption, reduced pollution, economic development, improved safety, increased travel choices and increased reliability of the transportation system—are difficult to quantify. These benefits also depend on the type of high-speed rail being provided; they are greater for the fastest service, but may not be commensurate with the much higher costs. Benefits also depend on ridership, which is very difficult to forecast. Costs are also hard to predict, but are generally higher than initial estimates. Then, the circumstances where true high-speed rail can be economically feasible appear to be quite limited. Finally, it is unclear where funding for the capital and ongoing operating costs—since these services are unlikely to be

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<sup>1</sup> These brief summaries are supplemented by the full audio recordings available at <http://www.ncsl.org/?TabId=20139>.

<sup>2</sup> The Congressional Research Service report *High Speed Rail (HSR) in the United States* (Dec. 2009) informed Mr. Peterman's testimony. A link to the report is also available at <http://www.ncsl.org/?TabId=20139>.

self-sustaining—will come from. The Highway Trust Fund can't even sustain the current surface transportation program, and there are no popular proposals for a dedicated rail funding source, so the future of high-speed rail is very uncertain. As with supersonic airlines, perhaps high-speed rail is an available technology that will not be pursued because it is not economically rational to do so.

*Frances Bourne, Director—Intergovernmental Relations, Government Affairs, Amtrak*

Amtrak is currently experiencing an up-trend with the revived national interest in high-speed, intercity passenger rail. The question of federal interest in passenger rail, however, was already answered by the Passenger Rail Investment and Improvement Act of 2008, in which Congress decided to support and fund Amtrak as well as intercity and high-speed rail. The act also created new roles in rail planning and service, into which stakeholders must evolve. In the past, Amtrak planned and operated rail service. Now, states will plan service, receive federal funds with a state match of 20 percent for capital projects, and manage operating losses. The Federal Railroad Administration will administer grants, coordinate state rail plans,<sup>3</sup> and facilitate relationships among the states, Amtrak, freight railroads and any additional operators. Amtrak intends to continue day-to-day operation of the national network and is well-placed to do so, with expertise in operating passenger and high-speed rail in the unique U.S. environment and existing relationships with the freight railroads. However, Amtrak will not necessarily operate high-speed rail systems in the U.S.: in some states—especially Florida and California—the job of service operation is up for grabs. Another role for Amtrak is that it can also help coordinate multistate corridors. Amtrak advises that the NCSL working group can help figure out the federal matching program for rail investment, give recommendations on the national rail plan, and encourage a sustainable funding source for rail.

*Leo Penne, Program Director for Intermodal and Industry Activities, American Association of State Highway and Transportation Officials (AASHTO)<sup>4</sup>*

High-speed rail is not an overnight sensation or a leap in the dark, but builds on the states' considerable work and demonstrated success on intercity, passenger rail. State DOTs, governors and legislatures have worked for over a decade in support of providing high-speed rail service where it is needed, wanted and feasible, and state DOTs are committed to continue this work into the future. The AASHTO Standing Policy on Passenger Rail sets these objectives for the future of passenger rail development: 1) Establish a national rail transportation policy; 2) Create a dedicated, sustainable source of funding; 3) Ensure the level of federal responsibility necessary for sustainable financing and system integrity, quality and accountability; 4) Establish a sound foundation for passenger rail service partnerships between states and the federal government; 5) Provide a stable, fiscally responsible system for funding rail passenger operating costs; 6) Provide flexibilities in national rail policy that adapt to differences among the states; and 7) Continue support for national, long-distance service. States should be realistic and responsible about these projects, and not just chase the federal dollars. Intercity, passenger rail projects require a substantial and long-term commitment, and it is important to establish at the outset a feasible means of providing the ongoing financing for operating costs—not just for the financial reasons, but also to demonstrate that commitment.

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<sup>3</sup> The Passenger Rail Investment and Improvement Act of 2008 (§303) tasks states to establish or designate a state rail agency to develop a state rail plan. For a summary, see <http://www.fra.dot.gov/downloads/PRIIA%20Overview%20031009.pdf>, page 3.

<sup>4</sup> AASHTO has produced several documents to support states' passenger rail efforts and to help them meet the eligibility requirements in the federal Passenger Rail Investment and Improvement Act of 2008. These materials informed Mr. Penne's testimony: *AASHTO Passenger Rail Policy (or Standing Policy on Passenger Rail)* (Nov. 2008), *2008 Update: Intercity Passenger Rail Transportation* (2008), *State Rail Planning Best Practices* (2009), *Achieving the Vision: Intercity Passenger Rail* (May 2009) and *AASHTO's Authorization Recommendations: High Speed and Intercity Passenger Rail* (updated 2010). Links to these materials are available at <http://www.ncsl.org/?TabId=20139>.

