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BEFORE THE

OF THE

NINETY-SIXTH CONGRESS

SECOND SESSION

ON

NOMINATION OF

STEPHEN BERGER, TO BE CHAIRMAN OF THE BOARD, UNITED STATES RAILWAY ASSOCIATION

AND

S. 2527

TO PROVIDE FOR THE SUBMISSION OF A PLAN OF RATIONALIZATION OF RAIL PROPERTIES OF THE CONSOLIDATED RAIL CORPORATION, AND FOR OTHER PURPOSES

AND

S. 2530

TO IMPROVE THE FAIRNESS AND EQUITY OF THE PROTECTION PROVIDED TO RAILROAD EMPLOYEES UNDER TITLE V OF THE REGIONAL RAIL REORGANIZATION ACT OF 1973 (45 U.S.C. 701 ET SEQ.)

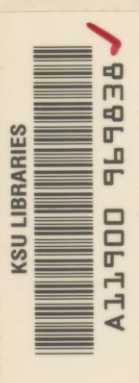
APRIL 16, 1980

Serial No. 96-96

Printed for the use of the
Committee on Commerce, Science, and Transportation

U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON: 1980



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USRA—NOMINATION; AUTHORIZATION; CONRAIL PLANT RATIONALIZATION; AND EMPLOYEE PROTECTION PROGRAM

WEDNESDAY, APRIL 16, 1980

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
SUBCOMMITTEE ON SURFACE TRANSPORTATION,
Washington, D.C.

The subcommittee met at 10 a.m., in room 235, Russell Senate Office Building, Hon. Russell B. Long (chairman of the subcommittee) presiding.

Senator LONG. This hearing will come to order.

First, I would suggest we consider the nomination of Mr. Stephen Berger, the chairman of the board of the U.S. Railway Association.

Is Mr. Berger here?

Please come forward, Mr. Berger.

We have your résumé, Mr. Berger.

Mr. Berger, have you explored with our staff, and also with the administration, any possible conflict of interest and seek to resolve those?

STATEMENT OF STEPHEN BERGER

Mr. BERGER. We have discussed it, Senator. I don't think there is any conflict of interest. I'm particularly sensitive to it.

It's true I sit on the board of the Metropolitan Transportation Authority of New York. If any incident were to come up—we have discussed it with counsel here at USRA, as well as in New York—obviously, I will be sensitive to it, and, if necessary, abstain on any issue where conflict might occur.

But frankly, I don't see it—and neither does counsel—as being a problem.

Senator LONG. Will you continue to sit on that board?

Mr. BERGER. Yes, sir, I would.

Senator LONG. I see.

You stated that you view your role on the board as one of assisting in the establishment of policy. What type of policies would you like to promote?

Mr. BERGER. I come from a State where the improvement of rail service under the Conrail system is essential for the entire Northeast. I believe the establishment and maintenance of a high quality railroad system is absolutely essential.

When I was asked if I would be interested in being chairman of the Association, I said I would because, in terms of the economy of the area, it is absolutely essential that we maintain and improve

the system. And I believe that the Association is now at a point where it can continue to perform a very vital role in planning and insuring the quality of rail service for the Northeast.

Senator LONG. You mentioned your financial experience in controlling expenditures while insuring proper levels of investment planning and equipment. In this regard, I'm sure you're aware of the Conrail's stated plans to reduce investments in rehabilitation of track and facilities below what many would call an acceptable level.

In light of your past experience, how do you view Conrail's proposed investments?

Mr. BERGER. Senator, I would have to take a much closer look than I have up to now to be able to make a judgment. I must tell you I had an experience the other day. I was riding on one of the Conrail lines that had been rehabilitated. We went along 55 miles on what was really some of the finest track I have seen in a long time, both in terms of rail, ties, and surfacing. It was really a fine piece of road bed.

Obviously, I think one has to look beneath the numbers at what the meaning is in terms of the reduced investment. And I think that's one of the responsibilities of the board and one which we will come back to you with when we have a judgment which we are firm on.

Senator LONG. To what extent do you believe the USRA should monitor investment, particularly in view of your belief that the Association is not to run Conrail?

Mr. BERGER. Well, I think there is a great distinction between running and monitoring. I think that the advantage of not requiring USRA to do day-to-day operations, allows the Association some distance and some perspective when making judgments on how investment policy is being implemented. I think that is an essential component for a system that is as large as Conrail and that has been forced to pull itself together in what is really a short period of time to redesign and reorganize its management and strategic planning. I think that is the proper role for USRA, and I think it is something which has been done by a staff with a high level of excellence that I am just coming to meet and know.

Senator LONG. I have other questions I'm going to submit to you, and you can just answer that in writing, if you would please.

Thank you very much, Mr. Berger, for being here today.

Mr. BERGER. Thank you.

[The biographical sketch and answers to questions of the committee follow:]

BIOGRAPHICAL SKETCH OF STEPHEN BERGER

Name: Stephen Berger.

Address: 1050 Park Avenue New York, New York.

Place of Birth: New York, New York, July 11, 1939.

Married to Cynthia Wainwright.

Children: None.

Education:

Brandeis University Waltham, Mass., 1955-1959, B.A. degree.

University of Chicago, Chicago, Illinois, 1959-1960, no degree.

Employment:

September 1977 to present: Stephen Berger Associates, 1050 Park Ave. New York, N.Y., Management and financial consultant.

September 1977 to present: New York University, 4 Washington Sq. North, New York, N.Y., professor.

January 1979 to present: Metro Transit Authority, 347 Madison Ave. New York, N.Y., member of board.

January 1977 to December 1977: New York State Board of Social Welfare, Two World Trade Center, New York, N.Y., member of board.

April 1976 to September 1977: New York State Emergency Financial Control Board, 270 Broadway, New York, N.Y., executive director.

May 1975 to April 1976: New York State Department of Social Services, 1450 Western Ave. Albany, N.Y., commissioner.

January 1975 to May 1975: New York State Office of Planning Services, State Capitol, Albany, N.Y., director.

February 1974 to January 1975: Self-employed, 11 East 75th St., New York, N.Y., management consultant.

October 1973 to February 1974: Commission on Critical Choices for Americans, 22 West 55th St., New York, N.Y. study director.

May 1973 to October 1973: New York State Executive Chamber, 22 West 55th St. New York, N.Y., consultant.

January 1972 to April 1973: New York State Temporary Commission on New York City, 600 Madison Ave., New York, N.Y., executive director.

February 1970 to December 1971: Self-employed, 45 East 80th St., New York, N.Y., management consultant.

March 1964 to February 1970: Congressman Jonathan B. Bingham, Congressional District Offices, executive assistant.

November 1961 to March 1964: Self employed, 119 East 28th St., 148 West 10th St., New York, N.Y., consulting.

October 1962 to April 1963: U.S. Army.

October 1960 to November 1961: Crowell-Collier Publications, 866 Third Ave., New York, N.Y., editor.

Government experience:

January 1979 to present: Member of the Board, New York State Metropolitan Transportation Authority.

March 1979 to June 1979: Member, Economic Development Advisory Group, New York State.

January 1977 to December 1977: Member of the Board, New York State Board of Social Welfare.

April 1976 to September 1977: Executive Director, New York State Emergency Financial Control Board.

May 1975 to April 1976: Commissioner, New York State Department of Social Services.

January 1975 to May 1975: Director, New York State Office of Planning Services.

May 1973 to October 1973: Consultant, New York State Executive Chamber.

January 1972 to April 1973: Executive Director, New York State Temporary Commission on New York City.

March 1964 to February 1970: Executive Assistant, Congressman Jonathan B. Bingham.

Memberships:

Member, American Jewish Congress, Commission on Urban Affairs.

Former Member, American Public Welfare Association.

Former Trustee, St. Joseph's College, New York.

Former Chairman of the Board, Welfare Research, Inc., New York.

Former Member, City Club of New York.

Political affiliations/activities:

Member, Democratic County Committee, New York County.

I have made contributions to the New York State Democratic Committee and selected candidates for local political office, including City Council, New York State Assembly and New York State Senate.

I was an unsuccessful candidate for the Democratic nomination for State Comptroller in 1977.

Honors and awards:

New York State Regents Scholarship Award, 1955 (declined).

Fellowship, Department of Political Science, University of Chicago, 1959-1960.

Humanitarian Award, National Committee for Furtherance of Jewish Education, 1976.

Published writings:

New York City's Budget—Looking into The Future (with Frank Macchiarola) Perspective, Baruch College, November 1974.

The Interplay of State and Local Government in Health Care Health Services, The Local Perspective, Academy of Political Science Vol. 32 No. 3, 1977.

New York Under The Carter Charter, New York Times, January 22, 1977.

Health Care in New York, Health Care News, 1978 (copy attached).

The attached articles appeared in the New York Law Journal (1977) and the New York Post (1978).

In addition, as Executive Director of the New York State Commission on New York City, I served as General Editor of the 13 Volumes published by the Commission (list attached).

STUDIES SPONSORED BY THE STATE STUDY COMMISSION FOR NEW YORK CITY

Re-Structuring the Government of the City of New York. March, 1972.

Attitudes of New Yorkers about Reorganizing Their City Government. June, 1972.

Concept of Multiple Functional Regions in the Tri-State Metropolitan Region. October, 1972.

The Management of the Maximum Base Rent (MBR) Program by the Housing and Development Administration of New York City—from June 1970 to October 1972. November, 1972.

New York City Pensions. January, 1973.

Urban Renewal in Brownsville: The Management of Urban Renewal in Brownsville Area 15, 1960–1973. January, 1973.

New York City's Mitchell-Lama Housing Program: The Management of the Middle Income Housing Program by the Housing and Development Administration of New York City. January, 1973.

The Neighborhoods, The City, and The Region: Working Papers on Jurisdiction and Structure. January, 1973.

Social Services in New York City. March, 1973.

A Superagency Evaluated: New York City's Housing and Development Administration. March, 1973.

Health Care Needs and the New York City Health and Hospitals Corporation. April, 1973.

QUESTIONS OF THE COMMITTEE AND THE ANSWERS THERETO

Question 1. Your background indicates extensive financial experience. In this regard, what specific experiences have you had which would be of assistance to you as a member of the board of the United States Railway Association? What experience have you had in the area of transportation, and how would such experience impact on your responsibilities vis-a-vis Conrail if confirmed as a member of the USRA Board?

Answer. I believe both my public and nonpublic activities have given me extensive experience in dealing with major fiscal and managerial issues. My public sector activities, as an agency head and financial and fiscal monitor, have given me the opportunity to deal with the difficult problem of meeting public needs while controlling public expenditures, determining whether plans are advisable, whether funding levels are appropriate to the job outlined, and whether management capacity exists to implement proposed programs. Those experiences will be essential in evaluating the performance and options facing the government with regard to the future of Conrail. As Chairman of the Finance Committee of the New York State Metropolitan Transportation Authority, I have worked to control expenditures while insuring proper levels of investment in plant and equipment. As a consultant working with the financial community, I have had the opportunity to develop financing alternatives for clients facing many of the same challenges Conrail faces.

Question 2. How do you perceive the role of the Association? How do you perceive its future role—will it be different? Some have expressed a strong sentiment for transferring certain functions from USRA. What is your reaction to this proposal?

Answer. Aside from the valuation case litigation now pending before the Special Court, I view the Association's role as attempting to identify and implement solutions to the rail problems in the Northeast. In fulfilling the planning aspects of that role, I would hope the Association could formulate a comprehensive program of action within the next year.

In regard to transferring certain functions from USRA, the Association has reached an agreement with the Department of Transportation on a proposed schedule for the transfer of Conrail monitoring functions to that agency. That agreement

permits the Association to fulfill its responsibilities in attempting to implement a viable solution to the rail problem in the region, a goal which I certainly support.

Question 3. How do you view your role on the Board of USRA if confirmed? What philosophy and expertise would you bring to the Board?

Answer. I view my role on the USRA Board as one of assisting the other members to shape policy and make decisions, of providing support to the professional staff to assist them to meet the goals that have been set, and of working closely with the executive and legislative branches to insure the positive working relationship the Association must have to be effective. My extensive financial and managerial experience, especially in "turnaround" situations similar to Conrail's should prove useful in that capacity.

Question 4. Why are you interested in becoming a member of the USRA Board? What goals would you like to see the Board and USRA attain while you are a member of the Board? How would you expect to contribute to attaining these goals?

Answer. Establishment of a viable and self-sustaining Northeast rail system is clearly one of the major tasks facing the country at this point. As someone from the Northeast who has been deeply involved in transportation problems, I look upon this as being an excellent opportunity to deal with the important and critical issues of transportation in the region. If confirmed as Chairman, I would like to see the Association implement a solution to the Northeast rail problem while at the same time concluding the valuation case, either by litigating it to a successful conclusion, or negotiating a favorable settlement.

Question 5. Are you satisfied with the activities of the Association to date, and if not, why not? Are there areas in which USRA's responsibilities could be expanded or more clearly defined? Could the implementation of its responsibilities be improved in any way?

Answer. I have met with members of the Association's staff and am impressed with their professionalism and commitment to solving the rail problems of the Northeast, problems they have been wrestling with for some time. Although I am not in a position to respond comprehensively and programmatically with respect to ways in which the definition and implementation of USRA's responsibilities might be improved, my initial assessment is that the Association is in a unique position to be profitably employed in planning a solution to the overall Northeast rail problem, rather than merely monitoring Conrail's performance. However, I will be glad to discuss this subject more fully with members of the Committee after I have had more opportunity to work with the Association.

Question 6. Criticism has been directed at USRA for not functioning independently enough from Conrail and the Administration and for not keeping Congress sufficiently informed. What is your response to these assessments?

Answer. Although I am not thoroughly familiar with the Association's performance in those areas in the past, I certainly intend that the Association function as an independent entity, meet its statutory obligations, and keep Congress fully informed on all important issues.

Question 7. USRA is responsible for the financial monitoring of Conrail. Given your background, to what extent do you believe the Association has been monitoring effectively in this regard? Has it assessed Conrail's financial needs accurately? Has it effectively controlled the operational performance of Conrail through the exercise of its responsibilities as a "banker"?

Answer. I have begun to meet with the USRA staff and to review reports on critical issues prepared by them. Many of those reports appear to be very well done and provide an excellent tool for the USRA Board and Congress to assess problems and possible solutions. It is the duty of the Association to protect the government's investment and to provide a solution to the rail problem in the region. I believe the Association should employ its planning, monitoring, and investment functions to the fullest to achieve those objectives, recognizing that it is not the purpose of the Association to "run" Conrail.

Question 8. Recently the USRA completed a study of alternatives to the present Conrail financial and operational structure. What is your view of that study? Did it go far enough? Are its conclusions valid? What continuing responsibility does the USRA have in this regard?

Answer. I have read the Alternatives Study and I believe it provides a useful starting point. However, more extensive and detailed study is required before more specific conclusions can be agreed upon. In this regard, I would support Congressional and Executive Branch proposals to have the Association play a major role in the course of the next year in planning and implementing an effective program in this area.

Question 9. The Association is also involved in a study of the transportation needs of the Northeast. Is this study proceeding in the appropriate direction? Are there any other such areas appropriate for examination by USRA? In this regard, many believe that USRA's unique contributions stem from its expert research and analysis capabilities. To what extent have these capabilities been optimally utilized?

Answer. The proposed final draft of the NERCOM/USRA study has been distributed for comment. It was produced by USRA staff working closely with representatives of the New England region. The first draft indicates a high level of expertise as well as sensitivity to the needs and concerns of regional interests. The forthcoming public comment period should provide ample opportunity for review and to make necessary changes.

During the limited time I have already spent with USRA staff, I have been impressed with the quality and caliber of the personnel. In the coming months the Board must address the ways in which USRA's capabilities can be fully exploited in order to achieve a prompt and efficacious solution to rail problems in the region.

Question 10. Congress is faced with the continuing Conrail dilemma and looks to USRA for assistance in arriving at appropriate solutions. What proposals, legislative or otherwise, would you suggest to the Committee in this regard?

Answer. It is my intent, if confirmed, that USRA assist Congress by providing the information and recommendations necessary to permit successful implementation of a Northeast rail solution. In my opinion the full resources of USRA should be committed to resolution of the Conrail dilemma as soon as possible.

ADDITIONAL QUESTIONS OF THE COMMITTEE AND THE ANSWERS THERETO

Question 1. In your response to prior Committee questions, you state that the USRA Board must ensure the "exploitation" of the Association's capabilities in the coming months. Would you please elaborate on this comment for the record? Has the expertise at USRA been fully utilized to date?

Answer. Although I have become acquainted with the USRA staff only recently, I am impressed with the technical ability and practical experience of its members. While USRA has played a significant role in Northeast rail planning, I believe it is important that the Association continue to effectively perform its duty to protect the government's investment and work toward a solution to the rail problem in the region. As I have stated previously, I believe the Association should employ its technical capacity to the fullest to achieve those objectives, in addition to whatever monitoring and planning functions may be requested by Congress.

Question 2. Conrail claims that for fiscal year 1981, it will not need any additional funding beyond the \$3.3 billion originally authorized. USRA has stated that Conrail will indeed need more money during fiscal year 1981. In this regard, do you feel that USRA has adequately fulfilled its responsibilities in monitoring Conrail's financial condition?

Answer. Conrail's prediction with respect to its funding needs for fiscal year 1981 was based on its business judgment to reduce its rehabilitation program, thus enabling it to stay within the current \$3.3 billion of Federal funding. USRA's judgement that Conrail would need additional funding for the same period was based on the assumption that Conrail would continue its rehabilitation program in 1980 and 1981 at the level of prior years. The previous level of investment in rehabilitation has enabled Conrail to make substantial improvements in roadbed, locomotives, and rolling stock. It will require careful monitoring to determine if Conrail should return to that level of rehabilitation. It is important that USRA continue to make independent, critical judgments, particularly in the financial area, without which the Congress would lack the information it needs to assess effectively the question of further funding, as well as the overall rail problem.

Question 3. Throughout your responses to prior Committee questions, you state that the role of USRA beyond that of monitoring Conrail is to "identify and implement" solutions to the rail problems in the Northeast, and further that USRA, with its expertise, is in a "unique position" to do so. To what extent is your view of USRA's role in this regard consistent with the agreement between DOT and the USRA Board to transfer certain of USRA's functions by no later than the end of 1981? To what extent do you believe that USRA's important mandate to ensure a self-sustaining rail system in the Northeast can be fulfilled by the end of 1981?

Answer. The USRA Board of Directors and technical staff have been wrestling with the Northeast rail problem since the Association's establishment in 1974, and are committed to designing and implementing a solution to that problem. At this point it appears that actions taken in 1980 and 1981 will be crucial to Conrail's future. It is therefore important that USRA apply its extensive technical expertise

toward achieving a viable self-sustaining rail system in the Northeast. That important Congressional mandate can be carried out if USRA, DOT, and the Congress agree immediately on a program. At the same time, Congress did not contemplate that USRA would be a permanent organization. Once a final plan and financing proposal are agreed upon, then a transfer of the USRA nonlitigation functions to DOT can be effected. Timing is essential. Since time constraints are tight, the planning and reporting cycle for implementation of an effective Northeast rail program must begin almost immediately.

Question. 4. Senator Cannon recently introduced S.2527, which would mandate the USRA, within a specific time frame, develop a plan for rationalization of Conrail properties for submission to Congress, and also make specific recommendations to Congress regarding Conrail's future financial needs and structure. What is your reaction to this legislation? Is it necessary? Does it address a problem which is a real one with regard to Conrail's self-sustainability? How do you view this legislation in light of what USRA is, and should be, doing with respect to Conrail and the study of alternatives to its present structure? If S.2527 were enacted, how would you view the proposal to sunset USRA?

Answer. The legislation recently introduced by Senator Cannon, S.2527, would establish a working plan that meets the goal of identifying and implementing measures designed to ensure a self-sustaining rail system in the Northeast by the end of 1981. By establishing deadlines it would create a framework within which the government could come to grips with its long term relationship with Conrail. A specific legislative program for the rationalization of Conrail lines would be very useful, since abandonments such as those considered by USRA in its recent study of Conrail alternatives could not be accomplished as fully and expeditiously under existing law.

S.2527 does not conflict with the proposal to transfer USRA nonlitigation functions to DOT by December 31, 1981, since all of the functions contained in the legislation would be completed prior to that date.

OPENING STATEMENT BY SENATOR LONG

Senator LONG. Next I am going to proceed to S. 2527, which provides a 2-year authorization for USRA administrative expenses associated with carrying out its various responsibilities for monitoring Conrail's performance and representing the Federal Government in litigation resulting from Conrail's formation.

The bill would also require the Association to formulate a plan to rationalize Conrail's plant and to make specific recommendations to Congress regarding Conrail's future Federal funding requirements.

The second piece of legislation we will receive testimony on today is S. 2530. This is the administration's proposal to improve the Labor Protection Program that now provides benefits to the former employees of the Northeast and Midwest bankrupt railroads that were formed into Conrail.

The common thread which ties together our consideration of these various matters is the continuing concern for Conrail's present and future ability to become a self-sustaining railroad.

Conrail's ability to rid itself of unproductive lines will certainly have some impact on its capability to increase its revenue-to-loss ratio.

On the other hand, a significant plant rationalization will possibly add to Conrail's need for employee protection funding since it bears the legal responsibility for that protection until title V of the 3R Act.

In addition to the specific issues raised by the two bills before us, this hearing will provide an opportunity to address the overall concern we have for the likely future funding requirements for Conrail.

We have particular concern for Conrail's decision to reduce its capital spending in 1980 and 1981 in light of GAO's recent report in which GAO stated its belief that such a strategy would pose an unacceptable risk to the Federal investment in Conrail.

I am hopeful that our witnesses will be able to provide us with additional insight into this problem of Conrail's funding. I will request, however, that the witnesses limit their prepared statements to a summary of the most relevant facts so as to allow some time for questioning by members who are present today.

Now, I believe Senator Cannon has a statement he would like to submit. I would like to submit Senator Cannon's prepared statement directly at this point.

[The statement and bills follow:]

OPENING STATEMENT BY THE CHAIRMAN

During the hearing today, the committee will be examining with the witnesses several important issues related to Conrail and the United States Railway Association. Of particular concern to me in this regard are the financial future of Conrail and the role which Congress, USRA, and other interested agencies and parties should play in determining its future.

