



**Finding Ways to Encourage and Increase Private Sector Participation
in Passenger Rail Service**

Testimony of Mr. Stan Feinsod on Behalf of the
Association of Independent Passenger Rail Operators

Before the Subcommittee on Railroads, Pipelines, and Hazardous
Materials
U.S. House Transportation & Infrastructure Committee

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The Association of Independent Passenger Rail Operators (AIPRO) represents private companies, US and international passenger rail operators, who have the qualifications, interest, experience and commitment to operate and maintain passenger railroad operations in the United States. AIPRO supports the innovations introduced in the Passenger Rail Investment & Improvement Act of 2008 (PRIIA).¹ AIPRO was formed in recognition of the fact that PRIIA provides states the freedom to choose their passenger rail service providers. This law created a first ever program of support to the states to revitalize high speed and intercity passenger rail corridors, to expand competition for passenger rail services and give states a greater role in passenger rail decision-making.

In line with President Obama's vision put forward in the State of the Union Address, AIPRO believes America should set its sights on a passenger rail network that meets the evolving world standards. Our companies focuses on service delivery, efficient use of resources, and sustainable business models. We are prepared to engage in a new era of passenger rail public-private partnerships (P3s). To be clear, AIPRO supports the right of the freight railroads for a fair return on private investment under models similar to the public private partnership arrangement to improve assets on the California Capitol Corridor.

AIPRO believes the next Surface Transportation Act should contain a Rail Title that will maintain the robust investment in the United States' freight rail network and stimulate cost effective passenger rail expansion. With growing highway and airport congestion this nation cannot ignore the enormous contribution that can be made by shifting freight and people from the highways to the railways. This proposal for reform is bold. We emphasize that the rights of labor, as stipulated in PRIIA, must be fully honored. This proposal will produce good jobs for organized labor as the passenger business expands through innovative and competitive operations. The public benefits of rebalancing freight from highway to rail are equal to those of establishing a vibrant rail passenger system. We propose that in all elements of this reform program access to tracks and fees for that access must be on a commercial basis.

In these times of budget austerity and fiscal discipline, and in line with Chairman Mica's vision, AIPRO believes the new Rail Title should be deficit neutral and success oriented. It should create a new program that cuts red tape, streamlines project delivery, increases private investment through P3s, encourages open and fair competition, and leverages creative financing approaches such as the Railroad Rehabilitation and Improvement Financing program.

¹ PRIIA – The Passenger Rail Investment & Improvement Act of 2008 was signed by President Bush. Prior to PRIIA all intercity passenger grants were between FRA and Amtrak. In a reform sponsored by Mr. Mica, PRIIA created a program of intercity passenger grants to the states to build high speed and intercity passenger rail service. PRIIA encouraged public private partnerships and competition for operators. We believe this program should be the cornerstone for the future reform efforts.

As a direct outgrowth of PRIIA² we propose to reorganize the current approach to regional service with a new Intercity State Corridor program. This will lead to tangible improvements to passenger rail services in the most productive corridors in the United States to prove that passengers will be attracted in large volumes to a high level of service that begins to meet international standards. Competition involving private sector companies offers the advantages of bringing innovation, capital investment, efficiency, and enthusiasm to the expansion of America's passenger railroad services. We believe that such competition will result in the creation of a significant amount of new, middle class private sector railroad and related industry jobs, helping to reverse a decade's old trend of reductions in railroad employment and mirroring the renaissance that has occurred in the US commuter railroad industry.

We recommend the following specific reforms:

1. **Dramatically revise PRIIA Section 24402 plan by creating an Intercity State Corridor Program to assist states by providing maximum authority to develop Passenger Corridors.**

The new American intercity rail network can learn from best practices in the United States and worldwide. On the international front, the German experience in creating competitive regional rail passenger operations may provide the best overall template for the U.S. in accomplishing a major reform. (*The Attachment to this testimony provides background on the European and German experience with competition and regionalization of passenger rail service.*) We propose a new Intercity Corridor Program, roughly based on the experience of the German Model, which would provide states with the option of completely managing intercity corridor service. We also recommend a special initiative for the Northeast Corridor. The PRIIA program of capital grants to the states applied the principle followed in highway and aviation programs that the federal governments provide infrastructure support and guidelines while states and state-chartered authorities are responsible for construction, operations, and maintenance. This was a good first step and that principle should be further developed. The next step is to expand state authority and we recommend the following:

