

9. Summary of Institutional Framework Alternatives

The recent market trend of an increasingly diverse service-oriented economy has put more emphasis on the role of the private sector in implementing changes and setting new standards in the transportation industry. The private sector, using two major management tools—productivity gains by investment in new technologies and marketing strategies directed at opportunities that are emerging in the transportation market—has been significantly involved in the development of new standards in the transportation industry. During the process of conceptualizing the Ohio Hub System, the focus has been put onto effectively improving the productivity and partnering benefits of adopting private sector tools, where appropriate.

The following list shows a range of potential public-private arrangements that the Ohio Hub System could adopt:

- **Full Privatization** – The private sector finances and runs the whole operation.
- **Cost and Risk Sharing** (e.g., turnkey development) – A hybrid privatization approach where the public helps with capital financing, but the private sector is expected to also provide substantial capital, and to subsequently operate the system on a commercially profitable basis including the responsibility to repay its own capital costs.
- **Public Financing with Operating Franchises** – A public/private initiative where the public sector provides all the capital, primarily for infrastructure, while the private sector runs the trains. Such an operation must at least cover its operating cost, but without the responsibility for repaying initial capital investment, a positive operating ratio (greater than 1.00) would produce an operating profit.
- **Contracting** – The public sector provides both capital and operating funds. Operations may be contracted to the private sector, but the responsibility for commercial business decision-making rests with the sponsoring public agency.
- **Cooperative Agreements for Technology Development** – This is a special purpose public/private partnership established for the purpose of research, development and technology transfer.

Full privatization is extremely difficult to achieve in passenger rail, due to government capital subsidies provided to other modes of transportation, and because the cost-structure of automobile ownership makes it difficult to charge a rail fare that is high enough to fully recover capital costs. This financing model has been tried on several high-speed rail projects in the US, such as the proposed Texas TGV and Florida FOX systems, but none of these projects has been able to achieve the financial rates of return needed to attract private investment.

Recognizing that high-speed rail projects are unlikely to be financed purely by the private sector, cost and risk-sharing arrangements have recently been proposed for High-speed rail systems in Florida and elsewhere. These appear to have a higher chance for success than the earlier efforts that were based on a full privatization model.

For a system such as the Ohio Hub, however, the benefits of private sector participation can be attracted if a large measure of financial “risk” – most notably associated with infrastructure

investment – can be shifted to the public sector. The FRA, in their proposals for developing public/private partnerships, has identified the need for amelioration of this “risk.” The FRA has proposed that the public sector be responsible for providing capital, while the private sector operates the system without an operating subsidy. Two critical conditions have to be met in order for this “franchising model” to work:

- Once started, the rail system must be able to generate at least enough revenue to cover its own operating costs.
- The investment must produce a positive benefit/cost ratio (greater than 1.00) that shows the overall project makes a net contribution to the US economy.

A franchising arrangement takes the form of a concession, granted in return for either an up-front or an ongoing payment, which grants the right to use the publicly provided rail assets for providing passenger service on the Ohio Hub System. Commercial decision making – the right to determine schedules, fares and service frequencies – is then left up to the franchise operator, who can operate with a minimum of government interference or regulation so long as the basic conditions of the franchise continue to be met.

In contrast, a contracting arrangement implies that the responsibility for commercial decision-making resides with the sponsoring government entity. While a contracting arrangement may be necessary for a loss-making transit service, for an intercity passenger system today, it is the least attractive option since it “crowds out” the private sector’s ability to tailor its services to best meet the need of the marketplace.

For evaluating the Ohio Hub System’s business potential, it is anticipated that varying levels of private sector participation may be possible. It is likely that the private sector could participate with the passenger rail system in provision of the following services:

- Train operations
- Station operations
- Express parcel service
- Call center operations
- On-board services
- Feeder bus services
- Vehicle maintenance
- Track maintenance
- Parking

New technologies in the communication industry have greatly enhanced transportation management control, by allowing businesses to monitor and diagnose the performance of their operations and to provide effective and efficient customer response service. As a result of these

