

COMMENTS OF  
THE VIRGINIA RAIL POLICY INSTITUTE<sup>1</sup>  
ON  
PRESENTATIONS TO THE CTB RAIL SUBCOMMITTEE  
IN SUPPORT OF HB1887

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## Overview

The Virginia Rail Policy Institute (VRPI) approaches this review with an overriding interest in strengthening the public benefits from Virginia's capital investments in rail. Many of our members have deep past and present ties to the freight railroads, while others are active passenger rail advocates. We support Virginia's robust freight rail industry and its increasingly diverse and popular passenger rail network.

The Authorization of the Rail Enhancement Fund (REF) was the culmination of a long campaign by rail advocates, most notably passenger advocates, several of whom were also founding members of VRPI. They succeeded in getting Virginia's first, significant appropriation for rail in the 2000 transportation budget.

In 2001, Virginians for High Speed Rail (VHSR) produced and widely distributed a proposed rail plan for Virginia. That plan suggested a need for an annual \$50 million funding source for rail freight and passenger projects in the Commonwealth. At the urging of VHSR, Governor Mark Warner in 2004 appointed the Commission on Rail Enhancement for the 21st Century, which recommended the REF, which was subsequently authorized by the General Assembly. The first grants from REF were awarded by the CTB in late 2005.

Our organization takes the view that the REF, as it currently exists, may not be perfect, but we see little need to tamper with it. We are deeply concerned that attempts to revise the public benefits provisions under HB1887 not devolve into an entitlement program for the freight railroads.

If anything needs improving, we believe it is to make the REF conform more closely with a comprehensive vision and strategy for rail development in Virginia. The identification and prioritization of rail needs should be the fundamental responsibility of the Department of Rail and Public Transportation (DRPT). Grants should follow DRPT's lead, not necessarily the priorities of the applicants.

*"Virginia ... needs a clearer vision of what it hopes to accomplish in cooperation with the private railroads. Just to keep private railroads in business, and to add to their bottom lines (both acceptable*

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<sup>1</sup> VRPI's comments represent the views of the organization as a whole and do not necessarily reflect in their entirety the opinions of every member of the organization.

*objectives) is not enough. If we can't get more transportation growth out of Virginia's rail program in the next 15 years than we have demonstrated during the last such period, then the justification for spending so many taxpayer dollars on rail should be questioned objectively."*<sup>2</sup>

We also recommend that the transparency, accountability and public reporting of grantee progress toward meeting REF project objectives be improved, but these are more administrative than statutory issues.

With these general concerns in mind, we offer the following comments on DRPT's presentations to the CTB Rail Subcommittee in support of HB1887.

## **I. Policy and Prioritization Recommendations: Statutory Requirements**

### **A. Economic Growth**

- VRPI recommends the addition of economic benefits for localities served by commuter and intercity passenger rail. Transit-oriented development, increased employment opportunities, enhanced tourism, enhanced mobility and access to jobs are all positive rail benefits to the economy and tax base, particularly for station localities.
- VRPI awaits more information before commenting on DRPT's proposed legislative changes to update the scope of economic benefits to encompass "targeted industries, supply chain and labor market competitiveness."

### **B. Support the Entire Multimodal System**

The original language of the REF states that the CTB should, "*...whenever possible, give due consideration to passenger rail capacity on corridors identified by the Commonwealth Transportation Board that have existing or proposed passenger rail service.*"

- The language clearly conveys the legislature's interest in increasing passenger rail capacity wherever possible.
- Wherever feasible, projects for which there is a convergence of benefits for both freight and passenger rail should be given priority.
- We also agree with DRPT's recommendation that the BCA model include monetary values for both freight intermodal and passenger facilities.

### **C. Thirty-percent Match Requirement**

The match requirement should be retained, but we believe the statute should be amended to provide DRPT with greater flexibility in setting the percent of state match to the project.

- A flexible and variable match requirement could provide leverage and strengthen DRPT's hand for negotiating the best deals with its private sector partners.

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<sup>2</sup> *Mid-Year 2015 Perspective on U.S. and Virginia Railroads and Rail Service, Freight and Passenger. As seen from the Crest of One Man's Hill.* Richard L. Beadles, July 15, 2015, p. 9.

