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To US House of Representatives, Subcommittee on Railroads, Pipelines, and Hazardous Materials,
Chairman Bill Shuster Presiding

Thursday, April 7, 2011

On behalf of the United States High Speed Rail Association (USHSR), its President, Andy Kunz, and its 250 members, I extend greetings to this prestigious Subcommittee on Railroads, Pipelines, and Hazardous Materials. I am here representing USHSR as its Vice President for Government Affairs and General Counsel. I also serve as the Director of the Washington office of the national law firm of Quarles & Brady. The USHSR is a non-profit trade association committed to advancing a state-of-the-art nationwide "true" high speed rail (HSR) system - to be completed in phases around the country. Our mission is to build widespread public, business, and political support for major investments in a national HSR network.

I. BACKGROUND

The USHSR is pleased to share its thoughts on how to expedite the development of HSR in the United States. On January 27th, I had the pleasure to testify in NYC before the full Committee's first hearing of this Congress. Following that hearing, USHSR hosted an international summit featuring Committee Chairman John Mica, Subcommittee Chairman Bill Shuster and Ranking Member Corrine Brown, and 400 attendees in DC that focused on the deployment of HSR. The conference yielded

much support and enthusiasm for building a true HSR system in America that is financed by both the public and private sectors. We are delighted today to offer model legislation to establish federal programs that will assist in the rapid creation of a true HSR system funded in part by innovative public-private partnerships.

This national HSR system will revive our economy and manufacturing sector by creating millions of new jobs. It will be the catalyst for the next national real estate boom as well as significantly reduce our dependence on foreign oil, shrink our national carbon footprint, and create efficient mobility that is safe and affordable for its passengers. Aside from these great benefits, is the desire to keep America more competitive through the constant development and ingenuity of its transportation systems as President Obama and Vice President Biden often remark.

Presently, most of our national transportation systems are overloaded and in a state of disrepair - which causes delays - costing the nation more than \$100 billion dollars per year in lost time and wasted fuel. The price of oil is already trading over \$100 dollars a barrel, and is expected to continue rising indefinitely. The quicker America can build alternative forms of transportation not dependent on foreign oil, the better the nation will be and the sooner we can recover from the current recession. Ironically, increased oil prices translate into increased rail ridership, which in turn improves the business case for HSR. We have already seen this happen in the summer of 2008 when oil hit \$147 per barrel, and the ridership on America's rail systems rose to record levels. With the right development and adequate investment in HSR, a vast consumer base can be tapped into for a true HSR line that can deliver safe, efficient, and faster travel.

The popular Washington, DC to Boston passenger train route, otherwise known as the Northeast Corridor is particularly ideal for HSR investments not only because it stretches across seven states totaling 480 miles, it has the most robust ridership level from a population of approximately 50

million. In 2009, Amtrak's daily rail ridership in the Northeast Corridor was more than 27,000 passengers. Economically strong, the Northeast Corridor has among the highest income levels per capita in the nation. Such demographics make the Northeast Corridor ripe for HSR development and investment by the private sector.

II. THE NEED FOR PRIVATE INVESTMENT IN HSR

The debate is now how do we fund one of America's most important infrastructure projects. With the continuing economic and political climate focused on reducing public spending and the challenges in attempting to balance the budget, the future of HSR development in America will depend, in part, upon private sector investment. As you know, over the past two years there has been a renewed commitment for federal investment in rail transportation, but more capital is needed to ensure a successful project that meets the expectations of consumers in an efficient and profitable manner. In essence, there must be an on-going federal HSR program established to signal that this project is one of "National Significance" similar to the way the transcontinental railroad and the interstate highway system were built. Moreover, public-private partnerships are needed to carry out this important national program and global experience shows that they can be successful.

Last year, the UK government auctioned off a 30-year concession for the right to own and operate its first high speed railway, the HS-1, linking London to the Channel Tunnel. The sale generated approximately \$3.4 billion dollars¹ and was sold to a consortium of two Canadian pension funds - Borealis Infrastructure and the Ontario Teacher's Pension Plan. The concession sale is estimated to return 40 percent of the original construction cost to the British treasury.² Such savings is

¹ Mark Reutter, British Deal Shows Private Investment Demand for High-Speed Rail, PROGRESSIVE FIX (December 10, 2010) available at <http://www.progressivefix.com/british-deal-shows-private-investment-demand-for-high-speed-rail>.