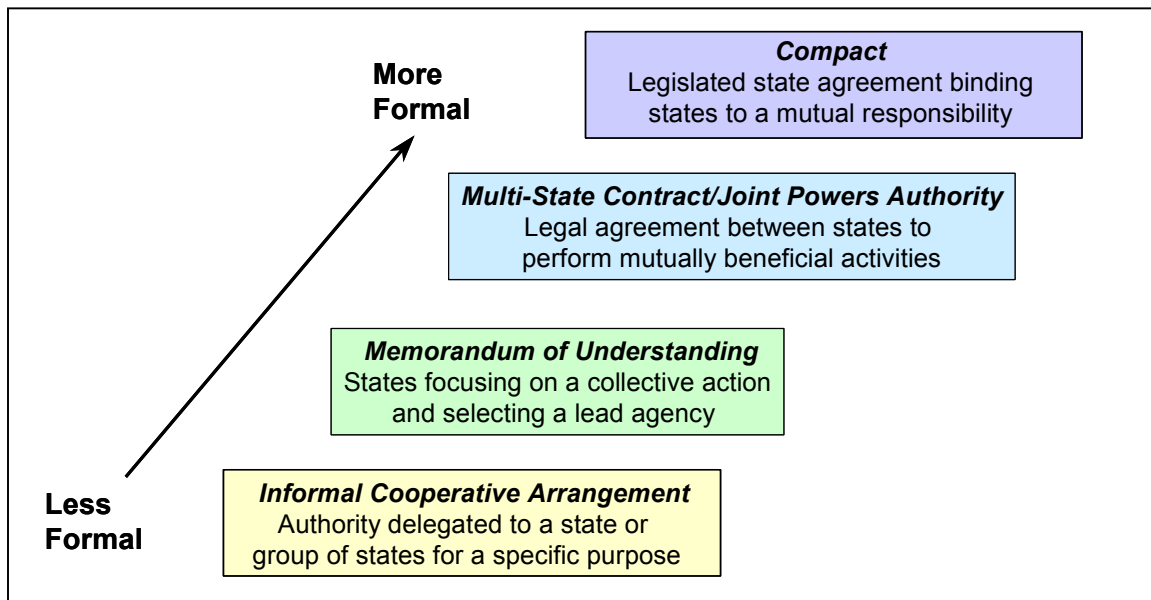
changes in transportation management control, both capital and operating costs in the transportation industry has decreased while service capabilities have improved.

9.1 Institutional Agreement Framework

As the Ohio and Lake Erie Regional Rail - Ohio Hub Study progresses to more detailed planning and ultimately to securing funding for implementation of the Ohio Hub System, multi-state participation and cooperation become necessary for the system's success. With the progression of a series of activities, it is important to define the institutional arrangement that meets the needs of the Ohio Hub Study collective action while minimizing intrusion on the authorities, powers and immunities of each state.

Institutional arrangements are the organizational structure and agreements between participating entities (e.g., states) responsible for undertaking or overseeing project-related activities. A continuum and definition of institutional arrangements range from less formal arrangements such as a Letter of Agreement to a more formal multi-state legislated compact arrangement. The level of arrangement selected will reflect the administrative needs of the states and the degree of complexity of the issues being dealt with. Exhibit 9-1 depicts the continuum of institutional agreement.

Exhibit 9-1: Continuum of Institutional Agreements



An example of an existing passenger rail compact is the Interstate Rail Passenger Advisory Council (Interstate High-Speed Intercity Rail Passenger Network Compact). Its purpose is to explore the potential for high-speed rail within the Great Lakes region and to encourage a cooperative and coordinated regional approach for planning and development activities. It is the policy of the Compact member states “to cooperate and share jointly the administrative and financial responsibilities of preparing a feasibility study concerning the operation of such a (passenger rail) system connecting major cities in Ohio, Indiana, Michigan, Pennsylvania and Illinois.”

The origin of this Interstate Rail Passenger Advisory Council is traced to January 30, 1979, when a bill was introduced in the Ohio legislature to create a high-speed rail compact with Ohio’s neighboring states. That bill was signed into law on August 28, 1979, and neighboring states were contacted and urged to join the Compact. By 1981, Michigan, Pennsylvania, Illinois and Indiana had joined the Compact. In the early 1990’s, New York and Missouri also became members of the Compact.

The Council continues to provide an institutional framework in which state rail transportation officials assemble to advance interstate rail projects. The Council’s current project involves overseeing the development of the Ohio and Lake Erie Regional Rail - Ohio Hub Study.

9.1.1 Guiding Principle in Selecting Institutional Arrangements

It is essential to take account a certain guiding principles to support Ohio Hub activities when considering and ultimately selecting institutional. The overall objectives of the principles should support the achievement of project goals without expanding or creating new bureaucracies. Most importantly, key to the success of a successful institutional arrangement is to ensure that the arrangement is designed in a manner that minimizes intrusion upon states’ powers and immunities. Moreover, while the form of arrangements is important, it is equally important to identify when multi-state arrangements are necessary and what authorities need be incorporated into these arrangements.

9.1.2 Multi-State Participation Activities

Since the Ohio Hub System involves the Ohio Rail Development Commission, four states of Ohio, Michigan, Pennsylvania and New York, and VIA Rail, Canada, the multi-state/agency participation is required in order to implement the Ohio Hub System. The activities and institutional issues requiring multi-state/agency participation for the Ohio Hub Study fall into three broad categories: project planning, business arrangements, and policy/operational oversight. Exhibit 9-2 lists these activities by project category.

