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Final Report of the Task Force on Rail Transportation

Maine State Legislature

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Final Report of the TASK FORCE ON RAIL TRANSPORTATION

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EXECUTIVE SUMMARY

Resolve 2001, chapter 120 established the Task Force on Rail Transportation. Members included 7 legislators, 3 of whom were Senators and 4 of whom were members of the House of Representatives representing the Joint Standing Committees on Appropriations and Financial Affairs, Business and Economic Development and Transportation. Non-legislative members included a representative of the Maine Port Authority, a member representing railroad shippers, a member representing an airport integrated with the rail system, a representative of the Northern New England Passenger Rail Authority and a member representing a private railroad in Maine.

The Resolve charged the Task Force, in cooperation with the Maine Department of Transportation (MDOT), to develop a statewide rail policy and plan that integrates all transportation modes, to review current rail transportation policies and programs and to identify financial resources for rail. The Resolve provided funding for the Task Force from the State's Railroad Preservation and Assistance Fund.

The Task Force convened on August 9, 2002 and held 5 meetings with its last meeting on October 18, 2002. The Task Force heard presentations from and consulted with representatives from state agencies and other interested parties on issues surrounding freight and passenger rail service. Based on those presentations and discussions, the Task Force made the following recommendations:

<u>Recommendation 1.</u> The Task Force recommends that MDOT continue to acquire abandoned rail right-of-way to preserve rail corridors.

<u>Recommendation 2.</u> The Task Force recommends that the State leave the rail intact on any branch owned or acquired by the State. When MDOT, in consultation with the Regional Transportation Advisory Committee and regional economic planning entity, determines that a specific length of rail can be removed without a negative impact on a region or on future economic opportunities for that region, the Commissioner of Transportation shall seek review and approval of the Joint Standing Committee on Transportation prior to removal.

<u>Recommendation 3.</u> The Task Force recommends that MDOT maintain all State-owned rail line and rehabilitate State-owned lines according to a priority listing based on the condition of the line and the activity and potential activity on the line.

<u>Recommendation 4.</u> The Task Force recommends that fines collected for violations of the 100,000-pound weight limit on trucks be deposited in the Rail Preservation and Assistance Fund.

<u>Recommendation 5:</u> The Task Force recommends that 4 additional staff positions within MDOT be devoted to rail transportation.

<u>Recommendation 6:</u> The Task Force recommends that the statutory cap per crossing be raised to $2,500 and that $1,000,000 be allocated annually from the Highway Fund for reimbursement at the levels allowed in statute.

Recommendation 7. The Task Force recommends that MDOT, the Department of Economic & Community Development and the State Planning Office coordinate their activities to ensure that transportation improvements and potential use of both passenger and freight rail are considered during economic development activities. The Task Force recommends that the statutory duties of the Commissioner of Economic & Community Development be amended to include responsibility for this coordination.

Recommendation 8. The Task Force recommends that a Freight Transportation Advisory Committee be established in statute with criteria for membership and an advisory role similar to that of the existing Freight Transportation Advisory Committee convened by the Commissioner of Transportation. The Task Force recommends that MDOT facilitate communications between the RTACs (Regional Transportation Advisory Committees) and regional and state economic development initiatives.

Recommendation 9. The Task Force recommends that the U.S. Customs Service assign a customs agent to the Auburn intermodal facility to allow inspections to be conducted on site.

Recommendation 10. The Task Force recommends that the IRAP (Industrial Rail Access Program) account receive an annual appropriation of $1,000,000.

Recommendation 11. The Task Force recommends that all revenue received from the railroad excise tax imposed under Title 36, chapter 361 be deposited in the Rail Preservation and Assistance Fund.

Recommendation 12. The Task Force recommends that the total tax credit cap of $500,000 imposed under 36 MRSA §2621-A, sub-§ 3, ¶F be repealed allowing a railroad company to receive the full tax credit for which the company is eligible.

Recommendation 13. The Task Force recommends that Maine Revenue Services be directed to track the amount of use tax paid by railroads on fuel that qualifies for the tax refund under 36 MRSA §3218 and that this amount be deposited in the Rail Preservation and Assistance Fund.

Recommendation 14. The Task Force recommends that the Joint Standing Committee on Taxation review the statutory provision for taxes that apply to railroads operating in Maine, consider the impact of these provisions and recommend revisions to improve the viability of railroads operating in this State.

Recommendation 15. The Task Force urges MDOT to continue to pursue all sources of federal funds, including funds available for extending passenger rail service in Maine.

Recommendation 16. The Task Force recommends that upon termination of CMAQ (Congestion Mitigation and Air Quality) funding in December of 2004, the Legislature provide continuing funds to cover the deficit in NNEPRA's (Northern New England Passenger Rail Authority) operating budget.

Recommendation 17. The Task Force recommends that the Commissioner of Transportation develop priorities for rail projects within the context of regional transportation corridors.

I. INTRODUCTION

The Task Force on Rail Transportation was created after extensive discussions before the Joint Standing Committee on Transportation during the 120th Legislature. A brief history of the process before that committee is offered as an introduction to this report.

A. Legislative History – First Regular Session of the 120th Legislature

LD 881, Resolve Establishing the Blue Ribbon Commission on the East-West Rail Corridor was proposed in the First Regular Session of the 120th Legislature. Membership included: Legislators; the Commissioners of Transportation and Labor; the CEO of the Finance Authority of Maine; the Director of the Office of Tourism at the Department of Economic and Community Development (DECD); and representatives of aeronautics, railroad, small business, and manufacturers along the corridor. The Commission's duties were to include the examination of the problems and solutions associated with the east-west rail corridor. The Commission was to report back to the Second Regular Session of the 120th Legislature by November 1, 2001.

The Transportation Committee amended LD 881 to propose that the Transportation Committee, rather than the Blue Ribbon Commission, study the issue. The Committee amendment widened the scope of the study to include, with the assistance of the Maine Department of Transportation (MDOT), an examination of current and potential State polices to enhance the financial viability of rail service throughout the State. The bill died on adjournment but the Legislative Council authorized the Transportation Committee to study the issue during the interim.

The Transportation Committee met during the interim on October 9, 2001 to discuss rail transportation. Stakeholders, including the intended membership of the original Blue Ribbon Commission, were invited. The meeting was successful in that it brought parties with varied interests together to discuss common interests and the role of the State in Maine's rail system. In regard to the role of MDOT, the Committee requested that Transportation Commissioner John Melrose provide them with written comments. See Appendix C for the Commissioner's response. The Commissioner's response outlined key areas in which the State is active in rail transportation and outlined work that still needed to be done with the Legislature in further defining a statewide rail policy.

B. Legislative History – Second Regular Session of the 120th Legislature

There were still many unanswered questions regarding legislative guidance on Maine's rail policy, and the issue returned in the Second Regular Session of the 120th Legislature.

House Paper 1727 authorized the Joint Standing Committee on Appropriations and Financial Affairs to report out legislation regarding a task force on rail transportation and to provide funding for the task force. The Appropriations Committee reported out LD 2214, which was enacted as Resolve 2001, chapter 120.

Resolve 2001, chapter 120 established the Task Force on Rail Transportation and its membership and duties. The Resolve established that funding for the Task Force would come from the State's Railroad Preservation and Assistance Fund. The Resolve was passed as an emergency measure on April 11, 2002. See Appendix B for the text of the Resolve.

II. BACKGROUND

A. Recent History of Rail Service

1. United States

Deregulation. In the 1970's railroads throughout the United States were in financial trouble. Ten Class I railroads (railroads with annual gross revenues exceeding $50 M) representing 20% of the nation's rail miles were in bankruptcy. By 1978, the U.S. Department of Transportation estimated that the Class I railroads would experience losses of $13 and $16 billion during the forthcoming decade.[1] The decline in railroad companies' profitability is largely attributed to 1.) increasing competition from highways, waterways and pipelines, and 2.) an archaic federal regulatory system administered by the Interstate Commerce Commission (ICC). Between 1970 and 1980, Congress enacted several pieces of legislation moving towards deregulation of the rail industry. A few legislative highlights are offered here for background.

