

SECTION 305 FINANCE and ADMINISTRATIVE SUB COMMITTEE

MINUTES

MAY 4, 2016

3:00PM EASTERN

CONFERENCE CALL

FACILITATOR	<i>Darrell Smith, Chair of the S305 Finance and Administrative Subcommittee (FASC)</i>
ATTENDEES	<i>Darrell Smith, John Bell for Ray Hessinger, Brent Thompson, Eric Curtit, Eric Curtit also as proxy for Arun Rao, Tim Hoeffner, Brian Beeler II, Jeff Gordon for Michael Lestingi, Lynn Everett, Steve Hewitt</i>
ABSENTEES	<i>Michael Lestingi, John Pagano, Arun Rao, Ray Hessinger, Tammy Nicholson, Jason Biggs, Larry Salci, Vincent Brotski, Nico Lindenau, Sal DeAngelo, Shayne Gill</i>

DECISIONS MADE

1. Welcome and Open Meeting – Darrell Smith:

Subcommittee Chair Darrell Smith, Amtrak, opened the conference call meeting and asked Steve Hewitt to call the roll.

2. Roll Call – Steve Hewitt:

Steve Hewitt called the roll and confirmed the presence of a quorum.

3.

Review of Action Items – Steve Hewitt:

Steve Hewitt provided the following action items status update:

Action Items Status

Membership Fee recommendation/outreach to SAIPRC: Thus far a meeting with SAIPRC chair and Darrell and Eric Curtit has not occurred, but FASC member states have held separate discussions with AMTRAK PRIAA 209 state partners and there does not appear to be an interest in the states providing direct funding to the NGECC (see DRAFT memo) agenda item 6.

Website review: Agreed upon updates will be incorporated into the website by Bryan Hong, AASHTO. The goal is to have consistency in format throughout the site. Members are welcome to provide additional suggestions to improve the site. Many of the recommended changes have been made to the site and it will continue to evolve over time. (Ongoing)

Specification User Fee Task Force – to flesh out mechanics: On the last call (4-6-16) it was determined that this option seemed to be a non-starter – as is the possibility of establishing a pooled technical service fee or adding to the AASHTO dues.

Legislative Outreach Task Force – developing a strategy and implementation plan to obtain future federal funds for the NGECC: The Board reviewed the revised two pager on its call on April 26th and has approved the suggested changes. Mo DOT is finalizing the document as agreed, and it will be recirculated for a quick review and will then be sent to AASHTO for printing and initial distribution.

Interpreting NGECC related provisions contained in the FAST Act: Beth Nachreiner agreed to follow up with the subcommittee by the next call (5-4-16), and, if a response is prepared by FRA, she will make it available to Steve Hewitt for distribution as a read-ahead -in advance of the call.

Agenda item 5.

Developing a report to the Executive Board on the FASC findings with regard to Recommendations 1, 2 and 3: A report to the Board is due by May 31, 2016. Darrell Smith will prepare a draft report (based on today's discussions) and provide it to Steve Hewitt for distribution to FASC members one week (4-27-16) in advance of the 5-4-

16 conference call.

Agenda item 6.

4.

Approval of Minutes from the 4-6-16 FASC conference call– Darrell Smith:

John Bell, NYSDOT, noted a spelling error in the DRAFT minutes – (David Kutrosky's name was misspelled). Steve agreed to make the correction.

On a motion by John Bell, NYSDOT, and a second by Brent Thompson, Washington State DOT, the minutes from the 4-6-16 FASC conference call meeting, with the correction as noted, were approved without exception.

5.

Status Update: FRA Review of FAST Act changes to PRIIA Section 305 – Lynn Everett:

The following memo was provided in response to the question asked of FRA – to interpret the changes made to PRIIA Section 305 in the FAST Act:

"May 4, 2016

To: Members of the NGEC Finance and Administrative Subcommittee (FASC)

From: Beth Nachreiner, FRA

Re: Interpretation of the FAST Act Section 11315(b) revising PRIIA Section 305(a)

Earlier this year, members of the FASC requested FRA to interpret the meaning of Section 11315(b) of the FAST Act, which enacted modifications to PRIIA Section 305(a).