² *Id.*

likely to help reduce the British government's record deficit. In 2040 - when the concession ends, the railway reverts back to the government, which anticipates re-bidding it for an equal or higher price. "[O]ver the course of its 150-year-plus lifecycle, [HS-1] repays its construction cost, probably several times over."³ Reportedly, the "higher-than-expected bids for the UK's only dedicated [HSR] line revealed [a] strong demand for such assets" and demonstrates an alternative solution to funding HSR development, especially in the Northeast Corridor which has one of the densest market of riders.⁴

Although there has not been public-private partnerships undertaken in the American railroad industry for over 80 years, there have been several other developments of transportation infrastructure in a similar manner such as in the development of toll roadways or parking concessions. In establishing creative public-private partnerships, governments can tap into the \$500 billion that is currently available for investment in such projects from private financial institutions on Wall Street, in pension funds, and in the banking sector. Furthermore, there is a potential for a high ROI (return on investment) for public projects such as this because of the existing market of experienced rail riders in large urban areas along the Northeast Corridor and other urban areas.

The key for success is to incentivize the private sector in conjunction with targeted expenditures of public funds. These incentives can be created and implemented through federal legislation. USHSR has proposed and is distributing publically today the "**Private Investment in High Speed Rail Act of 2011.**" Under such legislation, private companies seeking to invest in public projects stand to gain specialized benefits as well as other concessions for investment in the construction and operation of the nation's HSR rail lines.

³ *Id.*

⁴ Robert Wright, £2.1bn HS1 Sale Lifts Privatisation Prospects, FINANCIAL TIMES (November 10, 2010) available at <http://www.ft.com/cms/s/0/6be9c170-e90d-11df-a1b4-00144feab49a.html#axzz1BgsRnLPT>.

III. SIGNIFICANT PROVISIONS OF THE BILL

The Bill aims to designate HSR systems as "Projects of National Significance" to justify expedited processing of requests for environmental approvals, permits, and funding. It includes incentives that will (1) create jobs through support of the "Buy America," green energy and small business initiatives, (2) revitalize our transportation infrastructure, (3) allow private investment in Amtrak through stock and bond issuances, (4) give tax credits and flexible repayment options to businesses, (5) expand RRIF and TIFIA programs, (6) advance the creation of an Infrastructure Bank as proposed by a bipartisan group of Senators lead by John Kerry, Kay Bailey Hutchison and Mark Warner, and (7) use public funds from FRA to leverage state public-private partnerships financing for HSR. The end result means less reliance on public funds, thereby expediting HSR development, design, and construction at a reduced cost. Meanwhile, the public partner (federal and state governments) retains some control and management of the overall rail program to ensure that public requirements and government standards are met.

Many states have already signed legislation that encourages public-private partnerships. Most recently Georgia and Ohio have both signed bills heralding a new wave of thinking about funding projects of this magnitude. In Georgia, its General Assembly approved a water project bill that allows construction of reservoirs by public-private partnerships. Last week, Ohio's Governor John Kasich signed a \$6.8 billion transportation budget bill which includes a public-private partnership option. He remarked that it will help the state "get more infrastructure for less." It is this growing trend that illustrates the necessity of establishing a federal program that will further assist the development HSR projects. For the reality is that due the current economic climate and record budget deficits, America cannot afford not to use all available financial resources to make our rail transportation network more competitive with other nation's around the world.

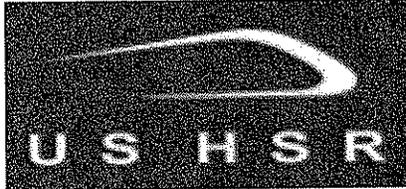
IV. CONCLUSION

At this time, this Committee and the entire Congress have an excellent opportunity to develop a public-private partnership model to fill a portion of the gap for HSR funding. The public-private partnership team of investors, lawyers, and public officials that successfully develops this model will likely be applauded for decades as the private sector helps develop HSR systems across America. We are confident that market forces will make the business case for HSR and this will show that additional federal funding is well placed as the foundation of our nation's infrastructure. The first test of the private market should occur this year when several states are expected to release their Requests For Qualifications (RFQs) to bidders. The RFQ's will likely contain a requirement for private investment to supplement federal and state funding. In closing, we invite members of this Committee to continue this discussion at our upcoming HSR Conference on May 23rd and 24th in Chicago. Public-private partnerships will be a key part of the agenda at the conference.

Thank you, Mr. Chairman and Madam Ranking Member for your time and your leadership. The USHSR looks forward to working with you in the future and I welcome the Committee's questions and comments.