The Passenger Rail Service Act of 1970 created the National Railroad Passenger Corporation, Amtrak. Prior to the creation of Amtrak, the ICC required Class I railroads to provide intercity passenger service. Under this regulatory framework, passenger service was not profitable and was, in effect, subsidized by private freight operations, contributing to the rail industry's bleak outlook in 1970.

Passage of the Regional Rail Reorganization Act of 1973 and the Rail Revitalization and Reform Act of 1976, along with the transfer of passenger service to Amtrak, resulted in states becoming involved in rail planning. The states formed the American Association of State Highway and Transportation Officials (AASHTO) with a Standing Committee on Rail Transportation (SCORT).

Conrail. About the same time, the federal government created Conrail at a cost of $7.5 billion from six bankrupt carriers. As freight revenues declined, railroads had deferred maintenance, allowing tracks and equipment to fall into disrepair. The federal government recognized the national significance of this problem and so created Conrail. Funds were appropriated to rebuild tracks and maintain equipment. By the 1980's Conrail began its financial turnaround. By June 1981 it would no longer require federal investment and finished the year with a profit. In 1987 Conrail went public with what at the time was the largest initial public stock offering in the nation's

[1] A Report on State Programs for Light Density Rail Lines 1976 – 1995. February 1997. American Association of State Highway and Transportation Officials (AASHTO) Standing Committee on Rail Transportation (SCORT).

history. This returned the Northeast-Midwest rail freight system to the private sector as a for-profit corporation, as Congress had planned when it created Conrail. In 1997, the CSX Corporation and Norfolk Southern Corporation offered to buy Conrail and by June 1, 1999, had begun operating Conrail lines and facilities. While Conrail succeeded in rebuilding the railroad, the problem of the archaic regulatory system remained.

Staggers Act. The Passage of the Staggers Rail Act of 1980 recognized that railroads faced fierce competition for freight traffic from trucks and other modes, but that prior legislation failed to allow railroads to earn adequate revenue and compete effectively. Survival of the industry required that railroads have the ability to establish their own routes and rates. One of the greatest impacts of the Staggers Act is that it made lower rail rates possible. Since its passage, shippers and their customers have saved over $10 billion per year. Rail market share bottomed out at 35% in 1978, has trended slowly upward since, and is now more than 40%. These percentages are for inter-city freight based on ton-miles. The average rate of return on investment has risen from an average of 2% in the 1970's to 7% in the 1990's.[2] Although the rail industry still falls short of earning its cost of capital, the gap has narrowed.

The Staggers Act did not completely deregulate the rail industry. In addition to retaining authority over a variety of non-rate areas, the ICC retained the authority to set maximum rates or take certain other actions against railroads that were found to have abused their market power or engaged in anti-competitive behavior.

Passage of the ICC Termination Act of 1995 provided for succession by the Surface Transportation Board (STB) as the federal agency responsible for the economic regulation of railroads. The Federal Railroad Administration, an agency within the U.S. Department of Transportation, is responsible for railroad safety regulation.

2. Maine

Deregulation led to the revitalization of the regional and local railroad industry. The Canadian National spun off the St. Lawrence and Atlantic (SLA) and the Canadian Pacific spun off significant portions of the current Bangor and Aroostook (BAR) system. Presently, Maine is served exclusively by regional and local railroads.

Conrail Break-up. The sale and break-up of the Conrail system disintegrated a system that had been fully integrated over a 20-year period. The Conrail system was broken into two parts, and then the two parts were reintegrated into two different systems with disparate operating philosophies. This was an extremely complicated situation that had a spillover effect in Maine, as some rail shipments to states outside the northeastern U.S. experienced delays as they entered the CSX and Norfolk Southern systems.

[2] History of the Rail Industry - Impact of the Staggers Act. Association of American Railroads. 2002. (Found on the web at http://www.aar.org).

Mergers. When Canadian National and Burlington Northern Santa Fe (BNSF) announced a merger in late 1999, the STB declared a 15-month moratorium on mergers and began designing new rules for the merger process. The moratorium ended in June of 2001. Theoretically, the new rules, which have not been tested, should make mergers between large Class I railroads more difficult. Since Maine does not have any Class I railroads, the effect of these new rules is minimal. However, it may make Maine railroads targets, as mergers between large and small railroads will be relatively easier to accomplish in the future.

With downsizing complete, railroads have been looking to marketing and operational initiatives to improve profitability. The split-up of Conrail and the successful integration of that system into the CSX and Norfolk Southern systems is aiding Maine shippers, as they now have access to these two competing railroads via Guilford for east-west and north-south service.

State Acquisition. In November of 1985, Maine voters ratified an $850,000 bond issue to provide funds to acquire three branch lines that had been listed for abandonment. In 1987 the Legislature determined that a General Fund appropriation would be a better mechanism to fund these acquisitions and deauthorized the bonds. Since that time, the State has acquired almost 300 miles of right-of-way using a combination of State General Fund, General Obligation Bond, and federal highway funds totaling almost $12 million. See Appendix D for details.

Passenger Rail. Since 1987, the State has provided over $100 million in State and federal funding for track rehabilitation and station development for passenger rail. In addition, the State provides Amtrak $2 million annually in operating assistance.

Earnings for the recently established Amtrak Downeaster have exceeded expectations, and MDOT and the Northern New England Passenger Rail Authority are continuing to rehabilitate and develop rail, first where the demand is highest, but also looking at the entire state with the goal of creating a complete system.

B. Task Force Process and Summary of Meetings

The Task Force on Rail Transportation convened on August 9, 2002 and held 5 meetings with its last meeting on October 18, 2002. The Task Force heard presentations by and consulted with representatives from state agencies and other interested parties on issues surrounding freight and passenger rail service. Major topics discussed are summarized in this section. The agenda for each meeting and highlights from presentations and testimony are found in Appendix E.

1. Bangor and Aroostook Railroad (BAR). The fate of the Bangor and Aroostook Railroad (BAR) has been a central focus of rail discussions in Maine for some time. This was true in the Task Force as well. At the August 9th meeting, Fred Yocum, then-President of BAR, summarized for the Task Force the ongoing bankruptcy proceedings of the railroad. Mr. Yocum explained that railroad bankruptcies differ from other bankruptcies in that it is nearly impossible to totally liquidate railroad assets and the public interest must be considered in resolving railroad bankruptcy cases. Since Mr. Yocum's summary, the Bankruptcy Court has signed an order authorizing the sale of BAR to Rail World, Incorporated pursuant to Section 363 of the Bankruptcy Code. In addition to the bankruptcy proceedings, the BAR case has been complicated by the jurisdiction of the Surface Transportation Board (STB) and that board's actions. The trustee for the BAR case, Jim Howard, rejected certain contracts with the Canadian National Railroad (CN), which the trustee was entitled to do under bankruptcy law. However, the STB must make a final determination regarding whether trackage rights continue to exist. Although authorization of the sale of the railroad has been approved, these outstanding actions still require resolution. Whatever happens procedurally, the STB still must approve the ultimate sale of the railroad.

Mr. Yocum further explained that throughout bankruptcy, the BAR never ceased operating and servicing its shippers; however, he acknowledged that the railroad is not profitable as it is currently operated. Mr. Yocum identified two areas, in addition to any legislative policy recommendations, in which the State can help the railroad as it transitions to new ownership.

- The State can provide rehabilitation money over a certain period of time to any buyer and can divert some of the money earmarked for this purpose next year to help prepare the railroad for winter operations this year. (Since this recommendation, the Bankruptcy Court has authorized that such money may be diverted for winter preparations.)

- The State can help cushion the blow to employees who lose jobs as a result of the sale and new operations by providing a bridge for insurance and job training. It was originally estimated that approximately 100 persons in the Bangor area, Aroostook County and the Brownville/Derby/ Milo area would lose their jobs.