- A flexible match would enable DRPT to negotiate the level of state commitment, depending upon how well a project aligns with state goals and priorities. Where there is a good alignment, the state would make a greater investment and the private entity would make a lesser one, and the reverse for projects that align less well with state interests.

#### **D. Federal Matching Funds**

VRPI sees no discernible reason why federal funds should not be allowed to match state funds for REF projects.

- In the ten years since the REF was established, the ineligibility of federal matching funds has effectively blocked intercity passenger rail from the normal route to funding. As an example, the improvements to the Norfolk Southern line between Petersburg and Norfolk, needed to restore Amtrak service to Norfolk, required special legislation to use REF funds and to suspend the usual match requirement for the grant.
- Local governments seeking to upgrade public rail facilities are often awarded federal grants to support the effort, but without the capacity to leverage the federal grants for state assistance, it is left to the locality to make up the difference — an obligation that many local governments would find difficult to meet in the face of competing local needs.
- VRPI continues to question why, as a matter of policy, the Commonwealth would arbitrarily limit itself to non-federal sources of matching contributions. To date, there has been no justification provided for the statutory inclusion of this restriction.<sup>3</sup>

## **II. Policy and Prioritization Recommendations: Policy Goals**

### **A. State of Good Repair**

VRPI opposes adding a category for State of Good Repair to the criteria for REF eligibility.

- Adding a category for State of Good Repair would open the door to the public's footing the bill for routine maintenance on privately-owned rail lines, which could become a massive, inexhaustible entitlement for the railroads.
- REF grants should ordinarily be awarded only for projects providing additions or improvements to the rail line, and therefore enhancing the capacity for freight and/or passenger rail — not merely for keeping what is already there.
- Improvements that the railroads would otherwise make on their own, without public assistance, for purposes of enhancing competitiveness, advancing the business plan or simply replacing or maintaining existing facilities, should not be eligible.

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<sup>3</sup> According to the two members of VRPI who served on the Warner Commission for Rail Enhancement for the 21st Century, it was not the intention of the Commission to disqualify federal matching funds.

## B. Exception for Independently Owned Shortlines

VRPI makes an exception for State of Good Repair projects for independent shortline railroads.

- Virginia shortlines, such as Buckingham Branch Railroad (BBRR), serve a vital economic function by providing rail carrier access for many of Virginia's small industries.<sup>4</sup>
- There are often unmet maintenance needs that are beyond the financial resources of these independent shortlines.
- Robert E. Bryant, Founder and Chairman of BBRR, writes the following about BBRR's history utilizing Virginia's Rail Preservation and Development Fund:

*"The Buckingham Branch Railroad would not have been successful without it. The preservation of the 200 miles leased Richmond and Alleghany Division with rail interchanges at Doswell, Orange, Charlottesville, Waynesboro, Staunton and Clifton Forge, VA would not have been, and will not be possible without funding until sufficient industrial freight traffic is generated."*<sup>5</sup>

- VRPI supports REF funding for State of Good Repair projects for Virginia's shortlines, but only for shortlines not owned or controlled by the Class I railroads.
- We also recommend a cap on the amount of REF funds used for this purpose, and agree with DRPT's recommendation of a \$3 million cap.

## C. Align Projects with State, Regional or Local Plans

Virginia is in the enviable position among states of having dedicated resources for rail.

However, with few exceptions,<sup>6</sup> the deployment of these resources has been reactive, rather than proactive in nature. The problem is that the grantees initiate the application process, with little apparent participation from the one agency (DRPT) that represents the public interest in the transaction.

- The outcome of this system is that there is a disconnect between the state's rail goals and priorities and the projects that it funds.
- DRPT should strike a better balance between grantee-initiated improvements and those that advance a long-range vision for rail development in the Commonwealth.
- The recent reduction of the REF by one-third, and the concurrent expiration of the 2008 transportation bonds (which annually pumped \$12.5 million into the fund), only makes the need for DRPT to initiate and prioritize rail projects according to a strategic plan more urgent.

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<sup>4</sup> BBRR is also host to the Amtrak Cardinal.