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H.R. ____ – The Private Investment in High Speed Rail Act
(Introduced in House - IH)

HR ____ IH

112th Congress
1st Session

For the purpose of the development and implementation of federal programs and policies to establish investment incentives expediting the creation of high speed rail infrastructure and related jobs throughout the United States.

Presented by:
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28 HR ____ IH

29 112th Congress

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31 For the purpose of the development and implementation of federal programs and policies to
32 establish investment incentives expediting the creation of high speed rail infrastructure and
33 related jobs throughout the United States.

34
35 **IN THE HOUSE OF REPRESENTATIVES**

36 February 2011

37 [Sponsors], introduced the following bill:

38
39 **A BILL**

40 For the purpose of the development and implementation of federal programs and policies to
41 establish investment incentives expediting the creation of high speed rail infrastructure and
42 related jobs throughout the United States.

43 **Section 1 - Short Title**

44 This Act may be cited as the Private Investment in High Speed Rail Act.

45 **Section 2 - Definitions**

46 As used in this Act, unless further defined in the text of the section:

47 **Affected jurisdiction** means any Public Entity, as later defined in this Section, State, as later
48 defined in this Section, county, city, town, or any other municipal government or authorized
49 agency thereof in which a qualifying section, portion or complete Infrastructure or Eligible
50 Facility constructed under this Act lies

51 **Asset Management** means operating and managing the infrastructure under an organized plan
52 while exercising competent care and reasonable judgment on behalf of the public under the
53 constraints of the Partnership Agreement

54 **Partnership Agreement** means the comprehensive agreement required to be negotiated and

55 completed by the private and public entities party to the development of the Infrastructure
56 duly negotiated by all Private Entities and Private Entities and executed according to the laws of
57 the Affected Jurisdiction.

58 **Concession** means any financial, tax, land or other instrument the private entity could not have
59 exercised without the assistance of the Public Entity or Affected Jurisdiction including any lease,
60 development, easement, lien, right away, tax incentives, interest on loans or capital in any form
61 for any qualifying Infrastructure.

62 **Concession payment** means any payment made by the Private Entity to ensure consideration
63 for a valid contractual relationship or any financial payment relinquished in course of business
64 over the terms of the operation of the Infrastructure for any reason whatsoever.

65 **Develop** means to plan, finance, organize, build or in any way materially contribute to the
66 schematic, plan, or construction of an Infrastructure project

67 **Infrastructure and Eligible Facility** means any structure or facility built to facilitate the
68 movement of goods, commodities, information or people in the United States through a
69 current or future mode of commuter, freight, passenger or high speed rail, toll roads, bridges,
70 or any appurtenances thereof.

71 **Material default** means any failure of an operator or owner to perform any duties under the
72 Partnership Agreement which jeopardizes delivery of adequate service

73 **Private entity or entities** means any natural person, corporation, or any business entity, trust,
74 partnership or investment vehicle recognized by any State or municipal subdivision in the
75 United States or foreign government, or collection, group or association thereof

76 **Public entity or entities** means any State, Commonwealth, division or subdivision or agency of
77 any State or Commonwealth, or any Federal agency, commission, or any other delegation by
78 appointment by Congress, or collection thereof

79 **Standard of Operation** means any regulations required by the United States Department of
80 Transportation or related State agencies in Affected Jurisdictions that pertains to the operation
81 or the development of Infrastructure

82 **State** means any recognized state of the union, or one of the territories of the United States
83 including the District of Columbia

84 **Revenue** means any collected fees from advertising, tickets, concessions, rental of right of ways
85 or vehicles, rental fees, or any other source of income derived from the partnership created
86 under this Act

87 **Section 3 - Policy - "Project of National Significance"**

88 The Congress, by enacting this Bill, finds that

- 89 1. There is a continuous need for development of the national infrastructure for the
90 well being of the United States and to encourage further economic, social, and
91 technological growth. In light of the numerous benefits provided by high speed rail
92 transportation, Congress deems the construction and operation of HSR systems to
93 be "Projects of National Significance" as defined in prior Acts.
- 94 2. The United States and the certain States have the ability and authority to build new
95 and provide enhancements and developments to existing Infrastructure by a
96 program soliciting the investment of Private Entities to undertake all or a portion of
97 a project or program for the study, planning, design, development, financing,
98 acquisition, installation, construction, reconstruction, improvement, operation,
99 and/or maintenance of Eligible Facilities
- 100 3. Public-private partnership initiatives provide the public sector with increased access
101 to private sector expertise and funding by:
- 102 a. Facilitating the collaboration, cost, and risk sharing in public infrastructure
 - 103 projects between all partners
 - 104 b. Bringing innovative thinking from the private sector to bear on public
 - 105 infrastructure needs
 - 106 c. Reducing the public cost of delivery and services for eligible facilities
 - 107 d. Expediting project delivery
 - 108 e. Encouraging life cycle efficiencies in public infrastructure projects
 - 109 f. Fostering flexibility in procurement methods to provide the best value to the
 - 110 public; and
 - 111 g. Providing better use and leverage of public resources, increasing private
 - 112 investment in public infrastructure facilities, enhancing capital formation for

113 large projects and providing savings to taxpayers.