In addition to the other complexities of the BAR case, there have been a number of scheduling challenges: affiliate companies filed for bankruptcy (these cases were consolidated by the Bankruptcy Court); existing differences between Canadian and U.S. law presented procedural issues; and parties involved have had difficulties making acceptable deals with the railroad's two largest creditors. No one wants the railroad to be insolvent at the end of the day.

Finally Mr. Yocum identified four changes that he believes need to occur for the BAR to operate profitably.

(1) The railroad needs to be properly capitalized.

(2) Different employment rules must be applied (using common railroad industry standards; this means that fewer people would be employed by the railroad.)

(3) The railroad needs to establish different and cooperative working relationships with other railroads.

(4) The railroad needs to increase its traffic and volume shipped. Currently there is too much track for the amount of traffic the railroad has.

At the October 18th meeting, Edward A. Burkhardt, the President of Rail World, Inc. and its subsidiary, Montreal, Maine & Atlantic Railway (MMA), appeared before the Task Force to talk about MMA's success in acquiring substantially all of Bangor and Aroosrook's rail assets and its plans for operation. December 1, 2002 is the tentative date for closing on the acquisition. MMA is in the process of hiring its workforce and changing out its fleet of rolling stock, locomotives and leased and owned railroad cars. Mr. Burkhardt explained that although the number of employees will decrease, with employees over age 60 opting for retirement, the actual number of employees terminated will be less than 30. MMA intends to maintain a central office in Bangor and to make improvements to upgrade the Derby shop facility. Mr. Burkhardt sees potential for work at the Derby shop to expand beyond maintaining MMA's rolling stock to doing contract work for other railroads. Plans are for Millinocket to be the operational center for MMA and to activate fueling facilities there.

Mr. Burkhardt spoke of the need to first stabilize traffic at BAR's level in the year 2000. Since 2000, traffic has fallen off by 20%. MMA is working with shippers to assure them that a solvent company will be operating the rail lines and will accommodate their needs. In response to customers' concerns, MMA is planning to run smaller trains more frequently. Rail World has experience working with economic development initiatives in other regions and understands the mutual benefits of business expansions and start-ups.

As part of the larger plan for the BAR lines, MMA recently acquired certain lines from Canadian Pacific Railway that were previously leased to Quebec Southern Railway. This facilitates a major interchange connection with CPR and marketing joint MMA-CPR service through the Montreal gateway.

MMA is awaiting a decision by the Surface Transportation Board on BAR's sale of the Madawaska - Van Buren line to Canadian National Railway. The bankruptcy trustee has rejected the sales contract but STB permission is necessary to cancel CN's track rights. MMA sees the contract between CN and BAR as an obstacle to MMA's preferred plan for the BAR trackage in Maine.

2. Calais Branch - MDOT's Perspective. At the August 30th meeting, Commissioner John Melrose gave the Task Force an overview of the MDOT's proposed plans for the Calais Branch. The department intends to:

- Preserve rail from Calais to Ayers Junction;
- Retain the State-owned rail corridor between Ayers Junction and Perry. The rail has been removed. (The State does not own a corridor from Perry to Eastport);
- Remove the rail between Ayers Junction and East Machias (24 miles) and allow recreational use (e.g., ATV's, snowmobiles, bicycles and hiking) along that corridor; and
- Keep rail in place between East Machias and Brewer.

The Commissioner recognized that one key objective for the region is for the Port of Eastport to become more active in national and international markets. He explained that the most effective approach to accomplish that objective still needs to be determined. Eastport's marshalling capacity and the ability to handle containers must be considered.

The Commissioner noted that the department and the Task Force must ask themselves many questions related to rail planning before they move forward with plans for the Calais Branch. Who are the potential users of rail in the region? What is the most efficient plan for transporting and warehousing freight?

New Brunswick Southern Rail provides rail access from Calais to the north and back into Maine at Vanceboro. If the Calais to Brewer Branch is reestablished, will the 2 lines be able to compete and will shippers benefit from the competition? Does it make sense to split traffic that has difficulty supporting one line? MDOT anticipates that the Calais to Brewer branch would need an operating subsidy in addition to capital investments.

Eastern Maine Rail Development Commission's Perspective. Skip Rogers and Dianne Tilton, members of the Eastern Maine Rail Development Commission (EMRDC), urged the Task Force to implement the recommendations in a 1998 report to the Maine Legislature made by the Commission to Study Establishing a Rail Authority to Develop Rail Service from Calais to Eastport and Brewer. The specific recommendations include:

- Rehabilitating the rail line from Brewer to Ellsworth to Federal Rail Administration (FRA) Class III conditions (suitable for speeds up to 40 mph) to allow passenger service;

- Rehabilitating the rail line from Ellsworth to Cherryfield to FRA Class I conditions (suitable for speeds up to 10 mph) for freight service;

- Rehabilitating the rail line from Calais to Ayers Junction and reconstructing the rail connection from Ayers Junction to Eastport; and

- Rehabilitating the entire Calais Branch line to FRA Class II conditions (suitable for speeds up to 25 mph) by 2010.

Mr. Rogers and Ms. Tilton stressed Eastport's potential as the deepest port on the east coast. To realize its potential, they believe that a rail connection is needed. Increased activity at the port would have a significant economic impact for Washington County and the entire state. Mr. Rogers and Ms. Tilton explained that reactivating the rail line between Calais and Brewer would benefit natural resource based industries such as gravel mining and peat moss harvesting. Trucking costs often prohibit the marketing of these products now.

Mr. Rogers and Ms. Tilton also noted that entrepreneurs in tourism have expressed interest in operating rail excursions in the Downeast area. There are short line freight operators who want to use the line. EMRDC promotes investment in the rail system as a catalyst for growth in existing businesses and new business start-ups and contends that sacrificing a portion of the rail line for recreational use is not in the economic best interest of Washington County.

Chris Spruce, Community Development Coordinator for the Sunrise County Economic Development Council, supported the comments of Mr. Rogers and Ms. Tilton and recommended the following specific actions:

- Continuing State custodial management of the Calais Branch;

- Passing a legislative resolution supporting the recommendations of the 1998 Commission to Study Establishing a Rail Authority to Develop Rail Service from Calais to Eastport and Brewer;

- Empowering EMRDC as a consultant to MDOT for the Calais Branch; and

- Securing bond money for the Phase I improvements to the line as outlined in the 1998 Commission's recommendations.

3. Rail abandonment. Allan Bartlett spoke about the process of rail abandonment. When a railroad abandons a line of track, it is only giving up its common carrier obligations along that line. Federal regulations provide that a railroad with common carrier obligations must provide a rate and service quote to any shipper on a line over which the railroad operates. Abandonment usually occurs because the rail is losing money.

If there are existing shippers using the rail line, the process for abandoning the railroad's obligations takes 6 months. Under this process, the railroad must file a "Notice of Intent to Abandon" at least 15 days prior to filing the abandonment application. During the period covering the application, persons and entities may protest the abandonment or subsidize continued operations for up to one year or longer if both parties agree. The Surface Transportation Board (STB) will grant abandonment if it finds that public convenience and necessity permit the abandonment. The STB can deny abandonment if it determines that public convenience and necessity would be adversely impacted.

If cars have not used the rail for 2 years, abandonment may follow an expedited process, which takes approximately 60 days. Other criteria for the short process include provisions for overhead traffic to be rerouted over other lines, the absence of any complaints filed by a shipper or public agency and notification to the appropriate state and federal agencies of the intent to abandon.

In either scenario, the railroad must file a notice of consummation within one year of the STB decision. This signifies that the railroad has exercised the authority granted to it by the STB. If the railroad fails to do this, the abandonment authority automatically expires and the railroad must file again.

4. Funding sources. Deputy Commissioner Jane Lincoln gave the Task Force an overview of public funding sources for rail projects. She noted that most funds may be used only for capital investments and not for operating expenses.