Section 11315(b) states:

(b) Passenger Rail Investment and Improvement Act Amendments. – Section 305 of the Passenger Rail Investment and Improvement Act of 2008 (49 U.S.C. 24101 note) is amended –

(1) Subsection (a) by inserting after "equipment manufacturers," the following: "nonprofit organizations representing employees who perform overhaul and maintenance of passenger railroad equipment,";

(2) Subsection (c) by striking "and may establish a corporation, which may be owned or jointly-owned by Amtrak, participating States, or other entities, to perform these functions"; and

(3) Subsection (e) by striking "and establishing a jointly-owned corporation to manage that equipment".

We checked in with our legal staff and based on their preliminary review have the following responses to the questions posed by FASC.

- **Is union representation on the NGEC limited to crafts associated with high-speed intercity passenger equipment?**

No. The statutes say membership is comprised of ". . . nonprofit organizations (e.g. unions) representing employees who perform overhaul and maintenance of passenger railroad equipment." This statement does not limit membership to unions representing employees who perform crafts associated with high-speed intercity passenger equipment.

- **Is union representation on the NGEC construed to include all unions represented by Amtrak's workforce?**

No. Only unions that represent "employees who perform overhaul and maintenance of passenger railroad

equipment" can be members. This would not preclude unions that represent employees who perform overhaul and maintenance of passenger railroad equipment and other types of employees.

- **Can the FAST Act provision be construed to require that union representatives on the NGEC be voting members (that is, be members of the NGEC Executive Board)?**

Neither Section 305 nor the FAST Act includes direction on voting member requirements. To address this issue, it would be helpful to understand how the NGEC has previously determined what members are voting members/members of the NGEC Executive Board.

Please let me know if you have further questions regarding FAST or its implementation requirements. "

Lynn Everett, FRA, provided an overview of the memo and explanation of FRA's responses to the questions posed by the FASC.

In response to the FRA's question with regard to membership classification, Steve Hewitt provided the following excerpt from the NGEC By-laws initially adopted January 14, 2010:

NGEC By-Laws excerpt:

2.4 Classification of Members

There shall be two classes of members: Voting and Non-Voting Members. The Federal Railroad Administration, one representative of each interested State, and Amtrak shall be voting members of the Committee, Executive Board and Subcommittees. All others shall be non-voting members.

Persons who wish to participate as non-voting members shall follow the notification procedures in Section 2.2.

In later sections of the By-Laws the Amtrak voting members are identified as the Amtrak CMO or designated representative and the Amtrak CFO or designated representative.

Darrell Smith also pointed out that the website (at the recommendation of FASC) had been revised several months ago to add a notice on the opening page describing how to join the NGEC and providing Steve Hewitt's contact information as the NGEC's point of contact.

Tim Hoeffner asked if multiple unions would be able to have a seat on the NGEC.

Darrell Smith responded that there are multiple unions which would fit the FAST Act description, and the FRA interpretation, but they would be as non-voting members.

Steve Hewitt commented that it would be handles the same as with industry members of the NGEC. There are currently 259 industry member who participate or follow the activities of the NGEC Technical subcommittee as non-voting members.

With no further comments, Darrell Smith determined that this task is completed and the action item is closed. Darrell will present the findings to the executive Board on its next call (5-10-16).

6. Review/Discuss DRAFT FASC Report/Memo to the NGEC Executive Board – Darrell Smith:

DRAFT Memorandum

To: Members of the NGEC Executive Board

From: Darrell Smith, Chair, Finance & Administrative Subcommittee

Re: Finance and Administrative Subcommittee Funding Options Recommendations

Date: May 2, 2016

BOARD DIRECTION

On October 24, 2014, the Next Generation Corridor Equipment Pool Committee's (NGEC) Executive Board directed the Finance and Administrative Subcommittee (FASC) to "develop a Statement of Work and budget for a no-cost Extension of the current grant agreement with FRA through September 30, 2017; and to recommend NGEC by-law changes, as appropriate, reflective of the changes resulting from adoption of the Committee Mode recommendation."

Additionally, the Executive Board directed the subcommittee to "propose/recommend" to the Board "potential funding options" for the NGEC beyond the expiration of the current grant agreement, and to do so by the end of October 2015.

The subcommittee successfully completed the first two tasks: (1) updating the NGEC by-laws, which were formally adopted by the Executive Board on February 3, 2015; and (2) proposing amending the grant agreement, which extended the agreement with a no-cost extension through September 30, 2017, and which was approved by the Executive Board, and executed in June 2015.

The FASC presented its recommendations to the NGEC Executive Board in a memorandum dated November 18, 2015, which the Board adopted, requiring the FASC to conduct some further research. This memorandum reports on our findings in regards to future funding for the NGEC's activities.