114 4. The Congress intends that the powers granted to Public Entities in this Act are in
115 addition to any other powers authorized under applicable law.

116 **Section 4 - Solicitation and Proposals**

117 1. Notwithstanding any other applicable provisions of federal or state law, Public Entities
118 are authorized to enter into public private partnerships for eligible Infrastructure
119 pursuant to this Act.

120 2. Under the authorization granted in this Section, Public Entities, and any agency thereof,
121 is authorized to procure a private partner or partners, and award public-private
122 partnerships under this Act using any of the following:

123 a. Solicitation of project proposals from Private Entities where the Private Entities
124 submit proposals to the United States Department of Transportation or a similar
125 State entity to determine the best proposals and enter into negotiations for
126 agreements

127 b. Unsolicited proposals, provided that the Public Entity determines that there is
128 sufficient public need and interest, and that implementation of a proposal would
129 best serve the public good

130 3. For any solicited proposal, the Public Entity shall set forth the qualifications, factors, and
131 indicia that the Public Entity will evaluate when reviewing proposals. The public
132 sponsor, in its sole discretion, determine the factors and weight given to such factors in
133 determining which proposal provides the best value for the Public Entity.

134 4. The Public Entity is authorized to pay a stipend to an unsuccessful solicited proposal in
135 an amount and on the terms and conditions determined by the public sponsor, if

136 a. The Public Entity cancels the procurement prior to the due date set by the Public
137 Entity for proposals or

138 b. The unsuccessful Private Entity submits a proposal that the Public Entity
139 determines is responsive and meets all requirements but is unselected.

140 In exchange for such a stipend, the Public Entity will retain the rights to all work
141 product, including but not limited to any technologies, techniques, methods, processes,

- 142 or information, produced by the Private Entity in the proposal if unsuccessful for the
143 previous reasons.
- 144 5. The Public Entity may charge a reasonable administrative fee for the evaluation of an
145 unsolicited proposal.
- 146 6. The Public Entity may procure services, enter into agreements, and administer revenues
147 as authorized in this Act.
- 148 7. The Public Entity may retain financial, legal, and other consultants and experts in any
149 sectors to assist in the procurement, evaluation, and negotiation of public-private
150 partnerships and for the development and/or Operation of eligible facilities under this
151 Act.
- 152 8. Notwithstanding any other provisions of applicable state or federal law, the Public Entity
153 may agree or require use of arbitration or an alternative dispute resolution procedures
154 to resolve disputes with proposers or the Private Entity

155 **Section 5 - Agreement Provisions**

156 All public-private partnerships shall be consummated with a written partnership agreement
157 that shall contain the terms of the agreement.

158 In a public-private partnership, the Public Entity is authorized to include any provision deemed
159 necessary or appropriate in the written partnership agreement, including but not limited to the
160 following:

- 161 1. Provisions authorizing the Private Entity to impose, collect, and enforce user fees,
162 tolls, fares, rents, or similar charges, including without limitation, provisions
163 governing the processes for collection, and any technology to be used to collect the
164 fees.
- 165 2. Provisions allowing the public sponsor to accept payments of money and share
166 revenues with the Private Entity.
- 167 3. Provisions addressing how the Public Entity and Private Entity will share
168 development costs and allocate and manage project risks and overruns
- 169 4. Provisions establishing performance criteria and/or incentives
- 170 5. Provisions addressing the acquisition of rights of way and other property interests

- 171 that may be required including provisions of eminent domain
- 172 6. Provisions addressing responsibility for reconstruction, upkeep, or renovations that
- 173 are required for a facility to meet applicable government standards at the end of the
- 174 term of the agreement
- 175 7. Provisions providing for patrolling, security, and law enforcement on, in, or for the
- 176 eligible facilities
- 177 8. Provisions identifying any technical or material specifications that must be satisfied,
- 178 and a process whereby the Private Entity may request and receive authorization
- 179 from such specifications on making such a showing satisfactory to the Public Entity
- 180 9. Provisions authorizing the Private Entity to receive a reasonable rate of return on
- 181 the investment
- 182 10. Provisions regarding compensation, payments, retention of funds, escrow of fees,
- 183 and generation of revenues
- 184 11. Provisions specifying the conditions under which the Private Entity shall be entitled
- 185 to compensation for lost revenues or other damages resulting from the construction
- 186 of a completely public facility by the Public Entity or another governmental entity.
- 187 12. Provisions specifying the event of a default, remedies and the accompanying
- 188 procedures available to both partners
- 189 13. Provisions regarding maintenance of the facility and auditing of the finances of the
- 190 Private Entity's books and records.