- The department receives $150,000 annually from excise taxes paid by railroads.
- The Industrial Rail Access Program (IRAP) was funded once through a MDOT bond and provided sidings at plants to allow for movement on and off rail cars. This program had great demand and was very successful.
- $23 million was received as one-time federal money from the Taxpayer Relief Act and was used to prepare for passenger rail service to Portland.
- Rail improvements are eligible for federal money from the Congestion Mitigation and Air Quality (CMAQ) funds and the U.S. DOT Transportation Enhancement Program.
- The Federal Rail Administration Local Rail Freight Assistance Program has provided money in the past for freight track improvements only, but this program has not been funded since 1995.
- Other federal sources may be tapped for money as well, including the Department of Housing and Urban Development (HUD), the Economic

Development Administration (EDA) and the Environmental Protection Agency (EPA).

- The National Corridor Planning and Development Program (NCPD program) and the Coordinated Border Infrastructure Program (CBI program), also known as the combined Borders and Corridors Program, are discretionary grant programs funded by the Federal Highway Administration (FHWA). The Borders and Corridors Program provides funding for planning, project development, construction and operation of projects that serve border regions near Mexico and Canada and high priority corridors throughout the United States.

5. United States Customs Service. Jeff Walgreen and Melvin Montpelier from the United States Customs Service in Portland discussed Customs procedures for rail processing of freight entering the United States by rail through Maine. Customs receives paperwork on rail shipments entering the U.S. through Jackman or Vanceboro several hours before a train arrives in either of those towns. A Customs inspector is present to examine the cars as they arrive. Inspectors check the seals of the cars and may stop trains to look for discrepancies between the shipping manifest and the contents. Approximately 100 railroad cars a day cross at Jackman on Canadian American Rail. It takes between 20 minutes and 1 hour for Customs to process a train in Jackman. In Vanceboro, trains on Eastern Maine Rail average 55 cars and are processed in 15 to 25 minutes. In general about half of the cars are empty.

Shippers of overseas containers may determine where those containers will be inspected. Containers arriving on the Pacific coast and transferred to rail for transportation to the Northeastern U.S. regularly cross Canada and arrive at St Lawrence and Atlantic's intermodal facilities in Auburn, Maine. Here the containers are loaded onto trailers to be trucked to their U.S. destination. The Customs office in Portland receives a train manifest specifying the number and content of the cars 24 hours before their arrival in Auburn. Approximately 2% of the containers are trucked to either Portland or Saco for Customs inspection prior to continuing to their destination.

Customs also deals with passenger trains in Maine. Acadian Railway Company operates a tourist excursion train from Montreal to Saint John, New Brunswick, with a stop over in Greenville. Other train excursions are planned for the region during the fall foliage season. These trains are well documented with passengers buying tickets in advance, and they do not present a concern to Customs.

Maine railroads appear to have a good working relationship with the Customs Service; however, the Task Force heard requests for additional Customs resources, including an inspector in Auburn.

6. Passenger Rail. Tracy Perez, a Policy Specialist with MDOT's Office of Passenger Transportation, spoke of the success of Amtrak's Downeaster service between Portland and Boston and MDOT's continuing rehabilitation of rail and development of passenger service. Initial efforts are concentrated along corridors with the highest demand. The department's passenger transportation plan envisions a statewide multimodal modal system including rail, bus, air and marine connections. A detailed summary of MDOT passenger rail initiatives is found in Appendix F.

Northern New England Passenger Rail Authority (NNEPRA). At the August 30th meeting, Michael Murray, then-Executive Director of NNEPRA and a member of the Task Force, provided the Task Force with the results of a recent survey of passengers on Amtrak's Downeaster. NNEPRA, established in 1995 as the State's steward and operations coordinator for passenger rail service, has been pleasantly surprised by the huge success of the Downeaster. Mr. Murray stressed that NNEPRA functions as a business and emphasizes customer satisfaction. NNEPRA is constantly looking for ways to enhance revenue, such as soliciting advertising, and to make traveling by train more convenient such as offering interchangeable bus-train tickets.

Mr. Murray noted that a rail connection between North and South station in Boston, which would help business travelers and commuters, appears doubtful at this time because of its high cost -- an estimated $3 billion. However, discussions are ongoing about a possible rail link to Lowell and Worcester, Massachusetts as a more cost-effective connection to the larger national rail system.

At the October 18th meeting of the Task Force, John Englert who succeeds Mr. Murray as Executive Director of NNEPRA, provided comments on several topics and a performance and financial summary as the Downeaster approaches its first anniversary; service began December 15, 2001. The text of Mr. Englert's remarks is found in Appendix G.

Commissioner Melrose, Mr. Englert and others commented on the benefits of investing in rail infrastructure. Federal funds are available for capital improvements to accommodate passenger rail service. Public funds channeled to the Boston-Portland rail corridor have resulted in significant improvements to privately owned track and many suggest to the freight service operating on that track. David A. Fink, Executive Vice President of Guilford Rail System, advised the Task Force that, while work was proceeding on the line to accommodate Amtrak's venture into Maine, Guilford experienced extensive delays in its freight rail operations, and in some cases, shippers used trucks instead of rail.

Mr. Englert acknowledged inherent tensions between freight and passenger services operating on the same track. The Downeaster now makes 4 round trips daily between Portland and Boston with 8 passenger stations and shares the Guilford-owned track with 12 scheduled freight trains. The corridor between

Portland and New Hampshire is single track with 3 segments of controlled passing rail. The ability of both passenger and freight to operate on time and with exemplary safety records indicates an effective working relationship.

7. Intermodal Facilities (IM). Ed Foley, Vice President of Sales & Marketing for St. Lawrence and Atlantic Railroad (SL&A) and Roland Miller, Director of Development for the City of Auburn, spoke to Task Force members at the Auburn Intermodal Facility (IM). Members watched a "Piggy Packer" load containers on an outbound rail car and learned that the IM facility at Auburn is the result of a private-public partnership that greatly increases the ability of the area to attract businesses. SL&A connects with Canadian National (CN) offering SL&A's clients connections throughout the world via rail and deep-water ports. SL&A provides double-stack container service for global transportation companies such as Zim Israel Navigation Company and APL, Ltd. L.L. Bean and FMC Corporation with a chemical manufacturing facility in Rockland are two Maine companies using the Auburn IM services.

Factors SL&A considered in locating its intermodal facility were acreage available to accommodate containerized cargoes and mounted units, three working tracks with capacity for expanding track and other necessary infrastructure in place, including trucking, nearby warehouses, and a connection to a Class I railroad. Proximity to an airport is another factor considered when locating intermodal facilities.

Keys to the Auburn IM's success include the fact that SL&A's rail line connecting with CN has the 22' 6" clearance needed for double stacking hi-cube containers and SL&A has developed a diverse mix of clients to smooth out fluctuations in demand for any one industry.

Comments at Task Force meetings, although generally supportive of IM facilities, cautioned about developing additional IM facilities in Maine at this time. In addition to the Auburn facility, there are IM facilities in Waterville and Presque Isle. A balance in inbound and outbound freight is necessary for IM facilities to be successful. Maine, in general, has more outbound freight. This is particularly true for less densely populated areas of the state. IM facilities require large capital investments. The number and location of IM facilities within the state will be critical to the success of each facility.

8. Shippers Comments. Many shippers shared with the Task Force their observations about rail services in Maine. Observations included comments on infrastructure, freight traffic, intermodal facilities, routes, state planning and macroeconomic issues. See Appendix E Meeting Summaries, Meeting # 3 for a listing of their comments and suggestions.

9. Role of the Department of Economic and Community Development (DECD). Alan Brigham, Director of the Office of Policy and Administration at the

Department of Economic and Community Development stated that it is impossible to say that rail is essential to the economic development of Maine without looking at the big picture. If the State builds railroads, there is no guarantee that new businesses will come. Higher value products produced by biotechnology, information technology and electronics businesses do not use rail. However, Maine's economy is still largely natural resource based. In order to determine the impacts of rail on economic development, more analysis is required and that effort is ongoing. Mr. Brigham believes that if it becomes clear that the demand for rail exists, speculative development may be appropriate, but only if the necessary resources are in place to back it up and a maximum return is ensured.

