

2010

Next Generation Corridor Equipment Pool Committee

- Preliminary Considerations -

Steve Patterson and George Howell

October 20, 2010

HUNTON &
WILLIAMS

Overview

- Overview and Goals for the Call
- Background
- Legislative Intent
- Objectives of Committee Members
- Options Available
- Considerations in Entity Selection
- Q&A

Goals for Today's Call

- Provide preliminary information on issues relating to whether the Committee should incorporate
- Begin understanding objectives of Committee members and receive feedback

More detailed presentation will be provided to Committee members at February 2011 Executive Board meeting.

Background

- PRIIA Section 305(c):

Amtrak and States participating in the Committee may enter into agreements for the funding, procurement, remanufacture, ownership, and management of corridor equipment, including equipment currently owned or leased by Amtrak and next-generation corridor equipment acquired as a result of the Committee's actions, and may establish a corporation, which may be owned or jointly-owned by Amtrak, participating States, or other entities, to perform these functions.

Background

- Statute allows for, but does not require, establishment of a corporation
- If the Committee members determine that a business entity other than a corporation should be established, technical amendment to the statute would be required
- If the Committee members determine that either a for-profit or nonprofit corporation should be established, no technical amendment would be required

Legislative Intent

- Section 305 was based on TTX railcar equipment pool model used by freight railroads
- TTX characteristics:
 - separate, for-profit corporation with its own management
 - members include freight railroads
 - corporation provides railcars and related freight car management services to freight rail industry

Objectives of Committee Members

- To determine the best options for the Committee to consider, an understanding of the Committee members' objectives is needed:
 - *Increased availability of railcars on shared basis?*
 - *Economies of scale through group purchasing?*
 - *Access to alternative funding/financing?*
 - *Others?*

Options Available

- Corporation
 - *For-profit*
 - *Nonprofit*
 - *Cooperative*
- Limited liability company
- Other entities (e.g., partnership, business trust)
- Remain unincorporated

Considerations in Entity Selection

- State law
 - *State law prohibitions on certain types of ownership*
 - *Authority to participate as owner in business entity*
- Access to funding/financing
 - *Public or private*
 - *Separate ownership of assets would facilitate collateralization*
 - *Separate branding of corridor equipment business*

Considerations in Entity Selection

- Taxes
 - *In a for-profit corporation, profits would be taxable to the corporation*
 - *In an LLC, profits would flow through to the owners*
 - *In a separate business entity, evaluation of availability of state level exemptions is needed*
- Governance
 - *Board representation*
 - *Management*
- Other Considerations

Q&A

- Questions following this call should be directed to:

Steve Hewitt

shewitt109@aol.com

(845) 616-3076

Nancy Greene

nancy.greene@amtrak.com

(215) 349-1055

Presenters

Steve Patterson
Washington Office
spatterson@hunton.com
(202) 419-2101

George Howell
Richmond Office
ghowell@hunton.com
(804) 788-8793