191 The Public Entity is required to include provision that establishes the Public Entity's rights to

192 develop, maintain, repair, rehabilitate, operate, or lease other projects independent of the

193 location of the agreed upon proposal.

194 **Section 6 - Tax Credits, abatements, and deferments**

195 Public-private partnerships advanced and development under this Act shall be eligible for the

196 following Concessions, as determined by the Public Entity responsible for entering into the

197 partnership or any other State, agency, or Affected Jurisdiction delegated authority by Congress

198 under this Act or subsequent Acts:

- 199 1. Reduction of applicable capital gains to shareholders of the Private Entity to the

- 200 minimum level currently available under Section 26 of the United States Code; or
201 2. Reduction of applicable income taxes as accrued by the Private Entity as profits from
202 the Eligible Facilities; or
203 3. Abatement or deferment of tax liabilities during the Eligible Facilities operation
204 under this Act as determined by the Public Entity party to the Partnership
205 Agreement.

206 Property developed, operated or held by the Private Entity under a public-private partnership
207 entered into under this Act shall be exempt from any and all state and county ad valorem and
208 property taxes that might otherwise be applicable.

209 **Section 7 - Performance and Payment Security**

210 A public-private partnership shall require the Private Entity or contractors acting on behalf of
211 the Private Entity to provide performance and payment security for each and every Eligible
212 Facility to be constructed under this Act. Notwithstanding any applicable provisions of state
213 law, the penal sum or amount of such security may be less than the price of the contract, based
214 upon the Public Entity's determination, made in sole discretion and on a facility by facility basis,
215 of what is required to adequately protect the Public Entity, the interests of the Public Entity,
216 and adequately assure payment of persons and amounts provided.

217 **Section 8 - Funding and Financing**

- 218 1. Any lawful source of funding and financing may be utilized for the development or
219 operation of an Eligible Facility under this Act.
220 2. The Public Entity may accept funding or credit assistance from any other federal or State
221 governmental organization or agency as are available to it for carrying out the purposes
222 of this Act, whether the funds are made available by grant, loan, or some other
223 financing arrangement. The Public Entity may enter into such agreements and other
224 arrangements with any government or agency, as may be necessary, proper, and
225 convenient for carrying out the purposes of this Act.
226 3. The Public Entity may accept from any source any grant, donation, gift, or other form of
227 conveyance of land, money, property – real or personal, or other valuable thing or
228 commodity made available to the Public Entity for carrying out the purposes of this Act.

- 229 4. Public Entities may impose and collect user fees, tolls, fares, rents, or similar charges
230 from users of Eligible Facilities and use lawful measures to enforce such charges and/or
231 authorize the Private Entity or Entities or another Public Entity to impose, collect, and
232 enforce such charges to the same extent as the Public Entity.
- 233 5. The Public Entity may issue and sell bonds or notes for the purpose of raising funds to
234 carry out the provisions of this Act with respect to the development, financing, or
235 operation of an eligible facility.
- 236 a. Any bond or note issued under this Section:
- 237 i. Constitutes the corporate obligation of the Public Entity
- 238 ii. Does not constitute the indebtedness of the State within the meaning or
239 application of any constitutional provision or limitation unless issued
240 directly on behalf of the state
- 241 iii. Payable solely as to both principal and interest from revenues, fees,
242 proceeds, earnings from the partnership project.

243 **Section 9 - Confidentiality and Public Disclosure**

- 244 1. A proposing Private Entity may identify those portions of a proposal or other submission
245 that contains what the proposer considers to be trade secrets or other confidential
246 commercial, financial, or proprietary information. In order for confidential and
247 proprietary information and trade secrets to be exempt from disclosure, the proposing
248 Private Entity shall do all of the following:
- 249 a. Invoke such exclusion upon submission of the information or other materials for
250 which protection is sought
- 251 b. Identify the data or other materials for which protection is sought with
252 conspicuous and clear labeling
- 253 c. State the reasons why protection is necessary; and
- 254 d. Fully comply with any applicable provisions of state law with respect to
255 information the proposer contends should be exempt from disclosure
- 256 2. Notwithstanding any other provisions of law, in order to properly balance the need to
257 maximize competition under the Act and create a transparent procurement process,

258 proposals shall not be subject to release or disclosure by the Public Entity until the
259 award of the partnership and finalization of the partnership agreement and the
260 conclusion of any protest or other challenge to such award, absent an administrative or
261 judicial order requiring such release or disclosure.