- **Authorize an Intercity State Corridor Program.** The states should be authorized to take control of corridor operations. We propose the Secretary establish an Intercity State Rail Corridor program under the guidance of a Federal Commission on Intercity Rail Public-Private Partnering. The transfer of corridor service is to be budget neutral to the states. Sec. 209 of PRIIA, State Supported Routes, defined a new methodology for establishing and allocating the operating and capital costs between the states and Amtrak. It appears states

² PRIIA set the stage for substantive changes such as: passenger rail decision making being shifted to the states to determine how resources for capital projects are spent (Sec 301); selection of an alternative operator of an intercity passenger train route (Sec 217); other passenger rail operator involvement in the next generation train equipment (Sec 305); a process to determine state access to equipment and facilities (Sec 217); employee protections and compensation (Sec 215); and establishing a rail carrier pilot program operating a rail passenger route.

not now paying full subsidy cost on a corridor operation soon will be doing so. In the event the formula shows, or the state can demonstrate that, there is a federal subsidy to the current corridor operation, that subsidy will be transferred to the state.³

- Authorize a Northeast Corridor Initiative. We agree with Chairman Mica that the Northeast Corridor holds the best opportunity for true high speed rail. We would propose a special initiative for the NEC that would lead to an exploration of high speed alternatives.⁴
- Engage P3s. Any state or states participating in the Intercity State Corridor Program will engage in a competition for the design, management, operation, and maintenance of the rail corridor passenger service under federal guidelines of the corridor operations.⁵ The program may include all federally designated high speed rail corridor routes, all state subsidized routes (formerly known as 403(b)) and new intercity corridor routes. States participating in the Intercity State Corridor Program or the NEC Alternatives program will be eligible for funding from the Passenger Rail Infrastructure Bank.

2. Reform and Expand the PRIIA Alternative Rail Service Pilot Program

PRIIA established an Alternative Passenger Rail Service Pilot Program and directed a rulemaking to provide guidelines. The established program is somewhat complex and the language vague. For example, it is not clear whether a freight railroad could subcontract out passenger service on their track. Because of this lack of clarity, there was no interest expressed in the program by the Class I railroads that we are aware of, and the Federal Railroad Administration (FRA) did not initiate the rulemaking.

Nonetheless, we believe this program could be streamlined and produce results. We do not believe this needs to be a pilot program, but rather can be a free standing competitive alternative to current service and the Intercity State Corridor Program which will be under state authority. Certainly, the Commission and FRA may wish to start with pilot projects, but that should be left to administrative discretion. We propose:

- Establish an Alternative Rail Service Program under guidelines established by the Commission on Intercity Rail Public-Private Partnering.

³ Corridor Subsidy – Currently there is a PRIIA provision in the alternate passenger rail service pilot program that permits a federal operating subsidy in a corridor that becomes a pilot project. This is restricted to circumstances where there is a subsidy on the service being replaced. It may be transferred to the Pilot private rail carrier. Essentially the same provision would be applied to states assuming control of state corridor service.

⁴ Northeast Corridor – We concur with certain recommendations of the House T&I Committee Report, “Sitting on Our Assets, p.29 to 34. The new NEC Initiative should provide funding for a robust program soliciting Expressions of Interest to provide alternative service.

⁵ The language in S 24402 (b) (3) that requires the proposed operator of service be selected competitively should be continued and enforced.

- Permit a FRA qualified Operating Public-Private Partnership, with the approval of the track owner(s), who must be a co-applicant, to petition FRA to provide intercity passenger service under Commission guidelines.
- The service route may be an existing passenger route or a new route.
- PRIIA provides labor protections and hiring preferences which will apply.
- Companies participating in the Alternative Rail Service Program would be eligible for funding from the Passenger Rail Infrastructure Bank.