The question with regard to Conrail which remains unanswered to the committee's satisfaction is whether Conrail will need more Federal funding beyond the \$3.3 billion originally authorized. The Senate recently passed the Railroad Transportation Policy Act of 1980, which if enacted would provide Conrail with the necessary rate flexibility to help improve its revenue picture. However, there still remains a question as to whether this rate flexibility would be enough to insure the future self-sustainability of Conrail. The committee is acutely aware of the risks associated with Conrail's precarious financial picture, whether or not additional money is authorized, and feels a responsibility to insure that these risks are minimized and that there is indeed achieved a health, self-sustaining rail freight system in the Northeast.

For this reason, I introduced S. 2527, which is intended to facilitate the attainment of these goals. Specifically, this bill would provide a procedural mechanism to address Conrail's future in the 97th Congress. It would mandate that Congress receive specific recommendations from USRA as to Conrail's future financing and would also include a plan for the rationalization of Conrail properties to be formulated and submitted to Congress, with appropriate examination by and input from participating agencies and affected parties. The recommendations to be submitted, including those to abandon and transfer properties, would have to be consistent with the objectives established by Congress under the 3R Act and initially implemented under the final system plan. Furthermore, this bill would not legislate a specific plan or recommendations, but instead, by establishing a specific timetable, would insure that a plan and recommendations are formulated and transmitted to Congress for review.

In light of this proposed legislation and the concerns which it addresses, the committee will be examining closely the USRA authorization and the nomination of Mr. Stephen Berger to be Chairman of the USRA Board. Pursuant to the 3R Act, USRA was established with the specific responsibility for monitoring Conrail to insure its future self-sustainability. The Association has worked toward fulfilling its mandate through its overall monitoring of Conrail and specifically its study of alternatives to Conrail's present financial and operational structure. The committee must insure that USRA has the capabilities to bring this work to a timely conclusion and that the Association and its Board are aware of their continuing responsibilities in this regard.

96TH CONGRESS
2D SESSION

S. 2527

To provide for the submission of a plan of rationalization of rail properties of the Consolidated Rail Corporation, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 2 (legislative day, JANUARY 3), 1980

Mr. CANNON introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To provide for the submission of a plan of rationalization of rail properties of the Consolidated Rail Corporation, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 That for purposes of this Act, the term—

4 (1) “Association” means the United States Rail-
5 way Association;

6 (2) “Commission” means the Interstate Com-
7 merce Commission;

1 (3) "Corporation" means the Consolidated Rail
2 Corporation;

3 (4) "rail properties" means assets or rights
4 owned, leased, or otherwise controlled by the Corpora-
5 tion which are used or useful in rail transportation
6 service; and

7 (5) "Secretary" means the Secretary of Transpor-
8 tation.

9 CONRAIL RECOMMENDATIONS

10 SEC. 2. The Association shall, at the time of submission
11 of a plan of rationalization pursuant to section 5(b) of this
12 Act, but in any event not later than March 1, 1981, make
13 specific recommendations to the Congress with respect to
14 future projected funding requirements of the Corporation. At
15 the time of submission of such plan of rationalization, the
16 Association shall also make specific recommendations to the
17 Congress with respect to the future structure and activities of
18 the Corporation in the Region (as defined in section 102(15)
19 of the Regional Rail Reorganization Act of 1973) (45 U.S.C.
20 702(15)) as it determines are necessary or appropriate to
21 meet the goals set forth in section 206(a) of the Regional Rail
22 Reorganization Act of 1973 (45 U.S.C. 716(a)), together
23 with any specific legislation necessary to implement such rec-
24 ommendations.

SEC. 3. Not later than thirty days after the date of enactment of this Act, the Corporation shall submit to the Association its findings with respect to the rail properties which it will propose (1) for abandonment in accordance with the provisions of this Act, or (2) for transfer for continued operation to another railroad or qualified person: *Provided*, That such transfer proposals shall set forth the essential terms and conditions for the transfer.

12 SEC. 4. (a) Within ninety days after the date of the sub-
13 mission of the Corporation's findings under section 3 of this
14 Act, the Association shall publish in the Federal Register its
15 preliminary findings on such submission. Such findings shall
16 include analyses and conclusions with respect to the aban-
17 donments and transfers proposed by the Corporation under
18 section 3 of this Act, and the feasibility of abandoning any
19 rail properties of the Corporation in addition to those pro-
20 posed by the Corporation pursuant to section (3)(1) of this
21 Act.

(b) The Association shall, on the date of such publication, transmit copies of such preliminary findings to the Congress, the Secretary, the Commission, and the Governor and public utility commissioner of each State in which any such

1 rail properties are located. Upon request, the Association
2 shall furnish a copy of such preliminary findings to any inter-
3 ested person.

4 PLAN OF RATIONALIZATION

5 SEC. 5. (a) Within sixty-days after publication of the
6 findings of the Association in the Federal Register, the Com-
7 mission shall invite and afford interested persons an opportu-
8 nity to submit comments on the preliminary findings of the
9 Association and shall hold hearings at which interested per-
10 sons may testify regarding such findings. Within such sixty-
11 day time period, the Commission shall submit to the
12 Congress and to the Association, and make available to inter-
13 ested parties upon request, a summary and analysis of the
14 evidence received as a result of such comments and hearings,
15 together with its critique and evaluation of the preliminary
16 findings.

17 (b)(1) Within sixty days after the receipt of the summary
18 and analysis required to be submitted pursuant to subsection
19 (a) of this section, the Association shall consider the com-
20 ments received with respect to its preliminary findings and
21 submit to the Congress for review, pursuant to section 7 of
22 this Act, a plan of rationalization of the rail properties of the
23 Corporation. The Association shall also submit to the Com-
24 mission and the Secretary a copy of such plan.

1 (2) The plan of rationalization shall be consistent with
2 the goals of section 206(a) of the Regional Rail Reorganiza-
3 tion Act of 1973 (45 U.S.C. 716(a)) and shall identify those
4 rail properties which should be (A) abandoned; (B) operated
5 by means of a rail service continuation payment (pursuant to
6 section 304(c) of the Regional Rail Reorganization Act of
7 1973 (45 U.S.C. 744(c)); or (C) transferred, as proposed by
8 the Corporation in its submission under section 3(2) of this
9 Act, to a railroad or qualified person for continued operation.

10

EVALUATION OF PLAN

11 SEC. 6. Within 20 days after the date of submission of a
12 plan of rationalization to the Congress pursuant to section
13 5(b) of this Act, the Commission and the Secretary shall
14 submit to the Congress evaluations of such plan.

15

CONGRESSIONAL REVIEW

16 SEC. 7. (a) The plan of rationalization submitted to the
17 Congress pursuant to section 5(b) of this Act shall be deemed
18 approved at the end of the first period of forty-five calendar
19 days of continuous session of Congress after such date of
20 submission unless the House of Representatives and the
21 Senate adopt a concurrent resolution during such period dis-
22 approving such plan.

23 (b) If such a resolution is adopted by the Congress, the
24 Association shall prepare, determine, and adopt a revised
25 plan of rationalization in accordance with the provisions of

1 section 5(b)(2) of this Act, which shall be submitted to Con-
2 gress for review pursuant to this section within sixty days of
3 the adoption of such concurrent resolution.

4 (c) For purposes of this section—

5 (1) continuity of session of Congress is broken
6 only by an adjournment of the Congress sine die; and

7 (2) the days on which either House is not in ses-
8 sion because of an adjournment of more than three
9 days to a day certain are excluded in the computation
10 of the forty-five day period.

11 IMPLEMENTATION

12 SEC. 8. (a) If a concurrent resolution of disapproval is
13 not adopted pursuant to section 7 of this Act, the Corpora-
14 tion may abandon any of the properties authorized for aban-
15 donment in the plan of rationalization without regard to any
16 provisions of title 49 of the United States Code, the Regional
17 Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.), or
18 the Railroad Revitalization and Regulatory Reform Act of
19 1976 (45 U.S.C. 801 et seq.): *Provided, however,* That (1) no
20 such abandonment shall become effective until sixty days
21 after the Corporation has issued a notice as specified in sub-
22 section (a)(1) and satisfied all of the requirements of subsec-
23 tion (a)(3) of section 10904 of title 49 of the United States
24 Code; and (2) all such properties abandoned shall (A) be sub-
25 ject to the provisions of section 402(a) of the Regional Rail

1 Reorganization Act of 1973 (45 U.S.C. 762(a)), as amended;
2 and (B) be deemed to have been authorized under section
3 10903 of title 49 of the United States Code and be subject to
4 the conditions specified by the Commission pursuant to sub-
5 section (b)(2) of such section.

6 (b) If a concurrent resolution of disapproval is not adopt-
7 ed pursuant to section 7 of this Act, the Corporation may
8 transfer to a railroad or other qualified person any rail prop-
9 erties identified for transfer in the plan of rationalization pur-
10 suant to section 5(b)(2)(C) of this Act without regard to any
11 provisions of title 49 of the United States Code, the Regional
12 Rail Reorganization Act of 1973, as amended (45 U.S.C.
13 701 et seq.), or the Railroad Revitalization and Regulatory
14 Reform Act of 1976, as amended (45 U.S.C. 801 et seq.):
15 *Provided, however,* That any transfer under this section shall
16 subject the Corporation and transferee, in each such transfer,
17 to the requirements and other provisions of title V of the
18 Regional Rail Reorganization Act of 1973, as amended (45
19 U.S.C. 771-779), except that the term "effective date of this
20 Act" contained in such title shall be applied to each such
21 transfer as if it read "effective date of this transfer".

22 AUTHORIZATION OF APPROPRIATIONS

23 SEC. 9. Section 214(c) of the Regional Rail Reorganiza-
24 tion Act (45 U.S.C. 724(c)) is amended to read as follows:

1 “(c) ASSOCIATION.—There are hereby authorized to be
2 appropriated to the Association for purposes of its adminis-
3 trative expenses such sums as are necessary, not to exceed
4 \$29,500,000 for the fiscal year ending September 30, 1981,
5 and \$27,500,000 for the fiscal year ending September 30,
6 1982, to remain available until expended.”.



1 701 et seq.) against deprivation of employment and reduc-
2 tions in railroad-related compensation contain inequities; that
3 these inequities hinder the Consolidated Rail Corporation
4 from achieving improved management of certain protected
5 employees in its work force; and that elimination of these
6 inequities would help reduce the cost levels of the Consoli-
7 dated Rail Corporation, and thereby improve the Corpora-
8 tion's ability to provide carriage of goods in interstate
9 commerce.

10 (b) It is declared to be the purpose of the Congress in
11 this Act to foster fair and equitable labor protection for cer-
12 tain railroad employees; to foster improvements in the ability
13 of the Consolidated Rail Corporation to manage productively
14 such employees in its work force; and to help reduce the cost
15 levels of the Consolidated Rail Corporation by eliminating
16 the inequities of the labor protection provisions, thereby im-
17 proving the Corporation's ability to provide carriage of goods
18 in interstate commerce by—

19 (1) revising the cash allowances for protected em-
20 ployees under title V of the Regional Rail Reorganiza-
21 tion Act of 1973 to ensure that the employees receive
22 a reasonable level of protection; and

23 (2) improving the ability of the Consolidated Rail
24 Corporation to train or retrain certain protected em-
25 ployees for bona fide job vacancies.

1 (c) Nothing in this Act is intended to affect any law,
2 regulation, court order, or obligation pertaining to equal em-
3 ployment opportunity.

4 MONTHLY DISPLACEMENT ALLOWANCE

5 SEC. 3. Section 505(b) of the Regional Rail Reorganiza-
6 tion Act of 1973 (45 U.S.C. 775(b)) is amended to read as
7 follows:

8 “(b) MONTHLY DISPLACEMENT ALLOWANCE.—A pro-
9 tected employee shall be paid a monthly displacement allow-
10 ance for any calendar month within the period identified in
11 subsection (c) of this section in which the employee is de-
12 prived of employment or adversely affected with respect to
13 his or her compensation, in accordance with the following:

14 “(1) PROTECTED EMPLOYEES OCCUPYING POSI-
15 TIONS IN THE NONOPERATING CRAFTS.—Effective on
16 and after January 1, 1980, the protected rate of pay of
17 a protected nonoperating employee (other than a main-
18 tenance-of-way employee) who has been deprived of
19 employment or adversely affected with respect to his
20 or her compensation shall be based on the rate of pay
21 of the position held by the employee on September 1,
22 1979, or if the employee held no position on that date,
23 the rate of pay of the last position held by the employ-
24 ee prior to that date. A guaranteed hourly rate of pay
25 will be computed for each protected employee, based

1 on the aforesaid rate, and will be the actual hourly
2 rate for hourly rated employees; the daily rate divided
3 by eight for daily rated employees; and the monthly
4 rate divided by the working days in the claim month,
5 further divided by eight in the case of monthly rated
6 employees. For employees occupying relief positions,
7 the guarantee shall be computed on the basis of the
8 weighted average daily rate of the positions relieved.
9 Extra list employees will be guaranteed the extra list
10 rate.

11 “(A) In the event a protected employee’s po-
12 sition is abolished or he or she is displaced, and
13 the employee is thereby required to occupy a po-
14 sition paying a lesser hourly rate than the em-
15 ployee’s guaranteed hourly rate, the protected
16 employee shall be paid the difference between the
17 hourly rate of pay of the position the employee is
18 occupying and his or her guaranteed hourly rate
19 for all hours included in the straight-time work
20 schedule of the employee’s position for the month
21 of claim, less any time lost on account of volun-
22 tary absences other than vacations. Hours worked
23 in excess of the straight-time work schedule shall
24 be paid in addition to the guarantee at the rate

1 applicable to the position occupied, as provided for
2 in the applicable collective bargaining agreement.

3 “(B) For any month or portion thereof in
4 which a protected employee is deprived of em-
5 ployment, the protected employee shall be paid
6 his or her guaranteed hourly rate for the number
7 of hours the employee would have worked in the
8 straight-time work schedule of his or her previ-
9 ously held position.

10 “(C) Notwithstanding the provision that the
11 protected rate shall be the rate of the position
12 held on or immediately preceding September 1,
13 1979, if a protected employee becomes the per-
14 manent incumbent of a higher rated position and
15 is not disqualified therefrom, the higher rate shall
16 become his or her protected rate.

17 “(2) PROTECTED EMPLOYEES OCCUPYING POSI-
18 TIONS IN THE MAINTENANCE-OF-WAY CRAFTS.—Not-
19 withstanding subsection (b)(1), effective on and after
20 January 1, 1980, a protected maintenance-of-way em-
21 ployee shall be afforded his or her average monthly
22 compensation computed in accordance with section
23 505(b) prior to such date (as used in this subsection (b),
24 ‘average monthly compensation’), but subject to a
25 ‘maximum’, which maximum is defined as the employ-

1 ee's average monthly compensation divided by his or
2 her average monthly time paid for, and further multi-
3 plied by one hundred and seventy-four hours, or by his
4 or her average monthly time paid for, whichever is
5 less. If the average monthly compensation of a protect-
6 ed maintenance-of-way employee exceeds the maxi-
7 mum, the average monthly compensation of the em-
8 ployee will be reduced to the maximum for purposes of
9 computing the employee's monthly displacement allow-
10 ance, if any. If a protected employee is deprived of em-
11 ployment or if the employee's compensation in his or
12 her current position is less in any month than the em-
13 ployee's average monthly compensation or the maxi-
14 mum, whichever is smaller, the employee shall be paid
15 75 per centum of the difference between his or her
16 earnings if any and the smaller figure, less any time
17 lost on account of voluntary absences other than vaca-
18 tions. If, at the close of the calendar year, the sum of
19 the protected employee's annual compensation (exclud-
20 ing overtime compensation earned by virtue of actually
21 working in excess of two hours at the punitive rate of
22 pay on any given day), monthly displacement allow-
23 ance payments, and offsets applicable pursuant to this
24 title is less than the employee's average monthly com-
25 pensation subject to the maximum and multiplied by

1 twelve, the employee shall receive an additional pay-
2 ment representing the difference. In the computation of
3 the monthly and the annual displacement allowance
4 payments, earnings shall not include compensation re-
5 ceived for overtime actually worked in excess of two
6 hours at the punitive rate of pay on any given day. If
7 in the previous calendar year an employee has received
8 displacement allowance payments in excess of his or
9 her annual entitlement, the excess payments shall be
10 recovered from any current or future entitlement to
11 monetary benefits afforded by this title, exclusive of
12 benefits afforded by section 505(g) of this title.

13 “(3) PROTECTED EMPLOYEES OCCUPYING POSI-
14 TIONS IN THE OPERATING CRAFTS.—Effective on and
15 after January 1, 1980, a protected operating employee
16 (defined as any protected employee in ICC classifica-
17 tions 107 through 128) who has been deprived of em-
18 ployment or adversely affected with respect to his or
19 her compensation shall be afforded his or her average
20 monthly compensation computed in accordance with
21 section 505(b) prior to such date, but subject to a
22 ‘maximum’, which maximum is defined as one twelfth
23 of the average annual earnings per employee, comput-
24 ed by cumulating the employee earnings reported to
25 the Interstate Commerce Commission by the Corpora-

1 tion on a monthly basis for calendar year 1977 for the
2 ICC classification of operating service in which the
3 employee performed the preponderance of his or her
4 work in calendar year 1974, increased by applicable
5 general wage increases. If the employee performed no
6 operating service in 1974, the ICC classification will
7 be determined by the preponderance of the employee's
8 operating service in an immediately preceding calendar
9 year. If the average monthly compensation of a pro-
10 tected operating employee exceeds the maximum, the
11 average monthly compensation of the employee will be
12 reduced to the maximum for purposes of computing his
13 or her monthly displacement allowance, if any. If the
14 average monthly compensation of a protected operating
15 employee is less than the maximum, the average
16 monthly compensation of the employee will be used to
17 compute his or her monthly displacement allowance, if
18 any. If a protected employee is deprived of employ-
19 ment, or if the employee is adversely affected with re-
20 spect to his or her compensation such that the compen-
21 sation in his or her current position is less in any
22 month than the average monthly compensation of the
23 employee or the maximum, whichever is smaller, the
24 employee shall be paid 75 per centum of the difference
25 between his or her earnings if any and the smaller

1 figure, less any time lost on account of voluntary ab-
2 sences other than vacations. If, at the close of the cal-
3 endar year, the sum of the protected employee's annual
4 earnings, monthly displacement allowance payments,
5 and offsets applicable pursuant to this title is less than
6 his or her average monthly compensation subject to the
7 maximum and multiplied by twelve, the employee shall
8 receive an additional payment representing the differ-
9 ence. In the computation of the annual payment, if
10 during the calendar year an employee has been force
11 assigned to, or has been required to exercise seniority
12 to, a position in an ICC classification with a lesser
13 maximum than the maximum applicable to that em-
14 ployee's 1974 ICC classification, the employee shall be
15 paid the difference without credit being taken for com-
16 pensation earned by virtue of actually working hours in
17 the calendar year in excess of the number of hours
18 paid for in the employee's average monthly compensa-
19 tion multiplied by twelve or his or her annual 1977
20 maximum, whichever is smaller. An employee's com-
21 pensation for purposes of this subsection will not in-
22 clude savings sharing productivity payments received
23 pursuant to paragraph (t) of the Crew Consist Agree-
24 ment between the Corporation and the United Trans-
25 portation Union dated September 8, 1978. If in the

1 previous calendar year an employee has received dis-
2 placement allowance payments in excess of his or her
3 annual entitlement, the excess payments shall be re-
4 covered from any current or future entitlement to mon-
5 etary benefits afforded by this title, exclusive of bene-
6 fits afforded by section 505(g) of this title.

7 “(4) PROTECTED EMPLOYEES OCCUPYING NON-
8 CONTRACT POSITIONS.—Effective on and after Janu-
9 ary 1, 1980, a protected noncontract employee who
10 has been deprived of employment or adversely affected
11 with respect to his or her compensation shall retain his
12 or her average monthly compensation and monthly dis-
13 placement allowance computed in accordance with sec-
14 tion 505(b) prior to such date. In the event such non-
15 contract employee exercises or has exercised seniority
16 in a craft or class of operating employees, the employ-
17 ee’s entitlement to a monthly displacement allowance
18 and fringe benefits, and his or her eligibility for trans-
19 fer, will be the same as the entitlement and eligibility
20 of other protected employees in the craft or class in
21 which seniority is exercised. In the event such noncon-
22 tract employee exercises or has exercised seniority in a
23 craft or class of nonoperating employees, the entitle-
24 ment of the employee to a monthly displacement allow-
25 ance and fringe benefits, and his or her eligibility for

1 transfer, will be consistent with the entitlement and
2 eligibility of other protected employees in the craft or
3 class in which seniority is exercised, except that the
4 protected rate of pay shall be based on the rate of pay
5 of the position first obtained through the exercise of se-
6 niority, rather than the rate of any position held on or
7 prior to September 1, 1979.

8 “(5) Notwithstanding the preceding provisions of
9 this subsection, employees who, prior to September 1,
10 1979, accepted transfer to positions requiring a change
11 of residence pursuant to section 505(d) of the Act,
12 shall retain their average monthly compensation and
13 monthly displacement allowance computed in accord-
14 ance with section 505(b) prior to January 1, 1980.

15 “(6) In determining compensation in his or her
16 current employment, the protected employee shall be
17 treated as occupying the position producing the highest
18 rate of pay to which his or her qualifications and se-
19 niority entitle the employee under the applicable collec-
20 tive bargaining agreement and which does not require
21 a change in residence. A protected operating employee
22 will be considered to be occupying the position produc-
23 ing the highest rate of pay if the employee occupies a
24 position producing compensation equal to his or her

1 average monthly compensation subject to the maxi-
2 mum.

3 “(7) With respect to a protected employee who
4 has been deprived of employment, the monthly dis-
5 placement allowance shall be reduced by the full
6 amount of any unemployment compensation benefits
7 received by the protected employee and shall be re-
8 duced by an amount equivalent to any outside earnings
9 of the employee.

10 “(8) A protected employee’s average monthly
11 compensation or protected rate of pay shall be adjusted
12 from time to time thereafter to reflect subsequent gen-
13 eral wage increases.