DECD has had limited involvement with rail projects over the past several years. Mr. Brigham cited DECD's involvement in 2 specific projects with a rail component. In November 1996, DECD approved the City of Biddeford's Tax Increment Financing (TIF) development program to assist in the relocation of the J.J. Nissen Baking Company from an obsolete plant in Portland to new facilities near the Biddeford Industrial Park. A requirement of this relocation was the installation of a 2,200-foot rail spur from the main line to the new facility to deliver raw materials. Biddeford provided $950,000 in financing for the spur over three years, securing a nearly $35 million investment from the company. In 1995, DECD provided a $400,000 Economic Development Infrastructure Grant to Mattawamkeag to assist with the installation of rail siding to the Aroostook-Bangor Reload, a railroad tie milling facility.

10. Air transportation as Part of a Multimodal System. Rebecca Huff from the Bangor International Airport (BIA) and Jeff Schultes, Airport Manager for Portland International Jetport, spoke about the importance of multimodal facilities. Mr. Schultes shared with the Task Force examples of both large and small airports that have successfully developed multimodal facilities. Appendix H provides information on the shuttle service to and from Portland Jetport. Ms. Huff explained that passengers using BIA had increased by 11% in the past year and that the airport is looking for ways to divert that traffic off the roads. Rail service is available at BIA, but it is not operational at this time. BIA is considering the potential for cargo transport and is working with Canadian Rail to explore further tourism options in the region.

III. FINDINGS AND RECOMMENDATIONS

The Task Force on Rail Transportation was established to provide a legislative forum to review the status of rail transportation in Maine and to make recommendations regarding a policy for a comprehensive and integrated transportation system. The Task Force finds that Maine needs an efficient and reliable statewide rail system to preserve and enhance the viability of existing businesses and to attract and expand market opportunities for additional businesses.

Beyond the direct and indirect economic benefits of job retention and creation, the potential for other public benefits from an improved rail network is significant and far-reaching. With an increased reliance on rail, particularly for freight transport, we can anticipate less traffic congestion on our roads, lower pollution emissions, reduced highway maintenance costs and improved air quality. These potential benefits must be considered when developing a statewide transportation plan.

In the last half of the 20th century, public funding and staff resources at MDOT dedicated to rail transportation have been dwarfed by expenditures and resources dedicated to highway projects and highway related activities. Continuing to concentrate capital improvements in and expansion of the highway system perpetuates a disproportionate reliance on this mode of transportation.

Improvements to rail service and the rail infrastructure in Maine are essential to developing and implementing a statewide plan that optimizes the use and integration of all modes of transportation. In reaching this conclusion and to meet this end, the Task Force makes the following specific findings and recommendations.

A. Preserve Rail Corridors

The Railroad Preservation and Assistance Fund (RPAF) established in 23 MRSA §7103 may be used for a variety of purposes, including "to acquire, lease and maintain rail lines when these actions are determined to be in the best interest of the State." The State has acquired approximately 300 miles of railroad right-of-way since 1987; 121 miles are currently active through leases and operating agreements with 2 short-line railroad operators.

Table 1
State-Owned Rail Lines
October 2002

In Service Branch	**# of Miles**	**Estimated Annual Maintenance Costs ***
• Rockland Branch	57.0	$ 570,000
• Lower Road	34.0	$ 340,000
• Belfast & Moosehead Line	30.0	$ 300,000
Subtotal	**121 miles**	**$1,210,000**
Non-Operating Branches		
• Calais Branch	126.0	$ 252,000
• Mountain Division	40.0	$ 80,000
• Lewiston Lower Road	9.5	$ 19,000
• Union Branch	2.0	$ 4,000
Subtotal	**177.5**	**$ 355,000**
Total	**298.5**	**$1,565,000**

* Calculated by using $10,000,000/mi/yr for in-service branches and $2,000/mi/yr for non-operating branches. These calculations reflect the dollar amounts needed to maintain State-owned rail lines, but are not currently available.

The Task Force finds that it is in the best interest of the State for MDOT to preserve rail corridors and makes the following recommendation.

<u>Recommendation 1.</u> The Task Force recommends that MDOT continue to acquire abandoned rail right-of-way to preserve rail corridors.

<u>Recommendation 2.</u> The Task Force recommends that the State leave the rail intact on any branch owned or acquired by the State. When MDOT, in consultation with the Regional Transportation Advisory Committee and regional economic planning entity, determines that a specific length of rail can be removed without a negative impact on a region or on future economic opportunities for that region, the Commissioner of Transportation shall seek review and approval of the Joint Standing Committee on Transportation prior to removal.

In particular, MDOT should suspend its plan to remove rail between East Machias and Ayers Jct. to accommodate recreational use along this 24-mile segment of the Calais Branch rail corridor. The rail should remain in place and the entire corridor should be preserved for possible reactivation in the future. With removal of the rail, recreational use by hikers, bicyclists, snowmobilers and ATV riders is likely to increase whether or not the segment is actively managed for recreation. A sense of ownership is likely to develop among the recreational users. This can create conflict and a significant obstacle to reactivating a rail line.

Once tracks are removed, it is likely that future opportunities for rail-based or rail-supported business are gone. Preserving rail corridors should include retaining existing rail.

<u>Recommendation 3.</u> The Task Force recommends that MDOT maintain all State-owned rail line and rehabilitate State-owned lines according to a priority listing based on the condition of the line and the activity and potential activity on the line. Section D recommendations 10 and 11 provide funding for this purpose.

Estimated annual costs of maintaining branches currently owned by the State are presented in Table 1 above. In addition, equipment needed to perform the maintenance on continuous welded rail has a price tag of roughly $1,000,000. MDOT should explore the cost and feasibility of leasing this equipment.

MDOT estimates the cost of rehabilitating rail to FRA Class II standards is between $500,000 and $800,000 per mile depending on the condition of the rail. FRA Class II standards allow for freight to travel at 25 mph and passenger trains at 30 mph.

B. Promote More Equitable Distribution of Public Resources between Highway and Rail

Since the beginning of the Interstate Highway System, transportation planning and funding at the federal and state level have emphasized highway transportation. The Task Force is charged with developing, in cooperation with the Commissioner of Transportation, a "rail transportation policy and plan that integrates rail, highway, marine and air transportation into an efficient and cohesive system for the entire State." To develop policies and distribute funds in a manner that truly promotes transportation efficiencies, policymakers must examine the relative costs of various modes in terms of shipping rates, fuel consumption and air emissions and who pays those costs.

1. Highway Cost Allocation

The degree to which highway users do or do not cover the cost of constructing, rehabilitating and maintaining state highways is of interest to the Task Force. In the past, MDOT has undertaken highway cost allocation studies to assess the appropriateness of various registration and permit fees paid by highway users. A highway cost allocation study provides the clearest picture of how different vehicle classes are or are not paying their full share of the costs attributed to their use of our highway system.

The last cost allocation study done in Maine was completed in 1989. This study was an intensive effort requiring the full time services of several MDOT staff people for a period of 18 months at a cost of over $150,0000. The study considered the broad range of highway impact costs caused by trucks and automobiles and compared them to their revenue contributions to determine whether each vehicle class was overpaying or underpaying its share of cost responsibility.

In 1989, MDOT updated a 1982 Highway Cost Allocation study and reported to the Legislature. The study found that single unit trucks, especially four axle trucks, and 6 axle combination trucks significantly underpaid their cost responsibility. Automobiles, small trucks and 3, 4 and 5 axle combination trucks were at equity or slightly overpaid their cost responsibility. The study recommended a number of mechanisms to improve equity, including increasing commodity permit fees, instituting dual registration systems that would charge single unit trucks higher fees than combinations and increasing the differential between diesel and gasoline taxes. To date, none of these recommendations have been adopted. Commodity permit fees were abolished not long after the study was completed.

