

1 **POLICY: OUR NATION’S RAIL SYSTEM**  
2 **COMMITTEE: TRANSPORTATION**  
3 **TYPE: DRAFT POLICY DIRECTIVE**  
4 **STATUS: REQUIRES RE-APPROVAL; APPROVED AT 2011**  
5 **LEGISLATIVE SUMMIT**  
6

7 The National Conference of State Legislatures recognizes viable passenger and freight railroad  
8 systems are essential to achieving a balanced intermodal transportation system and ensuring  
9 personal mobility, the free flow of commerce and national security. Rail must have the same  
10 financial security provided the other modes of transportation, such as highways, transit, aviation  
11 and waterways. NCSL strongly supports a dedicated source of federal funding for passenger rail  
12 service.

13  
14 The increasing mix of freight, commuter and intercity passenger rail on shared tracks and rights-  
15 of-way demands that concerns over liability and costs be rationally reviewed within the context  
16 of federal legislation. Fair and equitable standards for assessing costs, risks and priority usage are  
17 a necessary component of furthering the nation's rail network for passengers and freight.

18  
19 Passenger rail progress should be complementary to—not in conflict with—freight rail  
20 development. Freight railroads should be fully compensated for the use of their property by  
21 passenger trains.

22  
23 States should retain the ability to enact laws that govern railroad issues. NCSL encourages  
24 Congress to repeal provisions in federal law that exempt railroad companies from certain local  
25 and state laws.

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27 **Financing and Tax Issues**

28 NCSL supports efforts by Congress to provide investment tax credits for railroad infrastructure  
29 investments that expand capacity for the movement of both passengers and freight. Without  
30 private sector rail investment in infrastructure to accommodate increasing demand for goods  
31 movement, freight increases will necessarily be diverted to highways, further congesting and

32 damaging America's already challenged highway infrastructure. Anticipated future revenues will  
33 be inadequate to allow the railroads to privately finance all capacity improvements required even  
34 to maintain their current market share of freight traffic.

35  
36 NCSL also urges the federal government to continue to support state flexibility in financing rail  
37 service in states. NCSL favors a range of options including grants, guaranteed loans, tax exempt  
38 bonds, public-private partnerships and targeted federal investment. The present state volume cap  
39 on bond financing with exemption from federal taxation imposes an artificial restraint on the use  
40 of such bonds for rail projects and should be eliminated.

41  
42 NCSL further urges the federal government to allow states flexibility to use a portion of their  
43 allocation from the Highway Trust Fund to finance rail projects and service.

44  
45 NCSL urges the federal government to continue the tax credit for short line and regional  
46 railroads as an important incentive for upgrading and modernizing inadequate track and bridge  
47 structures. This support is critical to aid states in maintaining essential branchline services that  
48 otherwise would be eliminated.

49  
50 NCSL also urges the federal government to fund railroad infrastructure modernization grant  
51 programs such as “Capital Grants for Class II and Class III Railroads” program at 49 USC  
52 §22301 and the “Capital Grants for Rail Line Relocation” program at 49 USC §20154.

53 Federal laws that preempt the role of state courts by giving federal courts jurisdiction to establish  
54 the valuation of property for state and local tax purposes, or that give selected classes of state and  
55 local taxpayers procedural and substantive privileges unavailable to most taxpayers, offend  
56 principles both of federalism and equity.

57  
58 NCSL urges the federal government to provide federal highway safety incentive grants to states  
59 to advance innovative pilot programs. These programs would increase enforcement of grade  
60 crossing traffic laws at both active and passive crossings.

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62 **Passenger Rail and High-Speed Rail**

63 Successful evolution of an intercity passenger rail network throughout the United States,  
64 including dedicated high-speed corridors, will require cooperation among all levels of  
65 government. States will play a significant role in developing the high-speed and intercity  
66 passenger rail system, including developing state rail plans, providing funding and financing,  
67 conducting studies and analyses, securing rights-of-way, materials testing, construction,  
68 acquisition, inspections and determining where the train system interfaces with state  
69 transportation facilities.

70

71 NCSL urges the federal government to provide all possible assistance to increase the states'  
72 capacity to meet their expanded role in rail planning and evaluation under the provisions of the  
73 federal Passenger Rail Investment and Improvement Act of 2008. NCSL especially urges the  
74 federal government to increase the availability of voluntary planning and evaluation tools and to  
75 provide ongoing, permanent and dedicated funding to assist states with the planning and  
76 development of high-speed and intercity passenger rail. States require assistance in establishing  
77 cost estimates for building and operating high-speed and intercity passenger rail systems;  
78 benchmarking to gauge proposed projects and improvements; and developing and implementing  
79 key performance measures.

80

81 State legislators should be included in developing any federal guidelines for state models for rail  
82 governance and oversight. Any federal guidelines should continue to provide the states  
83 maximum flexibility over rail issues.

84

- 85 • Amtrak – The continued economic viability of Amtrak and other passenger rail providers is  
86 in the national interest. Federal funding should account for existing revenue deficiencies for  
87 Amtrak and other passenger rail providers and provide adequate funding for a capital  
88 improvement program.
- 89 • Intercity passenger rail – State and local support of intercity passenger rail systems has been  
90 critical to alleviating congestion, mitigating environmental concerns, and providing a feeder  
91 system to Amtrak. Federal support for these efforts is imperative. The federal government  
92 should provide a funding source for the states to implement cost-effective, efficient

93 passenger rail as it does for other modes of transportation—motor vehicle, transit, air and  
94 waterway.