14 “(9) The average monthly compensation or pro-
15 tected rate of pay provided by this section shall in no
16 event exceed \$2,500 in any month, except that such
17 amount shall be adjusted to reflect general wage in-
18 creases subsequent to April 1, 1976.

19 “(10) A protected employee and the employee’s
20 representative shall be furnished with the protected
21 employee’s protected rate of pay, or average monthly
22 compensation and average monthly time paid for, sub-
23 ject to the maximum, computed in accordance with the
24 terms of this subsection. Each protected employee who
25 has been deprived of employment, or his or her repre-

1 sentative, and the employer shall agree upon a proce-
2 dure by which the employee shall keep the employer
3 currently informed of the unemployment compensation
4 benefits received by the employee and the earnings of
5 such employee in employment other than with the em-
6 ployer.”.

7 DURATION OF MONTHLY DISPLACEMENT ALLOWANCE

8 SEC. 4. Section 505(c) of the Regional Rail Reorganiza-
9 tion Act of 1973 (45 U.S.C. 775(c)) is amended to read as
10 follows:

11 “(c) DURATION OF MONTHLY DISPLACEMENT ALLOW-
12 ANCE.—The monthly displacement allowance provided for in
13 subsection (b) of this section shall continue until the attain-
14 ment of age sixty-five by a protected employee with five or
15 more years of service on the effective date of this Act and, in
16 the case of a protected employee who has less than five years
17 of service on such date, shall continue for a period equal to
18 the employee’s total prior years of service: *Provided*, That
19 such monthly displacement allowance shall terminate upon
20 the protected employee’s death, retirement, resignation, or
21 dismissal for cause; shall not be paid with respect to any
22 period of disciplinary suspension for cause, failure to work
23 due to illness or disability, voluntary furlough, or failure to
24 retain or obtain a position available to the employee by the
25 exercise of the employee’s seniority rights in accordance with

1 the provisions of this section; shall not be paid to a protected
2 employee deprived of employment with respect to any period
3 of failure to work due to strike, fire, flood, snowstorm, hurri-
4 cane, earthquake, tornado, or other similar natural occur-
5 rence that causes a suspension of operations in whole or in
6 part and precludes performance of the work which would be
7 performed by the incumbents of the positions to be abolished
8 or the work which would be performed by the employees
9 involved in the force reductions (provided that the payment of
10 monthly displacement allowances shall be resumed upon ter-
11 mination of the emergency); shall not be paid with respect to
12 any month that commences after the effective date of the
13 Railroad Employee Protection Modification Act of 1980 for
14 which the employee has failed to make a claim for such al-
15 lowance within three full calendar months (unless otherwise
16 agreed upon by the employee, or his or her representative,
17 and the employer) after the last day of the month for which
18 such allowance is sought; and the entitlement of an employee
19 to an allowance shall be approved or denied within one hun-
20 dred and fifty days (unless otherwise agreed upon by the em-
21 ployee, or his or her representative, and the employer) after
22 the claim therefor is made.”.

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1 order to remaining qualified protected employee(s)
2 deprived of employment (not to exceed four em-
3 ployees per offer) in the seniority district.

4 “(B) If there are no qualified protected em-
5 ployees deprived of employment in the seniority
6 district where the vacancy exists, the vacancy
7 may be offered in inverse seniority order to quali-
8 fied protected employee(s) deprived of employment
9 (not to exceed four employees per offer) on the
10 system, in accordance with the procedure in para-
11 graph (4)(A) of this subsection. Employees offered
12 transfer pursuant to this paragraph (4)(B) will be
13 afforded thirty days to elect one of the options set
14 forth in paragraph (1) of this subsection.

15 “(C) The provisions of this paragraph shall
16 not prevent the adoption of other procedures pur-
17 suant to an agreement made by the Corporation
18 and representatives of the class or craft of em-
19 ployees involved.

20 “(D) When no bona fide vacancies exist in a
21 marine craft or class on the Corporation’s system,
22 or in the craft or class of a Penn Truck Lines,
23 Incorporated, employee, the Corporation may
24 offer such employee comparable employment for
25 which the employee is qualified, or for which the

1 employee can be trained, in another craft or class.
2 The Corporation shall first attempt to locate a
3 comparable position in a seniority district which
4 encompasses the employee's last work location,
5 and if successful, a transfer notice may be ten-
6 dered pursuant to paragraph (4)(A) of this subsec-
7 tion. If no such position exists, the Corporation
8 may tender the employee a transfer notice involv-
9 ing a position elsewhere on the system pursuant
10 to paragraph (4)(B) of this subsection. In the
11 event it is necessary to train an employee after
12 his or her acceptance of a position pursuant to
13 this subsection, such training shall be provided by
14 the Corporation at no cost to the employee."

15 (b) Section 505(i)(1) of the Regional Rail Reorganization
16 Act of 1973 (45 U.S.C. 775(i)(1)) is amended by adding the
17 following immediately before the last sentence of the subsec-
18 tion: "The Corporation may simultaneously offer a position
19 to not more than four protected noncontract employees. The
20 position will be give to the protected employee accepting
21 transfer whom the Corporation considers to be best qualified
22 for the particular position involved. Other protected employ-
23 ees who have accepted the transfer will retain their previous
24 status. Employees who have elected a voluntary suspension
25 of employment at their home location in lieu of protective

1 benefits or a severance of employment shall retain the option
2 elected.”.

3 PAYMENT, AUDIT AND REPORT

4 SEC. 6. Section 509 of the Regional Rail Reorganiza-
5 tion Act of 1973 (45 U.S.C. 779) is amended to read as
6 follows:

7 “PAYMENT, AUDIT AND REPORT

8 “SEC. 509. (a) PAYMENT.—The Corporation, the Asso-
9 ciation (where applicable), replacement operators, and acquir-
10 ing railroads, as the case may be, shall be responsible for the
11 actual payment of all allowances, expenses, and costs pro-
12 vided protected employees pursuant to the provisions of this
13 title. The Corporation, the Association (where applicable), re-
14 placement operators, and acquiring railroads shall then be
15 reimbursed for the actual amounts paid to, or for the benefit
16 of, protected employees, pursuant to the provisions of this
17 title (including such amounts paid by the employer prior to
18 the effective date of the Railroad Employee Protection Modi-
19 fication Act of 1980 and training costs incurred by the Cor-
20 poration pursuant to section 505(d)(4)(D) of this title), other
21 than provisions with respect to employee pension benefits,
22 not to exceed an aggregate sum of \$485,000,000, by the
23 Railroad Retirement Board, upon certification to such Board
24 in such detail as the Board may reasonably require, by the
25 Corporation, the Association (where applicable), replace-

1 ments operators, and acquiring railroads, of the amount paid
2 such employees: *Provided*, That the aggregate amount of re-
3 imbursements made by the Board for the payment of monthly
4 displacement allowances in the period after enactment of the
5 Railroad Employee Protection Modification Act of 1980 shall
6 not exceed \$180,000,000. There is authorized to be appro-
7 priated to the Secretary annually such sums as may be re-
8 quired to meet the obligations payable hereunder, not to
9 exceed the aggregate sum of \$485,000,000. Upon the ex-
10 haustion of such authorization, the Corporation, the Associ-
11 ation (where applicable), replacement operators, and acquir-
12 ing railroads shall retain responsibility for the payment of
13 benefits otherwise reimbursable under this title, but they
14 shall not be reimbursed therefor. There is further authorized
15 to be appropriated to the Secretary such sums as may be
16 necessary to provide for additional administrative expenses to
17 be incurred by the Railroad Retirement Board and the Asso-
18 ciation in the performance of their functions under this sec-
19 tion. Appropriations authorized under this section may be al-
20 located by the Secretary to the Railroad Retirement Board
21 and the Association.

22 “(b) AUDIT.—Commencing October 1, 1980, the Asso-
23 ciation is authorized and directed to audit the payment of
24 benefits pursuant to this title and to evaluate the effective-
25 ness of the provisions of this title in improving the Corpora-

1 tion's management of certain protected employees in its work
2 force who are entitled to receive monthly displacement
3 allowances, including the manner in which the Corporation
4 manages the overtime worked by maintenance-of-way em-
5 ployees. Such audits and evaluations shall be conducted in
6 accordance with such rules and regulations as the Associ-
7 ation may prescribe. The representatives of the Association
8 shall have access to all books, accounts, records, reports,
9 files, and other papers, things, or property belonging to, or in
10 use by or in connection with the Corporation, replacement
11 operators, acquiring railroads, or the Railroad Retirement
12 Board which pertain to the benefits provided protected em-
13 ployees pursuant to this title and which are necessary to fa-
14 cilitate such audit and evaluation.

15 “(c) REPORT.—The Association shall transmit to the
16 Congress and the President, not later than ninety days after
17 the end of each fiscal year, a comprehensive and detailed
18 report on the payment of benefits under this title and the
19 effectiveness of the provisions of this title in improving the
20 Corporation's management of certain protected employees in
21 its work force who are entitled to receive monthly displace-
22 ment allowances.”.

1 TECHNICAL AMENDMENTS

2 SEC. 7. (a) The table of contents of the Regional Rail
3 Reorganization Act of 1973 (45 U.S.C. 701 et seq.) is
4 amended by revising the caption

"Sec. 509. Payment of benefits."

5 to read

"Sec. 509. Payment, audit and report."

6 (b) Section 102(16) of the Regional Rail Reorganization
7 Act of 1973 (45 U.S.C. 702(16)) is amended to read as fol-
8 lows:

9 "(16) 'Secretary' means the Secretary of Transportation
10 or the designated representative of the Secretary;"

11 (c) Section 201 of the Regional Rail Reorganization Act
12 of 1973 (45 U.S.C. 711) is amended by—

13 (1) revising subsection (d)(2) to read as follows:

14 "(2) three Government members, who shall be the Sec-
15 retary, the Chairman of the Commission, and the Sec-
16 retary of the Treasury, acting directly or at any time
17 through their respective designated representatives
18 and, in the case of the Chairman, through the Vice
19 Chairman of the Commission; and";

20 (2) striking "Deputy Secretaries" from the first
21 sentence of subsection (i) and inserting in its place
22 "designated representatives"; and

1 (3) striking the first sentence from subsection
2 (j)(4).

3 (d) Section 501 of the Regional Rail Reorganization Act
4 of 1973 (45 U.S.C. 771) is amended by—

5 (1) adding to paragraph (6) after “disability,” in
6 the last sentence “failure to work due to strike, fire,
7 flood, snowstorm, hurricane, earthquake, tornado, or
8 other similar natural occurrence that causes a suspen-
9 sion of operations in whole or in part and precludes
10 performance of the work which would be performed by
11 the incumbents of the positions to be abolished or the
12 work which would be performed by the employees in-
13 volved in the force reductions,”; and

14 (2) striking “and” after the semicolon in para-
15 graph (10), striking the period after paragraph (11) and
16 inserting in its place “; and”, and adding the following
17 new paragraph:

18 “(12) ‘compensation’ means earnings in employ-
19 ment subject to the Railroad Retirement Act.”.

20 (e) Section 507 of the Regional Rail Reorganization Act
21 of 1973 (45 U.S.C. 777) is amended by adding after “section
22 504(d)” the phrase “, section 509(b), section 509(c)”.

23 EFFECTIVE DATE

24 SEC. 8. The provisions of this Act shall take effect on
25 January 1, 1980.

Senator LONG. Our first witness today will be Mr. Robert E. Gallamore, Deputy Administrator, Federal Railroad Administration.

STATEMENT OF ROBERT E. GALLAMORE, DEPUTY ADMINISTRATOR, FEDERAL RAILROAD ADMINISTRATION; ACCOMPANIED BY RAYMOND JAMES, CHIEF COUNSEL; ROBERT HUNTER, ACTING DEPUTY ASSOCIATE ADMINISTRATOR FOR FEDERAL ASSISTANCE; AND RAY SANDER, OFFICE OF THE SECRETARY, DEPARTMENT OF TRANSPORTATION

Mr. GALLAMORE. Good morning, Mr. Chairman.

Let me introduce my colleagues—on my left, Raymond James, our Chief Counsel, who can help me address questions on the title V program; on my right, Robert Hunter, who is Acting Deputy Associate Administrator for Federal assistance, dealing with Conrail issues; and to my far right Ray Sander, who is with the Office of the Secretary and can help me answer questions with respect to transfer of USRA functions to the Department.

I am pleased to be able to be before you today to discuss the closely related issues of the future of Conrail and of the future of the United States Railway Association.

These issues are addressed in S. 2527, recently introduced by Senator Cannon, and in the USRA Board of Directors February 28, 1980 resolution recommending the transfer of USRA's nonlitigation functions to the Department by the end of calendar year 1981.

For both issues, the administration has developed a single guiding principle: Conrail, in its relations with the Government, should eventually be placed on an equal footing with the rest of the industry.

This means that Federal financing for Conrail, if any additional funds are required, should come to resemble Federal financing for the railroad industry as a whole.

Also, the Federal Government should develop and implement its policies toward Conrail and toward the rest of the industry in a unified, rather than a fragmented, manner.

This approach takes into account Conrail's current status and prospects. In calendar 1979, Conrail had the best year in its 4-year history. It sustained a net loss on the order of \$180 million, half the loss it incurred the previous year.

Although Conrail expects a 1-year performance drop for 1980 due to traffic declines in the current economic environment, first quarter results for this year show Federal funding requirements falling \$100 million below budget.

In calendar year 1981, Conrail expects to improve its performance as the economy progresses, as corporate operating efficiencies build up, and as regulatory reforms hoped for from this Congress take effect.

Thus, the corporation has not requested a new Federal authorization in fiscal year 1981, and the administration has not budgeted any financing above the existing \$3.3 billion.

In the event that Conrail should develop emergency financing requirements in fiscal year 1981—for example, if the 1980-81 winter should be particularly severe or other unexpected events occur—the department would consider requesting funds to allow

Conrail to undertake up to its currently budgeted level, the approved calendar year 1980 and 1981 fixed plant rehabilitation and improvement program, depending on the nature of the emergency and the amount of funds ultimately requested.

In that circumstance, we would want to evaluate all available options for providing additional funds, including authorizing additional section 216 funds, authorizing a loan program for Conrail, or other possibilities.

I want to make clear, however, that at this time we do not believe that provision of 1981 funding is necessary or desirable.

Conrail may also identify a need for a new Federal authorization in fiscal year 1982 and beyond. In that eventuality, we are considering an approach similar to that of title V of the 4R Act, in which Conrail fixed plant rehabilitation and improvements would be funded through the Department of Transportation on a project-by-project basis.

As we noted, we believe that Conrail eventually should be placed on an equal footing with the rest of the railroad industry in applying for the limited amount of Federal funds available for railroads.

Substantial regulatory reform, which we expect from this Congress, will have a major effect on the financial performance of the Conrail system, both as a whole and on a line-by-line basis. Under a market-oriented system, pricing flexibility would be used to make lines profitable that otherwise would face abandonment. Until this regulatory reform is in place and Conrail has an opportunity to react to it, we would not favor a Federal effort, such as that contemplated in S. 2527, to identify specific lines for deletion from Conrail's for-profit system and report them to Congress in a way similar to the earlier Final System Plan, for rejection or acceptance as a single entity.

Rather, we would prefer to see Conrail identifying its own needs for abandonment, its own requirements in that regard, through the normal regulatory procedures of application to the ICC.

The history of Conrail's predecessors illustrates that line deletion is not the sole remedy for Conrail's financial problems. For example, Conrail at its inception excluded 5,500 route-miles operated by its predecessors. And even those predecessors had deleted, between 1959 and 1975, a substantial amount of rail miles from their own systems. Yet none of that produced self-sufficiency.

We believe that according to the USRA study done jointly with the Department last year, elimination of some 4,600 route-miles might yield benefits of about \$100 million. Nonetheless, that would not by itself produce self-sufficiency.

And indeed, while it is a large number, it is not overwhelming in the context of other operating efficiencies that could yield savings of as much as a half a billion dollars.

In addition to deletions of light density lines and pricing improvements, transfers of lines to solvent railroads have been suggested as a remedy for Conrail's continued losses.

Sales or transfers of major segments of the Conrail system we believe would require thorough evaluation of a number of legal and financial questions. Among the issues to be addressed are the willingness of other railroads to acquire Conrail lines, the possibility of

Conrail picking up services now provided by other railroads, and financial implications of transfers.

So, while we do not favor the abandonment and transfer proposals of S. 2527 at this time, Mr. Chairman, we believe the concept is appropriate in the larger context of a full review of Conrail's future and its requirements for continued Federal assistance.

We intend to undertake such a fundamental review as the basis for budget recommendations in fiscal year 1982 and as our initial effort under our forthcoming proposal to transfer USRA's Conrail planning, financing, and monitoring functions to DOT by the end of calendar year 1981.

The transfer of oversight functions would enable the Federal Government to deal with Conrail issues in a manner consistent with national transportation policy. The USRA Board would continue to oversee the conduct of the valuation case. This follows the joint recommendation of USRA and the Department of Justice against a transfer of those ongoing litigation functions.

The Department of Transportation is both willing and able to take over USRA's responsibilities for Conrail financing, monitoring, and planning. Our budgetary requirements for the job will be well within the personnel and other resource levels now allocated to USRA for these functions.

Within the limits of Federal personnel requirements, we hope to be able to attract USRA personnel with qualifications appropriate to the tasks we are assuming.

In line with S. 2527, we recognize that USRA—with its unique corporate composition—could provide a valuable review and analysis of Conrail to sum up its work. USRA could analyze Conrail's past performance and future prospects and present its recommendations on a variety of issues—such as physical plant, operations, and productivity. This would tie together USRA's efforts in exploring structural alternatives for Conrail, including such specialized studies as the New England and controlled transfer efforts underway or recently completed.

Such a report would assist us in assessing the impacts of proposed sales and transfers of Conrail properties and in conducting our fundamental review of Conrail's future as part of the fiscal year 1982 budget cycle. We believe that such a study by USRA would be useful.

Mr. Chairman, that concludes my remarks. I would be pleased to answer any questions on S. 2527 or on S. 2530, the Railroad Employee Protection Modification Act.

Senator LONG. I have several questions here that I want to submit to you, and I would like to have your answers in writing on these matters involved on the Conrail part of the bill.

I want to ask you a couple of questions about S. 2530, on which we also expect to conduct some hearings today. Certain labor representatives would testify as to discrimination and protection under this bill, S. 2530, against certain nonoperating employees.

How do you respond to their claim?

Mr. GALLAMORE. Mr. Chairman, I had intended to offer the testimony that Mr. James gave on the House side as a part of the record. If I can do that, I would like to, and then ask Mr. James to answer the question.

Senator LONG. All right, sir.

Mr. JAMES. Mr. Chairman, we don't think the proposal discriminates against any craft. The problem we were faced with is that various crafts had different work and compensation patterns that had to be addressed differently in the compensation program.

Now, for certain of the crafts—primarily the maintenance-of-way employees—we were faced with the seasonality of their work and compensation pattern. This had to be treated differently than is the case for other nonoperating employees, such as the clerks, who generally work straight time the entire year.

We tried to compensate with a rather complicated formula for the maintenance-of-way employees, which includes some of their overtime in the base year of 1974 and includes some of their actual overtime in the year in which the protection payments are made.

There is an issue between us and the maintenance-of-way employees as to whether we included or excluded enough overtime in the year that compensation is granted. We think we've provided a fair and equitable formula. It is not possible to provide a different formula for each of the crafts. We did break up the crafts into three major groups: operating employees, maintenance-of-way employees, and other nonoperating employees. And for each of those three groups we've provided a somewhat different formula.

We think each of the formulas is fair for the groups affected by the formula.

Senator LONG. The General Accounting Office will testify that retraining should be extended to all crafts. What is your reaction to that proposal?

Mr. JAMES. The major problem that we faced was with the marine and truck craft employees previously employed by the bankrupt railroads, who had no other employment that they could undertake under Conrail. The existing law prevented Conrail from requiring retraining or severing the employees. These employees, under the proposed bill, would be required either to be retrained or, if they decline to be retrained, they could be severed. We think that change in the law will save several million dollars.

With respect to the other employees, there generally isn't the same need for mandatory retraining.

Senator LONG. Thank you very much, gentlemen, for your testimony here today.

[The statements and answers to questions of the committee follow:]

STATEMENT OF ROBERT E. GALLAMORE, DEPUTY ADMINISTRATOR, FEDERAL RAILROAD ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

Mr. Chairman, I am pleased to be able to appear before you today to discuss two closely related issues—the future of Conrail and the future of the United States Railway Association (USRA). These issues are addressed in S. 2527 recently introduced by Senator Cannon, and in the USRA Board of Director's February 28, 1980 resolution recommending the transfer of USRA's nonlitigation functions to the Department by the end of calendar year 1981.

For both issues, the Administration has developed a single guiding principle: Conrail, in its relations with the Government, should eventually be placed on an equal footing with the rest of the industry.

This means that Federal financing for Conrail, if any additional funds are required, should come to resemble Federal financing for the railroads generally. Also, the Federal Government should develop and implement its policies toward Conrail and toward the rest of the industry in a unified, rather than a fragmented, manner.

This approach takes into account Conrail's current status and prospects. In calendar 1979, Conrail had the best year in its four-year history. It sustained a net loss on the order of \$180 million, half the loss it incurred in 1978. Although Conrail expects a one-year performance drop for 1980 due to traffic declines in the current economic environment, first quarter results for this year show Federal funding requirements falling \$100 million below budget. In calendar year 1981, Conrail expects to improve its performance as the economy progresses, as corporate operating efficiencies build up and as regulatory reforms hoped for from this Congress take effect. Thus, the Corporation has not requested a new Federal authorization in fiscal year 1981, and the Administration has not budgeted any financing above the existing \$3.3 billion.

In the event that Conrail develops emergency financing requirements in fiscal year 1981—for example, if the 1980–81 winter should be particularly severe—the Department would consider requesting funds to allow Conrail to undertake, up to its currently budgeted level, the approved calendar year 1980 and 1981 fixed plant rehabilitation and improvement program, depending on the nature of the emergency and the amount of funds requested. In that circumstance, we would want to evaluate all available options for providing additional funds, including authorizing additional section 216 funds, authorizing a loan program for Conrail, or other possibilities. I want to make clear however, that at this time we do not believe that provision of 1981 funding is necessary or desirable.