*Art Guzzetti, Vice President—Policy, American Public Transportation Association (APTA)*

Points to consider about high-speed rail are: 1) The U.S. has no models—although we can draw to some degree on international experiences or commuter rail and the Northeast Corridor in the U.S.—so every action now sets a precedent. The transit model is federal support, but local, regional and state decision-making. This also makes sense for high-speed rail, and is how FRA has put it forward. 2) As with the Interstate System, building this national network is challenging and there is not enough money. The Interstate, however, had a plan to fund the project: a federal trust fund fed by a gas tax. The Interstate wasn't done on time or on budget, but it got done. High-speed rail still lacks a plan, but we're working on getting there together. 3) Challenges exist, but so do opportunities. Strategies and policies to support the federal vision must be figured out: how the grant program will work, how to attain the workforce, how to finance the program, how to ensure the intended economic benefits, etc. But this program is "jobs looking for people." The key is to couple the transportation benefits with an economic development strategy. Add high-speed rail to the Amtrak's fleet replacement program, growing commuter and light rail systems and other transit and the potential exists for a very attractive market and green energy, American jobs.

*Jennifer Macdonald, Assistant Vice President of Government Affairs, Association of American Railroads<sup>5</sup>*

The nation's privately owned freight railroads want passenger rail to succeed. Most of Amtrak's system consists of tracks owned and maintained by freight railroads, and millions of commuter trips every year occur at least partially on freight-owned tracks. Significant challenges in expanding U.S. rail include partnering freight and passenger rail in the most effective way, so passenger rail does not operationally or financially overburden the nation's freight rail system. Although completely separate corridors would allow faster, safer and more reliable passenger service—and reduce the impediments freight railroads face when accommodating passenger service—it is challenging and expensive for passenger rail to obtain separate right-of-way. Each corridor is unique, so each access agreement must be negotiated on a voluntary, case-by-case basis and address site-specific issues. Four principles apply: 1) Safety must be the highest priority; 2) Capacity concerns must be properly addressed; 3) Freight railroads should be fully compensated for use of their assets; 4) Freight railroads must be adequately protected from liabilities that result solely from added passenger service. Finally, NCSL should consider in its policy development the federal mandate to implement positive train control, and how this is being interpreted in regulation. FRA estimates a 20:1 cost-benefit ratio for this mandate; AAR estimates a \$10 billion cost for implementation and maintenance, plus costs to commuter railroads. Both railroads and states will face this challenge in the years ahead.

*Dwayne Sampson, President—New York Chapter, Conference Of Minority Transportation Officials (COMTO)<sup>6</sup>*

As the nation progresses towards economic recovery, leaders across the country are looking for economic growth opportunities—including the high-speed rail initiative. COMTO's recommendations are: 1) Minority- and women-owned businesses should be at the center of high-speed rail development. A strong, aggressive small business program that focuses on their inclusion will ensure a level playing field and support the growth of those firms, thereby bringing economic development to rural communities. 2) Smaller contracts should be created to maximize the participation of small businesses—especially minority- and women-owned enterprises—as prime contractors on federal projects. Large contracts essentially exclude small and disadvantaged businesses from getting the work. 3) State agencies and transportation

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<sup>5</sup> Ms. Macdonald's written testimony is available at <http://www.ncsl.org/?TabId=20139>.

<sup>6</sup> In his testimony, Mr. Sampson quoted a June 10, 2009, memo from Timothy Gilchrist, New York Senior Advisor for Infrastructure and Transportation. A link to the memo is on <http://www.ncsl.org/?TabId=20139>. He also referred to a DVD, "The Missouri Model": Job Creation and Small Business Sustainability (March 2010), which is available from COMTO upon request.

authorities can create training and small business loan programs to assist small firms' entry into the marketplace; model mentorship programs exist. 4) Workforce development is key, and local communities should be taken into consideration in terms of getting these jobs. There will be a lot of friendly debate about how we implement the high-speed rail initiative, but COMTO is encouraged by the opportunity.