- 95 • Commuter rail – Commuter rail facilities using track owned by private freight companies  
96 have become an important part of the transportation system in urban areas. Use of track by  
97 commuter rail on an appropriate priority basis should be negotiated with the owner of the  
98 railroad track.
- 99 • High-Speed Rail – NCSL urges the federal government to support the states in meeting their  
100 expanded role in high-speed and intercity passenger rail and to facilitate interstate  
101 coordination as well as relationships among diverse stakeholders. NCSL also urges the  
102 federal government to support and facilitate the efficient integration of the high-speed rail  
103 network with local transportation systems to ensure the success of both. NCSL further  
104 recognizes that railroads over whose rights-of-way many high-speed rail authorities will  
105 operate have a legitimate concern over increased exposure to liability as a result of high-  
106 speed rail operations. This liability issue must be addressed by Congress in the context of  
107 high-speed rail legislation. NCSL requests that state legislators be included in ongoing  
108 cooperative agreements to explore solutions to this problem. The long-term goal in certain  
109 corridors should be track that is dedicated to high-speed service exclusively, in accordance  
110 with the U.S. Department of Transportation’s definition of high-speed rail. The federal  
111 government should facilitate the steps to reach that goal over time.
- 112 • Research and Development – The federal government should continue to support research  
113 and development of advanced passenger rail technologies. Federal research should provide  
114 best practices and strategic assistance to states negotiating with freight-rail ownership of  
115 rights of way, in order to enhance on-time performance, frequency, speed and safety of  
116 passenger and freight facilities operating on the same track. Federal policy should encourage  
117 U.S. technology development and production while incorporating all other technologies.
- 118
- 119 • Planning and Evaluation – The ongoing development by the Federal Railroad Administration  
120 of the first National Rail Plan in the United States—in collaboration with the states and  
121 consistent with state rail plans, under the provisions of the federal Passenger Rail Investment  
122 and Improvement Act of 2008—is encouraging. A comprehensive strategic plan establishing  
123 clear, long-range national goals and defining stakeholders’ roles is necessary to build and

124 strengthen an integrated, cohesive, and optimized interstate high-speed and intercity  
125 passenger rail network. NCSL urges the federal government to continue work on this key  
126 policy document, and requests that state legislators be included in its development.

127

## 128 **Freight Rail**

129 The states and the federal government have an interest in supporting an efficiently managed and  
130 well-maintained national freight railroad. It is a federal responsibility to ensure a competitive  
131 environment for the transport of freight. NCSL recognizes the interest of the states in preserving  
132 rail lines that are essential to local and regional commerce.

133

- 134 • Regulation – NCSL generally supports efforts designed to improve the regulatory climate of  
135 the freight rail industry by reducing the number of regulatory restraints that adversely affect  
136 the industry's economic performance. The regulatory needs of the railroad industry should be  
137 balanced with the captive shippers who have no alternative means of transportation  
138 available. NCSL also supports efforts to improve the regulatory climate of passenger rail.
- 139 • Other – The right of federal eminent domain should be granted only when there is a  
140 compelling national need for an alternative means of freight transportation.

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## 142 **Safety and Security**

143 NCSL supports a continued federal role in setting national performance and safety goals. NCSL  
144 urges Congress to provide incentive funding to promote comprehensive rail safety programs in  
145 the states.

146

- 147 • NCSL urges the federal government to fully fund increased security measures needed in the  
148 passenger rail system, such as security checkpoints prior to boarding, luggage inspection and  
149 improved security of rail tunnels, rail bridges, rail switching areas and other areas identified  
150 by the Secretary of Homeland Security as posing significant risks to public safety and  
151 security and the movement of interstate commerce. This effort should take into account the  
152 impact that any proposed security measure might have on providing rail service, deploying  
153 chemical and biological weapon detection equipment, dealing with the immediate and long-

154 term economic impact of measures that may be required to address those risks, and training  
155 employees in terrorism response activities.

- 156 • Trespassing – NCSL recognizes that the vast number of injuries and fatalities associated with  
157 the railroad industry are due to trespassing incidents. The role of the federal government in  
158 this arena is appropriately one of conducting research and facilitating public awareness of the  
159 danger and the illegality of trespassing under state law.
- 160 • Grade crossings – NCSL recognizes the inherent risks of highway-rail grade crossings where  
161 motorists disregard even active warning devices and gates. Federal funding through the  
162 Section 130 program should be continued and increased to adequately compensate states and  
163 to provide states with incentives for reaching federal standards for grade crossing warning  
164 devices. The Federal Railroad Administration (FRA) is encouraged to finance a long-term  
165 national grade crossing safety awareness campaign. Federal preemption has effectively  
166 limited the role and responsibility of states over most aspects of rail transportation. However,  
167 state law has been preserved in some areas related to tort liability in accidents involving  
168 railroads; responsibility of motorists and pedestrians in yielding to rail traffic; and overall  
169 decisions on grade warning devices or closings. NCSL strongly opposes efforts by the federal  
170 government to preempt traditional state authority in these areas, to replace state statutes  
171 governing violations by motor vehicles and penalties for failing to yield to an oncoming  
172 train, or to establish numeric standards for crossing closings to be accomplished by states.
- 173 • Research – Additional grade crossing research should be conducted in such areas as driver  
174 response to existing warning devices, improved crossing warning devices, low-cost active  
175 warning devices, off-track train detection systems, train conspicuity (reflectorization),  
176 locomotive conspicuity (lights), and audible warning technology (whistles/horns).

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178 *With the adoption of this policy the following existing NCSL policies will sunset: High-Speed*  
179 *Rail and Expanding Railroad Capacity.*