FUNDING ALTERNATIVES

The NGEC's current funding, provided by the FRA through a grant to Amtrak, expires September 30, 2017. The FASC presented recommendations concerning three potential funding sources to continue the NGEC beginning October 1, 2017. Below are those recommendations and a summation of our subsequent research.

1. *Consider a Specification Use Fee as a supplement to funding provided through a continuing federal grant and/or a PRIIA 209 support fee. Narrow the scope of a Specification Use Fee to the following two components:*
 - a. *Parts Suppliers, being the primary requestors of the specifications, charged a nominal fee to be recommended by the FASC by March 31, 2016.*
 - b. *Non-NGEC Members using a full specification for purchasing rolling stock charged a significant fee, on the order of \$250,000 per equipment-type specification, mechanics of which are to be recommended by the FASC by March 31, 2016. The mechanics include but are not limited to determining who is considered a NGEC Member for this purpose, developing the method of fee collection, and establishing the specification use rights of the purchaser.*

In further reviewing recommendation 1.a., the FASC determined that parts suppliers are requesting the NGECs specifications in order to fulfill orders for the two equipment orders currently underway that use NGEC specifications, being the Siemens Charger diesel-electric locomotive order and the CAF bi-level car order. For whatever reason, it appears that vendors are finding it easier to obtain copies of the specifications directly through the NGEC rather than receiving them from the locomotive and car suppliers to NGEC members. Therefore, the NGEC assessing a fee will likely simply be enough of a burden for the parts suppliers to obtain the specifications directly from the primary-contractor locomotive and car suppliers.

As the FASC further reviewed recommendation 1.b., we determined that there is likely a very limited market, if any, for selling the full specifications beyond the NGEC membership. Therefore, assessing such a fee is likely premature.

2. *Direct the FASC's Legislative Outreach Task Force to present a complete Congressional Outreach Implementation Plan by March 31, 2016, including draft educational materials for consideration for AASHTO's production, and specific next steps for members to request continuing NGEC funds.*

The FASC's Legislative Outreach Task Force presented a revised draft at the NGEC's Annual Meeting on February 19, 2016, and the document is being finalized for publication by AASHTO.

3. *Present the concept of a new annual PRIIA 209 support fee to the State Amtrak Intercity Passenger Rail Committee (SAIPRC) to determine the level of interest of the Amtrak state funding agencies. If SAIPRC expresses an interest, then the NGEC will direct either the FASC or a new task force to coordinate with SAIPRC a recommended methodology.*

The NGEC Chair and the FASC have been unable to successfully schedule a meeting with the SAIPRC Chair to review this recommendation. However, FASC member states did hold separate discussions with Amtrak PRIIA 209 state partners and found no interest in the states providing direct funding to the NGEC. The states believe that since standard specifications for intercity passenger rolling stock are primarily in the Federal interest, the Federal government should continue to fund their ongoing development and maintenance through the NGEC.

In addition, in the Treasurer's Report to the NGEC of February 19, 2016, the NGEC's spending on its ongoing activities is now half of what was previously estimated in the Statement of Work and Budget revisions to the Federal Railroad Administration per the March 30, 2015 Grant/Cooperative Agreement Adjustment, Amtrak and the NGEC should be able to seek another no-cost extension of the existing Section 305 Equipment Pool Committee Grant Agreement. Based on the Treasurer's report, this extension could continue funding from September 30, 2017, through to September 30, 2020.

FINAL RECOMMENDATIONS TO THE NGEC EXECUTIVE BOARD

Having completed its further examination of potential funding sources, and having come to the conclusion that it would be most effective and efficient for the NGEC to conduct its activities as currently organized the FASC recommends the following actions for the NGEC Executive Board's consideration:

- Re-evaluate actual NGEC spending at the conclusion of FY2016, being September 30, 2016, and consider filing a no-cost extension of the existing Federal Railroad Administration Section 305 Equipment Pool Committee Grant Agreement, currently estimated for three additional years through September 30, 2020, at the NGEC's 2017 Annual Meeting.

- Recognize the national interest in maintaining a set of standard intercity passenger rail equipment specifications through the NGEC, therefore re-doubling the NGEC's education efforts with federal policymakers and Congress. In so doing, expand the membership of the FASC's Legislative Outreach Task Force, which in turn will provide, through the FASC, a quarterly progress report to the NGEC beginning June 30, 2016.