3. Establish a Passenger Rail Infrastructure Bank.

In the face of enormous budget deficits, a deficit conscious approach is necessary. The right approach is to build a specific program of innovative infrastructure support for the states that elect to opt into the Intercity State Corridor Program or P3s that propose an Alternative Rail Service Program including in the NEC.

We propose a new Passenger Rail Infrastructure Bank that combines grants and loans. We support continuing the PRIIA S. 24402 program of capital investment to the states or replacing it with a new passenger rail grant program such as that proposed by the Obama Administration.⁶ However, we know that an expansive grant program is not likely. We suggest expanding the existing deficit neutral Railroad Rehabilitation and Improvement Financing. We would propose a new RRIF component of \$50 billion for this purpose. Then combine whatever grants are authorized with the RRIF loans and create a dedicated Passenger Rail Infrastructure Bank and leverage the combined funding to the maximum extent. The passenger loans, subsidized in line with a public interest measurement should be available to participants in the State Corridor program, to P3s participating in the Alternative Passenger Service Program, and to P3s that meet federal standards of passenger service and initiate service.

Conclusion

AIPRO is working on a framework for a legislative proposal to accomplish the goals of this testimony. We look forward to working with stakeholders in the industry, labor, states and this committee in the development of a Rail Title to the Surface Transportation Act.

Thank you.

⁶ We believe the principle of this proposal is consistent with the President's budget concept of a unified rail fund where states and all parties involved in intercity passenger service would compete for grants.

Attachment:

European Experience with Competitive Rail Operations

Cascadia Prospectus – Posted by Bruce Chapman – Article by Heiner Bente and Ray Chambers

The Corridors: Best Practices from Around the World. Intercity American passenger rail service is not close to the standards of the other industrialized nations of the world. With growing population and congestion it is time take a new look at the way rail passenger service is operated in America. While America has slumbered for decades with its lax, government run passenger service, the rest of the world has been wide awake. The US is stuck with an inefficient uneconomic model that dates from the mid-20th Century. Meanwhile much of the rest of the world has introduced competition and private sector innovation into passenger railroading. For more than two decades international institutions, including the World Bank, vigorously pressed reforms that broke up bureaucratic and monopolistic state railroads, demanded competition for rail operations and promoted substantial infrastructure investment. The European Union followed suit. Perhaps we can learn something here.

Today, private railroads operate first class regional and high-speed service across Asia, including Australia and Japan. Britain, Sweden and Germany among others have successfully initiated controlled competition for passenger operations. In each country, these experiments in competitive passenger operations have resulted in new sleek equipment and increased ridership. Britain undertook the most extensive privatization. With new private operators, passenger traffic grew so fast it outpaced the independent infrastructure company. The infrastructure deficiency has since been corrected with creation of a new public-private hybrid organization called Network Rail. It is no coincidence that the country with the greatest commitment to private operators has had the fastest passenger growth in Europe. In Britain, between 1990 and 2005, traffic rose from about 9 billion passenger miles to 35 billion passenger miles.

To put it in perspective, the United States has a population of 300 million and Amtrak provides only about 24 million passenger trips annually. In Britain, with a population of 61 million, private contract operators manage 1.2 billion passenger trips a year.

The German Model. The German experience may provide the best reform template for the U.S. For years Deutsche Bahn (DB), the government-owned monopoly operation of intercity rail

service, experienced unsustainable losses. In 1996 the DB monopoly over the regional German corridor lines was ended. The previous federal responsibility to determine and finance (i.e. subsidize) regional passenger rail services was spun out to state authorities. However, the states were protected financially in assuming the service. Financial resources were provided to the states for both infrastructure and operating subsidies.

Most importantly these state authorities were given the right to put long-term rail-services out for competitive tender. A number of smaller domestic and several large international railroads rushed into the market and were fairly successful in winning market shares from the incumbent. A federal oversight agency was established to set standards for operations, check safety requirements and set and enforce the rules of competition.