Since 1989, there have been several changes in highway use, vehicle miles traveled, truck fees and other elements that influence a determination of cost responsibility. A new cost allocation study would be needed to most accurately reflect current conditions. However, at the request of the Task Force, MDOT provided estimates of costs and contributions made by automobiles and 5 axle combination trucks using Maine's highways. See Table 2 below for simplified estimates of inferred costs and contributions and assumptions made in developing these estimates. The cost responsibility rates used in Table 2 reflect conditions that existed during the Study's base period of 1986-1987. Current conditions may be different than those that existed during the base period.

Table 2
Estimates of Highway Cost Incurred and Revenue Received by Vehicle Type
FY 2002-2003 Biennium

	Automobile/Small Truck	5-Axle Combination Truck
Revenues received per vehicle (registration fee and fuel tax paid)[1.]	$783	$4,681
Cost responsibility per vehicle[2.]	$498	$6,398
Revenue minus Cost	+$285	-$1,717

Note: Due to time constraints, this simplified analysis disregards the use of the Maine highway system by out-of-state vehicles, which also impact highway system needs. The revenues received and cost responsibility factors used in this table do not include Motor Vehicle Excise Taxes that were paid to municipalities rather than to State entities.

1. Revenue for an automobile and small trucks was based on a 21.0 miles per gallon fuel consumption rate and registration at $25 per year. Revenue for a 5-axle truck was based on a 5.5 miles per gallon fuel consumption rate and registration at 80,000 pounds gross vehicle weight. Both vehicles types are assumed to drive 35,000 miles per year on Maine highways.

2. Funding needs were based on an administrative cost estimate and MDOT's legislative request for FY 2002-03. The funding need total was then allocated to vehicle classes based upon vehicle class cost responsibility percentages from the 1989 Highway Cost Allocation Study.

2. Maximum Allowed Truck Weights

Members of the Task Force are extremely concerned that trucks routinely operate on state highways and other public roads in violation of laws restricting the weight hauled. During the 1st session of the 120th Legislature, Public Law 2001, chapter 267, An Act to Protect Highway Travelers and Maine's Highway System by Increasing Fines on Excessively Loaded Trucks, was enacted with an effective date of January 31, 2002. While the fiscal note on the bill anticipated $1,000,000 in increased fine revenue to the Highway Fund, revenues from fines for weight violations have trended down since enactment of the legislation. The ultimate impact of the increased fines in deterring weight violations has not yet been determined and will depend largely on the law enforcement effort. Fine information is collected routinely from the State Police as part of MDOT's annual Vehicle Size and Weight Report to the Federal Highway Administration. Table 3 presents this information for the past 3 years.

Table 3
Truck Weight Violation Summary

VIOLATION	Oct. '99 – Sept. '00	Oct. '00 – Sept. '01	Oct. '01 – Sept. '02[i]
Single Axle	615	252	46
Tandem Axle	488	200	283
Triaxle	341	294	168
Total Axle Weights	**1444**	**746**	**497**
Gross Vehicle Weight[2]	1214	792	615
Aggravated Gross Vehicle Weight[3]	113	91	60
Total Gross Vehicle Weights	**1327**	**883**	**675**
Bridge[4]	**318**	**52**	**9**
Total Violations	**3089**	**1681**	**1181**
Total Fine Amounts - All Weight Violations	**$1,034,259**	**$792,402**	**$853,185**

[1] The State Police attribute the reduced number of weight violations during this time period to the post-9/11 priority assignment of State Police personnel for hazardous material inspections and homeland defense issues.
[2] A gross vehicle weight violation means that the weight in pounds of the vehicle when empty plus the weight of the load carried exceeded the allowable gross vehicle weight.
[3] An aggravated gross vehicle weight violation means that the gross vehicle weight exceeded the allowable gross vehicle weight by 20%.
[4] Violations are on interstate bridges only.
SOURCE: Maine Department of Public Safety, Commercial Vehicle Enforcement Unit, November 2002.

MDOT currently has a weigh-in-motion (WIM) program with twelve active sites around the state. Data is being collected on the weight of different truck types and the percentage that are overweight at the various sites. This data is used primarily for planning purposes.

In another effort to improve compliance with Maine's weight laws and at the direction of the Legislature, MDOT submitted a report to the Transportation Committee in January 2002. The "Report On Holding Shippers Responsible for Overweight Truck Violations" included draft legislation that proposed holding shippers responsible for weight violations based upon bills of lading and other shipping documents. Under the draft proposal, a law enforcement officer would make the determination of shipper responsibility based upon the vehicle type and the vehicle's payload amounts in excess of statutorily set limits. The draft legislation included a provision that the determination of shipper liability would not relieve the motor carrier of responsibility for weight violations. The Transportation Committee did not report out the draft legislation proposed by MDOT as a bill for legislative action.

3. Potential Impact of Shifts from Highway to Rail

The Maine studies cited do not directly address the equity of public investments in truck transport as compared to rail transport. However, it may be argued that those commercial trucks types that are underpaying their cost responsibility relative to their consumption of public highways are, in effect, receiving a public subsidy that has implications for truck versus rail transport competition. Other states have attempted to quantify the potential benefits of rail by estimating the cost of diverting rail freight to highway trucking or estimating the savings realized by diverting highway traffic to the rails.

A March 2002 study by Kansas State University found that the added pavement damage cost to the State of Kansas caused by diverting grain shipments from short line rail to truck was 17 cents per truck mile.[3] A Washington State study projected costs incurred if the freight rail system ceased operations. The study estimated the number of trucks that would be added to the highway system, additional hours of delay experienced by motorists and delay related costs, the increase in traffic-related accident costs, additional highway capacity needed to mitigate the effects of congestion and the increased highway resurfacing costs. The Executive Summary from this study report is found in Appendix I.

A report by the Transportation Research Board provides a comparison of shipping rates, fuel consumption rates and emissions produced by 3 modes of transportation – barge, rail and truck. This information is reproduced in Table 3. Comparisons of freight capacity are found in Appendix J.

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[3] "Impact of Kansas Grain Transportation on Kansas Highway Damage Costs", March 2002, Kansas State University, Department of Economics. Report No. KTRAN:KSU-01-5.

Table 4

Transportation Research Board (TRB)

Comparison of Freight Modes

July 2002

Shipping Rates		**Fuel Consumption Rates**		**Emissions (lbs.) Produced in Moving 1 Ton of Cargo**			
Mode	***Cents per ton-mile***	***Mode***	***Ton-miles per gallon***	***Mode***	***Hydrocarbon***	***Carbon Monoxide***	***Nitrous Oxide***
Barge	0.97	Barge	514	Towboat	0.09	0.2	0.53
Rail	2.53	Rail	202	Rail	0.46	0.64	1.83
Truck	5.35	Truck	59	Truck	0.63	1.9	10.17
SOURCE: River Transportation Division for Planning and Research Division, Iowa Department of Conservation, U.S. Army Corps of Engineers, Emissions Control Lab, Environmental Protection Agency							

The Office of Freight Transportation is proposing a study as part of MDOT's 2004-2005 Biennial Transportation Improvement Program to determine potential benefits to the State from a program designed to shift a portion of highway freight to the rail mode. The study would entail analyzing current modal choice factors and identifying highway freight most suitable for a shift to rail. The study would outline the improvements and investments needed in rail infrastructure for shippers to realize an advantage by using rail rather than highway freight. Potential benefits to the State include reduced annual highway maintenance costs and reduced capital highway costs, both resulting from extending the average lifespan of the highway system. Secondary, and less easily calculated benefits would include reduction in the consumption of fossil fuels, reduction in air emissions, reduction in congestion and the related cost to highway travelers due to delay. The study would examine costs and benefits and determine if a net benefit would accrue from a modal shift.

State policies should recognize the important role railroads could play in containing highway costs. In recommendation 4, the task force acknowledges the negative impact of overweight trucks on the condition of our roads and on highway safety and the need to fund improvements in our rail systems to promote rail as an alternative mode.

Recommendation 4. **The Task Force recommends that fines collected for violations of the 100,000-pound weight limit on trucks be deposited in the Rail Preservation and Assistance Fund.** (See section D on funding sources.)

