

3C Corridor Joint Powers Authority

Concepts and analysis for continuing 3C rail development

All Aboard Ohio

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INTRODUCTION:

The basic assumption of this document is that Ohio will lose the entire \$400 million federal funding award, including the \$14.9 million preliminary engineering grant, awarded to the State of Ohio. The award and the grant from it were provided to Ohio in January 2010 by the Federal Railroad Administration (FRA) to develop 3C Corridor as planned. Even if this fails, there needs to be a viable and locally supported alternative for continuing to pursue development of passenger rail in the 3C Corridor in the presence of a rail-hostile governor.

This report explores how Ohio could create a 3C project sponsor using the lessons from two other states.

BACKGROUND:

Under federal laws (Passenger Rail Investment & Improvement Act (PRIIA) and the American Reinvestment & Recovery Act (ARRA) – for more details see: <http://www.fra.dot.gov/Downloads/ARRA%20FAQs%20FINAL.pdf>), there are three types of competitive discretionary rail grant programs, each with slightly different applicant eligibility requirements:

- For high-speed rail corridor development grants, States (including the District of Columbia), groups of States, Interstate Compacts, public high-speed passenger rail agencies established by one or more States, and Amtrak are eligible to apply.
- For intercity passenger rail service corridor capital assistance grants, States (including the District of Columbia), groups of States, Interstate Compacts, and public intercity passenger rail agencies established by one or more States are eligible to apply.
- For congestion grants, States and Amtrak (in cooperation with States) are eligible to apply.

The 3C “Quick Start” application was awarded by the FRA via the Corridor Development Grant program. Therefore, the following eligible recipients involving Ohio were researched to determine if they are reasonable options....

State sponsorship: Under this Plan B, it is assumed a direct capital grant award to ODOT will no longer be possible.

Interstate Compact/Group of States sponsorship: An option is an interstate compact. A relevant, active compact exists and Ohio is a member of it, called the Midwest Interstate Passenger Rail Commission (<http://www.miprc.org/>). This compact depends on gubernatorial and legislative support including annual membership dues paid by each state.

Because of this, MIRPC has not been formally approached to determine their interest in taking over as the 3C “Quick Start” project sponsor. It is possible that MIRPC, like ODOT, will not be allowed by Ohio to participate.

Amtrak sponsorship: Amtrak was approached as part of our research of possible Plan B alternatives. However, Amtrak opted out of consideration because it did not want to set a precedent of picking up states’ discarded projects. And the FRA will likely not distribute to Amtrak, nor is Amtrak willing to accept a funding award for corridor development without a means to financially sustain the resultant passenger rail service.

Public high-speed passenger rail agencies established by one or more states: While Ohio has no such agency, it may have the ingredients for one that needs to be assembled by the participants. Individual state-chartered transit agencies may unite via inter-local agreements to provide multi-jurisdictional transportation services, as did the Capitol Corridor Joint Powers Authority (CCJPA) to manage and administer Amtrak passenger rail service between the California Bay Area and Sacramento. Another, newer JPA is the Northern Lights Express between Minneapolis and Duluth. That JPA is comprised of municipalities, counties and several regional railroad authorities – it also created itself via inter-local agreements/MOUs.

The JPA concept appears to have the greatest promise as an alternative to accept and administer FRA funding to develop 3C “Quick Start” especially if a means to operationally sustain the rail service is identified.

3C JOINT POWERS AUTHORITY:

There are numerous benefits and some drawbacks from organizing an independent Cleveland – Columbus – Dayton – Cincinnati Joint Powers Authority (3CJPA) through inter-local agreements between transit agencies.

Legal Authority: The following is discussion by Attorney Eugene Kramer (216-621-7974 ekramer@sbcglobal.net) who helped write the charters for the Greater Cleveland Regional Transit Authority, Ohio Rail Development Commission and the Cuyahoga County reform charter...

“Ohio counties and municipalities have extensive authority to enter into cooperative agreements under which they can engage in almost any kind of activity that they are authorized to engage in, including transportation projects. They also could do such things as create multi-county regional transit authorities, and existing regional transit authorities can contract with each other to jointly carry out transportation projects.

“If a sufficient number of counties and municipalities or regional transit authorities were to be in agreement in desiring to carry out an intrastate or interstate rail project, there probably would be sufficient legal authority to proceed.”

Benefits: The following are potential benefits of a 3CJPA...

