DRAFT

High-Speed Trains Act of 2008

The United States has fallen far behind many other developed nations in terms of infrastructure investments, with passenger rail a glaring example. While the U.S. is investing heavily in other forms of transportation, our investment in world class rail is dwarfed by other countries. For example, Germany's federal government gives the states $8.9 billion a year for rail projects and France spends twenty times more per capita on rail than the U.S. Passenger rail serves several critical functions from easing congestion on our nation's roadways to providing tremendous environmental benefits to giving people an alternative mode of transportation as gas prices rise above $4 a gallon. Unfortunately, the United States today not only lacks a central organization to organize and promote high-speed rail, but we also lack the financing mechanism to make world class high speed rail a reality.

To divert large amounts of traffic from other forms of transportation, reliable and fast rail transportation is a necessity. In the Northeast Corridor - the only high-speed rail corridor in the United States which has trains capable of reaching 150 miles per hour – when compared to air travel rail has approximately a 50% market share for intercity travel, offering a glimpse of what high speed rail can accomplish in this country. With the roads and sky becoming more congested every year and reaching capacity in many areas of our country, it is imperative that we invest in a fast, safe, and reliable alternative mode of transportation. Rail provides scores of benefits as a mode of transportation, from reducing greenhouse gas emissions to more safely transporting people to serving as an alternative form of transportation in times of emergency. For corridors between 100-500 miles, high-speed rail: transports people from city center to city center more quickly than any other mode of transportation; benefits smaller communities who have stops along the way; and helps protect our environment.

Overview

The High-Speed Trains Act of 2008 creates a central office to oversee the development of high speed rail and provides a consistent source of funding. The bill lays out criteria for evaluating programs and over the course of six years, this bill provides $200 million per year in grants, $8 billion in tax exempt bonds, and provides $10 billion in tax credit bonds for high-speed intercity rail facilities and $5.4 billion in tax credit bonds for rail infrastructure.

Office of High-Speed Rail

The legislation will create an Office of High Speed Rail within the Federal Rail Administration (FRA) to oversee high speed rail programs. The office will be headed by the Associate Administrator for High Speed Rail. The office will have a full time staff as well as detailees from relevant agencies to work under the Associate Administrator.

The office will serve as a clearinghouse for projects related to high-speed rail. The office will provide expertise, guide applicants as they develop their projects, coordinate with other agencies and interested parties, lay out a vision for the future of high-speed rail, work with the FRA Office of Safety, assist with the environmental review process, assume the high speed rail duties of the Office of Railroad Development, review and validate applications, administer grants, and coordinate with the Secretary of Treasury about the eligibility of high-speed rail projects and rail projects to receive private activity bonds and tax credit bonds.

Applications and Review

Applications to the Office can be submitted by either states or a compact of states for new high speed rail projects, and Amtrak is eligible to apply for improvements to existing high speed rail corridors (currently this is just the NE corridor). The bill is technology neutral, all types of rail projects that meet the criteria laid out in the bill will be eligible for funding. The applying entity shall receive a response within nine months.

The Office shall work with applicants to ensure that applications clearly lay out the plan for the high speed rail corridor. The applications shall address each of the criteria for evaluation of a rail corridor project and how the project will work towards accomplishing these goals.

The Office of High-Speed Rail will determine if projects are eligible to receive grants based on mandatory criteria and then will evaluate each project based on the established list of preferences.

The Office will coordinate which projects are eligible for grants and make recommendations on both types of tax credit bonds and tax exempt bonds. The purpose is to have funding available for high speed rail at different points of the project.

Mandatory Eligibility Requirements for Grants

The Office must certify that all rail corridors have a cruising speed of at least 150 miles per hour in order to be eligible to receive a grant. In addition, new projects must meet the following criteria:

- No at-grade crossings
- Dedicated passenger rail track

The Associate Administrator of High-Speed Rail may waive these requirements if there is a compelling reason.