More staff resources are also needed to promote improvements in rail in Maine. Currently there are 2 positions in the Maine Department of Transportation that are devoted entirely to rail. The position of Rail Director- Logistics & Operations is within the Office of Freight Transportation and a technician position is within Bureau of Maintenance & Operations. The Director of the Office of Freight Transportation is responsible for all freight programs in the department including rail, motor carrier, marine and airfreight. Within the Office of Passenger Transportation, one policy specialist is assigned to surface transportation programs including passenger rail and bus.

<u>Recommendation 5.</u> The Task Force recommends that 4 additional staff positions within MDOT be devoted to rail transportation.

The task force supports including the following positions in the next biennial budget.

1 Technical Assistant	Bureau of Maintenance & Operations
1 Passenger Rail Planner	Office of Passenger Transportation
1 Technical Assistant	Bureau of Project Development
1 Professional Engineer	Shared by the Bureau of Maintenance & Operation and the Bureau of Project Development

Railroad companies are required to maintain crossings and crossing protection devices where public roads and railroads intersect. Under 23 MRSA §7230, MDOT is authorized to reimburse railroad companies up to 50% of their annual cost of maintaining these crossings with a cap of $1,500 per crossing and $2,500 per grade separation bridge. Funding for the reimbursement comes from the Highway Fund. Originally funded at $1million per year, the highway budget has provided $610,000 for the last several years. MDOT receives invoices totaling approximately $740,000 annually. Railroads have not been reimbursed the maximum allowed under statute but have received a prorated reimbursement based on the amount of money available and the invoices received. A higher dollar cap and reimbursement to the cap would assist the railroads in maintaining and improving signals at railroad crossings. The railroads would still be responsible for 50% of the annual cost. It is in the interest of the motoring public that these crossings be well maintained.

<u>Recommendation 6.</u> The Task Force recommends that the statutory cap per crossing be raised to $2,500 and that $1,000,000 be allocated annually from the Highway Fund for reimbursement at the levels allowed in statute.

C. Consider the Rail System during Planning and Economic Development at the State, Regional and Local Levels

The task force heard compelling testimony from many shippers regarding the importance of rail to their businesses. Maine's natural resource based industries are dependent on low cost, high volume transportation. A report published in November 2001 entitled "How to Retain Businesses in Maine- the Interim Report of the Mature and Dominant Industries Project" provides insight into the status of Maine's dominant industries and the type of assistance needed. In a survey conducted as part of that Project, businesses were asked "What types of business retention programs would be most valuable in keeping your company viable and healthy?" Fifty three percent of respondents checked transportation improvements. The only suggested responses receiving a higher percentage of responses were tax related programs at 65% and workforce training financing at 61%.

A 1995 Legislative Commission to Study the Future of Maine's Paper Industry included the following findings with regard to transportation.

- The state is deficient in all three basic modes of transportation (i.e., highways, rail, and ports).

- Rail should be the number one priority for state action in that it offers safety, economical, and environmental advantages over highways, could be accomplished with the least state funding and is currently the most lagging mode.

- Other modes and intermodal links are also important to the industry but that "rail is necessary for the very existence of the industry."

Communications from the Maine Department of Economic & Community Development indicated that DECD has had very limited involvement with rail projects over the past several years. In contrast to the previously mentioned studies and testimony received by the task force from businesses Alan Brigham, Deputy Commissioner for DECD in a memo to the Task Force stated:

> "Based upon discussions with Maine & Company (the department's non-profit business attraction partner corporation) and various regional and local economic development organizations, it does not appear that the current level of rail service is causing the material loss of business development opportunities. While there is no substantiating statistical data, these organizations report that they seldom (if ever) receive requests for information related to the availability of rail service, and none could recall a single rail-related prospect that was lost to an out-of-state location due to Maine's rail service." (See Appendix K for full text of memo.)

The difference in perspective may be explained by development agencies' focus on attracting new business in research, technology and information sectors. The Task Force would like to emphasize the importance of retaining and developing additional natural resource based businesses and stress that these businesses should not be overlooked. Regional and state economic development organizations should work closely with MDOT, planning transportation improvements to benefit both existing business and to support new development projects.

The Task Force encourages DECD to review various programs it administers and, where appropriate, establish criteria to give preference to projects that use rail transportation. The intermodal facility in Auburn is an example of a successful private-public partnership that has improved rail infrastructure, enhancing the viability of area businesses as well as increasing the ability of the area to attract businesses. MDOT actively worked with the City of Auburn, the Androscoggin Valley Council of Governments and St. Lawrence and Atlantic Railroad to plan and develop this facility.

MDOT's reactivation of the rail line between Thomaston and Rockland has had a tremendous positive impact on Dragon Cement and the future economy of that region. Rail excursions catering to tourists have provided an economic boom to the Greenville area this summer. There is considerable interest in similar excursions in other regions of the State.

In addition to materials and products being moved to and from businesses, workers need to commute from their homes to these businesses. Where concentrations of workers are high, passenger rail can reduce congestion with, in many instances, the potential to create new opportunities for tourism. The Regional Transportation Advisory Committees established under Maine's Sensible Transportation Policy Act, and the Freight Transportation Advisory Committee have knowledge of transportation systems and regional needs. A connection must be made to facilitate communications between transportation planners and economic development specialists.

Recommendation 7. **The Task Force recommends that MDOT, the Department of Economic & Community Development and the State Planning Office coordinate their activities to ensure that transportation improvements and potential use of both passenger and freight rail are considered during economic development activities. The Task Force recommends that the statutory duties of the Commissioner of Economic & Community Development be amended to include responsibility for this coordination.**

Recommendation 8. **The Task Force recommends that a Freight Transportation Advisory Committee be established in statute with criteria for membership and an advisory role similar to that of the existing Freight Transportation Advisory Committee convened by the Commissioner of Transportation. The Task Force recommends that MDOT facilitate communications between the RTACs and regional and state economic development initiatives.**

To build on the success of the Auburn intermodal facility in attracting new and serving regional businesses, inspection of imported cargo at the Auburn facility is needed. The Task Force became aware of this need early in its deliberations and was pleased to learn as it concludes its work that U.S. Customs is proposing making the Auburn facility an official port-of-entry with inspection on site. The Task Force has written to the Commissioner of U.S. Customs to express support for this designation.

<u>Recommendation 9.</u> **The Task Force recommends that the U.S. Customs Service designate the St. Lawrence and Atlantic's Intermodal Facility as a port-of-entry and allow inspections to be conducted on site**.

D. Enhance Funding for Rail Improvements and Operations

Since 1987 MDOT has used several sources of funding to acquire and preserve rail corridors and invest in rail improvements. These sources have included federal funds from the Federal Railroad Administration and the Federal Highway Administration and state monies from general obligation bonds and the General Fund. Appendix D provides detail on public expenditures for rail since 1987. This section briefly describes existing programs and sources for additional funding.

1. Industrial Rail Access Program (IRAP)

The Maine Department of Transportation developed the Industrial Rail Access Program to provide funds for infrastructure projects that enhance the rail mode and lead to increased rail usage. IRAP was funded with $1.2 million from general obligation bonds approved in a 1998 transportation referendum and $800,000 in federal CMAQ funds (Congestion Mitigation Air Quality). The Office of Freight Transportation administers IRAP as a grant program. Of the total $2 million available through IRAP, $1.6 million has been expended. Expenditure of the remaining $0.4 million obligated for projects on the Bangor & Aroostook Railroad has recently been authorized pending acquisition of the B & A lines by Montreal, Maine and Atlantic Railway, LLC.

Funding for IRAP has not been included in a bond referendum since 1998. Annual funding is needed to continue this grant program. A modest appropriation from the General Fund to a dedicated account for IRAP is justified by the importance of freight rail to the State's economy and the success of this program.