Conrail may also identify a need for a new Federal authorization in fiscal year 1982 and beyond. In that eventuality, we are considering an approach similar to that of Title V of the 4R Act, in which Conrail fixed plant rehabilitation and improvements would be funded through the Department on a project-by-project basis. As we noted, we believe that Conrail eventually should be placed on an equal footing with the rest of the railroad industry in applying for the limited amount of Federal funds available for railroads.

Substantial regulatory reform, which we expect from this Congress, will have a major effect on the financial performance of the Conrail system, both as a whole and on a line-by-basis. Under a market-oriented system, pricing flexibility would be used to make profitable lines that otherwise would face abandonment. Until regulatory reform is in place and Conrail has an opportunity to react to it, we would not favor a Federal effort such as contemplated in S. 2527 to identify lines for deletion from Conrail's for-profit system.

The history of Conrail's predecessors illustrates that line deletion is not the sole remedy for Conrail's financial problems. For example, Conrail at its inception excluded 5,500 route-miles operated by its predecessors; the predecessors between 1959 and 1975 deleted 3,600 route-miles from their own systems; yet neither Conrail nor its predecessors was able to achieve self-sufficiency. Moreover, a September 1979 report released by USRA suggested that the elimination of 4,600 route-miles from Conrail's system would yield annual benefits of about \$100 million, while improvements in operating efficiencies could yield savings of as much as \$500 million. Nonetheless, any opportunities for improvement in Conrail's financial performance should be examined carefully, and Conrail should seek ICC authorization to abandon those lines that offer no hope of profitability, even with pricing flexibility. We are confident that the ICC would act expeditiously on such requests from Conrail.

In addition to deletions of light-density lines and pricing improvements, transfers of lines to solvent railroads have been suggested as a remedy for Conrail's continuing losses. Sales or transfer of any major segments of the Conrail system would require a thorough evaluation of a number of legal and financial questions. Among the issues to be addressed are the willingness of other railroads to acquire Conrail lines, the possibility of Conrail picking up services now provided by other railroads, and the financial implications of transfers.

While the Department does not favor the abandonment and transfer proposals embodied in S.2527 at this time, Mr. Chairman, we believe the concept is appropriate in the larger context of a full review of Conrail's future, including its present structure, the implications of regulatory reform, and requirements for continued Federal assistance. We intend to undertake such a fundamental review as the basis for budget recommendations in fiscal year 1982 and as our initial effort under our forthcoming proposal to transfer USRA's Conrail planning, financing and monitoring functions to DOT by the end of calendar year 1981.

The transfer of oversight functions would enable the Federal Government to deal with Conrail issues in a manner consistent with national transportation policy. The USRA Board would continue to oversee the conduct of the valuation case. This follows the joint recommendation of USRA and the Department of Justice against a transfer of these ongoing litigation functions.

The Department of Transportation is both willing and able to take over USRA's responsibilities for Conrail financing, monitoring, and planning. Our budgetary requirements for the job will be well within the personnel and other resource levels now allocated to USRA for these functions. Within the limits of Federal personnel requirements, we hope to be able to attract USRA personnel with qualifications appropriate to the tasks we are assuming.

In line with S.2527, we recognize that USRA—with its unique corporate composition—could provide a valuable review and analysis of Conrail to sum up its work. USRA could analyze Conrail's past performance and future prospects and present its recommendations on a variety of issues—such as physical plant, operations, and productivity—based on its six years' experience with Conrail. This would tie together USRA's efforts in exploring structural alternatives for Conrail, including such specialized studies as the New England and controlled transfer efforts. Such a report would assist us in assessing the impacts of proposed sales and transfers of Conrail properties, and in conducting our fundamental review of Conrail's future as part of the fiscal year 1982 budget cycle. We believe that such a study by USRA would be useful.

Mr. Chairman, that concludes my remarks. I would be pleased to answer any questions on S. 2527 or on S. 2530, the Railroad Employee Protection Modification Act.

STATEMENT OF RAYMOND K. JAMES, CHIEF COUNSEL, FEDERAL RAILROAD
ADMINISTRATION

I am pleased to appear before you today to outline the Administration's recommendations to modify the employee protection provisions contained in title V of the Regional Rail Reorganization Act of 1973 (3R Act).

Title V of the 3R Act was enacted to protect employees of the Penn Central Transportation Company and the other bankrupt railroads that were involved in the restructuring which produced the Consolidated Rail Corporation in 1976. Representatives of railroad management and railroad employees negotiated the terms of protection contained in title V at the request of then Secretary of Transportation Claude Brinegar, and the Government agreed to contribute \$250 million to fund the program. The program now covers about 60,000 Conrail employees and includes (1) a monthly displacement allowance for protected employees whose current earnings are less than in 1974, (2) eligibility for separation allowances of up to \$20,000 per employee and (3) moving expense benefits. Payments under the program began in June 1976. The last part of the \$250 million Federal authorization was used earlier this month.

The information that we have shows that approximately 13,000 employees per month claim a monthly displacement allowance and the typical claimant receives \$400 per month; about \$5.2 million is expended each month on monthly displacement allowances. If this trend were to continue, Conrail projects that an additional \$736 million would ultimately be paid out to employees under title V over and above the \$250 million expended so far. The principal reasons for this high total cost estimate are that (1) fewer employees have taken separation allowances than initially projected when title V was enacted, (2) the annual earnings of some employees in the test period used to compute an employee's monthly guarantee—1974—have been unusually large, and (3) employee eligibility for a monthly displacement allowance is established if the employee's actual earnings in a given month (before general wage increases) are less than his average monthly earnings in 1974—regardless of the fact that the employee may have higher than average earnings in the following month.

Our response to this situation has been to develop a list of suggested modifications to title V that should be implemented if more Federal money is to be committed to the program. These modifications principally affect a protected employee's eligibility for monthly displacement allowances. What we have tried to come up with are proposals that will provide a reasonable monthly guarantee to each protected employee, but will reduce the opportunity for employees to receive MDA's when their actual annual earnings are greater than their annualized guarantee under title V. We have discussed the proposals with representatives of Conrail management and the affected unions and are confident that, while everyone may not agree with every proposal, what we are recommending will ultimately furnish reasonable protection to employees and protect against excessive cost. Conrail's estimate of the future cost of title V protection is \$235 million in the event these proposals are enacted.

The major modifications that we propose are as follows:

1. Overtime is excluded from the computation used to determine monthly compensation guarantees for nonoperating and maintenance-of-way employees. For train and engine service employees, 1977 craft compensation averages are used to determine an employee's monthly guarantee. These averages include overtime and arbitraries. The present program includes in the employee's monthly guarantee all 1974 compensation actually received by the employee. This modification is expected to eliminate windfall payments now made to certain employees who had unusually high 1974 earnings.

2. Monthly displacement allowance (MDA) payments made in years when an employee's actual annual compensation exceeds the employee's annual compensation guarantee will be credited against future MDA liability. The present program does not contain this provision. As a result, many employees receive MDA benefit payments even though their actual annual compensation is greater than their annual guarantee.

3. Title V benefits will be suspended during a reduction or curtailment of Conrail operations due to strikes, severe winters, floods, and other "Acts of God." The present program does not contain this provision.

4. The MDA of a protected employee deprived of employment will be reduced by the full amount of any outside earnings. The present program reduces MDA payments to these employees by only half of the amount of any such earnings.

5. The United States Railway Association is authorized and directed to audit the payment of benefits under these provisions. This will help to insure that Conrail manages effectively the protected employees in its work force by, for example, keeping protected employees fully employed through the placement of displaced employees in productive jobs. The present program does not contain a provision for monitoring the program.

6. Conrail is permitted to offer a bona fide job vacancy to more than one surplus employee simultaneously. Present provisions of title V require that Conrail offer a bona fide vacancy sequentially to only the most junior surplus employee. Since the employee can wait as long as 30 days to decide whether or not to accept the vacancy, it can be a very time-consuming process for Conrail to place a willing surplus employee in an available job.

7. All claims for title V benefits would have to be made no later than three months after the claimed month. Claims would have to be settled by Conrail within 150 days after a claim is filed. Present title V provisions do not impose any such time limits.

8. Mandatory retraining or severance is provided for former Penn Truck Line and marine employees. These employees have virtually no hope of ever being employed again by Conrail in those capacities. The present program does not contain these provisions.

The modifications that make up the Administration's proposals also respond to the recent GAO report critical of title V.

I will now discuss program costs. Conrail estimates that if these modifications are adopted, the probable additional title V liability, beyond the current \$2500 million authorization, will amount to \$213.2 million, before a contingency factor of approximately 10 percent.

Conrail's probable cost breakdown for the modified title V program

	<i>Millions</i>
MDA's to operating employees.....	\$133.0
MDA's to nonagreement employees.....	15.0
Transfer, severance and MDA payments to surplus employees.....	17.2
Crew consist reduction severance payments.....	40.0
Payments to employees retaining existing title V protection benefit levels. (Those who have previously transferred under title V.).....	8.0
Total.....	213.2

We have reviewed the procedures used by Conrail to estimate the projected costs for these modifications to title V and have concluded that the estimates are reasonably accurate, based on Conrail's current assumptions that there will be no additional MDA liability for nonoperating and maintenance-of-way employees. These assumptions are reasonable because currently about 30 percent of Conrail's nonoperating work force, and 60 percent of its maintenance-of-way force, are ineligible to receive title V protection benefits. This means that, unless there is a severe business downturn or an extensive rationization of the existing Conrail system, nonopera-

ting and maintenance-of-way employees who are eligible for title V benefits will remain fully employed.

While we do not like having to propose such a substantial additional authorization for the title V program, we have tried to make the best of an unfortunate situation.

Again I wish to thank the Committee for the opportunity to appear before you today and outline these proposed title V modifications. Let me emphasize that I believe our bill to be a reasonable, economical, and equitable compromise among all the parties involved.

QUESTIONS OF THE COMMITTEE AND THE ANSWERS THERETO

Question 1. You state that the ultimate goal for Conrail is to be placed on "equal footing" with the rest of the industry. You further suggest that in the eventuality that Conrail should identify a need for a new Federal authorization in fiscal year 1982 and beyond, Conrail's fixed plant and improvements should be funded on a project-by-project basis. In this regard, does the Department believe that by 1982 Conrail would be at a point where the level of deferred maintenance would have been reduced such that Conrail would proceed to a program of normal maintenance to prevent further deterioration of the plant? Do you believe that Conrail is that close to achieving a financial status which would put it on a par with the rest of the industry?

Answer. Conrail must base its track maintenance programs in 1982 and after on its future needs, rather than on past deferrals. Rail and tie installations on Conrail's predecessors fell far below "normal" levels in every year between 1958 and 1974, according to USRA; thus, Conrail at its inception faced a considerable backlog of maintenance deferrals. The ten-year rehabilitation program in the Final System Plan (FSP) will not have been completed by 1982, since the 1980 and 1981 work seasons will be far less intensive than the 1976-79 efforts, and since the ten years will not elapse until 1985. Thus, if Conrail were to base its program solely on a recouping of past maintenance deferrals in line with assumptions in the FSP, the Corporation would have to undertake track work at levels above "normal."

Nevertheless, the traffic forecasts in the FSP have proven very optimistic; regulatory reform promises to alter traffic patterns on Conrail in the coming years. As a result, Conrail need not base its track work programs on FSP assumptions. Instead, a detailed line-by-line review of traffic volumes, axle loadings, physical and operating conditions, and future disposition of each line should be conducted before continuing with the heavy maintenance-of-way and A&I program levels of the 1976-79 period. Particular attention should be given to multiple track routes, in order to determine specific normalized maintenance program needs based on current and future traffic trends, possible future plant rationalization, and the current physical and FRA class status of each line. As a result of such a review, Conrail will be in a better position to establish its track rehabilitation and maintenance requirements for the mid-1980's.

Conrail is not close to achieving a financial status on a par with successful, privately-financed carriers. Although there was a marked improvement in operating results in 1979 as opposed to 1978 (an improvement of \$200 million in cash flow from operations over the five years), the 1979 loss of about \$180 million (\$490 million on an ICC basis), illustrates the difficulties facing Conrail. Moreover, uncertain economic conditions in 1980 make it extremely unlikely that Conrail will be able to maintain in the coming year the momentum toward profitability that it established in 1979.

Question 2. Since conveyance, Conrail has carried out major rehabilitation programs designed to prevent further deterioration of its property and reduce the level of deferred maintenance. Conrail now has indicated that it will proceed with a program of reduced capital spending and thus that it will need no more funding for fiscal year 1981. GAO, however, has suggested in its report that such a program will pose an unacceptable risk to the Federal investment already made in Conrail. What is the Department's response to that suggestion? In light of the Department's view that Conrail will not need additional funding in fiscal year 1981, is the resulting program an acceptable risk?

Answer. The Department of Transportation (DOT) agrees with the GAO conclusion that any long-term solution to rail service in the Northeast will require a well-constructed and a well-maintained rail system. However, the DOT does not agree with the GAO conclusion that a reduced level of capital spending in 1980 and 1981 for track maintenance and additions and improvements (A&I) to the physical plant represents and unacceptable risk to the Federal investment in Northeast rail

freight transportation. The DOT believes that simply continuing to provide a "normalized" track rehabilitation program severely oversimplifies the complex and unsettled issue of the size and type of fixed plant Conrail needs for its future traffic base, especially under proposed rail deregulation. Conrail and the Federal Railroad Administration (FRA) staff concluded that a two-year reduction in the current levels of rehabilitation and maintenance, while these other issues are being resolved, will not adversely affect the long-term future of Conrail provided that the necessary funds are available at the end of that period to catch up with any necessary maintenance. The United States Railway Association (USRA) also indicated that such a reduction may not be critical, and that the real risk was that money would not be available after 1982 for increasing the program. The GAO approach risks leading Conrail into a long-term, if not permanent, dependency on Federal funds, the very outcome the GAO report purports to prevent.

The DOT does not feel that the GAO report fairly depicts for the Congress the long-term financing cost to the general public for continuing the current rehabilitation levels. The GAO report should note the hard choice facing the Congress on the Conrail issue, i.e., on-the-one-hand, continued subsidization of noncompensatory Conrail traffic by other profitable Conrail traffic and the Federal Government (which risks making Conrail a permanent ward of the Federal Government) and, on the other, Conrail's own funding of a physical plant appropriate to a deregulated environment with funds generated by a profitable traffic base. The DOT prefers the latter course. For all of these reasons, DOT considers Conrail's 1980 and 1981 fixed plant investment programs to represent an acceptable risk.

Question 3. In its comments to GAO's draft report on Conrail's reduced capital program, DOT states that compelling Conrail to maintain normal capital expenditures would risk leading Conrail into a long-term, if not permanent, dependency on Federal funds. Could you give some further explanation as to why the Department believes this result would occur?

Answer. Compelling Conrail to maintain "normal" capital expenditures would undermine the key principle on which Conrail's future depends: The commitment to a self-sustaining, private railroad solution in the Northeast. Conrail's management, having developed its own budget and plans for 1980 and 1981, has determined that reduced fixed plant programs in those years are appropriate. The establishment of such budgets and plans is a prerogative of Conrail as a private concern; while the Government, in its role as creditor, has a right to review the plans, it would be incompatible with the private enterprise system for the Government to compel Conrail to accept additional Federal funds for the purposes suggested in the GAO report. Such compulsion by the Government would irreparably harm the delicate relationship between Conrail, USRA, and the Executive Branch that has thus far kept Conrail in the private sector, and has permitted the Corporation to improve its performance dramatically in the past year. If additional funding were forced on Conrail in this manner, the Corporation could lose its motivation to effect the operating efficiencies and plant adjustments essential to self-sufficiency, justifiably assuming that the Federal Government would promptly and unhesitatingly fulfill any future funding needs.

Question 4. DOT is proposing that USRA monitor the amended Title V program. However, you have recommended the transfer of certain of USRA's responsibilities with respect to Conrail. How do you reconcile these two proposals?

Answer. We believe that the responsibility for monitoring the title V program belongs with the overall Conrail oversight responsibility. While we recommend transfer of USRA's Conrail oversight function to the Department, until that transfer occurs, title V program monitoring belongs with USRA.

Question 5. You mention the Department's proposal to transfer USRA responsibilities to DOT by the end of 1981. You also state the need for USRA to complete its study in certain areas. Can these studies actually be completed satisfactorily by that date? Will USRA's responsibility in ensuring Conrail's self-sustainability be carried out by that time? In this regard, if S. 2527 were enacted, how would you view this issue of transferability?

Answer. The USRA transfer proposal, while initiated and strongly supported by DOT, is a recommendation of the USRA Board in its resolution of February 28, 1980. The studies referred to in the joint USRA-DOT transfer report could be completed well before the December 31, 1981 transfer date recommended by the USRA Board. USRA should complete a comprehensive analysis of Conrail's past performance and future prospects and present its recommendations on a wide variety of issues—such as physical plant, operations, and productivity—based on its experience of monitoring Conrail and taking into account the impact of changes in the regulatory environment. USRA could also complete its New England rail study.

By the time of the transfer, USRA will have completed more oversight work and developed new analyses of Conrail's future. We believe that USRA's responsibility for Conrail oversight rightfully belongs to DOT where it can be more effectively performed as part of the Department's national rail responsibility. We plan to offer DOT employment to many of the key USRA analytical staff and to transfer USRA monitoring tools and authorities so that the same Conrail oversight can be continued at DOT. Also, until regulatory reform is in place and Conrail has an opportunity to react to it, we believe a Federal effort such as contemplated in S. 2527 to identify lines for deletion from Conrail's for-profit system would be premature. We do, however, feel that the needed studies can be completed without affecting the transfer of USRA Conrail monitoring functions by December 31, 1981, and indeed the schedules for further USRA studies and the transfer of monitoring functions were considered jointly by the USRA Board in adopting the February 28 resolution.

Question 6. You indicate that the Department intends to undertake a fundamental and far-reaching review of Conrail. When do you plan to begin this review? In this regard, you also cite USRA's six-year experience with Conrail. Is not USRA better equipped to perform the type of review which you discuss? What staff and support would the Department use for this study?

Answer. The Department plans to begin a fundamental review of Conrail as part of the fiscal year 1982 budget cycle. The review will begin with an evaluation of Conrail's Five-Year Business Plan for 1981-85, to be received on June 1, 1980. The initial phase of the review, directed toward an fiscal year 1982 budget decision for inclusion in the President's Budget in January, 1981, will employ existing Department personnel and contractor support. Studies by USRA during fiscal year 1980 and fiscal year 1981 should be a major contribution to the Department's effort, but transportation policy studies underlying the President's budget are the responsibility of the DOT. The Department envisions a continuation and intensification of the full review of Conrail's future after the USRA monitoring and planning functions are absorbed—that is, in calendar 1982. By that time, the full extent and implications of regulatory reform should be evident.

Question 7. You argue that the proposals embodied in S. 2527 should be more appropriately part of a fuller review of Conrail's future. Has Conrail not been studied enough for some action toward resolution to be taken?

Answer. Conrail has indeed been studied enough to justify actions in many areas that would enhance its profitability. Examples of these areas would include operating efficiencies, creative marketing initiatives, and deletions of lines that are clearly and irretrievably unprofitable. Nevertheless, further study of the impacts of regulatory reform must precede any major Federal program to delete significant portions of the Conrail system on a one-time basis. Careful consideration of regulatory impacts would enable Conrail to tailor its system to the traffic and revenue base of the future, rather than to the old regulatory structure. Furthermore, the transfers to other carriers envisioned in S. 2527 raise significant issues regarding the goals of Federal involvement in rail planning and financing in the Northeast: whether, for example, the Government should emphasize self-sufficiency for Conrail or the enhancement of inter-railroad competition where the two goals conflict. The Department can resolve such issues only in the context of a comprehensive review of Conrail's future, a review which the compressed time schedule of S. 2527 would not allow.

Question 8. You mention that S. 2527 does not add anything to the abandonment procedure already available through the ICC. Do you not believe that a specific legislative framework, with an expression of Congressional intent, is the way to ensure that Conrail will avail itself of this procedure, as it has not done to date?

Answer. The Department recognizes that legislative provisions, as exemplified by S. 2527, would directly encourage Conrail to rationalize its existing system quickly and comprehensively. The procedure established in S. 2527 would result in deletions of lines that Conrail has determined to be uneconomic within the current regulatory framework. Many of these lines, however, may be made profitable through rate flexibilities inherent in a liberalized regulatory environment and may not need to be deleted from Conrail's system. The use of contracts, peak service pricing, etc., which will become possible after provisions contained in S. 1946 are enacted, should also help to improve rail service so that some of these lines may attract higher traffic levels and become economically viable. Analysis of past traffic trends and current operations will be helpful, but cannot be the sole basis to use to determine uneconomic lines in light of a new regulatory situation. The Department believes that regulatory reform will so alter the economics of Conrail's lines as to make a Federally sponsored one-time study of extensive line deletions inappropriate in 1980

and 1981, and that Conrail has in the meantime many other ways in which to improve its performance.

Question 9. In expressing your opposition to S. 2527, you state that no action should be taken on S. 2527 until regulatory reform is in place, and further that "line deletion" under S. 2527 would only result in relatively small savings. Can we be sure that the enactment of regulatory reform legislation will be timely and that it will promote the substantial savings which you cite? Can Congress afford to delay? Should Congress not be assured that all possible action is being taken to ensure savings, no matter how large or small, in the event that no additional funding is authorized and Conrail suddenly needs more money?

Answer. With the timely passage of the Senate's regulatory reform legislation, the Department believes that concerted action by the Congress will give the rail industry increased pricing flexibility within the near future. Conrail is currently benefiting from a relaxed administrative regulatory climate resulting from the ICC's recent deregulatory actions. Conrail's surcharge program has netted Conrail significantly increased revenues estimated at \$27 million annually with only minimal levels of diversion. Legislated regulatory reform is expected to provide higher levels of benefits in the future. In view of Conrail's specific problems, as well as the capital shortfall in the rail industry as a whole (as detailed in the Department's report under section 504/901 of the 4R Act), Congress cannot afford to delay regulatory reform.