262 **Section 10 - Technical Standards and Specifications**

263 Notwithstanding any law to the contrary, for a public-private partnership the Public Entity may
264 adopt, amend, repeal, enforce, apply, and waive technical standards and specifications
265 including standards and specifications for performance or outcomes that affect the Standard of
266 Operation

267 **Section 11 - Eminent Domain**

268 The Public Entity may exercise the power of eminent domain to acquire property, rights of way,
269 or other rights in projects necessary for accepted proposals that are necessary to develop,
270 operate, or hold an eligible facility under this Act, regardless of whether the property will be
271 owned in fee simple by the Public Entity or whether such property will be sold or leased at a fair
272 market value price to the Private Entity to use, lease or operate for business purposes in
273 connection with the Eligible Facility.

274 **Section 12 - Job Creation**

275 This Act is a representation of the desire of this Congress to spur development in the creation
276 of jobs in the Transportation industry, further develop new technology and sponsor innovation
277 in such fields that utilize green energy and broadband technologies using right-of-way and spur
278 reeducation of the workforce to create the jobs and industries of the next century.

279 **Section 13 - Code**

280 In codifying the new sections added by this Act, the official revisor of statutes shall substitute
281 the appropriate section numbers of the United States Code and appropriate designations
282 thereof.

283 **Section 14 - Sovereign Immunity**

284 Notwithstanding any applicable provision of law, this Act shall not be construed to limit or
285 waive any sovereign immunity of a Public Entity or any officer or employer of a Public Entity,
286 nor any agent acting on behalf of the Public Entity, with respect to participation in or approval

287 of any proposal or operation of any eligible facility

288 **Section 15 - Police Powers**

289 All law enforcement offices of any Public Entity in the public-private partnership and of an
290 affect local jurisdiction shall have the same powers and jurisdiction within the limits of an
291 Eligible Facility as they have in their respective areas of jurisdiction and access to the Eligible
292 Facility at any time for the purpose of exercising such powers.

293 **Section 16 - Remedies**

294 Upon the occurrence and during the continuation of a material default by the Private Entity,
295 not related to an event of force majeure, the Public Entity may:

- 296 1. Elect to take over operation of the Eligible Facility, including succession of
297 all right, title, and interest, subject to any valid and lawful liens granted
298 prior to succession
- 299 a. In the event of a takeover under this Section, the Public
300 Entity shall
- 301 i. Collect and pay revenues subject to a lawful and
302 valid lien to satisfy any obligation
- 303 ii. Develop and improve the eligible facility
- 304 iii. Solicit new proposals for public-private
305 partnerships under this Act
- 306 2. Terminate the Partnership Agreement between the Private Entity in
307 Material Default and exercise any termination rights contained within the
308 Agreement

309 **Section 17 - Jurisdiction**

310 Any dispute arising under this Act between any valid member of the partnership agreement
311 shall be adjudicated first though in nonbinding arbitration at a venue with jurisdiction
312 convenient to all involved parties, thereafter any party in privity with the Partnership
313 Agreement or other contractual agreement with the Public-Private Partnership may seek
314 redress in a Federal court or tribunal with appropriate jurisdiction.

315 **Section 18 - National Infrastructure Bank**

316 This Act shall incorporate the development of an American Infrastructure Financing Authority
317 (AIFA), a type of infrastructure bank, as designated by the Long-Term Development Act (BUILD
318 Act). The BUILD Act shall serve as an alternative means to finance high speed rail projects.
319 Funding allocated by the AIFA may be administered to qualifying high speed rail projects.