*Randal O'Toole, Senior Fellow, Cato Institute*<sup>7</sup>

Mr. O'Toole expressed skepticism about proposals to spend huge amounts of money on projects that even their own advocates expect to have small benefits—if any. Many compare high-speed rail to the Interstate system, but several significant contrasts exist: 1) The Interstate was always meant to be paid for by its users, whereas capital costs and many operating costs for high-speed rail will be paid for by general taxpayers, not users. Users will then promote trains that are not financially viable because others will pay for it, as happened in Japan. If politics become the determining factor for building high-speed rail, we will bankrupt ourselves. 2) Congress used a pay-as-you-go system for the Interstate, rather than debt financing. High-speed rail will be built out of deficit spending—including interest and finance charges rarely included in cost estimates. 3) The Interstate created new mobility that did not exist before, whereas high-speed rail is meant to substitute for air and auto travel—but will do so only at a much higher cost. 4) High-speed rail, unlike the Interstate, will impose huge obligations on the states for system maintenance and operations. The system also will need to be rebuilt every 30 years, and neither states nor the federal government will likely be able to cover these costs. If you want to impose obligations on taxpayers for a system that will only benefit a few, that's high-speed rail—a system the nation neither wants nor can afford.

*Robert Puentes, Senior Fellow and Director, Metropolitan Infrastructure Initiative, Metropolitan Policy Program, Brookings Institution*

Although states and metropolitan areas have long engaged in promoting high-speed rail, the \$8 billion in recovery act grants really boosted the interest in these systems. High-speed rail also taps into a growing demand for game-changing, market-shaping investments that have been long deferred in the U.S. As the high-speed rail conversation moves forward, state legislators should consider: 1) There is interest in “true” high-speed rail, but only a few corridors will have these systems. The U.S. rail system is concentrated—half of Amtrak's riders are in 10 metropolitan areas—and financial constraints exist. So the FRA approach of targeted, iterative corridor improvements—mainly upgrades to conventional rail—is a good one. We need to walk before we run, and keep our expectations in check. 2) States must work together, either formally or informally, on corridor planning. Federal funding has favored interstate collaborations, and rail planning is better when states work together. 3) The high-speed rail program differs from past federal transportation spending. Rather than distributing funds by formula and earmarks, there was a competitive, transparent, merit-based process where states had to justify their proposals. So, as states think about how to work with the federal government to make these investments, they must consider performance measures. We could waste a lot of money if we don't do this right, but we can justify these investments if we do so carefully.

*Petra Todorovich, Director, America 2050*<sup>8</sup>

America 2050 strongly supports the development of a nationwide high-speed rail system organized around megaregions.<sup>9</sup> Both “true” high-speed rail and conventional passenger rail have a role. In many regions,

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<sup>7</sup> Mr. O'Toole's testimony was informed by a report he authored for the Cato Institute titled *High-Speed Rail Is Not “Interstate 2.0”* (Sept. 2009). A link to this report is available at <http://www.ncsl.org/?TabId=20139>.

<sup>8</sup> Ms. Todorovich's testimony was informed by a report she co-authored with Yoav Hagler for America 2050 titled *Where High-Speed Rail Works Best* (Sept. 2009). A link to this report is available at <http://www.ncsl.org/?TabId=20139>.

<sup>9</sup> For more about megaregions, see America 2050's Web site at <http://www.america2050.org/content/megaregions.html#more>.

incremental improvements to conventional rail are sufficient. But true high-speed rail also has a place, especially in the nation's 11 megaregions. Two points: 1) As states plan and invest in high-speed rail, they should focus on ridership as a critical factor in securing its benefits. Rail investments should first be made in areas with the highest demand: corridors connecting the central business districts of large cities; airports with proven short-haul markets; regions with transit systems that connect to rail and/or high transit ridership; and regional economies specialized in service sector jobs and knowledge industries. 2) The economic benefits of high-speed rail can go beyond the rail sector, and result from activating the latent growth potential of megaregions. High-speed rail boosts productivity for the service sector through time savings for its workers; broadens labor markets for employers by increasing the number of skilled workers within commuting distance; increases the job opportunities accessible to workers; fosters "agglomeration economies" (the clustering of related firms over larger areas), leading to efficiency and competitive advantage; helps generate commercial development and growth around rail stations; and allows better use of existing infrastructure. As America's population grows, high-speed rail can maximize the potential of our megaregions in a way that is energy-efficient and supports sustainable land use patterns.