<sup>5</sup> Letter from Robert E. Bryant to VRPI President, Meredith Richards, re: Rail Enhancement Fund and Rail Preservation and Development Programs, July 9, 2015.

<sup>6</sup> Among the 58 REF grants approved in the history of the program, several have been initiated by DRPT. These include the rail yard improvements at Maersk Terminal (now APM Terminals) at Portsmouth and related Commonwealth Railway line relocation, as well as improvements to facilitate new Norfolk (\$82 million) and Roanoke (\$92 million) Amtrak service. (Jennifer Mitchell, report to VRPI Directors & Fellows, September 24, 2014.)

- VRPI encourages DRPT to be proactive, intentional, and visionary in creating a state rail program that optimizes all of Virginia's resources to develop a modern, competitive, interconnected rail network for the future.

## **D. Rail Operations**

We do not support a statutory change that would make freight or passenger operations eligible for REF funding.<sup>7</sup>

- If the public were to get into the business of reimbursing freight rail operations, the railroads would have little incentive to keep their operating costs low. Furthermore, the public would have little or no control over the outcomes or quality of the rail services they are subsidizing.
- Virginia already pays the operating costs of its regional Amtrak trains through a combination of fare revenues and state subsidies, under the provisions of PRIIA, Section 209. Since FY2014, these costs have been covered by the Intercity Passenger Rail Operating and Capital Fund (IPROC).

## **E. Quick Turnarounds and Firm Completion Dates**

With slightly more than half of 58 funded projects actually completed in the ten years of the REF,<sup>8</sup> prioritizing fast turnarounds and requiring firm completion dates for future grants might at first appear to be a good idea.

- However, VRPI believes that such requirements are unrealistic and would not necessarily result in the best use of public funds.
- With infrastructure spanning miles of track, multiple jurisdictions and many stakeholders, the potential for unanticipated and uncontrollable delays in rail improvement projects is very high. It is highly unlikely that the freight railroads would agree to any such terms.
- Furthermore, prioritizing short turnarounds may have the unintended consequence of rewarding "quick fixes" instead of incentivizing the kinds of complex, long-term improvements that are needed to bring Virginia's antiquated rail lines up to modern standards.

## **F. Obtain Ownership of Selected Rail Assets**

In virtually every developed country except the United States, rail lines are predominantly publicly owned. They are also overwhelmingly used for passenger rail, whereas in America they are overwhelming used for freight (1,390 billion ton miles per year as compared to 6 billion

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<sup>7</sup> Rare exceptions might occur with pilot innovations designed to increase rail's share of the freight market. In 1989, the Virginia Port Authority funded the Front Royal Intermodal facility as a \$10 million pilot project for extending PVA's operations 220 miles inland. It proved highly successful in capturing new markets and became a U.S. Customs-designated port of entry.

<sup>8</sup> As of September, 2014, 32 projects were complete or under agreement, 7 were complete but funded from sources other than the REF, 17 were not yet under agreement and 2 were withdrawn after approval. (Jennifer Mitchell, report to VRPI Directors & Fellows, September 24, 2014.)

passenger miles per year)<sup>9</sup>. America's ubiquitous passenger rail network all but disappeared during the 1950's, 60's and 70's as a consequence of the construction of the Interstate Highways and the availability of cheap gasoline and popularly priced cars. At the same time, the freight railroads were dismantling almost half of their own infrastructure in response to declining revenues and the near elimination of passenger trains.

- Today, the combination of a reinvigorated freight industry, reduced capacity of the infrastructure, and freight and passenger trains sharing the same network creates conflicts that were not anticipated when Amtrak was created in 1971.
- Some states have resolved these conflicts by purchasing rail lines formerly owned and operated by freight railroads in order to start new commuter, light rail or regional passenger service.
- Some states purchased active mainline track, usually at the end of a corridor, others bought whole abandoned rail networks, and still others built their own lines for passenger service and leased these to the freights.
- *Appendix 1*. lists major examples of publicly owned rail infrastructure in the United States.
- We pose a question as to whether Virginia should consider either full or part ownership of the DC2RVA corridor between Washington, DC and Petersburg — a key segment in the Southeast High Speed Rail Corridor between Florida and Washington, DC. If developing this corridor proves to be unworkable within the usual framework of public private partnerships, should Virginia exercise this option in order to protect the future of HSR in the Commonwealth?