320 **Section 19 - Small Business Barriers and Procurement Authority**

- 321 1. Within 6 months after the date of enactment of this Act, the Department of
322 Transportation (DOT) or some other authority as delegated by Congress shall
323 complete a proceeding for the purpose of identifying and eliminating, by
324 regulations pursuant to its authority under this Act (other than this section),
325 market entry barriers for entrepreneurs and other small businesses in the
326 provision and ownership of companies and enterprises that are directly
327 involved in Eligible Facilities and related vendor services or in the provision
328 of parts or services to providers of high speed rail services.
- 329 2. In carrying out subsection (a), the Department of Transportation shall seek
330 to promote the policies and purposes of this Act favoring growth of small
331 business enterprises in the transportation sector, vigorous economic
332 competition, technological advancement, and creation of jobs in furtherance
333 of the public interest, convenience, and necessity.
- 334 3. American small businesses are a catalyst for job creation and innovation,
335 therefore, hereafter, the FRA shall be authorized to utilize small business
336 goals and timetables currently used by FTA, FAA, and other agencies under
337 the Department of Transportation. Also, recipients of FRA funds must
338 develop and implement a DBE program that conforms to DOT standards set
339 forth in 49 CFR Part 23 and 49 CFR Part 26.

340 **Section 20 - Terminal Economic Development Zones**

341 This Act shall designate a zone of a 1 mile radius around each Eligible Facility constructed under
342 authority in this Act for use as a terminal by a high speed rail line, in which such a zone shall be
343 designated as an Economic Development Zone and as such, shall be eligible for applicable
344 Housing and Urban Development grants for further residential and business development

345 around such terminals.

346 Additionally, further construction, redevelopment, or improvements of the following terminals
347 already in development or constructed will qualify as an Eligible Facility under this Act:

348 Transbay, San Francisco, California

349 Pennsylvania and Grand Central Stations, New York, New York

350 Union Station, Washington, District of Columbia

351 Union Station, Chicago, Illinois

352 **Section 21 - Buy American**

353 Understanding the products and services developed in the United States are superior to
354 products and services created elsewhere, this Act encourages integrated development of
355 business in the United States by all Public-private Partnerships entered into under the authority
356 of this Act participating in the Buy America program and receiving an applicable tax credit in
357 proportion to the services and products purchased from businesses in the United States.

358 **Section 22 - Green Energy**

359 This Act, in seeking to develop environmental friendly technology and transportation systems,
360 shall grant tax credits to Eligible Facilities under the authority in this Act which implements
361 Wind, Solar, Tidal, or Nuclear created energy into their energy systems and developments for
362 terminal operations and propulsion of the train with the goal to be completely free of oil use by
363 2030.

364 **Section 23 - Amtrak**

365 1. Understanding that the National Railroad Passenger Corporation, operating as
366 Amtrak, currently operates as a public entity, preferred stock completely and solely
367 owned by the United States and a class of common stock owned by contributing
368 railroad corporations, Congress shall allow Amtrak, in the spirit of increasing Private
369 Entity investment in the national infrastructure, in particular, the railroad and
370 transportation systems of the United States, to issue bonds with both of the
371 following approvals:

372 a. Majority of Congress as voted on by Resolution by both Houses of Congress
373 upon introduction

- 374 b. Majority of the Board of Directors of Amtrak at a designated Board meeting
375 2. The total issuance of securities shall never exceed 5% of the fair market assets of
376 Amtrak at any given time. Amtrak shall comply with all applicable securities laws of
377 the District of Columbia and shall be regulated by the Securities Exchange
378 Commission for any securities offerings with an issuance of approved bonds. The
379 interest owed on the bonds shall accumulate for a minimum of ten (10) years and
380 the interest rate shall be set by the Board at the time of issuance. The bonds shall
381 be freely transferrable and contain no restrictions for resale on the common equity
382 markets. The United States Treasury shall be responsible for the repayment of the
383 bonds issued in the following events:
- 384 a. Privatization, either in whole or in part or;
 - 385 b. Bankruptcy of the corporate entity and the difference between the
386 liquidated value of the assets and the liabilities of any bond issue or;
 - 387 c. Failure of Amtrak to have sufficient cash reserves to redeem the bonds
388 issued under this provision.

389 **Section 24 - TIFIA and RRIF Programs**

390 Whereas, the Transportation Infrastructure and Finance and Innovation Act (TIFIA) and Railroad
391 Rehabilitation and Infrastructure Financing (RRIF) are currently in effect, Congress shall:

- 392 1. Increase the cap set by TIFIA and RRIF to reflect current demand for modern
393 transportation projects including high speed rail
- 394 2. Expand the scope of TIFIA and RRIF loan guarantees by allowing Eligible Facilities to
395 borrow up to 50% of the projected cost of the completed project
- 396 3. Allow TIFIA and RRIF funding for Eligible Facilities even deemed unsuitable for
397 investment
- 398 4. Allow TIFIA and RRIF programs to be more flexible in financing preliminary projected
399 costs for planning and construction of Eligible Facilities
- 400 5. Waive any Administrative procedures and policies set by the Executive branch to be
401 replaced by the Project Agreement
- 402 6. Expedite the processing of TIFIA and RRIF applications at DOT

403 **Section 25 - State Allocations of Federal Transportation Funds**

404 Congress shall allow States to use any funds received through legislative acts in regards to
405 transportation, that are not specifically earmarked, to use for investment in Eligible Facilities as
406 either a Public Entity, or as Private Entity and eligible for all Concessions under this Act.