*Robert Poole, Director of Transportation Policy, Reason Foundation*<sup>10</sup>

Before states embark on high-speed rail, they should figure out what it is expected to do, what it won't do and whether it is worth the tax money it will cost. Four arguments are often made in favor of high-speed rail, but the right comparisons must be made in each case: 1) *Greenhouse gas reduction*. Impacts over the entire lifecycle should be considered. Including the construction phase more than doubles high-speed rail's carbon footprint, disproportionate to aviation or highways. 2) *Reduced oil dependence*. Most proposals involve diesel, not electric, locomotives. Also, new CAFE standards will reduce the carbon output of the automotive fleet by 20 percent within 20 years. 3) *Catching up with Europe and Japan*. Many misunderstandings exist about how transferable those situations are to the U.S. Even so, taxpayers have subsidized the capital costs of all but two systems worldwide, and although Europe offers more conditions under which high-speed rail can be successful, passenger rail's mode share has declined there. 4) *Providing more travel choices*. This is a good idea only if those who use the choices pay for them. This is not true for high-speed rail under any scenario. Unsubsidized alternatives, however, have growth potential and, in the case of intercity bus, the smallest carbon footprint for certain trip types. Auto and air travel offer other technological, financial, and traveler convenience advantages. The overall message to state legislators is: Look before you leap. High-speed rail is a costly, high-risk proposition, and a major share of the capital costs will need to come from state budgets, which are already constrained and will face more obligations in the coming decades. States will need to make tough choices about how to spend limited state funds, and spending on high-speed rail means not spending on something else.

*Deb Warner, Vice President—Public Policy and Government Relations, Greater Syracuse Chamber of Commerce, representing the High-Speed Rail Coalition of New York*

The High-Speed Rail Coalition of New York offers five recommendations for high-speed rail development: 1) Independent state public entities are needed that are dedicated to the design, planning, construction and operation of high-speed rail networks in each state. States that have made the most progress on high-speed rail plans, and that have the most capacity to develop these plans, have rail authorities or similar entities. State DOTs play a key role in supporting all modes, but focused attention on passenger rail is needed to reverse 50 years of underinvestment. 2) States should be encouraged through policies and incentives to work collaboratively, and in a regionally cohesive manner, on the development and implementation of state rail plans. 3) There should be a dedicated, substantial, consistent federal funding

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<sup>10</sup> Mr. Poole's testimony was an overview of his more detailed written testimony, available at <http://www.ncsl.org/?TabId=20139>.

stream. Also needed are proven models for states to develop matching funds and a formulaic federal funding mechanism—for example, a National Infrastructure Bank or high-speed rail revolving loan fund—that discourages competition among the states. Public-private partnerships should be part of the discussion and subsequent policy recommendations. Funding issues should be addressed in surface transportation authorization. 4) Consideration should be given to other forms of transportation and land use that can be impacted by increased investment in passenger rail. 5) Education and outreach is needed to communicate the benefits of passenger rail investment to the general public and to the private sector. Developing a national passenger rail network will not be easy. An interconnected network of passenger rail systems will only be possible through the support of many stakeholders, including state legislators.

*Thomas Hart, Vice President—Government Affairs and General Counsel, U.S. High-Speed Rail Association*<sup>11</sup>

Mr. Hart offered few thoughts about this historic development of high-speed rail in the U.S. The debate and apprehensions about high-speed rail is reminiscent of the debate around the deployment of the Internet, and this time, forces will again prove the naysayers wrong. High-speed rail development in the right strategic markets will spark innovation, employment, transit-oriented development, economic growth and ancillary benefits. The FRA chose two excellent model corridors to test market high-speed rail in America: Florida and California. The funding for these corridors was moderate but not conclusive, which is good because it challenges the states and the private sector to supplement federal funds in order to implement the project. Florida passed some dedicated funding and California had a bond referendum, but these are not enough; there is also a need for public-private partnerships. As both states roll out their RFP process, they are challenging the bidders to come in with their own financing. To be a part of the U.S. high-speed rail initiative, bidders are also required to create American jobs and support American manufacturing. The reality is that high-speed rail has bipartisan support and is going to come to America, probably sooner rather than later. So we need to work together to build it as quickly as possible, to make it as profitable and successful as possible, and to let the marketplace determine its longevity.

### **Summary of Closing Comments**

*Sen. Dennis Nolan (Nev.)* thanked everyone for their testimony and participation in the discussion.

*Sen. Malcolm Smith (N.Y.)* thanked Sen. Dibble for giving him the opportunity to co-chair the working group, and NCSL staff for their support. The working group is dealing with a subject that will transform America. When President Lincoln signed the act for passenger rail, nobody knew where it was headed, but now, here we are. Today, Secretary LaHood reaffirmed the administration's commitment to high-speed rail, but also added that this initiative will take decades to implement. He expressed an interest in working with NCSL. On the state level, there are things that need to be done in relation to rail authorities and public-private partnerships, and as the working group shows, this is truly a bipartisan issue. The world is changing, and this is a key opportunity for NCSL to be involved in that transformation.

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<sup>11</sup> In his testimony, Mr. Hart referred to several upcoming U.S. High-Speed Rail Association events. A list of these events is available at <http://www.ushsr.com/events.html>.