The Department agrees that Conrail should take all possible actions to assure adequate, financially self-sufficient rail service in its region at minimal cost to the taxpayer. Conrail can pursue some action areas—for example, operating efficiencies and abandonment of irremediably unprofitable lines—immediately under existing procedures, and without new legislation. On the other hand, a one-time extensive deletion of lines prior to implementation of regulatory reform would run the twin risks of (1) prematurely depriving substantial areas of adequate rail service, when pricing adjustments under regulatory reform would otherwise be sufficient to keep the lines open, and (2) simply transferring the burden to the Federal/state/local light density subsidy programs, in which case there may be no short-term net benefit to the taxpayer.

Question 10. You state that "line deletion" is not the sole remedy for Conrail's financial problems. As you point out, improvements in operating efficiencies offer the greatest potential savings. Do you have any other suggestions as to how greater operating efficiencies can be achieved, if not under S. 2527?

Answer. S. 2527 addresses line deletions only. Much evidence exists that Conrail can effect savings through means other than line deletions. For example, in 1979, Conrail's average freight employee count of 68,875 was 12 percent less than its average count for 1976. Since traffic levels have remained approximately constant since 1976 (about 93 billion revenue ton-miles annually), transportation production per employee has increased correspondingly. For the future, the USRA/FRA staff study identified \$536 million (1977 constant dollars) in efficiency improvements that could be achieved in 1983 over 1977 levels; these would be in the following areas, and would be independent of line deletions:

[Dollars in millions]

Efficiency area	Operating efficiencies	Percent of total operating efficiencies
Maintenance of way.....	\$108	20
Maintenance of equipment.....	46	9
Transportation.....	171	32
General, administrative and other.....	28	5
Car utilization (19.5 percent improvement).....	128	24
Taxes.....	55	10
Total net income improvement in 1983 relative to 1977 base period due to operating efficiencies.....	536	100

Source: USRA.

Thus, both past experience and projections show that there are significant opportunities, in addition to line deletions, for improvement to Conrail's performance.

Question 11. With regard to the title V legislation, a labor witness has indicated that Conrail mismanaged title V funds under the present program, and that the only modification necessary to the program is in the area of management. What is your reaction to this comment?

Answer. In the past there have been frequent allegations that the \$250 million title V fund was exhausted because of Conrail's mismanagement of the program. However, in a December 5, 1979 report by the Comptroller General of the United States (GAO)—"Employee Protection Provisions of the Rail Act (Title V 3R Act) Need Change" (CED-80-16)—the GAO concluded that, based on samples taken over a twelve-month study period, the aggregate error rate of all claims paid was only 1.1 percent.

Their findings conclusively show that Conrail's administration of the program has been good, and that the administrative procedures Conrail has developed and implemented are sound and effective, particularly in light of the complexity and magnitude of the title V program.

The draft report also shows that the depletion of the funds was caused not by any maladministration of the program by Conrail but by the application of the provisions of the statute.

Question 12. GAO has testified that Conrail's estimate of the predicted labor costs under S. 2530 is inaccurate and that non-Conrail employees under the program could be unfairly penalized. Also, GAO suggests that there be a certain termination date attached to the program. What is your response to these criticisms?

Answer. The GAO testimony indicated that in view of the current economic trends and possible plant rationalization due to deregulation, Conrail's estimate of the modified title V funding requirements could be understated. As a result, GAO suggests that employees of other railroads, who also receive title V benefits, could be unfairly penalized if in fact the title V funds were prematurely exhausted. There are at the present time six railroads, other than Conrail, whose employees receive title V benefits. A significant departure from what has been the traditional proportionate use of the fund by any of the participating carriers could have an adverse effect on the longevity of the fund. However, DOT believes that Conrail's estimates are conservative and that barring the wholesale rationalization of the Conrail system or a major recession, the protections are realistic.

With respect to attaching a termination date to the program, the DOT believes that the modified program significantly reduces the projected Federal liability, from \$736 million in the event the present program was extended to \$235 million, while maintaining the original intent of the Congress to provide these employees with lifetime protection. Furthermore, if a six-year termination date were put on the existing program as in the Amtrak protection provisions, the projected liability would be greater than the lifetime protection contained in the DOT modified package.

Next I am going to call the Honorable Darius Gaskins, Chairman of the Interstate Commerce Commission.

We are pleased to have you.

STATEMENT OF HON. DARIUS GASKINS, CHAIRMAN, INTERSTATE COMMERCE COMMISSION

Senator LONG. Mr. Gaskins, we are pleased to have you here.

Mr. GASKINS. Mr. Chairman, members of the subcommittee, I am pleased to have this opportunity to appear before the subcommittee to discuss the important and complex issues of Conrail structure and financial strength. The Interstate Commerce Commission shares Congress concern with the performance of Conrail.¹

S. 2527 provides for a "rationalization" of Conrail's system in the same manner by which Conrail was created. Conrail would have 30 days to propose a plan for transfer or abandonment of those lines which it does not wish to retain. Within 90 days, USRA would publish its preliminary findings on the Conrail plan. Then the Commission would be required, within 60 days, to hold hearings at which interested persons may testify on the preliminary findings.

¹ Because it does not directly affect our activities, we are not commenting on S. 2530, a bill dealing with labor protection for Conrail employees.

The Commission would then summarize and analyze the evidence, and critique and evaluate the preliminary findings.

After consideration of these comments, USRA would, within 60 days, submit a rationalization plan to Congress. The Commission and DOT would be required to submit evaluations of that plan to Congress within 20 days. If Congress did not disapprove the plan within 45 days after its submission, it would be automatically enacted. If Congress were to disapprove the plan within the prescribed time, USRA would have an additional 60 days within which it must submit a revised plan.

If the plan is enacted, and not disapproved, Conrail would abandon or transfer the lines so designated without any prior approval by the Commission. However, as to lines to be abandoned, Conrail would be required to provide 60 days' advance notice by means of the same posting, publishing, and service procedures which is required of abandonment applications submitted to the Commission. Furthermore, the abandonments would be subject to the same employee protective conditions which the Commission is required to impose in abandonment proceedings. Line transfers would be subject to the employee protection set forth in title V of the 3R Act of 1973.

Although we believe that rationalization of Conrail's system should be encouraged, we are not certain that enactment of S. 2527 is necessary to achieve the desired reduction in the size of the Conrail system. We believe that rationalization can be accomplished pursuant to the existing regulatory structure. The Commission, since enactment of the 4R Act, has adopted a fairly simplified abandonment process. Unopposed abandonment cases are now concluded in an average of 60 days, and even the most controversial cases are completed in less than a year. Similarly, the transfer of lines to another rail carrier can normally be accomplished expeditiously. Moreover, the existing regulations provide sufficient time periods to enable affected shippers and carriers to air their views on the propriety of a proposed transaction.

We believe USRA should have an important advisory role in rationalizing Conrail's system, but feel that existing Commission procedures are adequate to handle the problems expeditiously yet on a gradual enough basis that communities have sufficient time to adjust to the loss of rail service. Conrail, unfortunately, has chosen not to pursue abandonments and transfers under the existing system, in spite of our urging. Rather, Conrail has made a highly publicized management decision not to take any actions toward rationalizing its plant before the Congress acts on rail deregulation.

We should note that although structural changes are a necessary step in aiding Conrail, these changes are only part of the solution. Abandonments and transfers should be done, and done promptly, but other things must also be done. I want to stress the importance that we place on fundamental reform of the regulatory process.

Abandonments and transfers, by themselves, will not solve Conrail's problems. Innovative marketing based on a wide range of rate and service offerings is another essential part of the solution.

To a certain extent, such innovation is blocked or slowed by an out-of-date regulatory process. The Commission has testified on

these issues before, and today I would add only that flexible rate-making, freedom to set one's own rates without collusion or undue interference from other railroads, and the ability to enter enforceable contracts are, like rationalization, absolute prerequisites to achieving the goal of a successful independent eastern rail network.

The Commission is ready and able to assist this process actively. We have already moved to make our ratesetting procedures faster and fairer. We are actively considering changes in our market dominance and peak and seasonal rate procedures to assure that they encourage rather than inhibit ratesetting flexibility. We have reversed a long-standing policy discouraging contracts, and are working actively to promote greater use of contracts. We have ample authority to permit cancellation of joint rates that are unfair to participating carriers, and are not reluctant to use that authority where appropriate.

If Congress desires to restructure the Conrail system in the manner set forth in S. 2527, we see no significant obstacles to performing our functions in the restructuring. Some of the time limits are rather short and could inhibit public participation in the process, but we believe we can do the job in the time allowed.¹

This concludes my prepared statement. I am prepared to answer any questions you may have.

Senator LONG. I take it that you believe legislative action is necessary, in view of Conrail's hesitance to pursue abandonments and transfer under the existing regulatory structure?

Mr. GASKINS. I'm not sure additional legislation is necessary, because I believe that the problem associated with funding beyond 1981 will drive Conrail to attempts at rationalization and focus the Congress' and the administration's attention on this issue, anyway.

My concern about the proposed legislation is that it doesn't actually require Conrail to do very much. In other words they can still, as I read it, sit on their hands and take minimal steps to rationalize their system.

Senator LONG. You indicate that the Commission shares Congress' concern with the performance of Conrail. Could you tell us of any specific actions you have taken?

Mr. GASKINS. Well, many of our actions are aimed not just at Conrail but at the rail system as a whole. But let me explain a few of the ones that have had the biggest impact on Conrail. We recently have announced a policy which would encourage the cancellation of joint rates when carriers are unsatisfied with the coverage of their costs under joint rate movements.

A year ago the Commission indicated that we would allow Conrail to file surcharges and encourage them to apply those surcharges on certain of their joint movements which were unprofitable. We have in the works a rulemaking to adjust the market dominance criteria, which will essentially, if it's concluded, allow carriers to adjust their rates without fear of suspension up to fully

¹Commissioner Stafford, dissenting in part: "I disagree with the statement that innovative marketing proposals are 'blocked or slowed by an out-of-date regulatory process.' The fact is that these innovative marketing plans mean higher rates for shippers and consumers. Present regulations attempt to balance these competing interests and should not be cast in such a negative light."

allocated costs. And we think that will make an important difference in restructuring Conrail's rate system.

We further have a rulemaking dealing with peak and off-peak rates which we think should provide some rate flexibility to Conrail. And we have made it very clear that we are prepared to handle abandonments in an expeditious manner. But we don't have any applications for abandonments by Conrail.

Senator LONG. You indicate that rate flexibility is of vital importance to Conrail, and you state the Commission is prepared to assist in this regard and specifically to take such action prior to the enactment of a regulatory formal measure. To what extent would your actions reflect the legislative intent that was expressed on the Senate side within the bounds of the current law?

Mr. GASKINS. I think there's a very close parallel between the intent or the thrust of our proposed rulemakings and the Senate bill. Particularly with respect to market dominance, where the two are pretty much parallel in their direction.

Senator LONG. Thank you very much for your presence, Mr. Chairman.

[The following information was subsequently received for the record:]

INTERSTATE COMMERCE COMMISSION,
Washington, D.C., April 29, 1980.

Hon. RUSSELL B. LONG,
Chairman, Subcommittee on Surface Transportation, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, D.C.

DEAR CHAIRMAN LONG: Attached are responses to five questions you posed to me relating to my testimony on April 16, 1980, before your Subcommittee on S. 2527. Due to time constraints, these responses have not been voted on by the Commission and therefore represent only my views.

If I can be of any further assistance, please contact me.

Sincerely yours,

DARIUS W. GASKINS, Jr.,
Chairman.

Enclosure.

QUESTIONS OF THE COMMITTEE AND THE ANSWERS THERETO

Question 1. In your testimony, you indicate that S. 2527 is unnecessary and that the present I.C.C. procedures are adequate. You also mention that Conrail has chosen not to avail itself of these procedures. The Committee is faced with a situation in which Conrail may run out of money, if no additional funding is provided for fiscal year 1981. Is not legislation necessary to ensure that Conrail is taking available steps to become more financially sound and more efficient?

Answer. I suspect that a firm commitment to terminate Conrail funding on a date certain is the best incentive to lead Conrail management to rationalize its system through both abandonments and sales and to operate more efficiently. A less draconian measure would be to force Conrail to file promptly abandonment applications with the Commission with respect to all lines which do not and are not likely to produce enough revenue to cover their avoidable costs. Either or both of these legislative actions hopefully would lead Conrail to trim its system to a more economically rational size.

Question 2. In your testimony before the Committee, you indicated that if legislation is envisioned, perhaps S. 2527 does not go far enough in pushing Conrail to take steps to rationalize. Would you please elaborate on this comment for the record? What recommendations would you make in this regard?

Answer. S. 2527 offers Conrail a somewhat more expeditious procedure for effecting abandonments and transfers, but it does not require Conrail to enter into these transactions nor does it create incentives for it to do so. Other than the steps suggested in the answer to question 1, at this time I have no other recommendations.

Question 3. S. 2527 sets forth a procedure for effecting abandonments and transfers. How would you compare S. 2527 to current I.C.C. procedures in this area, particularly with respect to time frames and input from interested parties?

If S. 2527 were enacted, you indicate that you see no obstacles to fulfilling your functions in the restructuring. DOT, on the other hand, has expressed concern over the proposed time frames, particularly those under Section 5, which requires the Commission to hold hearings and provide a summary and analysis of the hearings within 60 days. How do you respond to DOT's concern?

Answer. I will first address the Commission's procedures and time frames for handling rail abandonment applications.

Under the 4-R Act, each carrier is required to annually update its System Diagram Map, indicating its abandonment plans for every line in its system. The carrier must publish a notice in local newspapers when it places a line in Category 1 (abandonment application anticipated within the next 3 years) or Category 2 (under study as a potential abandonment candidate). In this manner, affected shippers and communities are alerted to the possible future loss of the line and may plan accordingly. Shippers are expected to reassess their rail needs and either (1) make the additional commitments to rail service necessary to assure profitable operation of the line or (2) make arrangements for alternate transportation should the line be abandoned.

In enacting the 4-R Act, Congress placed such importance on this advance warning mechanism that the Commission is prohibited from authorizing an abandonment if the line has not been in Category 1 for at least 4 months before the abandonment application is filed, unless no state or local body or significant user objects.

In this connection, I would note that Conrail has not used the System Diagram Map for its intended purpose. In a press release dated December 6, 1979, Conrail announced its policy of deferring any abandonment initiatives pending legislative action. Therefore, with few exceptions, lines with active customers were not placed in Category 1 or 2.

The next step in the abandonment process is the publication, posting, and service, on state officials and significant users, of the carrier's notice that it is filing an abandonment application. This notice, issued about a month before the application is filed, explains how interested persons may participate in the Commission's proceeding.

When the application itself is filed, if no one requests an investigation, the Commission will issue the certificate authorizing the abandonment within 60 days. If an investigation is requested, the Commission will receive and consider evidence from all interested persons before making its decision. The timetable for this investigation is governed by statutory deadlines. As stated in the Chairman's testimony, these proceedings are normally concluded in less than a year.

The Commission's decision to authorize abandonment is published in the *FEDERAL REGISTER*. Thereafter, any interested person has 15 days in which to offer financial assistance to enable continue rail service. The offer may be either to subsidize the carrier for its costs of providing the service or to purchase the line so that another entity may provide the service. If a valid offer is filed by a financially responsible person and the Commission finds the assistance is likely to fully reimburse the carrier, the Commission will postpone abandonment authority for a maximum 6 months to enable negotiations to be concluded.

Once a carrier receives abandonment authority from the Commission, the statute provides that the authority may not become effective for 120 days. However, we believe that this additional delay at this stage in the process is unnecessary. By this time, affected shippers and communities have had ample opportunity to arrange alternate transportation.

In contrast, S. 2527 would not provide affected shippers and communities the same direct early warning that they may lose their rail service. The posting, publishing, and service procedures of S. 2527 are for notification that the line will be abandoned in 60 days. This is after the rationalization plan has been enacted and public participation is no longer allowed. The only public participation would be in the 60 days the Commission has to analyze USRA's preliminary findings. Shippers and communities will learn of the findings only through the coverage afforded by the local media. Furthermore, they may only have a few days in which to prepare and submit testimony to the Commission. The degree and quality of public input into the ultimate decision will be diminished substantially. Furthermore, their comments will be diluted because they will be addressed to an intermediary, rather than to the final decisionmaker.

In this regard, our answer to the second part of question 3 is that the Commission is capable of conducting hearings and preparing an evaluation within the expedited 60 day schedule. However, Congress must realize that the quality and detail of both the public participation and the Commission's analysis will reflect the very restrictive timetable.

Question 4. Your testimony indicates that the transfer of lines to another rail carrier can normally be accomplished expeditiously. Can you provide any additional details on the average time frames involved?

Answer. Briefly, the procedures and time frames for handling rail transfer applications are as follows: First, the Commission has 30 days in which to reject an incomplete application. Once an application is accepted, the Commission has a maximum 240 days to hear additional evidence in support or opposition to the proposal, with a maximum 180 days to issue an administratively final decision after all the evidence has been received. I emphasize that these are the maximum, rather than ordinary, time frames. Where there are no major market shifts involved, the Commission processes these applications much faster. For the type of individual line transfers contemplated for Conrail, I would anticipate that these applications could be decided in no more than 3 to 6 months, depending upon the amount and nature of the opposition to the proposal.

I would point out that although S. 2527 would eliminate the need for Commission approval of the transfer, the purchaser of the line would still need Commission authorization to provide the common carrier service over the line. Thus, the bill would not eliminate the need for a Commission proceeding.

Question 5. Both the Senate and House rail bills contain provisions affecting joint rates and specifically permitting imposition of surcharges under specified conditions. Assuming such reform legislation is enacted within the next several months, do you see a problem with proceeding as set forth in S. 2527 before Conrail has had a chance to experiment with more flexible ratemaking and specifically with surcharges?

Answer. While we favor giving Conrail and other railroads added rate flexibility, permitting commodity surcharges will make only a small dent in the Conrail deficit. Proceeding apace with abandonments and sales is generally complementary with rate and divisions adjustment activity. However, carriers have been encouraged by the Commission to impose branch line specific surcharges as an alternative to abandonment. Such surcharges also test out whether a line is in fact providing essential service. If the surcharge drives traffic off the line, then it is reasonable to conclude shippers have other transport alternatives.

Senator LONG. Next we will call Mr. Stanton P. Sender, treasurer of the National Institute—the National Industrial Traffic League.

STATEMENT OF STANTON P. SENDER, TREASURER, NATIONAL INDUSTRIAL TRAFFIC LEAGUE; ACCOMPANIED BY JAMES BARTLEY, EXECUTIVE VICE PRESIDENT; AND MS. M. J. FIOCCO, DIRECTOR OF LEGISLATIVE COMMUNICATIONS

Mr. SENDER. Good morning. I am Stan Sender. I am the elected treasurer of the National Industrial Traffic League. I am also on the board of directors of the U.S. Railway Association, representing large shippers.

I am accompanied today on my left by M. J. Fiocco, director of legislative communications of the league; and on my right by James Bartley, the executive vice president of the league.

If my statement can be put in the record, I will briefly summarize the five points in my statement.

Senator LONG. We will put your statement in the record.

Mr. SENDER. The first point is the National Industrial Traffic League urges early and favorable action on S. 2527 to provide a legislative framework for congressional review of Conrail's future, including the submission of specific recommendations by the USRA at the beginning of the next Congress.

Our second point is that we ask that the bill be clarified to insure that any lines chosen for rationalization or abandonment or line deletion or whatever term you use, are sustaining a continuing financial loss, and that every avenue is explored to continue service on those lines, either through transfers to other railroads or, after adequate notice, through purchases by shippers and communities.

The third point we want to make is that Conrail's financial situation, particularly the deferral of maintenance, makes imperative the prompt enactment of S. 2527.

The financial facts with respect to the prior two points, rationalization and deferral of maintenance, are contained in a joint staff report by USRA and the Federal Railroad Administration of DOT, and dated last September. The report reviewed Conrail's August business plan. This business plan assumed that regulatory reform would provide for complete pricing freedom on January 1, 1981, thus enabling Conrail, quote:

To raise and lower rates on the basis of competitive considerations or the cost of service, determine its rates free of joint rate restrictions, and institute backhaul pricing.

The joint staff report termed these assumptions optimistic, and Senate action on S. 1946 has upheld the report's analysis that Conrail's predictions were optimistic. In Conrail's August plan, it indicated that complete pricing freedom would enable Conrail to reduce its plant by about 1,948 route miles, reduce its traffic base by about 8 percent, and reduce its operating costs by 13 percent. Even though, as the report pointed out, Conrail assumed a 13-percent reduction in operating costs, its August plan showed that the operating efficiencies would be lower than had been forecast earlier in the year.

The report also pointed out—and this is one of the most significant facts—that in the past Conrail has achieved less than 80 percent of its planned operating efficiencies. And if there is a 20-percent shortfall, as has happened in the past, the report points out that this will be the equivalent to the amount that Conrail has programmed for its 1983 track maintenance program. In other words, if Conrail has a 20-percent shortfall in its operating efficiencies, that shortfall is equivalent to all of Conrail's planned 1983 track maintenance program.

Finally, Conrail's August plan calls for a reduction in rehabilitation capital expenditures, with track maintenance levels dropping below those required for normal maintenance, and elimination of locomotive rebuilds. As to these cutbacks, the joint report said, quote:

This would result in substantial losses of operating efficiency benefits and significant cost increases, the impact of which would be compounded by inflation and the potential of reductions in the quality of service.

I'm continuing to quote:

The risks that these actions could jeopardize Conrail's long-term financial and operational performance are such that additional analyses are imperative.

Now, GAO has done that additional analysis, and their conclusion, as you noted, Senator, was that Conrail's capital spending plans are unacceptably risky.

According to the USRA staff, this cutback in maintenance is right now under way. For April to June 1980, Conrail's additions and improvements, as well as track rehabilitation programs, are \$51 million or 34 percent less than its 1979 efforts. On a constant 1979 dollar basis, this level is \$60 million or 40 percent less than last year. And even with this reduced maintenance, the USRA staff estimates that Conrail will have completely exhausted its current \$3.3 billion authorization by the third quarter of 1981.

We agree with the testimony of DOT and ICC that rationalization or abandonment or line deletion is not the sole remedy for Conrail's financial problems. According to the staff report, 70 percent of Conrail's projected 1983 financial improvement is dependent upon management's ability to reduce costs and improve overall operating performance. Savings from operating efficiency, which alone total \$536 million, comprise the largest contribution to this future profitability. The benefits from a liberalized regulatory environment and a one-time plant rationalization represent 30 percent of the total improvement and \$283 million of the projected 1983 net operating improvement.