Preferences for Grants and High-Speed Intercity Rail Bonds

In considering high-speed rail project grant applications and high-speed intercity rail bonds, the Associate Administer will consider the following preferences for each project:

- Receives robust financing commitments from non-Federal entities, especially private sector entities (including matching funding from operators of existing high-speed passenger rails service);
- Provides a service that is not provided by other modes of transportation;

- Expected to have a major impact on congestion and is competitive with other modes of transportation for the same routes or destinations, including highway and air transportation;
- Expected to promote economic opportunity by encouraging economic development along the corridor, in and around stations, and for cities served by the corridor;
- Has the greatest potential for ridership;
- Provides environmental benefits;
- Integrates into the national passenger rail transit system if applicable;
- Has the greatest average speed, as determined by calculating the average speed over a nonstop trip from endpoint to endpoint of the corridor and the nonstop speed over the most widely traveled portion of the corridor;
- Enhances the ability of freight railroad by reducing congestion on freight rail tracks, or provide spillover tracks during nonpeak hours;
- Promotes future development of high speed rail, including the development of a revenue stream for future high-speed rail projects; and
- Serves immediate points that are not otherwise effectively served by air transportation, or points that can more effectively and more economically served by high-speed rail than by aircraft.

For bond projects the application will be sent to the Secretary of the Treasury and the Secretary of the Treasury will consult with the Associate Administrator who will consider the above preferences high-speed intercity rail bond applications.

Uses of Funds
Grants awarded by the Office of High-Speed Rail may be used to develop or enhance the operations of a high speed-passenger rail system including the following:

- Bridge and tunnel improvement;
- Straightening railway curves and deal with other geographical features that may affect performance;
- Super elevation for high-speed rail track;
- Improved catenaries and updated electric traction systems on existing high speed-rail services routes;
- New track for congestion relief, improved signaling, and new ties and track;
- Acquiring locomotives, rolling stock, and track and signal equipment; and
- Conducting construction and engineering studies.

The Associate Administrator has the authority to issue grants for the construction, reconstruction, or acquisition of property (including right of way and real property), equipment, supplies, or services substantially and directly related to the provision of high-speed passenger rail transportation.

Issuing of Grants
The Office will evaluate each project and have $200 million annually to award in grants, with such sums appropriated to the office each year for six years, in addition to the authorization for appropriation for the office itself ($15 million). Grants shall be awarded

to the most deserving eligible projects as determined by the Office based on the above preferences. Grants for new rail projects should be concentrated in early stage development of the rail corridor, including but not limited to completing engineering studies and the environmental review process. For existing eligible rail corridors, grants shall be focused on the areas that most cost effectively accomplish the goals set out in this legislation under the criteria for evaluation of rail projects.

Modify Existing High Speed Intercity Rail Facility Bonds

Under current law, interest on bonds issued by State and local governments is generally exempt from income tax. Bonds issued by State and local governments are classified as either governmental bonds or private activity bonds. Qualified private activity bonds permit State and local governments to finance certain private activities, including transportation facilities. High-speed intercity rail facilities are included in the definition of exempt facilities. High-speed intercity rail facilities are currently defined as a facility other than rolling stock for fixed guideway rail transportation of passengers and their baggage between metropolitan statistical areas. The facilities must use vehicles that are reasonably expected to operate at speed in excess of 150 miles per hour between scheduled stops. These facilities must be made available to the general public as passengers.

Most tax-exempt private activity bonds are subject to annual state volume cap. Generally, only 25 percent of high-speed intercity rail facilities bonds count against the annual cap.

The High-Speed Trains Act of 2008 makes modifications to the existing definition of high speed intercity rail facility bonds. The current law definition is modified by including rolling stock and changing the speed to at least 110 miles per hour between scheduled stops.

The High-Speed Trains Act of 2008 establishes a national limitation of $8 billion for high speed intercity rail facility bonds for six years after the date of enactment and for this time period, high-speed intercity rail facility bonds would be exempt from the volume cap. Any proceeds not used within five years of the date of issuance of the bonds must be used within the following six months to redeem such bond.

The Secretary of Treasury will consult with the Office of High-Speed Rail on rewarding these bonds.

Rail Tax Credit Bonds

Under current law, there are tax credit bonds for specific programs. Tax-credit bonds are not interest-bearing obligations. Rather, the taxpayer holding a tax-credit bond on a credit allowance date is entitled to a tax credit. Thus, the "interest" is paid by the federal government in the form of the tax credit and the issuer of such bonds pays only principal. The amount of the credit is determined by multiplying the bond's credit rate by the face value amounts of the taxpayer's bond. The credit rate is determined by the Secretary and is to be a rate that permits issuance of such bonds without discount and interest cost to the issuer. The credit is included in gross income (as if it were an interest payment on the bond), and can be claimed against regular income tax liability and alternative minimum tax liability.

