



PHILADELPHIA 2012
HIGHSPEED
8th World Congress on High Speed Rail

Legal Issues Influencing HSR Development in the USA

Allison I. FULTZ

Attorney, Kaplan, Kirsch & Rockwell, LLP, USA

July 12, 2012, Advancing High Speed Rail in USA

History and US Context

- Federal government
 - Regulation
 - Funding
- State government
 - Planning
 - Funding
 - State DOTs, state rail plans, state supported service
- Local government
 - Land use planning
- Amtrak

Planning

- Traditional model: Each state plans individually for transportation needs
 - Federal government does not impose top-down role
- HSR demands multi-state consortia, coordinated planning
 - Not widely-used model in US: Midwest, Southeast, Northeast Corridor
 - Multi-state compacts – issues of authority under state law; may require special legislation at state level
- Environmental review

Financing

- Funding streams frequently not dedicated
 - Federal funding not always appropriated in authorized amounts
 - Local revenue streams – sales taxes, property taxes
- Federal grants and loans – largely competitive process
 - Transportation Infrastructure and Finance Act
 - Railroad Rehabilitation and Improvement Financing Act
 - Federal Transit Administration grants
- New concepts for US
 - PPPs
 - Leveraging real estate investments

Corridor Assembly

- Existing right-of-way: US rail network largely privately owned by Class I railroads
 - Commercial RE negotiation to purchase or secure easement as ROW
 - Practical operational concerns big issue for freights
- New right-of-way
 - Negotiation
 - Eminent domain
- If Federal funding, project proponent must satisfy requirements
 - Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (“Uniform Act”) requirements
 - National Environmental Policy Act of 1969 (“NEPA”) requirements

Project Models – Construction

- Existing US models
 - Design-bid-build
 - Design-build
- New models
 - Single entity concessionaire: Design-build-operate-(finance)-maintain
- Legal considerations
 - Changes to state procurement law
 - Coordination with federal funding agencies

Project Models – Operation

- Existing US models – passenger rail services
 - Amtrak
 - Public sector operates directly
 - Public sector operates through third-party private operator
- New model
 - PPP – long-term operating concession

International Comparisons

■ USA

- Most ROW privately owned and developed
- Land use planning locally controlled
- Until recently, passenger rail projects have been entirely publicly funded – little PPP experience
- Operational revenues – closed loop: fares, tax revenue stream, public sector grants

■ Europe and Asia

- ROW publicly owned and developed
- Land use planning more centrally controlled
- Extensive history of PPP and variety of financing mechanisms
- Opportunities to leverage real estate investment to support passenger transportation operations



PHILADELPHIA 2012

HIGHSPEED

8th World Congress on High Speed Rail

**...Thank you
for your kind attention**

Allison I. Fultz
Kaplan, Kirsch & Rockwell, LLP
afultz@kaplankirsch.com
www.kaplankirsch.com
www.transitattorneys.com