<u>Recommendation 10.</u> **The Task Force recommends that the IRAP account receive an annual appropriation of $1,000,000.**

2. The Rail Preservation and Assistance Fund (RPAF)

The Rail Preservation and Assistance Fund established in 23 MRSA §7103 receives $150,000 from the railroad excise tax. Revenue collected in excess of $150,000 is deposited in the General Fund. The RPAF may receive grants from other sources and accept funds from the Federal Rail Administration. The Legislature approves expenditures from the fund. Money from the fund may be used for a variety of purposes, such as cost-benefit analyses on the potential retention or loss of rail lines and condition surveys of track and other facilities. See Appendix L for a copy of 23 MRSA §7103 and the list of possible uses of these funds under sub-§3.

Railroad companies pay the excise tax "…for the privilege of exercising its franchises and the franchises of its leased (rail) roads in the State, which…is in place of all taxes upon the property of such railroad." (Title 36 § 2623). Railroad companies do pay municipal property taxes on buildings and on right-of-way over which all railroad service has been abandoned. The table below provides amounts paid into the General Fund from the Railroad Excise Tax. This is the total amount paid minus the $150,000 per year deposited in the RPAF.

Railroad Excise Tax

Fiscal Year	Amount Deposited in General Fund
FY 2002	$438,784
FY 2001	$450,206
FY 2000	$365,949
FY 1999	$346.701
FY 1998	$424,436

In keeping with the discussion of rail preservation under section A, the Task Force recommends increasing funding for RPAF.

<u>Recommendation 11.</u> The Task Force recommends that all revenue received from the railroad excise tax imposed under Title 36, chapter 361 be deposited in the Rail Preservation and Assistance Fund.

For a rail company, the amount of the excise tax is a percentage of gross transportation receipts. Simplistically, the percentage increases as a company's profits increase. For railroads operating over 50 miles or less of track, the tax may not exceed 1.75% of the companies gross transportation receipts.

Under 36 MRSA §2624, taxes may be reduced based on the amount of operating investment made relative to operating income. Provisions for the Maine capital tax credit under 36 MRSA §2621-A, sub-§3 also allow a railroad company to reduce the amount of excise tax owed. In 1991 a cap of $500,000 was placed on this tax credit. This is an aggregate cap, limiting the total reduction allowed for all railroads to $500,000. Similar caps were placed on a number of tax credits in response to a state fiscal crisis.

The formulas for calculating the rail excise tax and tax credits need to be examined. Are changes needed to implement a tax policy that is equitable and encourages investment? The Task Force did not have time to thoroughly examine tax provisions affecting rail. Recommendations 11 and 12 are made and supported as discreet steps that can be taken now pending a more encompassing study of tax policy.

<u>Recommendation 12.</u> The Task Force recommends that the total tax credit cap of $500,000 imposed under 36 MRSA §2621-A, sub-§ 3, ¶F be repealed allowing a railroad company to receive the full tax credit for which the company is eligible.

3. Use Tax on Special Fuel Refunds

Railroad companies that pay Special Fuel Taxes on diesel fuel used off the highway system are entitled to a refund (Title 36 §3218). However, if the Special Fuel Tax is refunded, the fuel is subject to a 5% use tax.

The following is a summary of revenues to the General Fund that are derived from this use tax. These figures include use tax on Special Fuel Tax refunds for agricultural, commercial, industrial, boat and stationary engine users. Railroad users are included in these figures but the State does not track revenues created strictly from railroad users.

Revenue from Special Fuel Use Tax

Fiscal Year	Amount Deposited in General Fund
1996	$900,801
1997	$959,373
1998	$979,833
1999	$748,673
2000	$614,914

The use tax paid by the railroads is a potential and logical source of revenue to fund rail improvements.

<u>Recommendation 13.</u> The Task Force recommends that Maine Revenue Services be directed to track the amount of use tax paid by railroads on fuel that qualifies for the tax refund under 36 MRSA §3218 and that this amount be deposited in the Rail Preservation and Assistance Fund.

<u>Recommendation 14.</u> The Task Force recommends that the Joint Standing Committee on Taxation review the statutory provision for taxes that apply to railroads operating in Maine, consider the impact of these provisions and recommend revisions to improve the viability of railroads operating in this State.

4. Federal Funds

Federal funding for freight rail projects has decreased. The Federal Rail Administration Loan Program has not been funded since 1995. MDOT has used Congestion Mitigation and Air Quality funds and funds available under the Transportation Enhancement Program (T21) for eligible passenger rail projects. Rail acquisitions and improvements for passenger rail can have significant secondary benefits for freight rail. Upgrades to tracks allow freight trains to increase their speed and improve delivery times.

<u>Recommendation 15.</u> The Task Force urges MDOT to continue to pursue all sources of federal funds, including funds available for extending passenger rail service in Maine.

5. Operating Costs for Passenger Rail

Ticket sales for the Downeaster, Amtrak service between Portland and Boston, are currently covering 68% of operating costs. The industry average is 25 - 45%. NNEPRA continues to be innovative in ways to enhance revenue and increase ridership. However, it is unrealistic to assume that revenues will ever cover all operating costs. No scheduled passenger rail service in the world makes a profit. Railroads must cover the cost of right-of-way, unlike air and over the road transportation providers.

CMAQ funding to the Downeaster is limited to three years ending on Dec. 15, 2004, at which time the current contract with Amtrak also ends. Amtrak has stated that all future contracts will require the State to cover all operating costs; however, negotiations are ongoing. The Downeaster's FY 2003 Budget is $6.9M. Revenue sources are:

- 68% Farebox;
- 25% Congestion Mitigation Air Quality (CMAQ); and
- 7% Other Federal Funds.

Funding is secure for extending rail passenger service to Freeport and Brunswick and inland to Auburn. As discussed in other sections of this report, increased reliance on rail has the potential to reduce or significantly slow growth in traffic congestion, air emissions and fuel consumption. Passenger rail helps supports Maine's growing tourism industry and can help revitalize town centers. Our recommendations for continuing funding are in recognition of the many direct and indirect benefits of a passenger rail system. Failure to meet the continuing need for operating and capital assistance would be extremely shortsighted.

<u>Recommendation 16.</u> The Task Force recommends that upon termination of CMAQ funding in December of 2004, the Legislature provide continuing funds to cover the deficit in NNEPRA's operating budget.

E. Prioritizing Rail Improvements

The Task Force urges the Legislature and the Commissioner of Transportation to endorse the policies and specific actions recommended in this report. Undoubtedly, funding available will be something less than the funding required to accomplish the many rail improvements needed in Maine. Prioritizing improvements will be difficult, and progress will be incremental.

We urge the MDOT and the Joint Standing Committee on Transportation to consider the benefits of rail in reducing freight shipments over highways and ultimately reducing the cost of constructing and maintaining more miles of highway. The Statewide Transportation Improvement Program (STIP) and biennial transportation budgets must include priorities for rail improvements developed as part of regional transportation plans -- plans that encompass all modes of transportation.

Maine's economy and the cost of our highway infrastructure will be impacted by:

- Whether or not track in Maine is upgraded to be 286,000 pound compliant and where those upgrades take place;
- Whether or not rail lines can accommodate double stacking of containers, and where those lines are; and
- Whether or not businesses can locate near and be connected to an active rail line.

Along with the above considerations for prioritizing improvements for freight rail, viable routes for passenger service must be simultaneously considered. Expanding passenger service in Maine is worth pursuing for many reasons discussed in the previous section of this report. MDOT should continue its plans for expanding passenger service. Considerations in planning and prioritizing passenger routes must include the potential demand for passenger service and the impact on rail freight operations along the proposed passenger route. Improvements made to meet Federal Rail Administration standards for passenger traffic are likely to increase the speed at which freight trains can operate. Disruption of freight rail schedules, particularly during upgrades, but also to accommodate ongoing scheduled passenger trains, is the other side of the coin. Controlled passing sidings along sections of a route can be critical to successful coexistence of freight and passenger rail and the ability of both to expand service. Having restated several concerns and considerations, the Task Force recognizes that the Commissioner and the MDOT staff working closely with advisory groups must ultimately prioritize the funding and optimal sequence of carrying out projects.

Recommendation 17. The Task Force recommends that the Commissioner of Transportation develop priorities for rail projects within the context of regional transportation corridors.