## G. Revise the Incentive Structure

In a 2010 report to the General Assembly on funding passenger rail operations, DRPT stated that, "*Virginia carefully manages its funding programs, as these funds set minimum partner contributions and require positive project outcomes that protect the Commonwealth's investment.*"<sup>10</sup>

- These protections are backed by clawback provisions for dragging back or recapturing a portion of the state's contribution if the project outcomes are not met.
- VRPI opposes replacing such clawback provisions with restrictions on future grants, which we do not recommended for the following reasons:
  - Without a clawback, the grantee enjoys the use of capacity improvements paid for by the public — currently up to 70% of the cost — whether or not the project outcomes are ever met.
  - DRPT's agreements typically frame the outcomes in terms of 15-year goals. During the time the grantee has to deliver these outcomes, the grantee is still theoretically eligible for future grants, even if the goals are not eventually met.

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<sup>9</sup> Virginia Department of Rail and Public Transportation, *Statewide Rail Plan Technical Data Update*, December, 2009, chapter 6, pp. 30-31.

<sup>10</sup> Funding Strategies for State Sponsored Intercity and High Speed Passenger Rail. Report of the Department of Rail and Public Transportation, November, 2010, p. 15.

- Future grant restrictions are only potentially workable for applicants who are recurring grant recipients.
- To our knowledge, DRPT has never provided a public accounting of the extent to which the guaranteed outcomes of past grants have actually been monitored and enforced following completion of the projects, or whether clawback provisions have ever been invoked.
- VRPI has long been concerned about whether the state is getting the best possible deals with the partnering railroads. Is the usual twenty-year term for return on investment long enough (especially when grants can be in excess of a \$100 million)? Is it equitable that the public benefits (slots for passenger trains, for example) cease once the term is up? These and other issues pose huge challenges for the future as DRPT potentially stands to receive billions of dollars in federal grants and add major new facilities to the DC2RVA corridor in preparation for HSR.

### III. Proposed Enhancements to the REF Model

#### A. Demonstration of the Model

VRPI is concerned that the BCA model as presented in Rail Subcommittee meetings has not been described in sufficient detail.

- In the interest of transparency, and to facilitate the knowledgeable participation of the public, VRPI requests that a future presentation to the Rail Subcommittee include two hypothetical case studies of grant applications — one successful and one unsuccessful — in which the use of the BCA model is demonstrated step-by-step.
- We also request further information on the mathematics of the BCA model. Are differential weights assigned to different public benefits, and if so, how do these reflect the policy goals and priorities of the CTB? What equations are used to calculate the total benefits of a proposed project? In other words, what computations intervene between Steps 2 and 3 in DRPT's Flowchart of the BCA model?

#### B. The "Internal Improvements" Clause of the Virginia Constitution

Article X, Section 10. of the Virginia Constitution, "Lending of credit, stock subscriptions, and works of internal improvement," reads:

*"...nor shall the Commonwealth become a party to or become interested in any work of internal improvement, except public roads and public parks, or engage in carrying on any such work; ...."*

- This language was historically interpreted to prohibit public investment by the state in rail facilities.<sup>11</sup>

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<sup>11</sup> Richard L. Beadles, *Railroad Policy in Virginia: How We Got Where We Are and Where We Might Go From Here*. The Virginia Newsletter, Vol. 89, No. 3, June 2013, p. 5.

- In recent years, the Virginia Supreme Court has adopted a relatively broad interpretation of the “public roads exception” such that the Commonwealth’s provision of funding or services for a development or retention of an interest in a development will be constitutional “...if the development can be reasonably deemed an exercise of the Commonwealth’s governmental function of constructing, maintaining and operating its highway system.”<sup>12</sup>
- Protecting the public interest means, among other things, protecting the REF from future constitutional challenges, such as the one that occurred in 2011.
- As the CTB revises and updates the policy goals and public benefits for the REF, it is wise to keep in mind their applicability to the “public roads exception” of the Virginia Constitution.
- How satisfactorily can rail benefits that are “borne by society as a whole,”<sup>13</sup> — economic growth, environmental sustainability and livability, for example — be defended for their connection to Virginia highways? How far would the courts go in making the connection?
- Virginians may one day choose to support an amendment to the Constitution that removes these ambiguities and fully embraces the compelling public benefits to be derived from making public investments in rail as well as in roads and parks.