- ◆ The vision of the 3C Corridor serving as the public transit spine of Ohio might be best realized by the transit agencies themselves.

- ◆ Public support for rail and transit development is likely to be found in greater abundance in Ohio's metropolitan areas.
- ◆ Communities will have a greater stake in the success of the passenger rail service.
- ◆ Transit agencies may contract with Amtrak or others to provide crews, liability insurance, access to freight railroads, reservations systems, marketing, etc.
- ◆ Ohio transit agencies have technical and operational expertise with federally funded public transportation development projects in general and rail service in particular (namely Greater Cleveland Regional Authority [Rapid transit and commuter rail], Akron Metro RTA [owns more railroad track than any Ohio transit agency as it contracts with Cuyahoga Valley Scenic Railroad, W&LE], Southwest Ohio RTA [partner in developing Cincinnati streetcar and regional light rail planning], Central Ohio Transit Authority [light-rail planning], Greater Dayton RTA [rail trolley planning]).
- ◆ Transit agencies have legal and financial tools useful for station-area planning and development, as well as varying degrees of experience in supporting transit-oriented development, transit-investment districts and other land use issues and value-capture tools.
- ◆ Under the Ohio Rail Development Commission's enabling legislation, passenger rail projects require a super-majority (5-2) vote by the State Controlling Board to approve capital expenditures and a simple majority (4-3) for operating expenditures. This constraint does not apply to transit agencies. Instead, federal funding is awarded to transit agencies with the approval of one or more metropolitan planning organizations.
- ◆ The larger transit agencies in the 3C Corridor are more stable than the Ohio Rail Development Commission, which has no dedicated revenue stream and is subject to major realignment or even elimination with the election of a new governor. Indeed ORDC's existence has been threatened several times since its inception in 1994. Its small budget has varied widely in that period, from about \$2 million to \$6 million in general revenue funds per year, because of political factors.

Disadvantages: The following are potential disadvantages of a 3CJPA...

- ◆ Coordination among multiple transit agencies is inherently difficult and contractual relationships between them may require ongoing maintenance.
- ◆ Ohio transit agencies, although more stable than ORDC, have faced serious financial difficulties in recent years.
- ◆ Covering 3C's operating shortfall would ultimately be the responsibility of the transit agency sponsors, regardless of the potential revenues from value-capture activities.
- ◆ Transit agencies may view intercity rail service as beyond their geographic scope of responsibilities.
- ◆ Transit agencies are subjected to political influences, although less so than ORDC.

THE CAPITOL CORRIDOR JPA MODEL:

The Capitol Corridor Joint Powers Authority is probably the most relevant model for a transit agency-based 3CJPA. It is eligible to receive FRA funding via Passenger Rail Investment & Improvement Act programs, according to a Nov. 10, 2009 memorandum by CCJPA Executive Director Dorothy Dugger regarding recent and future federal capital grant

applications by the CCJPA and CalTrans (See pages 19-20 at http://www.capitolcorridor.org/included/docs/board_meetings/ccjpa_agenda_091118.pdf).

The memorandum also shows an Ohio-relevant benefit of a JPA: that when the state government does not act in the best interest of the JPA, the JPA does not need to conform to the state government's direction. In the memorandum, Dugger writes:

"The actions by the Governor's Office have, among other things, caused CCJPA staff to re-evaluate partnering with the State to submit future FRA applications. ...Because CCJPA has the authority to directly apply to FRA pursuant to the HSIPR Program guidance, CCJPA staff is seeking a guidance and support from the CCJPA Board to authorize the CCJPA Executive Director to apply directly to FRA for subsequent HSIPR funding requests if it becomes clear that working with the State would jeopardize the submittals getting to the FRA due to the Governor's prior direction."

Former CCJPA Executive Director Eugene Skoropowski (407-805-0355 eskoropowski@HNTB.com) provided All Aboard Ohio with the following detailed description and history of the CCJPA:

"In California, the law provides that any two public entities can come together and form a third entity called a Joint Powers Authority. This would be called a 'special purposes district' in many places, and its creation must for a SINGLE purpose, such as for joint creation of a consolidated school district, water district, sewer, police, fire, etc. A California state law was enacted in 1996 allowing the counties/communities/transit agencies along any of the state's three state-supported intercity passenger rail services to take over the management responsibility of any of those state managed passenger rail services. Only the communities along the 170-mile-long eight-county Capitol Corridor route elected to do so.