The High-Speed Trains Act of 2008 creates a new category of tax-credit bonds, qualified rail bonds. There are two types of qualified rail bonds: high-speed intercity rail facility bond and rail infrastructure bond. For both types, 100 percent of the available project proceeds are required to be used with the five-year period that begins on the date of issuance. Available project proceeds are defined as proceeds from the sale of the issue less issuance costs (not to exceed two percent) and investment earnings on such sale proceeds. To the extent that less than 100 percent of the available project proceeds are used to finance qualified rail bonds during the five-year spending period, bonds will continue to qualify as qualified rail bonds if unspent proceeds are used within 90 days from the end of the five-year period to redeem bonds. The five-year spending period may be extended by the Secretary of the Treasury if the issuer's request demonstrate that failure to satisfy the requirement is due to reasonable cause and the project will continue to proceed with due diligence.

Generally, the proceeds of qualified rail bonds must be spent within five years of issuance. The Secretary of Treasury will allocate bonds with consultation of the Office of High-Speed Rail. Projects financed with qualified rail bonds are required to meet Davis-Bacon labor standards.

High-Speed Intercity Facility Rail Bond
High-speed intercity rail facility bonds will be used to finance a high-speed intercity rail facility which is designated by the Secretary of Treasury, after consultation with the Associate Administrator for High-Speed Rail. High-speed intercity rail facility means any facility for the fixed guideway rail transportation of passengers and their baggage between metropolitan statistical areas using vehicles that operate at least 150 milers per hour between scheduled stops and the facility is available to members of the general public as passengers. The Associate Administrator for High-Speed Rail will evaluate these projects based on preferences specified in this legislation.

To be eligible a project must meet the following criteria: passenger service provided by the project is over rail track dedicated for such services; does not include at grade crossings; and all federal state, and local environmental review process have completed at the time of designation. The Secretary of the Treasury, after consultation with the Associate Administrator of the High-Speed Rail project may waive the requirements for dedicated track and at grade crossings if exceptional circumstances exist. Projects in existence prior to the date of enactment are not required to meet the dedicated track and no at-grade crossing requirements.

The legislation provides for a national limitation of $10 billion over a six-year period. The length of the maturity of the bond is 20 years.

The proceeds of the bonds may be used for the construction of bridges and tunnels, super elevation of track, catenaries, straightening of track curves, or the electrification of track for projects in operation prior to the date of enactment. If the rail corridor includes the use of the rights-of-way owned by a freight railroad regarding the use of the rights-of-way, collective bargaining agreements with freight railroad employees shall remain in full force and effect.

Rail Infrastructure Bond
Rail infrastructure bonds will be used to finance projects eligible under 21101(b) of title 49, United States Code\, which the Secretary of Treasury determines was selected using the criteria of section 26101(c) of title 49, United States Code, by the Secretary of Transportation that makes a substantial contribution to improving a rail transportation corridor for intercity passenger rail use. Projects are not required to reach a specific speed. If the rail corridor includes the use of the rights-of-way owned by a freight railroad regarding the use of the rights-of-way, and that collective bargaining agreements with freight railroad employees shall remain in full force and effect.

The legislation provides for a national limitation of $5.4 billion over a six-year period. The length of the maturity of the bond is 15 years.

Study on Potential Revenue Sources
Within one-year of enactment the Department of Treasury is required to report to Congress a study on potential excise taxes that could be dedicated to offset expenses related to high speed rail.

Other Provisions
Any eligible entity providing rail transportation that begins operations after the date of enactment of The High-Speed Trains Act of 2008 and uses property acquired through the use of grants or bonds provided by this Act shall be considered an employer for purposes of the Railroad Retirement Act of 1974 and considered a carrier for purpose of the Railway Labor Act.

Any entity providing high-speed intercity passenger railroad transportation that begins operations after the date of enactment of The High-Speed Trains Act of 2008 and funded in part by grants or bonds provided by this Act, and replaces intercity passenger rail service that was provided by another entity as of the date of enactment is required to enter into an agreement with the agent for the employees of the predecessor provider that provides a priority for hiring and establishes rates of pay and procedure for notification.

The Office of Safety at FRA is further instructed to issue safety regulations for high-speed rail, both for dedicated track and partial track sharing.