Submitted August 20, 2015 by



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Meredith Richards, President  
Virginia Rail Policy Institute

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<sup>12</sup> *Montgomery County, et al. v. Virginia Department of Rail and Public Transportation, et al.*, Record No. 100350 at 18 (Va. Supreme Ct. Nov. 4, 2011), 282 Va. 422,437, 719 S.E.2d 294, 301.

<sup>13</sup> VDRPT, *Proposed Enhancements to the REF Model*. Presentation to the CTB Rail Subcommittee, July 15, 2015.

## **Appendix I. Examples of State- or Locally-Owned Rail Lines in the United States**

Compiled by  
Michael L. Testerman, Executive Director  
Virginia Rail Policy Institute

### **1. Coaster services (Southern California)**

**San Diego Northern Railway (SDNR)** purchased the tracks used by Coaster from the Atchison, Topeka and Santa Fe Railway in 1994. North County Transportation District (NCTD) created the subsidiary San Diego Northern Railway Corporation in 1994<sup>[4]</sup> and dissolved it in 2002. Revenue Coaster service began February 27, 1995.<sup>[4]</sup> Funding for right-of-way acquisition and construction costs came from TransNet, a 1987 measure<sup>[4]</sup> that imposed a 0.5% sales tax on San Diego County residents for transportation projects.

NCTD owns 62 mi (100 km) of mainline track, including the 41.1 mi (66.1 km) on which the Coaster travels. California also contracts out (Amtrak) the Pacific Surfliner service between San Luis Obispo and San Diego. Under public ownership the rail line has been vastly improved, with wooden bridges being replaced and much double tracking.

### **2. Sun Rail (Fla)**

Instead of building an entirely new rail line, the **State of Florida purchased a 61-mile segment of the existing "A" Line between DeLand and Poinciana from CSX Transportation.** The total cost of the system was originally estimated at \$615 million for construction plus \$432 million to purchase the right of way and tracks. However, the cost of construction ended up being above the \$615 million quoted and the agreement still allows CSX to run a limited number of freight trains along the line at night, although the majority of the freight traffic has been rerouted west to CSX's "S" Line.

The system was financed by the federal government, the state and the counties. Volusia County, Seminole County, Orange County, the City of Orlando and Osceola County are the partners in the project. Fifty percent of the funding came from a federal transit "New Starts" grant. The local partners were responsible for 25 percent of the cost and another 25 percent was paid by the State of Florida, which included the cost of track improvements, construction of train stations, and purchasing of locomotives and rail cars.

### **3. MBTA (Greater Boston)**

With the bankruptcy of New England railroads, beginning in the 1960s, the Commonwealth of Massachusetts and MBTA began to purchase several lines, like the Lowell Line between Somerville and Wilmington, from the Boston & Maine (on the north side), and from the Penn Central Railroad in the 1970s, on the south side. Most recently, after purchasing the Framingham-Worcester trackage from CSX in 2012, the MBTA has begun adding service to the outer section of the line and performing track work to increase speeds and reliability. Two new stations are planned: Boston Landing in Brighton opening in 2016, and West Station in Beacon Park Yard opening in 2020.

#### 4. **Trinity Railway Express (Greater Dallas-Fort Worth)**

The commuter rail service between Dallas, Texas and Fort Worth, Texas is a service provided by Dallas Area Rapid Transit (DART) and the Fort Worth Transportation Authority (“The T”) doing business as the Trinity Railway Express (TRE). The relationship between DART and The T for providing this service is an inter-local cooperative agreement. TRE operates on the 34-mile rail corridor owned by the two transit authorities. The tenant railroads on the TRE mainline are: BNSF Railway (BNSF) Dallas; Garland and Northeastern Railroad (DGNO); Fort Worth & Western Railroad (FWWR), and; Union Pacific Railroad Company (UPRR).

DART owns two additional freight rail lines. These subdivisions are the Cotton Belt, and the Katy. Additionally, DART and The T jointly own a portion of the Madill. These lines converge and cross one another in Carrollton, Texas.