The resulting system has been a major success. Today there are 60 local and regional railway companies operating. Among them some companies have grown into significant competitors to DB. For years, about every second bidding process was won by DB's competitors. The state-owned DB, which in the meantime has also lost monopoly control of the long distance services, has reacted to the competitive pressure from market entrants and has restructured successfully to survive in the new competitive world.

Recently, a German federal court ruled that the legal right of authorities to put contracts out for tender is now a legal obligation. German state authorities in charge of contracting rail services expect a massive "wave" of bidding procedures in coming years

Across Germany's regions, private and state investment have sparked a significant increase in passenger traffic. For example, one new operator in the Rhineland-Westphalia started with 800 passengers a day. The average now is 16,000 passengers a day. On the NordWestBahn network there was a 70 percent traffic increase in one year following the takeover by a new operator. These numbers are not unusual. Across the board there has been a modernization of equipment. In 2002 more than 1,000 new rail cars were put into service on the regional lines. New investment volume for rolling stock alone amounts to 11 billion dollars. Many innovative services have been introduced: Internet access on regional trains; regional gourmet food services and taxi/rental cars as a part of the basic train ticket.

The US passenger rail debate is bogging down between advocates of huge government subsidies, on the one hand, and those who see no future role for passenger rail. A better approach, following the German example, would facilitate maximum competition and private investment to provide modern rail intercity service as one part of a national transportation program.

Heiner Bente is an internationally recognized expert in passenger rail restructuring. He was one of the architects of the German Model described in the above article. Mr. Bente is currently

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Ray Chambers is Senior Transportation Fellow of the Cascadia Center/Discovery Institute in Seattle. Mr. Chambers is also sole proprietor of RBC & Associates of Washington, D.C. where he serves several clients as a transportation policy advisor. His email is rchambers@passengerrail.org. (Photo: Sebastian Terfloth, Wiki Commons)

Read more at <http://www.cascadiaprospectus.org>

About Cascadia *Founded in 1993, as the Cascadia Project, Discovery Institute's Cascadia Center for Regional Development is an important force in regional transportation and sustainable development issues. We're known for our involvement in transportation and development issues in the Cascadia Corridor, Puget Sound and in the U.S.-Canadian cross-border realm. We've recently added to that mix through a major program to promote U.S. efforts to reduce reliance on foreign oil, including the earliest possible development and integration of flex-fuel, plug-in, hybrid-electric vehicles. We're proud of our reputation as an independent voice for creative solutions to metropolitan, state, regional, and national challenges – a voice we share through constructive policy analyses, expert testimony to government bodies, and through convening forums and conferences to facilitate solutions to complex policy matters*

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
Truth in Testimony Disclosure

Pursuant to clause 2(g)(5) of House Rule XI, in the case of a witness appearing in a nongovernmental capacity, a written statement of proposed testimony shall include: (1) a curriculum vitae; and (2) a disclosure of the amount and source (by agency and program) of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years by the witness or by an entity represented by the witness. Such statements, with appropriate redaction to protect the privacy of the witness, shall be made publicly available in electronic form not later than one day after the witness appears.

(1) Name:

Stanley G. Feinsod

(2) Other than yourself, name of entity you are representing:

Association of Independent Rail Operators (AIRO)

(3) Are you testifying on behalf of an entity other than a Government (federal, state, local) entity?

YES

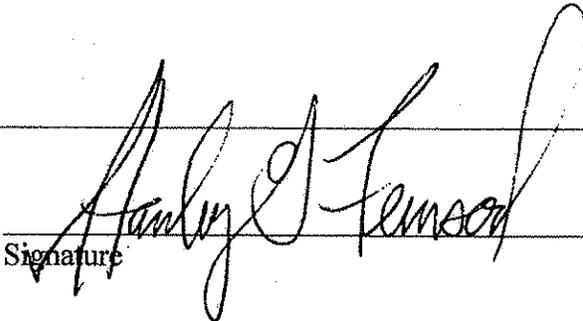
If yes, please provide the information requested below and attach your curriculum vitae.

NO

(4) Please list the amount and source (by agency and program) of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years by you or by the entity you are representing:

AIRO - None
Ratp Dev - None

Signature



Date

3/8/11