

## **Government Investment in High-Speed Rail Creates Opportunities for the Private Sector**

**August 10, 2009**

The federal government has proposed making significant public investment to facilitate the development of a comprehensive high-speed rail network throughout the United States. The Federal Railroad Administration (FRA) plans to allocate \$8 billion authorized under the American Recovery and Reinvestment Act of 2009 (ARRA) and an additional \$5 billion in proposed annual federal budget appropriations (spread over five years) among states, groups of states, interstate compacts, special purpose high-speed rail authorities, and Amtrak. The FRA recently published interim guidance (the Guidelines) describing the application process for these government entities to receive funds from the FRA.

The federal government's commitment to high-speed rail has created several opportunities for private-sector participation. At the federal level, the FRA is soliciting the private sector to advance independent or alternative proposals for the development of high-speed rail systems. In addition, at the state level, some state governments are seeking to form state-sponsored public-private partnerships as a means to help finance those high-speed rail projects that also qualify to receive funds from the FRA.

### **The FRA High-Speed Rail Strategic Plan and Application Guidelines for Governmental Entity Participation**

In April, the FRA released its "High-Speed Rail Strategic Plan" (the Plan) to develop high-speed rail service across the United States. The Plan designates 10 high-speed rail corridors across the country including the regions of Northern New England, the Southeast, Florida, the Gulf Coast, the South Central states, the Chicago Hub, California, and the Pacific Northwest. A map of the designated corridors can be found at <http://www.fra.dot.gov/Downloads/RRdev/hsrmap-lv.pdf>. The Plan also describes several categories of uses for the funding, including intercity passenger rail capital improvements; the development of federally designated high-speed rail corridors; and covering the capital costs of building new or improving current facilities, infrastructure, and equipment to reduce congestion and facilitate the use of intercity passenger rail transportation.

In June, the FRA published the Guidelines for states and regions to apply for federal funds to carry out the purposes of the Plan. In response, the FRA received 278 pre-applications from 40 states and the District of Columbia seeking a total of \$102 billion in federal funding for such projects. The pre-application raw data statistics can be found at <http://www.fra.dot.gov/downloads/Press%20Release%20Raw%20Data%20HSR.pdf>. The FRA is currently reviewing the pre-applications, and while not all proposed projects can be funded, the FRA will

work with states and regions to identify priorities and prepare for ongoing high-speed passenger rail development. The deadline for submission of the final applications is August 24, 2009 for “ready to go” projects, projects in the planning phase, and projects funded with a 50% state match. Projects centered on development of new or improved high-speed rail and intercity passenger corridors are not due until October 2, 2009. The FRA expects to announce the first round of merit-based grants by the end of the year.

### **The FRA Request for Expressions of Interest from the Private Sector**

The FRA also has published a Request for Expressions of Interest soliciting private-sector proposals in which participants must verify that they can “assemble a cohesive team that can plan, organize, finance, design and construct a complete high-speed rail system in an eligible federally-designated corridor, as well as gain the support of key public and private stakeholders, and maintain it on a long-term basis.” Responses will be considered by the U.S. Department of Transportation Secretary and possibly by commissions representing affected governors, mayors, freight railroads, transit authorities, labor organizations, and Amtrak. The results of these reviews will be summarized in one or more reports to Congress. Congress, in turn, will make recommendations for further action regarding no more than one project concept for each corridor. Expressions of interest must be submitted by September 14, 2009.

### **The California High-Speed Rail Authority**

California is at the forefront of high-speed rail in the United States. California’s High Speed Rail Authority (the California Authority) has already proposed an 800-mile statewide system connecting San Francisco, Sacramento, Los Angeles, and San Diego with an estimated cost of \$45 billion. California is also the only state in the country that already has in place state financing (through a \$9 billion voter-approved general obligation bond), environmental clearances, and an adopted route for a true high-speed rail system. The California Authority forecasts that the system will not require operating subsidies and that once it is up and running, the system will generate more than \$1 billion in annual profits. If completed, the California high-speed rail project will be the most costly infrastructure project ever constructed in the United States.

The California Authority is actively pursuing a multitrack financing strategy for the planning, design, and construction phases of the project, including three tiers: state and local funding, anticipated federal funding from the FRA, and public-private partnerships. The California Authority predicts that the commitment of state and federal dollars will attract around \$4.5 billion to \$7 billion in private funding, and the team has identified a broad array of public-private partnership opportunities, including project debt financing, vendor financing, systems operations, and private ownership. California last sought to enlist private-sector partners in March 2008.

### **State High-Speed Rail Public-Private Partnerships**

Other state governments are seeking to follow California’s lead and are actively seeking to enlist private-sector partners in order to supplement any funds they receive from the FRA or to collaborate directly in competitively pursuing such funds. For example, in June, the New York State Commission of State Asset Maximization formally recommended the creation of a public-private partnership between New York’s Department of Transportation, private railroad companies, and investors to advance the development of high-speed rail passenger service on up to three designated corridors within New York, including the Empire Corridor from New York City through Albany to Buffalo. In addition, Arizona recently passed

legislation outlining provisions for the Arizona Department of Transportation to enter into “public-private partnerships” for developing the state’s transportation infrastructure, including railways.

For more information on the issues discussed in this LawFlash, please contact any of the following Morgan Lewis attorneys:

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