"The Capitol Corridor Joint Powers Authority was created by signing a Memorandum of Understanding between six transit agencies along the Capitol Corridor Route, representing the eight counties. These local transit 'member agencies' are Santa Clara Valley Transportation Authority (VTA, based in San Jose covering Santa Clara County), the San Francisco Bay Area Rapid Transit District (BART, based in Oakland and representing San Francisco, Alameda, Contra Costa Counties), Solano Transportation Authority (STA, based in Suisun City, covering Solano County), Yolo County Transportation District (YCTD, based in Woodland, covering Yolo County), Sacramento Regional Transit District (SacRT, based in Sacramento, covering Sacramento County), and Placer County Transportation Planning Agency (PCTPA, based in Auburn, covering Placer County).

"These MOUs are what created the Capitol Corridor Joint Powers Authority (CCJPA) as a stand-alone independent agency, created under the laws of California for the specific purpose of providing, operating, expanding & improving intercity passenger rail service along the 170-mile-long Capitol Corridor route. Amtrak is the contract operator (annually negotiated contracts) and the service runs on 168 miles of Union Pacific Railroad's busy Central Corridor (at its western end to the Port Of Oakland). Rolling stock (coaches & locomotives) were purchased by and are owned by the State of California and are leased to the CCJPA for \$1 per year to use in provision of the Capitol Corridor service.

"The member transit agencies' MOUs were for an initial three-year period, but since have been extended and are now in continuous force 'until cancelled'. One member agency with rail experience (BART) was designated as 'the Managing Agency'. There are actually no employees of the CCJPA, but BART provides a separate Capitol Corridor Executive Office

with dedicated railroad staff who actually manage the entire service, set schedules, fares, capital programs, seek funding, negotiate contracts with Amtrak, Union Pacific Railroad, and other entities needed to carry out the CCJPA Board mandate as articulated in the board-adopted 'Vision Plan' (2002, updated in 2005).

"There are two CCJPA Board members from each county (16 members total), and a Chair and Vice-Chair are elected every two years for a two-year term. The elections are conducted by the Board themselves. All CCJPA Board members must also be a member of the Board of whichever member transit agency they represent.

"This all sounds complex, but it actually is a simple concept that works. The local communities/counties/member transit agencies that comprise the Capitol Corridor have a stake in its performance and are involved in its management and success. I could go into much more detail, but this above description captures the essence of the structure. This structure, combined with state capital funds, allowed the Capitol Corridor to grow from a brand new intercity passenger rail corridor with six trains a day in 1991 to the nation's third-busiest route with some 32 trains a day, and pushing the share of costs paid by passengers to 50-55% (up from 29.8% in 1998). It is judged as a success by users, legislators, state administrators and transportation officials of both political parties. Yes, even in California, the automobile capitol of the planet, Americans will ride trains if they are safe, frequent, reliable, modern, comfortable, and reasonably time competitive.

"The capital funding (until the advent of the recent federal intercity/high speed passenger rail funding) has come from state bonds, approved by voters. Operating funds come from passenger fares and an annual allocation of state funding (about 50% from each source). The gross budget for a 32-train schedule on weekdays, 22 trains on weekend days/holidays (1,200,000 train-miles annually) is about \$56-58 million, with about 50% from passenger fares, leaving \$23-24 million in 'subsidy' or rather the 'annual investment' needed for maintenance to ensure the assets are in a state-of-good-repair and can deliver a superior customer travel experience to the passengers."

For more information about the Capitol Corridor Joint Powers Authority, please visit these Web sites for details:

<http://www.capitolcorridor.org/>

http://en.wikipedia.org/wiki/Capitol_Corridor

THE NORTHERN LIGHTS EXPRESS JPA MODEL:

In 2007, a joint powers board was developed to explore options for renewing passenger rail service in the 155-mile corridor between Duluth and Minneapolis. Initial members are the regional rail authorities of Hennepin, Anoka, Isanti, Pine, and St. Louis and Lake counties, plus the cities of Duluth and Minneapolis. Also participating in the meetings are representatives of the Mille Lacs Band of Ojibwe, Superior, Wisconsin, and Douglas County, Wisconsin, plus numerous agencies and communities along the corridor. Steve Raukar, St. Louis County commissioner, and Dan Erhart, Anoka County commissioner, co-chair the effort to build the joint powers board.