Darrell Smith reviewed the DRAFT memo and opened the floor for comments.

A spelling error was (subcommittee) was noted and corrected, and the procuring manufacturer of the bi-level car order was misidentified as CAF. This will be changed to Sumitomo/Nippon Sharyo.

With no other comments or discussion, Darrell Smith entertained a motion to approve the memo with the noted corrections, for submittal to the Executive Board for its consideration.

Tim Hoeffner, Michigan DOT offered a motion to approve the memo (with the noted corrections) for submittal to the Executive Board for its consideration. The motion was seconded by Eric Curtit, Missouri DOT.

With no further discussion forthcoming, Darrell asked Steve Hewitt to call the roll of voting members:

Darrell Smith, Amtrak – aye
Brent Thompson, Washington State DOT – aye
John Bell, for Ray Hessinger, NYSDOT – aye
Eric Curtit, Missouri DOT – aye
Eric Curtit as proxy for Arun Rao, Wisconsin DOT – aye
Tim Hoeffner, Michigan DOT – aye
Brian Beeler II for Maine DOT – aye
Jeff Gordon, FRA - aye

With a quorum having been confirmed and all members voting in the affirmative, Chairman Smith determined that consensus has been achieved. The memo will be put in final form and submitted to the Executive Board.

7. Other Issues/questions – All:

With no further business to come before the subcommittee today, Darrell Smith adjourned the meeting at 3:30 PM Eastern.

Next Finance and Administrative subcommittee conference call June 1, 2016
866 209 1307 access code: 9786620#

Decisions and Action Items

Website review: Agreed upon updates will be incorporated into the website by Bryan Hong, AASHTO. The goal is to have consistency in format throughout the site. Members are welcome to provide additional suggestions to improve the site. Many of the recommended changes have been made to the site and it will continue to evolve over time. (Ongoing)

Legislative Outreach Task Force – developing a strategy and implementation plan to obtain future federal funds for the NGEC: The Board reviewed the proposed two pager on its call on March 15th and agreed to several "tweaks". Mo DOT was to revise the document as agreed, and recirculate for a final approval by the Executive Board before sending to AASHTO for printing.

The FASC memo recommends:

- Recognize the national interest in maintaining a set of standard intercity passenger rail equipment specifications through the NGEC, therefore re-doubling the NGECs education efforts with federal policymakers and Congress. In so doing, expand the membership of the FASC's Legislative Outreach Task Force, which in turn will provide, through the FASC, a quarterly progress report to the NGEC beginning June 30, 2016.

Interpreting NGEC related provisions contained in the FAST Act: Beth Nachreiner agreed to follow up with the subcommittee by the next call (5-4-16), and, if a response is prepared by FRA, she will make it available to Steve Hewitt for distribution as a read-ahead -in advance of the call.

This task has been completed. Darrell Smith will report to the Executive Board on its next call as to the FRA's interpretation, and the FASC discussion.

Developing a report to the Executive Board on the FASC findings with regard to Recommendations 1, 2 and 3: A report to the Board is due by May 31, 2016. Darrell Smith will prepare a draft report (based on today's discussions) and provide it to Steve Hewitt for distribution to FASC members one week (4-27-16) in advance of the 5-4-16 conference call.

This task has been completed. The memo, with two minor corrections was approved by the FASC for submittal to the NGEC Executive Board for its consideration.

Next Call: 6-1-16 at 3:00PM Eastern

ATTACHMENTS

Next Generation
Equipment Committee



The NGEC will provide national leadership in standardization, acquisition, financing and management of passenger rail equipment.

SECTION 305 Finance and Administrative Subcommittee (FASC)

Conference call
May 4, 2016

**3:00PM Eastern
866 209 1307 pass code 9786620#**

MEETING AGENDA

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|---|---------------|
| 1. Welcome/Open | Darrell Smith |
| 2. Roll Call | Steve Hewitt |
| 3. Action Item Review | Steve Hewitt |
| 4. Approval of the Minutes from 4-6-16 | Darrell Smith |
| 5. Status Update: FRA Interpretation of NGEN related provisions contained in FAST | Lynn Everett |
| 6. Review/discuss DRAFT FASC Report/recommendations to the Executive Board | Darrell Smith |
| 7. Other Issues/questions | All |

**Next Call June 1, 2016
Call in # 866 209 1307 passcode 9786620#**