407 Congress shall also allow the States to use funds received in such a fashion to leverage up to an
408 amount ten times the granted amount in order to funds an Eligible Facility as a Public Entity.

409 All and any payments shall be made to the Highway Transportation Fund (HTF) to further
410 develop future projects in transportation.

411 **Section 26 - Severability**

412 If any provision of this Act, or the application thereof to any person or circumstance is held
413 invalid, the invalidity does not affect other provisions or applications of this Act which can be
414 effect legal effect without the invalid portion or application, and to this end the provisions of
415 the Act are severable.

416 **Section 27 - Effect**

417 This Act shall effect upon its approval.

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:

Thomas A. Hart, Jr.

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

United States High Speed Rail Association

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



YES

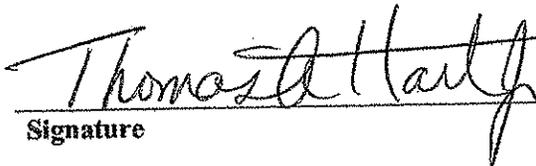
If yes, please provide the information requested below and attach your curriculum vitae.



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:

NONE



Signature

04/05/2011

Date

Thomas Hart, Esq.



**Vice President,
Government Affairs & General Counsel
US High Speed Rail Association**



Mr. Hart is responsible for USHSR's efforts to advocate for policy and legislation for high speed rail in America. In this role, Mr. Hart works with federal, state and local elected officials, the White House and federal agencies. As an advisor, Mr. Hart frequently appears on professional panels on HSR, financial services, telecommunications, congressional affairs and other domestic and international issues. While at USHSR, Mr. Hart has proposed federal legislation entitled the "Private Investment in High Speed Rail Act of 2011," designed to promote private investment and government incentives for HSR projects. He also spearheaded the creation of the USHSR Small Business Database to spark small business procurement opportunities in the HSR industry.

Mr. Hart is Director of the Washington Office of the national law firm of Quarles & Brady. Prior to joining USHSR, Mr. Hart was a partner at Holland & Knight, LLP where he practiced telecom, real estate, and corporate law. During his 25 years in legal practice, he has represented numerous prestigious clients including the National Bankers Association, Verizon, XM Satellite and the Congressional Black Caucus. He was the Founder and Vice Chairman of the Telecommunications Development Fund which was created by Congress as part of the Telecommunications Act of 1996 to assist small businesses gain access to capital. He is a former member of the Board of Directors of the African-American Real Estate Professionals Organization (AAREP). Mr. Hart recently testified at a Town Hall Meeting in Los Angeles organized by members of the California Legislature, concerning opportunities for small businesses in the HSR industry. His work was profiled in the October/November 2010 issue of Uptown Magazine.

Mr. Hart holds a Bachelor's degree in Economics and Political Science from Brown University, and a J.D. from Georgetown University Law Center. He is admitted to practice in the District of Columbia and the U.S. Court of Appeals for the Eighth, Tenth, and District of Columbia Circuits, and is a member of the Bar of the United States Supreme Court.

Company Profile

The United States High Speed Rail Association advocates for the development of a state-of-the-art high speed rail network across the country. USHSR is an independent, nonprofit trade association created with a vision for a 21st century high speed rail system that reaches speeds in excess of 200 mph.

This new national electric transportation project will revive the American economy by creating millions of jobs. It will also greatly reduce our dependence on oil and significantly reduce our national carbon footprint. HSR corridors will also create efficient mobility and real estate development that's safe, convenient and affordable. For additional information see ushsr.com.

Vision

Our vision includes a national HSR system, connecting cities and states in an integrated way, constructed with an aggressive schedule for full system build out by 2030. Our vision sets high standards for dedicated tracks, advanced control systems, elegant multi-modal train stations, and high tech trains. We promote the "best practices" and operational models from HSR systems globally.

Voice

Our voice for a national high speed rail network is unified and supported by companies and citizens around the world. USHSR has over 250 members and represents the advancement and development of the high speed rail industry in America. Our voice reaches across the spectrum including policymakers and many of the largest and most successful domestic and international companies.