#### 5. **New Mexico Rail Runner Express**

The **New Mexico Rail Runner Express (NMRX)** is a commuter rail system serving the metropolitan areas of Albuquerque and Santa Fe, New Mexico. It is administered by the New Mexico Department of Transportation (NMDOT) and the Rio Metro Regional Transit District (Rio Metro), a regional transportation agency, while Herzog currently holds the contract for the operation and maintenance of the line & equipment. Phase I of the system, operating on an existing right of way from Belen to Bernalillo that NMDOT purchased from BNSF Railway, opened in July 2006. Phase II, the extension of the line to Santa Fe, opened in December 2008.

#### 6. **Vermont**

The **Vermont Railway** (reporting mark **VTR**) is a shortline railroad in Vermont and eastern New York, operating much of the former Rutland Railway. It is the main part of the **Vermont Rail System**, which also owns the Green Mountain Railroad, the Rutland's branch to Bellows Falls. The trackage is owned by the Vermont Agency of Transportation except in New York, where VTR operates a line owned by the Boston and Maine Corporation.

#### 7. **Route of the Vermonter/Montrealer**

The **Connecticut River Line** (colloquially known as the **Conn River Line**) is a railroad line owned by the Massachusetts Department of Transportation (MassDOT) between Springfield and East Northfield, Massachusetts. Freight rail service along the line is operated by Pan Am Railways, and passenger rail service is operated by Amtrak.

In 2014, following several years of planning and construction, the original mainline was restored to modern standards, with a maximum authorized speed of 79 miles per hour (127 km/h) for passenger trains on the long straight sections of track between Hatfield and Deerfield. During this time, MassDOT purchased the line from Pan Am Railways. Amtrak's *Vermonter* was rerouted to the Conn River Line on December 29, 2014, with stops at Greenfield, Northampton, and later Holyoke.

## 8. Michigan

The Michigan Department of Transportation manages 665 miles of state-owned rail lines. These five lines are operated under contract by five freight railroads. Intercity passenger rail service is also provided on the corridor between Kalamazoo and Dearborn. A most recent purchase was a Norfolk Southern-owned extension of the Amtrak-owned line - part of the Chicago-to- Detroit HSR corridor.

Michigan gets to upgrade the former NS line to 110 mph track speed and NS retains its freight franchise on that segment.

## 9. Cincinnati to Chattanooga

The **Cincinnati, New Orleans and Texas Pacific Railway** (abbreviated: **CNO&TP**; (reporting mark **CNTP**)) is a railroad that runs from Cincinnati, Ohio, south to Chattanooga, Tennessee, forming part of the Norfolk Southern Railway system. The rail line that it operates, the **Cincinnati Southern Railway**, constructed to Chattanooga in 1880,<sup>[1]</sup> is owned by the City of Cincinnati and is leased to the CNO&TP under a long-term agreement. It is the only such long-distance railway owned by a municipality in the United States. The CNO&TP's lease of the Cincinnati Southern Railway is currently set to expire in 2026, with an option for a 25-year renewal.<sup>[2]</sup> The agreement is governed by the Trustees of the Cincinnati Southern Railway, who are appointed by the Mayor of the City of Cincinnati.

## 10. North Carolina Railroad

The **North Carolina Railroad** (reporting mark **NCRR**) is a 317-mile (510 km) state-owned<sup>[1]</sup> rail corridor extending from Morehead City, North Carolina to Charlotte, North Carolina. The railroad carries over seventy freight trains offered by the Norfolk Southern Railway and eight passenger trains (Amtrak's Carolinian and Piedmont) daily. It is managed by the North Carolina Railroad Company.

## 11. Alameda Corridor (CA)

The **Alameda Corridor** is a 20-mile (32 km) freight rail "expressway"<sup>[1]</sup> owned by the Alameda Corridor Transportation Authority (reporting mark **ATAX**) that connects the national rail system near downtown Los Angeles, California, to the ports of Los Angeles and Long Beach, running parallel to Alameda Street. The corridor is considered one of the region's largest transportation projects in the past 20 years. This is an example of a public-private partnership that created an improved shared-asset that the private sector would never have assembled.