Exhibit 9-2: Typical Institutional Arrangement Activities by Category

Project Planning	Business Arrangement	Policy
Hiring consultants Project planning oversight Environmental review Garnering project support	Issue and retire state debt Federal grant activities Major procurements System construction Outsourcing decisions	Train operator oversight Capital investments Service quality standards Receipt of revenue Payment to contractors Disbursements to states

In the Project Planning activities, arrangements support joint funding and collective oversight of the planning process among states and any relevant agencies. Then, the Business Arrangement activities involve the contractual agreement(s) with lending institutions, investors, suppliers, contractors, freight, and commuter railroads while protecting the interest of states, defining fiduciary responsibility, and achieving objectives according to a schedule and within limits of affordability.

While some Ohio Hub activities can be accomplished by individual states, others will require varying levels of institutional arrangements. Institutional arrangements would identify state responsibilities in deciding on Ohio Hub policies and broad service delivery issues. Then, the establishment of a policy oversight entity would interact with the rail operator through the provision of required funds and the specification of service plans. Exhibit 9-3 illustrates those activities relating to planning that can be accomplished through different cooperative agreements.

Exhibit 9-3: Actions and Potential Institutional Arrangements

Ohio Hub Study Potential Actions and Responsibilities	Informal Cooperative Agreement	Memorandum of Agreement	Multi-State Agreement	Multi-State Compact
Level of Institutional Action Required				
Agency Approval	X	X	X	
Legislative Approval				X
Arrangements Supporting Planning Activities				
System Plan	X	X	X	X
Service Plan	X	X	X	X
Service Standards	X	X	X	X
Arrangements Supporting State Management Activities				
Stakeholder Support	X	X	X	X
Procurements		X	X	X
System Construction Oversight			X	X
Vendor Selection		X	X	X
System Implementation Oversight			X	X
Full Time Administrative Support			X	X
System Accounting			X	X
Arrangements Supporting State Financial Responsibilities				
Federal Grant Applications and Awards			X	X
Capital Program Development			X	X
Multi-State Cost Sharing			X	X
Multi-State Revenue Distribution			X	X

9.2 Multi-State/Agency Participation Institutional Framework

In the Ohio Hub Study, the multi-state/agency participation is required in order to implement proposed system. There are mainly two kinds of institutional arrangements possible between states. These are *State-to-State Contract* and *Interstate Compact* and details of each arrangement are discussed below.

State-to-State Contract

- Agreements among states to make the contractual arrangements that would be necessary to achieve intercity service within the jurisdictions of the states.
- Possibility to establish the arrangement without prescribing the precise form or content or separate enactment by each participating state.
- Requirements of assurance for the participating states to enact all necessary legislation and regulations to implement the plan for the Ohio Hub System.
- The advantages of the speedy and flexible agreement structure, since legislative approval is not required, and the ability of a contract to hold a state harmless from legal liability.
- The disadvantage of possibility of not being able to fully reflect the collective good and credibility that might be achieved with a more formal agreement.

Interstate Compact

- Permission by congress to allow states, agencies, or authorities created by states to enter specific agreements that involve interstate commerce.
- The most recent consent of the Amtrak Reform and Privatization Act in 1997, which grants the consent of Congress to states to enter into interstate compacts to promote the provision of intercity passenger rail service.
- Agreements among states to establish a system, which would operate across state lines, and cooperate and share jointly the administrative and financial responsibilities of implementing the operations of such a system.
- The compact could also describe the institutional framework, such as a Policy Board consisting of members from each of the participating states directing an operator. It could identify the terms for enactment, such as providing that the compact could become effective upon the adoption or enacting into law by two or more participating states.
- Identical agreed-upon compact language for each state.
- Allowance of waiving sovereign immunity to a specific action, such as contracts, provision of public services, or certain types of torts, by states.
- Its main advantage lies in the formal structure, which is recognized by Congress to seek federal funding for significant infrastructure improvements and to establish the Ohio Hub System.
- The disadvantage of a time frame and state legislative approval requirements.

With the guidance of the Ohio Rail Development Commission (ORDC) and steering committee approval, a general institutional arrangement framework for the Ohio Hub System was suggested to be a bi/multi-state agreement between the ORDC and the four states of Ohio, Michigan, New York, and VIA Rail. This proposal will require further discussion as the project moves forward into project development and implementation. VIA Rail represents Canadian interests in the Ohio Hub System, while Amtrak's role is advisory. This bi-national/multi-state agreement institutional arrangement is depicted in Exhibit 9-4, illustrating the flow of federal funding and revenue.

Exhibit 9-4: Federal Funding and Revenue Flow For a Bi/Multi-State Agreement Institutional Arrangement