Comprehensive feasibility studies and a business plan were conducted in 2007 for restoring rail service between Minneapolis and the Twin Ports of Duluth and Superior. The study evaluates the 155-mile route for estimated ridership, economic costs and benefits.

The study is conducted by TEMS and SRF Consulting Group, Inc., in conjunction with Krech Ojard & Associates, LLC.

The National Passenger Rail Study Group in December 2007 identifies this corridor as one of eight top priorities for development – in the entire country. The group, headed by the Secretary of the U.S. Department of Transportation, says this corridor should be operational by 2015. Building on years of transit advocacy by individuals and agencies along the corridor, public outreach efforts pick up speed with dozens of presentations along the corridor.

The first organizations to pass resolutions or provide funding include Andover, Anoka County, Braham, Coon Rapids, Hennepin County, Isanti County, Kanabec County, Duluth-Superior Metropolitan Interstate Council, Mille Lacs Band of Ojibwe, Pine County, Proctor, and St. Louis and Lake Counties Regional Railroad Authority.

On Feb. 20, 2008, the first official meeting of the Minneapolis-Duluth/Superior Passenger Rail Alliance, a joint powers board, was held in Hinckley. Steve Raukar, St. Louis County commissioner, is elected chair. Dan Erhart, Anoka County commissioner, is elected vice chair. The Alliance receives the TEMS feasibility study report. BNSF Railway, owners of the existing tracks in the corridor, provides feedback on the feasibility study. Their constructive comments focus on suggestions for track improvements that will maximize speeds.

A name and logo is selected for the project—Northern Lights Express, or NLX. NLX receives federal grant money. The project is one of a select few nationwide to receive money. Public outreach activities continue. Support continues to build at all levels of government.

For more information about the Northern Lights Express Joint Powers Authority, please visit these Web sites for details:

<http://www.northernlightsexpress.org/>
http://en.wikipedia.org/wiki/Northern_Lights_Express

POSSIBLE NEXT STEPS:

Numerous persons, officials and company representatives are seeking to convince Gov.-elect Kasich to continue a state-led 3C “Quick Start” project. Even if there are signs of progress in convincing him, All Aboard Ohio encourages that steps be taken immediately to start a process toward saving the project from cancellation. Those and other possible steps are identified here:

1. Push for the formation of a 3C Joint Powers Authority which can be created by each participating entity passing inter-local agreements (such as MOUs). These can be municipalities, counties, transit authorities, port authorities, etc.
2. The first two participating entities may sufficiently constitute a JPA, and designate a chair, co-chairs and board designees. One or two persons will also likely be needed to staff the JPA.

3. **The first priority of the JPA is to keep the \$14.9 million Federal Railroad Administration's Tier II preliminary engineering/environmental assessment grant here in Ohio and in force for Ohio's 3C Corridor.**
4. The lead city, county or agency would seek memorandums of understanding with other participants in the 3C Corridor, thereby expanding a 3CJPA.
5. The 3CJPA oversees the Tier II PE/EA.
6. From the Tier II PE/EA, the 3CJPA develops a request for proposals from private consortiums for a super-turnkey design-build-operate-maintain 3C "Quick Start" contract.
7. The 3CJPA pursues an 80 percent federally funded grant from the Federal Railroad Administration to implement the winning super-turnkey contract.

CONCLUSION:

The chief goal of this report is to ensure that the **\$14.9 million Federal Railroad Administration's Tier II preliminary engineering/environmental assessment grant here in Ohio and in force for Ohio's 3C Corridor**. The secondary goal is to try to keep as much of the remaining \$385.1 million in federal funds in Ohio. The third goal is to continue the 3C "Quick Start" project as proposed, as it represents the best opportunity for providing the most cost-effective, high-quality passenger rail service to serve as the foundation for regional commuter rail and intercity high-speed rail services in the Midwest's busiest travel market between metro areas.

It should be emphasized that the FRA awarded funding to the 3C Corridor – the name of the sponsor(s) should be irrelevant as long as they are legally allowed to accept the funds and can sustain the project. Transportation Secretary Ray LaHood's goal of having 80 percent of Americans served by high-speed rail in 25 years is not likely if 3C Corridor is left out of the loop.

But our first priority MUST be to keep these funds in Ohio and invest them in a way that satisfies the FRA and creates opportunities for long-term corridor development – its intended purpose.

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