Of this total, \$208 million would result from regulatory changes, while only \$75 million would accrue from a 3,700-mile rationalization of Conrail's overall 16,700 mile network.

Fourth, we think the legislation should direct, in view of these facts, the USRA to focus its attention on the operating efficiencies, where 70 percent of the savings are projected to occur, as well as any potential savings to Conrail from enactment of rail reform legislation.

Fifth and finally, the USRA report should focus on Conrail's future structure. The league strongly opposes a freight-Amtrak solution to Conrail. Since its establishment, USRA has served as Conrail's banker. And although a Government agency, it has provided a buffer between Conrail's management and operations and the executive branch.

The majority of USRA's Presidentially appointed and Senate-confirmed members represent shippers, rail management, labor and investors, and cities and Governors. Under USRA, the goals of Conrail's management and policies have remained those of a for-profit corporation.

As soon as Conrail can be made profitable, there will be no need for USRA, and at this point the league believes this temporary agency should be promptly terminated. When Conrail is like every other railroad, it should be so treated. Its stockholders then should have the authority to appoint a majority of its board of directors, and through them Conrail's management.

However, as long as the Government has the power of appointment over Conrail's board and management, Conrail will not be like other railroads in America. The league believes it would be a serious mistake to remove this temporary buffer and place control of Conrail in an executive branch agency such as DOT. Such a move clearly would signal a permanent Government link to Conrail. Equally unwise would be to provide for a system similar to those used by Amtrak and the U.S. Postal Service.

The wisest course, we believe, would be to direct USRA to recommend to Congress the steps needed to achieve a profitable Conrail,

to provide for a stockholder-appointed majority on Conrail's board, and to set a date for its termination.

Thank you very much, Senator.

Senator LONG. Thank you, sir.

The arguments against passage of S. 2527 state that the bill is not necessary, since the present procedures are adequate, that we should wait until regulatory reform is enacted, and that in any event plant rationalization would not significantly decrease Conrail's costs. What is your response?

Mr. SENDER. Let me take the last part first. As far as plant rationalization, as I pointed out, it would be about only 5 or 10 percent of the possible savings. Therefore, we do not see rationalization as the solution to Conrail's problems.

As far as whether the legislation is necessary, it seems to us that it's imperative that the next Congress take action with respect to Conrail. Maintenance, as I pointed out, is being deferred. We think the bill would provide recommendations to Congress to assist Congress in taking action, and if not, we will be faced in the next Congress with a crisis situation such as we have on the Rock Island and the Milwaukee.

And that is why we would like to see this legislation.

In addition, it would be a signal to the shipping community that Congress is not going to stand by and see that railroad have more and more deferred maintenance and bring it back to 1975, where it was when the Government started up Conrail.

Senator LONG. Thank you very much. I have some other questions here. I'm going to submit them and ask you to give us answers in writing. Thank you very much, sir.

[The statement and answers to questions of the committee follow:]

STATEMENT OF STANTON P. SENDER, TREASURER, NATIONAL INDUSTRIAL TRAFFIC LEAGUE

Mr. Chairman and members of the subcommittee; the National Industrial Traffic League urges early and favorable action on S. 2527 to provide a legislative framework for Congressional review of Conrail's future. We strongly agree with the bill's recognition of the need for an intensive review of Conrail's financial situation and its future viability as well as for the submission of specific recommendations by the beginning of the 97th Congress. We further agree that this can best be done by the United States Railway Association, an independent, expert body, acting as an arm of Congress. We support directing USRA, after public hearings by the ICC, to submit to the Congress a plan for rationalization of Conrail rail properties, which will become effective within a specified time, if not rejected by a joint Congressional resolution. However, we ask that S. 2527 be clarified to ensure that those chosen lines are sustaining a continuing financial loss, and that every avenue is explored to continue service either through transfers to other railroads or, after adequate notice, through purchases by shippers and communities.

The National Industrial Traffic League is a voluntary organization of 1,800 shippers, shippers' associations, boards of trade, chambers of commerce, and other entities concerned with rates, traffic, and transportation services of all carrier modes. It is the only nationwide organization which represents all types of shippers. Its members include large, medium, and small shippers who use all modes of transportation and ship all types of commodities. The League is not a panel or a committee of a trade group, nor is it a spokesman for a particular commodity or transportation viewpoint. It does not permit carrier membership. League members, directly or indirectly, are responsible for the routing of about 80 percent of our country's commercial traffic. The League's primary concern is providing the nation and all shippers with a sound, efficient, well-managed, and privately-owned and operated transportation system. To arrive at positions reflecting the broad range of

shipper interests within the League, our members, at annual and special meetings consider, debate, and vote on pertinent transportation issues. During its more than 70-year history, the League frequently has been the spokesman for the nation's shippers before Congress on transportation and regulatory reform legislation.

The goals of the "3-R" (Regional Reorganization Act of 1973) and "4-R" (Railroad Revitalization and Regulatory Reform Act) Acts were to create, through reorganization, a financially self-sustaining rail system adequate to meet the rail transportation needs and service requirements of the northeast. The League supported their enactment to ensure that our national rail system remained privately owned and operated. Conrail's present financial situation, however, makes imperative prompt enactment of S. 2527's legislative framework.

The General Accounting Office March 10 submitted a report to Congress pointing out that Conrail's March, 1979, five-year business plan projected a cumulative Federal funding need of \$4.082 billion through 1983—\$782 million more than the \$3.3 billion already authorized by Congress. Under the March plan, Conrail earmarked \$1.936 billion for track rehabilitation and \$728 million for additions and improvements.

However, less than five months later, Conrail, last August, revised its March plan and reduced that capital spending program for 1980 and 1981 by about \$379 million to stay within its current \$3.3 billion authorization. Conrail based its revised estimates on projections that traffic levels and prices under a changed regulatory environment would sufficient revenues to allow the capital program to be restored in 1982.

A joint staff report by USRA and the Federal Railroad Administration, dated last September, reviewed Conrail's August business plan. First, Conrail's plan, assumed that regulatory reform would provide for complete pricing freedom on January 1, 1981, thus enabling it to "raise and lower rates on the basis of competitive considerations or the cost of service; determine its rates free of joint rate restrictions; and institute backhaul pricing." The joint staff report termed those assumptions, "optimistic." Senate action on S. 1946 has upheld the report's analysis of Conrail's predictions.

Second, Conrail's August plan anticipated that "complete pricing freedom" would enable it to: (1) reduce its plant by about 1,940 route miles; (2) reduce its traffic base by about 8 percent, and (3) reduce its operating costs by 13 percent. The report noted that the projected 13 percent reduction in operating costs was based on assumed operating efficiencies which were lower than those forecast in Conrail's March business plan. The report pointed out that in the past Conrail has achieved substantially less than 80 percent of its planned operating efficiencies. If there is a 20 percent shortfall in Conrail's projected operating efficiencies, the report said, its funding need will increase to a level equal to one-half of the net income forecast through 1983 or, since there is no provision for additional funding, to a level approximating the amount programmed for Conrail's 1983 track maintenance program.

Third, that Conrail's August plan calls for a reduction in rehabilitation and capital expenditures—with track maintenance levels dropping below those required for "normal" maintenance, and elimination of locomotive rebuilds. As to these cutbacks, the joint report said, "this would result in substantial losses of operating efficiency benefits and significant cost increases, the impact of which would be compounded by inflation and the potential of reductions in the quality of service. The risks that these actions could jeopardize Conrail's long term financial and operational performance are such that additional analyses are imperative."

GAO had done this additional analysis. The GAO March report found that, when Conrail planned to sustain its capital spending programs, it expected to lay 876 miles of track and 3.2 million ties annually during 1980-1983. Under its August plan, however, Conrail would reduce its programs for 1980 and 1981 to 240 miles of rail and an average of 1.4 million ties for the two year. According to GAO, Conrail's records show that to maintain its existing track condition, it would need to replace about 725 miles of rail and 2.8 million ties annually. GAO concluded "Conrail's capital spending plans are unacceptably risky."

According to the USRA staff, this cutback in maintenance is now underway, for April-June, 1980, Conrail's additions and improvements as well as track rehabilitation program are \$51 million or 34 percent less than its 1979 efforts. On a constant 1979 dollar basis, this level is \$60 million or 40 percent less than last year. Even with this reduced maintenance, USRA staff estimates that Conrail will have completely exhausted its current \$3.3 billion authorization by the 3rd Quarter of 1981.

The joint report also analyzed Conrail's reliance on regulatory reforms and plant rationalization to achieve profitability. According to the staff report, 70 percent of

the Conrail's projected 1983 financial improvement is dependent upon management's ability to reduce costs and improve overall operating performance. Savings from operating efficiency, which alone total \$536 million, comprise the largest contribution to this future profitability. These savings are based on enhanced equipment utilization, better yard and technical performance, increased labor productivity, and other operating efficiencies.

The report finds that the benefits derived from a liberalized regulatory environment and a one-time plant rationalization represent about 30 percent of the total improvement and \$283 million of the projected 1983 net operating improvement. Of this total, \$208 million would result from regulatory changes, while only \$75 million would accrue from a 3,700-mile rationalization of Conrail's overall 16,700-mile network. If this reduction was increased to 4,600 miles, there would be an additional \$20 million in revenues. However, if there was 6,200-mile rationalization (about 40 percent of the Conrail system), there would be a \$30 million less in revenue than projected for the 4,600-mile plan.

These facts demonstrate the need for a legislative framework within which the 97th Congress will be able to make informed decisions about Conrail's future viability. S. 2527 should direct USRA to focus its attention on operating efficiencies—where 70 percent of the savings are projected to occur—as well as on potential savings accrue from enactment of reform legislation.

While the League agrees that unprofitable and unnecessary track should be eliminated, in Conrail's case, track reduction will provide only a small percentage of the savings needed for profitability. As a result, we believe S. 2527 should be clarified to indicate that any rationalization plan should be limited to unprofitable track. Further, since it is a plan for rationalization, not abandonment, every avenue should be explored to continue service either through transfers to other railroads or through granting shippers and communities, after adequate notice, the opportunity to buy these lines at net liquidation value.

Finally, the USRA report should focus on Conrail's future structure. The League strongly opposes a freight-Amtrak solution. Since its establishment, USRA has served as Conrail's "banker." Although a government agency, it has provided a "buffer" between Conrail's management and operations and the Executive Branch. The majority of USRA's Presidentially-appointed, Senate-confirmed members represents shippers, rail management, labor and investors, and cities and governors. Under USRA, the goals of Conrail's management and policies have remained those of a for-profit corporation.

As soon as Conrail can be made profitable, there will be no need for USRA and, at this point, the League believes it should be promptly terminated. When Conrail is like every other railroad, it should be so treated. Its stockholders then should have the authority to appoint a majority of its board of directors and, through them, Conrail's management. However, as long as the government has the power of appointment over Conrail's board and management, Conrail will not be like other railroads. The League believes it would be a serious mistake to remove this temporary "buffer" and place control in an Executive Branch agency such as DOT. Such a move clearly would signal a permanent government link to Conrail. Equally unwise would be to provide for a system used similar to those used by Amtrak and the U.S. Postal Service.

The wisest course, we believe, would be to direct USRA to recommend to Congress the steps needed to achieve a profitable Conrail, to provide for a stockholder-appointed majority on Conrail's board, and to set a date for its own termination.

Conrail now stands at the cross roads between becoming nationalized and becoming self-sustaining. Only Congress can determine which path will be taken. The League supports S. 2527 as a positive step for providing a rational legislative framework for a self-sustaining Conrail adequate to meet service needs of the northeast free from government subsidy and control.

Thank you very much. I would now be willing to answer any question you may have.

QUESTIONS OF THE COMMITTEE AND THE ANSWERS THERETO

Question 1. You state that S. 2527 must be clarified to ensure that those lines chosen for abandonment or transfer are sustaining a loss and that all alternatives have been explored. What specifically do you propose in this regard? Does S. 2527 as written differ from present law in this respect?

Answer. Under the provisions of Section 5(b)(2) of S. 2527, the USRA plan of rationalization is subject to an overall statutory requirement that it be consistent with the goals of Section 206(a) of the "3-R" Act. (45 U.S.C. 716(a)). In addition, if

lines are to be operated by means of a rail service continuation subsidy, it is to be pursuant to Section 304(c) of the "3-R" Act. (45 U.S.C. 744(c)). Finally, if lines are to be transferred, the USRA plan is limited to those initially proposed by Conrail.

Under the provisions of 45 U.S.C. 744(g), Conrail may abandon, after a two year period of operation, lines in the Final System Plan if the Commission finds that such abandonment is required by the public convenience and necessity, and no rail service continuation payment is offered. In determining public convenience and necessity, the Commission is governed by 49 U.S.C. 10904-10906. In particular, Section 10905 includes "an unprofitability" test (avoidable cost plus a reasonable return as compared to the revenues attributable to that part of the line); and a six month notice period for an agreement to provide assistance or purchase. Under Section 10906, the Commission may also offer abandoned rail properties for sale for public purposes.

Section 8(a) of S. 2527 provides that if the USRA plan of rationalization is not disapproved by Congress, Conrail may abandon designated lines upon 60 days notice and provided that it has satisfied all of the requirements of 49 U.S.C. 10904(a)(3) (4-month designation); be subject to 45 U.S.C. 762(a) (local rail services); and be deemed to be authorized under Section 49 U.S.C. 10903; and subject to I.C.C. conditions under 49 U.S.C. 10903(b)(2) (employee conditions).

S. 2527 would provide for an expedited rationalization of Conrail lines by a USRA plan; Commission hearings; and Congressional review in lieu of the present provisions of 49 U.S.C. 10904-10906.

The League supports such an expedited approach provided that the USRA planning be governed not only by the goals of the "3-R" Act, but also by the standards incorporated in present law of public convenience and necessity (profitability). In other words, Section 5(b)(2)(A) of S. 2527 should be amended to add after abandonment the words: "provided that on such lines the attributable revenues are less than the avoidable costs plus a reasonable return as specified in 49 U.S.C. 10905." This would provide a profitability test for USRA to follow in designating lines. We would also urge that Section 5(b)(2)(B) be amended to add following the words (45 U.S.C. 744(c)) and preceding the semicolon, the words "or additional revenues pursuant to 49 U.S.C. 10905."

As indicated above, S. 2527 differs from existing law not only in providing an expedited method of rationalization, but also, as we interpret it, failing to provide standards for U.S.R.A. to follow in designating lines and exploring alternatives. The amendment we recommend would add these standards and alternatives.

Question 2. DOT and ICC have expressed the view that S. 2527 is not needed at this time. The League, on the other hand, supports S. 2527 as a step toward a rational legislative framework for a self-sustaining Conrail. I take it that you do not believe Congress can afford to await the outcome of experiments under regulatory reform before taking such legislative action with regard to Conrail?

Answer. As indicated in our testimony, Conrail is already deferring maintenance; GAO has concluded that "Conrail's capital spending plans are unacceptably risky"; and the USRA staff estimates that Conrail will have completely exhausted its current \$3.3 billion authorization by the 3rd quarter of 1981.

We believe that it will, therefore, be necessary for Congress to be prepared to act early in 1981 with respect to Conrail's future financial viability.

Regulatory reform can only provide 30 percent of the total improvement needed by Conrail according to the USRA staff report, and this will not occur overnight.

Therefore, we believe it would be unwise and unacceptably risky for Congress to await the results of regulatory reform on Conrail's net income before taking action as proposed in S. 2527.

Question 3. You and other witnesses have stressed the importance of operating efficiencies to Conrail's future viability. Apart from S. 2527, do you have any specific recommendations for Congressional action in this area?

Answer. The League in its comments on the joint staff report, "Alternatives for Conrail", a copy of which is attached, supported expeditious rationalization of Conrail's plant; and that the USRA should immediately investigate and determine the extent to which the present Conrail management has been capable and effective in meeting the stated goals and objectives and recommended appropriate action prior to any additional authorization of Federal funds in 1980.

Congress cannot directly legislate operating efficiencies but it can provide the tools for honest, economical and efficient rail management to earn a fair return through regulatory reform, rationalization, multimodal ownership and financial assistance in accordance with League policies.

Question 4. You indicate in your testimony that USRA properly has a vital function pursuant to S. 2527. Certain parties have proposed a transfer of certain of

USRA's responsibilities by the end of 1981. Whether S. 2527 is enacted, or not, how do you view this proposal?

Answer. In the League's testimony before the Transportation & Commerce Subcommittee of the House Interstate and Foreign Commerce Committee on March 11, 1980, copy attached, we stated:

"Since its establishment, the USRA has well served the shipping community. First, USRA provides a 'buffer' between the Executive branch of government and Conrail's management and operations. Although a government agency, USRA is structured as an independent corporation which functions as an arm of Congress. The majority of its Presidentially-appointed members represents shippers, rail management, labor and investors. Representatives of mayors and governors, as well as the Secretaries of Transportation and Treasury, and the Chairman of the Interstate Commerce Commission also serve. Under USRA, Conrail's management and policies have remained those of a for-profit corporation.

"If DOT had assumed USRA's functions, it would not control Conrail by appointing the majority of the members to the railroad's board of directors. Through them, DOT could have selected Conrail's chairman, president, and other officers. Control of these appointments, in turn, would have given DOT the power to determine policy on rates, abandonments, service, divisions of revenues, and labor issues.

"If DOT had assumed those USRA functions, there would have been no single agency planning, no monitoring and analysis of Conrail's problems, and no formalized system for the inclusion of the views of affected parties such as shippers, labor, local communities, and others. Instead, Conrail would be just one of the many problems waiting in line for DOT action.

"Third, USRA has performed a monitoring function to ensure that Congress and the public have the necessary facts and information to consider remedial programs for Conrail in a timely, orderly, and noncrisis manner. For example, USRA recently called attention to the beginning of deferred maintenance on Conrail. The Railroad's Expenditures for track maintenance and additions and improvements will be below this year's normalized maintenance levels. Its current monthly expenditures are already significantly below those for last year despite a moderate winter.

"If DOT assumes USRA functions, the shipping community fears that DOT's crisis attitude in dealing with the Rock Island and Milwaukee Road will also be applied to the setting of overall policy for Conrail. Attached is a copy of the League's recent letter to Federal Railroad Administrator Sullivan regarding shipper concerns on the handling of the Rock Island situation.

"The USRA and DOT on March 1, submitted to Congress a Feasibility Study recommending the transfer of all USRA functions to DOT on December 31, 1981.

"This study recommendation was adopted after the defeat of a shipper, rail labor, and investor supported motion to continue USRA until a private sector solution for Conrail is completed.

"We are concerned that the study fails to consider the importance of a USRA "buffer" role, and makes no provision for preventing Executive control of Conrail Board of Directors, management, and policies. Under a transfer of functions, the Secretary of DOT in 1982 could appoint six DOT employees to the Conrail Board and other DOT employees as chairman and president. Through them, DOT could fix rates, service, divisions, abandonments and conduct labor negotiations. Even the U.S. Postal Service and Amtrak are shielded from such political influences by a Presidentially-appointed and Senate-confirmed board.

"We strongly urge that if Congress approves USRA's termination on December 31, 1981, it enact legislation to ensure that Conrail is a privately-owned and operated railroad acting as a for-profit corporation—not a Government enterprise—and do so by shielding it from Executive Branch control.

"We are also concerned that if there is no USRA, some provisions be created for a formal mechanism to consider the views of shippers and other affected persons for achieving a private sector solution to Conrail. We strongly urge Congress to enact such legislation if USRA is terminated.

"Furthermore, the joint USRA and DOT report predicates the termination of USRA on December 31, 1981 on the completion by that date of a private sector solution to Conrail. This would be good news if the prediction were fact and not assumption."

As we state in our testimony, the USRA report called for by S. 2527 should focus on Conrail's future structure. The League strongly opposes a freight Amtrak solution. Since its establishment, USRA has served as Conrail's "banker." Although a government agency, it has provided a "buffer" between Conrail's management and operations and the Executive Branch. The majority of USRA's Presidentially-appointed, Senate-confirmed members represents shippers, rail management, labor

and investors, and cities and governors. Under USRA, the goal of Conrail's management and policies have remained those of a for-profit corporation.

As soon as Conrail can be made profitable, there will be no need for USRA and, at this point, the League believes it should be promptly terminated. When Conrail is like every other railroad, it should be so treated. If stockholders then should have the authority to appoint a majority of its board of directors and, through them, Conrail's management. However, as long as the government has the power of appointment over Conrail's board and management, Conrail will not be like other railroads. The League believes it would be a serious mistake to remove this temporary "buffer" and place control in an Executive Branch agency such as DOT. Such a move clearly would signal a permanent government link to Conrail. Equally unwise would be to provide for a system use similar to those used by Amtrak and the U.S. Postal Service.

The wisest course, we believe, would be to direct USRA to recommend to Congress the steps needed to achieve a profitable Conrail, to provide for a stockholder-appointed majority on Conrail's board, and to set a date for its own termination.

Attachments.

[Attachment 1]

TESTIMONY ON BEHALF OF THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE

The National Industrial Traffic League is a voluntary organization of 1,800 shippers, shippers' associations, boards of trade, chambers of commerce, and other entities concerned with rates, traffic, and transportation services of all carrier modes. It is the only nationwide organization which represents all types of shippers. Its members include large, medium, and small shippers who use all modes of transportation and who ship all types of commodities. The League is not a panel or a committee of a trade group, nor is it a spokesman for a particular commodity or transportation viewpoint. It does not permit carrier membership. League members, directly or indirectly, represent an estimated 80 percent of the commercial traffic moving in our country.

The League's primary concern is providing the nation and all shippers with a sound, efficient, well-managed, and privately-owned and -operated transportation system.

To arrive at positions reflecting the broad range of shipper interests within the League, our members, at annual and special meetings consider, debate, and vote on pertinent transportation issues. During its more than 70-year history, the League has frequently been the spokesman for the nation's shippers before Congress on transportation and regulatory reform legislation.

The League supports extending the United States Railway Association's authorization through fiscal year 1981 to allow its continued involvement in achieving a private sector solution for Conrail. During the deliberations on the 3-R and 4-R Acts, we advocated the establishment of an independent agency to assist in the restructuring of the Northeastern railroads and to ensure that our national rail system remained privately owned and operated. The League has always been opposed to any moves which threaten private ownership and operation of that system, including proposals which would allow the Department of Transportation or other Executive agency to control a railroad's management and operations.

Since its establishment, the USRA has well served the shipping community. First, USRA provides a "buffer" between the Executive branch of government and Conrail's management and operations. Although a government agency, USRA is structured as an independent corporation which functions as an arm of Congress. The majority of its Presidentially-appointed members represents shippers, rail management, labor and investors. Representatives of mayors and governors, as well as the Secretaries of Transportation and Treasury, and the Chairman of the Interstate Commerce Commission also serve. Under USRA, Conrail's management and policies have remained those of a for-profit corporation.

If DOT had assumed USRA's functions, it would now control Conrail by appointing the majority of the members to the railroad's board of directors. Through them, DOT could have selected Conrail's chairman, president, and other officers. Control of these appointments, in turn, would have given DOT the power to determine policy on rates, abandonments, service, divisions of revenues, and labor issues.

Second, USRA has pursued its mandate of achieving a private sector solution for Conrail and other Northeastern railroads through planning, "monitoring," and providing expert analytic capabilities as well as drawing on the expertise of shippers, rail management, rail labor, investors, local communities, and State governments.

If DOT had assumed those USRA functions, there would have been no single agency planning, no monitoring and analysis of Conrail's problems, and no formalized system for the inclusion of the views of affected parties such as shippers, labor, local communities, and others. Instead, Conrail would be just one of the many problems waiting in line for DOT action.

Third, USRA has performed a monitoring function to ensure that Congress and the public have the necessary facts and information to consider remedial programs for Conrail in a timely, orderly, and noncrisis manner. For example, USRA recently called attention to the beginning of deferred maintenance on Conrail. The railroad's expenditures for track maintenance and additions and improvements will be below this year's normalized maintenance levels. Its current monthly expenditures are already significantly below those for last year despite a moderate winter.

If DOT assumes USRA functions, the shipping community fears that DOT's crisis attitude in dealing with the Rock Island and Milwaukee Road will also be applied to the setting of overall policy for Conrail. Attached is a copy of the League's recent letter to Federal Railroad Administrator Sullivan regarding shipper concerns on the handling of the Rock Island situation.

While Congress has yet to act on the USRA staff analysis of alternatives for Conrail, the League believes this study is a good beginning. Attached is a copy of the League's comments and recommendations, and we request action in accordance with them.

The USRA and DOT on March 1, submitted to Congress a Feasibility Study recommending the transfer of all USRA functions to DOT on December 31, 1981.

This study recommendation was adopted after the defeat of a shipper, rail labor, and investor supported motion to continue USRA until a private sector solution for Conrail is completed.

We are concerned that the study fails to consider the importance of a USRA "buffer" role, and makes no provision for preventing Executive control of Conrail Board of Directors, management, and policies. Under a transfer of functions, the Secretary of DOT in 1982 could appoint six DOT employees to the Conrail Board and other DOT employees as chairman and president. Through them, DOT could fix rates, service, divisions, abandonments and conduct labor negotiations. Even the U.S. Postal Service and Amtrak are shielded from such political influences by a Presidentially-appointed and Senate-confirmed board.

We strongly urge that if Congress approves USRA's termination on December 31, 1981, it enact legislation to ensure that Conrail is a privately-owned and operated railroad acting as a for-profit corporation—not a Government enterprise—and do so by shielding it from Executive Branch control.

We are also concerned that if there is no USRA, some provisions be created for a formal mechanism to consider the views of shippers and other affected persons for achieving a private sector solution to Conrail. We strongly urge Congress to enact such legislation if USRA is terminated.

Furthermore, the joint USRA and DOT report predicates the termination of USRA on December 31, 1981 on the completion by that date of a private sector solution to Conrail. This would be good news if the prediction were fact and not assumption.

If Congress is to terminate USRA by December 31, 1981, we urge early consideration and enactment of legislation with respect to Conrail in accordance with the attached League comments and recommendations on the USRA alternatives analysis.

If the matter is postponed until after Congress considers regulatory reform legislation, it will be difficult, at best, to complete such action before the USRA staff begins leaving since the agency will soon begin dismantling to meet the December 31, 1981 deadline.

The DOT has promoted deregulation as a solution to Conrail problems. The USRA alternatives analysis indicated that deregulation could not achieve such result. The DOT program contains provisions which would undermine necessary regulation, which in the absence of effective competition, protects the public interest and provides important safeguards to the shipping public. If DOT is given control of Conrail's management and operations and, if ICC authority over Conrail rates, divisions, and abandonments is removed, then the Secretary of Transportation will be transformed into the northeast's Czar of Transport. We strongly urge Congress to prevent this.

In the midst of debates over a private sector solution to Conrail problems, and transfer of USRA functions to DOT, the League's deepest concern is that our commonly shared goal—to provide rail service to meet the needs of the northeast and the nation—is not lost. Every day deferred maintenance is accruing on Conrail,

causing the railroad to slide back to those days of the '70s when Penn Central slow orders and standing derailments were the rule and not the exception.

We strongly urge Congress to take early action before this matter reaches crisis proportions. We pledge our support in achieving a prompt solution in the national interest.

[Attachment 2]

THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE,
Richmond, Va., February 11, 1980.

Hon. JOHN M. SULLIVAN,
Administrator, Federal Railroad Administration,
U.S. Department of Transportation,
Washington, D.C. 20590

DEAR MR. SULLIVAN: The members of The National Industrial Traffic League, as well as hundreds of other shippers and receivers, are deeply distressed, utterly confused, and intensely concerned with the present uncertainties confronting shippers dependent on the Rock Island railroad. Recent court and Interstate Commerce Commission decisions threaten the continuation of essential rail services in the region. The lack of meaningful decision-making information from Federal agencies—both the Interstate Commerce Commission and the Department of Transportation—has not helped to clarify the uncertainty concerning continued Rock Island service. Shippers are unable to adequately plan for future rail transportation to and from their Rock Island located plants, warehouses, and other facilities. Lack of specific information prevents proper arrangements for service from alternate railroads and other transport modes.

The Department of Transportation's release dated February 4 made available for the first time, in some instances, information to shippers concerning specific line segments that could be operated after March 2. Unfortunately, shippers still do not know and are unable to obtain information on whether specific rail service is going to be available, whether switching service will be provided at individual plants, and who will supply the necessary freight carrying equipment. The question of adequate motive power is another concern of shippers. These are viable plant operations, employing thousands of workers and contributing millions of dollars to the economy. The nation's shippers deserve better treatment and we respectfully urge that you and the Department of Transportation provide them with the needed information that will permit orderly and economically feasible decisions on future transportation requirements.

Our members are substantial users of rail service and, as such, are extremely interested in minimizing the impact of any reduction in or withdrawal of essential rail service in the areas served by the Rock Island. It is vital that an early and viable resolution of the problems associated with the continued operation of these rail lines be forthcoming. It is equally vital that affected shippers and receivers receive from the Department of Transportation and the Interstate Commerce Commission an explicit indication of their efforts regarding service decisions. This is particularly necessary in the case of the Rock Island which has announced an embargo of inbound traffic effective February 15, in anticipation of a shutdown on March 2 following the expiration of the currently effective directed service order.

If the Department of Transportation or the Interstate Commerce Commission contemplates continued essential service on any segment of the Rock Island after March 2, based on pending bids for acquisition, the shipping public should be so informed as soon as possible. Undoubtedly, there are customers of the Rock Island whose need for rail service beyond March 2 is vital to their continued economic viability. Indeed, the cessation of service, in some cases, jeopardizes entire communities inasmuch as it will be necessary for plants to cease operation in the absence of reliable, economic transportation service. Adequate alternative transportation may or may not be available in all instances on such short notice. An early indication from the Department and/or the ICC concerning continued service is imperative to an orderly, rational, and effective transition.

The League has long advocated a free-enterprise, private sector solution to the problem of rail over-capacity in the United States. However, the League also recognizes that special circumstances may arise which require the limited intervention of outside parties, on a problem-responding basis, to ensure continued essential transportation service. In view of the continuing uncertainties and the prospects for economic hardship facing midwest rail users in this situation, the League urges the Department to ensure that the continuance of essential rail services on the Rock Island beyond March 2. The Department should make maximum utilization of the

authority granted to it under the Emergency Rail Services Act, the Milwaukee Railroad Restructuring Act, the Railroad Revitalization and Regulatory Reform Act and the Regional Rail Reorganization Act. Cessation of service and abandonment of track in the case of the Rock Island should be carefully weighed inasmuch as such a decision often times is irreversible.

Finally, the League urges the Department to continue and improve its efforts in keeping affected parties completely informed of developments as it endeavors to reach an early, final resolution to the midwest rail crisis. This is particularly necessary in view of the fact that some plants operating on the Rock Island lines are contemplating a possible shutdown on March 2 absent specific information concerning the future availability of rail service.

The League, and its members, stand ready to provide whatever assistance we can in solving this complex problem. Please let me know how we can help.

Sincerely,

DONALD BOYES, *President.*

[Attachment 3]

COMMENTS OF THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE ON ALTERNATIVES FOR CONRAIL—A JOINT STAFF REPORT OF THE USRA AND FRA SEPTEMBER 1979

PREFATORY COMMENTS

The United States Railway Association jointly with the Federal Railroad Administration in September 1979, released a staff report entitled, "Alternatives For Conrail." USRA invited public comments on the staff report and requested that such comments be due October 15, 1979. The National Industrial Traffic League (hereinafter called the League) welcomes this opportunity to present our comments and urges USRA to take action consistent with our position as outlined below.

IDENTITY AND INTEREST OF THE LEAGUE

The National Industrial Traffic League is a voluntary organization of 1,800 shippers and receivers, shippers' associations, boards of trade, chambers of commerce and other entities concerned with rates, traffic and transportation of all carrier modes. It is the only shipper organization which represents all types of shippers nationwide. Its members include large, medium and small shippers who use all modes of transportation and who ship all types of commodities. The League does not permit carrier membership. League members, directly or indirectly, represent an estimated 80 percent of the commercial traffic moving in the United States.

The League is dedicated (1) to the protection of the shippers' interests in transportation developments and issues, and (2) to the attainment and preservation of an adequate and efficient national transportation system, privately owned and operated.

To arrive at positions reflective of the broad range of shipper interests within the League, the membership at its annual and special meetings considers, debates and votes on actions to be taken. During its more than 72 years of existence, the League has frequently been the spokesman for the nation's shippers before Congress on proposed transportation and regulatory reform legislation. The League was actively involved in general support of Congressional efforts to revitalize the eastern railroads and assist railroads generally in the 3R and 4R Acts. Most recently the League presented to Congress a 20-point League legislative program for reform of railroad regulation.

POSITION OF THE LEAGUE

The League has reviewed the Joint Staff Report of USRA and FRA entitled "Alternatives For Conrail" and feels that none of the alternatives is acceptable as stated. However, with certain modifications the League supports alternative number 2, "Improved Conrail."

IMPROVED CONRAIL AS MODIFIED BY THE LEAGUE

Improved Conrail: This alternative assumes that improvements in operating efficiency would be achieved; that regulatory reforms (NITL's 20 points, attached as Appendix A) would become effective in 1981, and that additional Federal funding would have to be made available. The variations of the alternative are based on various route-mile rationalizations. This assumes that the Federal government will supply additional funding through 1983 with concomitant plant rationalization.

Rationalization should be achieved under the existing regulatory process. All abandonment studies should be continued expeditiously throughout the period. Under this course of action, analyses indicate that the need for direct Federal funding would cease or become greatly reduced by 1983.

The staff report outlined three levels of route-mile rationalizations of Conrail trackage which were made for analytical purposes. This does not necessarily mean that rail service would cease to move over the affected lines. Rationalized track could be made profitable through corrective action and retained by Conrail; transferred to other rail carriers; incorporated in short line operations; operated within the existing Light Density Lines Program; or operated by Conrail with Federal, state or local support.

The League recognizes that some rationalization of Conrail's plant is necessary and believes that the rationalization should be done expeditiously. However, the League notes that the mileage projections of USRA are considerably greater than those of Conrail, and in the absence of sound justification to the contrary, would recommend rationalization more in line with Conrail's projections of approximately 1,500 miles over the five year period.

A high percentage of Federal funding authorized during the first three years of Conrail's existence has been wisely expended on needed improvements to upgrade the physical plant, motive power, and rolling stock. The League vigorously opposes any action which would permit a return to a deferred maintenance program with resulting deterioration of operation and service.

The League notes with great concern that Conrail, throughout its existence, has fallen significantly short of its goals as stated in the 3-R Act. USRA and FRA should immediately investigate and determine the extent to which the present Conrail management has been capable and effective in meeting its stated goals and objectives and recommend appropriate action prior to any additional authorization of Federal funds in 1980.

COMMENTS ON OTHER ALTERNATIVES

Continue Current Operations: The League believes that this alternative is a self-destructive one which will ultimately cause a return to the chaotic conditions which existed on the financially distressed Northeast railroads, in the early 1970's. We agree with the joint staff report finding that, "Conrail's present rate of improvement is inadequate to permit it to accomplish the goal of long-term self-sufficiency within the additional Federal funding calculated for this alternative."

No Additional Funding: The League believes this alternative to be an unrealistic solution. With existing Federal funding Conrail cannot survive beyond 1980. The current rate of inflation and changes in the business environment make totally inadequate the funds appropriated in the past for specific improvements.

Firewall: We agree with the joint-staff report that there is no clear best position for a firewall, and note the lack of probable benefits for this course of action. League members are also aware of the study of New England rail carriers including a sector of Conrail presently being conducted. When the results of this study are announced, the League will be prepared to submit its comments.

Controlled Transfer: This should not be considered except as a last resort if the operation of Conrail presents problems out of the range of immediate speculation.

LEAGUE PROGRAM FOR IMPROVEMENT OF CONRAIL SERVICE AND RAIL REVITALIZATION

In addition to our comments on matters contained in the joint staff report, the League offers the following program for the improvement of Conrail service and rail revitalization.

Financial Assistance

Congress declared it to be one of the purposes of the 3-R Act to provide necessary Federal financial assistance at the lowest possible cost to the general taxpayer.

The League supports necessary financial assistance to Conrail in accordance with the purposes of the 3-R Act to maintain problem-responding services on an interim basis. (See League Policy D-1).

The League supports the principle of government-insured loans, including interest thereon, to individual railroads (including Conrail) to provide necessary rolling equipment, including motive power; and government guarantee of loans and/or redeemable preference shares to individual railroads that can justify the needs for the purpose of rehabilitating rail and terminal facilities used to provide train service. (See League Policy D-7).

Management

There should be the greatest degree of responsibility upon, and freedom of, carrier management in providing the public with the transportation service which it needs. Regulation should be limited to that reasonably necessary in the public interest, and should not encroach upon the proper sphere of managerial discretion and responsibility either in the field of traffic or in actual physical operation. Conrail is entitled to an opportunity to earn a fair return under honest, economical and efficient management; to assure the public of adequate and efficient service at reasonable charges; and to assure a continuation of private ownership and operation. (See League Policies A-4 and 5).

Productivity

Energy—Conrail must obtain greater productivity from its use of fuel, including the minimization of the fuel inefficiencies of: economic regulations; consignor or consignee loading/unloading practices; and labor practices—and with due consideration to environmental and safety requirements. (See League Policy M-2).

Labor—It is the policy of The National Industrial Traffic League that all archaic work rules which are inconsistent with modern operating practices or with sound economic conditions on Conrail should be eliminated. The League favors fair and flexible work rules which are in harmony with modern, economical, transportation methods. (See League Policy B-15).

The League further urges that Conrail strive to optimize use of all of its resources including motive power, rolling stock, and internal administration techniques.

Regulatory Reform

The National Industrial Traffic League urges adoption of a 20-point program for nationwide regulatory reform applicable to Conrail as well as other railroads (See Attachment A). The League notes the areas of differences in position on several points of regulatory reform and urges reconsideration by Conrail in order to make those positions more compatible with those of rail users.

Multimodal Ownership

Conrail should be permitted, through ownership or contractual operations, to operate other forms of transportation for the purpose of providing a complete transportation service for the public. Such arrangements should be subject to a requirement that they must not unduly restrict competition. (See League Policy B-9).

Rationalization and Controlled Transfer

In the event that Conrail line segments are to be abandoned, opportunities for their acquisition by other viable carriers should be provided. The League favors soundly conceived mergers and consolidations of rail carriers which tend to strengthen the transportation industry, produce improved service at reduced cost; establish or continue adequate competition in transportation service; and be consistent with the long-range public interest in the maintenance of an adequate common carrier system. (See League Policy B-21).

CONCLUSION

The League has presented its views regarding the USRA/FRA joint staff report and feels that none of the alternatives is acceptable as stated. However, with certain modifications, as previously discussed, the league supports alternative number 2, "Improved Conrail." Additionally, the League offered a program for the improvement of Conrail service and rail revitalization. The League urges the USRA to take action responsive to the aforementioned comments.

Senator LONG. Next we'll call the Honorable Donald C. Cole, president of the United States Railway Association.

STATEMENT OF HON. DONALD C. COLE, PRESIDENT, UNITED STATES RAILWAY ASSOCIATION; ACCOMPANIED BY CARY W. DICKIESON, VICE PRESIDENT, LAW; JOSEPH P. WELSCH, VICE PRESIDENT FOR FINANCE; AND EVANS R. HUGHES, JR., VICE PRESIDENT FOR OPERATIONS AND MARKETING

Mr. COLE. Mr. Chairman, thank you. I appear today in support of pending legislation to authorize appropriations for USRA's admin-

istrative expenses and to testify on behalf of the association regarding the legislation that is before you.

Before I begin, though, I would like to introduce the people accompanying me. On my right is our vice president of law, Cary Dickieson. On my immediate left is our vice president for operations and marketing, Evans Hughes. And on his left is vice president for finance, Joe Welsch.

You have been supplied copies of the USRA budget submission and I will outline very briefly our authorization request and then discuss in more detail the pending legislation.

We are requesting \$21.7 million for expenses in support of litigation now pending before the special court. This is 74 percent of our total authorization request—\$7.8 million is for expenses in connection with the monitoring of the \$3.3 billion authorized investment in Conrail and for contingency planning expenses in regard to Conrail's future. Total obligations in this fiscal year 1981 will be \$1 million greater than the amount now requested for the current fiscal year, including a pending supplemental appropriation request.

The principal work of the association, in terms of dollars expended, is the litigation of the valuation cases now being tried in the special court. In the next fiscal year, we must anticipate continuing this level of effort devoted to litigation.

In our judgment, the possibility for any settlement of the case is enhanced by the Government's continued affirmation of its willingness to litigate vigorously.

Apart from litigation, the main concern I note this morning with the subcommittee is Conrail and its future. The association continues periodic and special monitoring activities related to Conrail. The need for these monitoring functions stems directly from the fact that the Federal Government has authorized the investment of \$3.3 billion in the railroad, an investment which must be protected.

We are also assessing Conrails' progress toward meeting the goals of the 3R Act to provide in the private sector a self-sustaining rail system capable of achieving reliable and efficient rail transportation in the Northeast and Midwest region.

The scope and intensity of USRA's monitoring efforts reflect the recognition that it appears unlikely that conrail will be able to meet the goals set forth in the final system plan. However, I am glad to report that in the past year Conrail has made substantial progress.

One of our important planning activities during the past year was the development jointly with FRA of the staff report on alternatives for Conrail. Mr. Sender, who testified before me, has cited several aspects of that report.

Looking at fiscal year 1981, the association sees planning activities continuing in the contingency aspects for Conrail. We intend to update the Conrail alternatives study using 1979 traffic data for Conrail, which, as I indicated earlier, was a very good year for Conrail. We also have to revise the assumptions on the operating efficiencies and projections for achieving operating efficiencies, again elements that Mr. Sender discussed.

We have to evaluate the regulatory climate that will exist for the future of Conrail when Congress passes legislation. Our alternative

report last year made certain regulatory assumptions. The Senate bill contains some of those assumptions, but makes other changes, specifically with regard to the joint rate through-route issues.

We also have to look at the economic projections for the 1980's because, as we are all aware, there have been substantial changes in our economic assumptions from last year.

Following completions of our New England study this year, we intend to recommend actions that might be taken to improve rail service and strengthen rail carriers in the Northeast and New England in particular. We also intend to analyze the various restructuring plans for the northeastern rail system that have been proposed by others.

You have asked me to comment on the provisions of S. 2527, which was recently introduced by Chairman Cannon.

This bill would require, first, that USRA, in conjunction with Conrail, the ICC and DOT, develop a plan for the rationalization of Conrail's rail properties. Second, the bill would require USRA, no later than March 1, 1981, to make recommendations to Congress with respect to Conrail's future projected funding requirements. Third, the bill would require the association to make specific recommendations to the Congress with respect to the future of Conrail.

The bill authorizes \$29.5 million to be appropriated to USRA for its administrative expenses for fiscal year 1981—the same level of funding contained in our original budget request—and \$27.5 millions for fiscal year 1982.

In our opinion, the objectives of the bill are both appropriate and timely. Almost 5 years have passed since the final system plan was adopted by USRA and approved by Congress. And yet, a self-sustaining rail system in the Northeast and Midwest region is still not clearly in sight.

Most observers would agree that excess plant capacity is one impediment to Conrail's profitability. Previous witnesses have dwelt on the importance of that one element. The bill provides a workable mechanism to address that problem, while at the same time providing reasonable protection of the legitimate interests which might be affected by any proposed abandonments.

Now is the time to start developing the other recommendations required of USRA by the bill so that Congress will not be faced with reacting in a crisis environment at some later date.

We anticipate that the existing \$3.3 billion in Federal funds authorized to be invested in Conrail will be exhausted sometime next year. It is clear that prior to that event, Congress will need an independent, expert judgment as to the amount, if any, of additional Federal investment necessary to enable Conrail to become financially self-sustaining.

Similarly, Congress will also require specific recommendations regarding any structural changes to Conrail needed to finally bring about a rail system that meets the goals set forth in the 3R Act.

USRA is uniquely capable of carrying out the responsibilities assigned to it in the bill. The analytical tools and key staff are essentially in place. The time frames within which these responsibilities are to be carried out appear to be reasonable.

We would question, however, whether the authorization provided in the bill for fiscal year 1981 is sufficient to enable the association to develop the rationalization plan and its funding and structural recommendations in the thorough and reliable manner necessary.

Our first, and admittedly rough, estimate is that the responsibilities given to USRA in S. 2527 would require \$4 million in additional funds in fiscal year 1981, but nothing additional in fiscal year 1982. In fact, the \$27.5 million authorization contained in S. 2527 for fiscal year 1982 may be more than adequate because the time limitations in S. 2527 require the responsibilities to be completed in fiscal year 1981.

Additional funds are necessary in fiscal year 1981 in order for us to prepare the detailed analysis of light density lines contemplated in the bill. Involved are estimates of potential revenues, future operating and maintenance costs, and assessments of alternatives available for operation of the segments that appear to have a negative effect on Conrail's future income.

The bill would also require the association to update and enhance its forecasts of Conrail's systemwide results. We anticipate the need for new studies of Conrail's capital structures of environmental and community impacts caused by structural changes of some of the basic factors that affect future improvement of the efficiency of the system, and also of changes in the method of handling passenger and commuter traffic.

We will study the matter further and provide a firm estimate of the funding requirements for the record shortly.

Mr. Chairman, I appreciate the opportunity to appear before you and I attach to my prepared statement some comments on S. 2530, regarding title V labor protection, which I ask to be included in the record.

I am happy at this time to respond to any questions the subcommittee may have.

Senator LONG. Let me just ask you this question, Mr. Cole. You state that this authorization request of \$29.5 million is \$1 million greater than the amount requested for fiscal year 1980.

Would you explain the reason why the increase and the specific projects that would be covered by the increase?

Mr. COLE. Mr. Chairman, our problem basically is that the litigation has been much more expensive than we have been able to project. We have constantly been trying to catch up with the requirements of the special court as it leans more and more on us to complete segments of the case. We have to insure that we have the adequate litigation resources. It has been the litigation side that has constantly kept us having to worry about our funding.

Senator LONG. Now is this request the amount that's also in the President's budget?

Mr. COLE. The \$29.5 million is, yes.

Senator LONG. I see. Now you are not responsible—the USRA is responsible for monitoring Conrail and DOT has testified that its goal is to insure that Conrail is put on equal footing with the rest of the rail industry.

What is USRA's response to this claim and how feasible do you think that the achievement of this goal would be in the near future?

Mr. COLE. Well, Mr. Chairman, Conrail is quite different from the rest of the rail industry at this point in time.

First of all, it has a capital structure with a Federal Government investment of \$3.3 billion which is way beyond any other railroad in this country.

In addition, there still is a concern, and that's what we're spending money and litigation for, of what the Federal investment is going to be to acquire Conrail's assets. Claims for rail use only could run from \$4 to \$5 billion.

Even if a victory in the special court reduces that significantly, there will be a Federal investment in Conrail beyond the present authorization of \$3.3 billion of the Federal Government's money with all the other investments for the planning of Conrail.

Therefore, you start with a railroad that is different from any other railroad in this country. When Congress is confident that Conrail is going to be a private sector company, when there is some determination made with regard to a return to the Government's investment, then you can step back and say, all right, we will treat this railroad like any other railroad in this country.

So, consequently, I think it's the time that Congress decides that they are comfortable with Conrail's future that you start treating it as another railroad.

Right now, we are concerned about the future. We certainly intend to do planning even without S. 2527. But that point has not been yet reached to say we're comfortable.

Senator LONG. What is your reaction to the argument that a bill of this sort should not be passed until the regulatory reform legislation is in place?

Mr. COLE. Mr. Chairman, when we did our alternatives study last year, we assumed a degree of regulatory reform and we were able to identify certain lines which would not make any positive contribution to Conrail. I think that it is important before we go very far with the development of recommendations to know exactly what Congress or the ICC has provided in regulatory change.

But, we have developed the sophisticated tools and models so that it is not necessary to await a test period to continue with the uncertainty of Conrail's future and its funding requirements before identifying those lines which do not make a positive contribution to Conrail and which could be considered for rationalization.

However, the bill is structured in such a way that the identification and the congressional approval of the rationalization of those lines does not require Conrail to drop them. If, in the 240 days that it takes to develop the process outlined in the legislation, Conrail determines that through its pricing mechanism it finds reason to keep those lines, Congress can keep the lines. It is not required to drop them.

I see no difficulty in running the exercise at the same time that you are testing in the free marketplace.

Senator LONG. I see. Thank you very much for that information. I think you made a very clear statement to us.

Mr. COLE. Thank you.

[The statement and answers to questions of the committee follow:]

STATEMENT OF DONALD C. COLE, PRESIDENT, UNITED STATES RAILWAY ASSOCIATION

Mr. Chairman and members of the subcommittee, I am pleased to appear before you today in support of pending legislation to authorize the appropriation of \$29.5 million for administrative expenses of the United States Railway Association for fiscal year 1981.

The subcommittee has been supplied with copies of the USRA budget submission to Congress, which explains the details of the requested authorization. Very briefly, the budget request is—

\$21.7 million for expenses in support of litigation now pending before the Special Court (74 percent of the total); and

\$7.8 million for expenses in connection with monitoring the \$3.3 billion authorized investment in Conrail and loans to other railroads and for contingency planning expenses (26 percent of the total).

Total obligations in fiscal year 1981 would be \$1 million greater than the amount now requested for the current fiscal year, including a pending supplemental appropriation request.

The principal current work of the Association in terms of dollars expended is litigation of the valuation cases being tried in the Special Court. As the Subcommittee knows, USRA has taken the lead in this litigation, by agreement between the Attorney General, the Secretary of Transportation, and USRA. USRA is committed to mounting the best possible case on behalf of the Government and the taxpayers. This has been quite expensive but, considering the very large amounts involved in the case, we believe that the money has been well spent.

For the next fiscal year we must anticipate continuation of the level of effort devoted to litigation. Much as the Special Court and the parties might desire an early settlement, there is no way we can predict when or whether a settlement can be achieved. In our judgment, the possibility for settlement is enhanced by the Government's continued affirmation of its willingness to vigorously litigate the case.

Work on the rail use case and the non-rail use case is proceeding simultaneously:

The rail use case will establish values under a contention that the bankrupt railroads could have disposed of major parts of their rail systems for continued rail use to purchasers other than Conrail;

The non-rail use case will establish the value of real property that would not have been continued in rail use but would have been disposed of for other purposes.

The rail use case alone may entail values as argued by the transferors of \$4 to \$5 billion. Effective presentation of the government's case is clearly critical to the ultimate amount of payments from the Federal Treasury.

Our Vice President-Law is here to respond further, if desired, on litigation matters.

Apart from litigation, the Association continues periodic and special monitoring activities related to Conrail. The need for these monitoring functions stems directly from the fact that the Federal government has authorized the investment of \$3.3 billion in the railroad which must be protected, while also assessing progress toward meeting the goals of the 3R Act in providing a private-sector, self-sustaining rail system capable of achieving reliable and efficient rail transportation in the Northeast and Midwest region.

The scope and intensity of USRA's monitoring efforts reflect the recognition that it appears unlikely that Conrail will be able to meet the goals set forth in the Final System Plan. However, in the past year, I am glad to report Conrail has made substantial progress.

One of the most important planning activities during the past year was the development of the staff report on Alternatives for Conrail. The Alternatives report proceeded from the realization that the goal of financial self-sufficiency was not attainable under current conditions and might require additional infusion of Federal funds.

Planning activities in fiscal year 1981 will include:

an update of the Conrail Alternatives study using 1979 traffic data, revised assumptions as to operational efficiencies, regulatory climate, and new economic projections;

completion of recommendations concerning actions that might be taken to improve rail service and strengthen rail carriers in New England; and

analysis of restructuring proposals for the Northeastern rail system designed to help ensure a viable, private-sector solution.

Finally, the Committee has asked me to comment on the provisions of S. 2527, which was recently introduced by Chairman Cannon. This bill would require, first, that USRA in conjunction with Conrail, the Interstate Commerce Commission, and the Department of Transportation, develop a plan for the rationalization of Con-

rail's rail properties. Second, the bill would require USRA, no later than March 1, 1981, to make a recommendation to the Congress with respect to Conrail's future projected funding requirements. Third, it would require the Association to make specific recommendations to the Congress with respect to the future of Conrail. The bill would authorize \$29.5 million to be appropriated to USRA for its administrative expenses for fiscal year 1981—the same level of funding contained in our original budget request—and \$27.5 million for fiscal year 1982.

The objectives of the bill are both appropriate and timely. Almost five years have passed since the Final System Plan was adopted by USRA and approved by Congress, and yet a self-sustaining rail system in the Northeast and Midwest region is still not clearly in sight. Most observers would agree that excess plant capacity is one impediment to Conrail's profitability. The bill provides a workable mechanism to address that problem while at the same time it provides reasonable protection of the legitimate interests which might be affected by any proposed abandonments.

Second, now is the time to start developing the other recommendations required of USRA by the bill so that Congress will not be faced with reacting in a crisis environment at some later date. We anticipate that the existing \$3.3 billion of Federal funds authorized to be invested in Conrail will be exhausted some time next year. It is clear that prior to that event Congress will need an independent, expert judgment as to the amount, if any, of additional Federal investment necessary to enable Conrail to become financially self-sustaining. Similarly, Congress will also require specific recommendations regarding any structural changes to Conrail needed to finally bring about a rail system that meets the goals set forth in the 3R Act.

USRA is uniquely capable of carrying out the responsibilities assigned to it in the bill. The analytical tools and key staff are essentially in place. The time frames within which these responsibilities are to be carried out appear to be reasonable.

We would question, however, whether the authorization provided in the bill for fiscal year 1981 is sufficient to enable the Association to develop the rationalization plan and its funding and structural recommendations in the thorough and reliable manner necessary. Our first, admittedly rough, estimate is that the responsibilities given to USRA in S. 2527 will require \$4 million in additional funds in fiscal year 1981. Additional funds would enable us to prepare the detailed analysis of light density lines contemplated in the bill. Involved are estimates of potential revenues, future operating and maintenance costs, and assessments of alternatives available for operation of the segments that appear to have a negative affect on Conrail's future income. The bill also would require the Association to update and enhance its forecasts of Conrail's system-wide results. We anticipate the need for new studies of Conrail's capital structure, of environmental and community impacts caused by structural changes, of some of the basic factors that affect future improvement in the efficiency of the system, and of changes in the method of handling passenger and commuter traffic. We will study the matter further and provide a firm estimate for the record shortly.

Mr. Chairman, I appreciate the opportunity to appear before you today to comment on our authorization and S. 2527. I have attached to my prepared statement some comments on S. 2530, regarding the Title V labor protection program, which I ask be included in the record. I would be pleased to respond to any questions the Subcommittee may have.

Attachment.

COMMENTS OF UNITED STATES RAILWAY ASSOCIATION ON S. 2530, THE RAILROAD EMPLOYEE PROTECTION MODIFICATION ACT OF 1980

Section 6 of the bill amends Section 509 of the Regional Rail Reorganization Act of 1973 to create three new subsections, 509(a), 509(b) and 509(c). As discussed below, Subsections 509(a) and 509(b) should be modified to accomplish the purposes of the Act more efficiently.

I. Subsection 609(a)

Subsection 609(a) of the bill authorizes appropriations to the Secretary of Transportation for administrative expenses incurred by the Association in the performance of its Title V duties. This bill would authorize and direct the Association to audit the payment by Conrail of Title V benefits, to evaluate the effectiveness of Conrail in implementing this bill, and to report to Congress and the President on the operation of the Title V program. This bill therefore would alter the present statute to give new responsibilities under Title V to the Association, but none of the necessary funding, while giving none of the responsibilities but all of the funding to the Secretary. In our view it is more appropriate for the funding to be provided to

the agency having the program responsibility, particularly since the Association is not an element of DOT. Thus, we believe the bill should be modified to authorize appropriations directly to the Association for the administrative expenses it will incur in performing its new duties.

II. Subsection 609(b)

Subsection 609(b) directs the Association to "audit the payment of [Title V] benefits. . . ." The word "audit" has a relatively precise, technical definition which, as used here, could be interpreted to mean that the Association must conduct every year an expensive and time consuming accounting of Conrail's Title V expenditures—an effort that would in all likelihood duplicate Conrail's own annual audit conducted by external, independent auditors, as well as those audits of government spending programs, conducted by the United States General Accounting Office. It is clear from the Secretary of Transportation's section-by-section analysis of the bill that it was intended that the Association's review of the Title V program be in the form of a "program audit". See Section-by-Section Analysis, 126 Cong. Rec. S. 3451, S. 3453 (daily ed. Apr. 2, 1980). Therefore, to avoid this expensive and repetitive performance of functions, the Association recommends that Subsection 609(b) be modified to make it clear that the Association should conduct a "program audit" or "systems review" of the payment of Title V benefits under the Act.

QUESTIONS OF THE COMMITTEE AND THE ANSWERS THERETO

Question 1. You state in your testimony with regard to Conrail's financial condition that in the past year, "Conrail has made substantial progress." Would you please elaborate upon this statement?

Answer. Yes, Conrail has made substantial progress in the past year and is continuing to do so currently. Conrail recorded a net loss of \$178 million on a GAAP basis (Generally Accepted Accounting Principles) in 1979, reversing a trend of escalating losses (\$205 million in 1976, \$367 million in 1977 and \$385 million in 1978) and demonstrating a financial turnaround. In so doing, the railroad reduced its requirement for Federal investment to fund cash losses from operations from \$289 million in 1978 to \$59 million in 1979. In fact, the use of Government investment has changed substantially over the past four years. The portion devoted to cash losses has decreased from 40 percent in 1977 and 35 percent in 1978 to 9 percent in 1979. It is expected to decline further in 1980.

Furthermore, Government funding, as a percentage of Conrail's total sources of funds, declined to 14 percent in 1979 from an initial level of 16 percent in 1976 and 1977 and a peak of 18 percent in 1978. It is expected to decline further in 1980. Conrail's rate of improvement in 1979, relative to its 1978 performance, compares favorably with the Final System Plan (FSP) as well as that of other large railroads in 1979. The FSP forecast that Conrail's 1979 financial position would improve by \$205 million over 1978; Conrail achieved a \$207 million improvement. This was largely attributable to the carrier's ability to keep cost increases well below the accelerating level of inflation and general rate increases while its traffic level increased only modestly. By contrast, the other major profitable railroads realized improved profits from sizable revenue increases resulting from real traffic increases.

Conrail estimates that operating efficiencies accounted for \$157 million of the improvement from 1978 to 1979. While Conrail still requires substantially more operating improvements to become profitable, if Conrail experiences significant traffic increases after the recession of 1980, and has sufficient equipment capacity and adequately maintained physical assets to handle that traffic, the carrier should realize a substantial improvement in its financial position in 1981.

As indicated below, the first quarter of 1980 was the seventh in which Conrail's financial performance was better than the corresponding quarters of prior years.

CONRAIL'S QUARTERLY RESULTS OF OPERATION—NET INCOME (LOSS) ON A GAAP BASIS

[In millions of dollars]

	Actual	Prior year	Variance
1978:			
3d quarter.....	\$(48)	\$(54)	\$6
4th quarter.....	(60)	(77)	17
1979:			
1st quarter.....	(125)	(216)	91

CONRAIL'S QUARTERLY RESULTS OF OPERATION—NET INCOME (LOSS) ON A GAAP BASIS—
Continued

[In millions of dollars]

	Actual	Prior year	Variance
2d quarter.....	33	(61)	94
3d quarter.....	(38)	(48)	10
4th quarter.....	(48)	(60)	12
1980: 1st quarter.....	(85)	(125)	40

It is still uncertain whether Conrail can achieve long-term financial self-sufficiency, but the prospects are brighter at this point than at any time since conveyance in 1976.

Question 2. USRA has submitted a status report on the litigation proceedings and has included an explanation of the proceedings in the justification for your authorization request. For the record, would you please give the Committee a date by which the proceedings at the outside could be brought to a close? Also, would you please provide the Committee with a dollar range which would represent the liability costs to the Federal government which might result from a decision in these proceedings? How much more money do you estimate will be spent on the litigation before it is completed.

Answer. Largely because the Penn Central and the other major bankrupts have pursued an extremely vigorous and detailed litigation strategy in the Valuation Case, coupled with the inherent novelty and complexity of the legal issues involved, it is virtually impossible to project a date for completion. As explained in the litigation status report, the parties are currently litigating the first phase of the case (the "rail use" portion) in which it will be determined what value, if any, the transferors would have received for assets they assert would have been retained for continued rail use in the absence of the Rail Act. Under the schedule established by the Special Court, the Penn Central and the other transferors submitted to the Court their written direct evidence in December, 1978. In November, 1979, and January, 1980, the Government Parties submitted their reply evidence. The transferors are now conducting discovery and cross-examination depositions of the Government Parties' witnesses. That process must be completed by September 2, 1980. In a recent letter to the parties, the Court has stated that it expects final briefing of rail use issues to begin no later than December 10, 1980. Thus, it can be reasonably assumed the Court intends to issue its judgment on rail use early in 1981.

It should be remembered that the rail use issues pertain to valuation of approximately 40 percent of the assets in controversy. The remaining assets must be valued for nonrail use. In addition, the Court has yet to consider the value of other benefits ("VOB") conferred on the bankrupt estates by virtue of the Rail Act. Finally, the Court must make a determination of how much, if any, compensable unconstitutional erosion ("CUE") of the bankrupts' assets occurred as a result of government action. The duration of this process will depend largely on the nature of the Court's decision on the rail use portion of the case and, perhaps more importantly, on whether the parties will be able to stipulate to a method for trial of remaining portions of the case.

At the outset of the litigation, USRA determined that the assets conveyed to Conrail by the bankrupts had a value of approximately \$650 million. This figure was based on a theory of scrap value. The bankrupt estates, however, asserted that their assets were worth considerably more than that figure, with the Penn Central alone claiming compensation of about \$12 billion. Representatives of the Penn Central subsequently modified their claim to approximately \$6 to \$7 billion. As the litigation progressed and USRA forced Penn Central to support its assertions with evidence, their claims continued to shrink. In its December 1, 1978 submission to the Special Court, Penn Central claimed a rail use value of \$2.2 to \$2.4 billion. The total for all the bankrupts, including Penn Central, is now \$3.1 to \$3.4 billion for rail use assets. Up to this time the bankrupts have not offered any evidence to show the value of assets which they admit would not have been retained for rail use, but rather would have been sold for scrap or other nonrail use purposes. Therefore, USRA can offer only an approximation of this figure. With this reservation, it is estimated that the bankrupts will assert a total value of approximately \$4.5 to \$5.0 billion.

Naturally, as with any litigation, one cannot safely predict what may occur in the course of the proceedings or how the court will eventually rule. We feel confident, however, that our evidence will show that the values claimed by the bankrupts are substantially overstated.

Unfortunately, the very reasons that make it virtually impossible to predict a date for completion of the Valuation Case have the same effect on predicting the ultimate litigation costs. Much will depend on how vigorously the transferors continue to litigate their cases, the schedules imposed by the Special Court and, to a great extent, the coming decision of the Special Court in the rail use portion of the case.

Question 3. In opposition to S. 2527, some argue that S. 2527 is unnecessary, as procedures for rationalization are available, and that in any event savings from plant rationalization would be relatively small. What is your response to these arguments?

Answer. It is true that presently there are procedures available which allow railroads to address the size of their plants. Conrail, as well as other railroads, has stated that the present process is so time consuming and expensive that it negates much of the gain to be achieved through actions of this nature. Conrail has stated this is one reason it has not proceeded with an active program of rationalization. The Association in its contingency planning efforts has addressed the issue of the size of Conrail's plant. Our previous efforts have shown the annual savings associated with modifications to the plant may approximate \$80 million. While these previous studies indicate that this item in itself will not achieve financial self sustainability for the corporation, we do not believe the potential annual savings to be insignificant.

Question 4. You express USRA's support for S. 2527. How would the responsibilities given to USRA under the bill correspond with USRA's current efforts in the area of Conrail alternatives? What work has been done by USRA to examine specific Conrail lines appropriate for abandonment and transfer? What other information has USRA already gathered which would form the basis for the plan and recommendations to be submitted pursuant to S. 2527? In this regard, how would you use the additional \$4 million which you request for fiscal year 1981 if S. 2527 were enacted?

Answer. The responsibilities given to USRA under S. 2527 could be accomplished as a logical extension of the analysis already being undertaken by the Association. The current and planned analyses of the Conrail system views lines on the basis of cost and contribution, but does not present the detailed technical analysis for individual lines that would be required before actual decisions regarding rationalization could be made on a line specific basis.

The work of the Association allows us to present a broad overview of the situations which currently face Conrail, as well as providing assessments of the potential of possible solutions to these problems.

This bill would require the Association to conduct a study of the future structure, activity and funding requirements of conrail and to make recommendations to Congress concerning Conrail's future funding needs. The Association would be required to prepare analyses and conclusions concerning possible abandonment or transfer of Conrail properties, to publish findings and to develop a plan to implement the recommendations. To accomplish these assignments, the Association would undertake a number of tasks for which funding is not included in the budget request for fiscal year 1981. Additional costs are estimated at \$4 million and would cover the following activities:

1. Prepare projections of Conrail's future traffic, revenues, operating costs, and capital requirements using assumptions as to the general level of economic activity, operating efficiencies, physical plant and the impact of regulatory reform. While USRA's 1980 supplemental request and 1981 budget included funds for updating the staff's previous contingency planning activities which were prepared last year, it did not provide sufficient funds for the intensive effort contemplated by the legislation. Extensive analyses of the traffic base, track segments, and the economic environment would need to be completed. Accomplishment of these objectives would require additional marketing and computer systems resources. Existing USRA models would be enhanced and expanded to evaluate Conrail's plant configuration. Sensitivity analysis would need to be performed to test the results of the analysis.

2. A light-density lines analysis would be conducted. This would involve the development of operating and maintenance costs, revenue projections, and cost estimates for specific line segments in the Conrail system. Assessments may be required for future subsidy requirements and of transfer possibilities. The majority

of this work would be done in-house with an expanded staff in order that the Association can respond to inquiries from Congress and the public.

3. Studies would be undertaken to assess environmental and social impacts on committees served by lines proposed for abandonment or transfer. Environmental impacts including noise and air pollution and energy use would be assessed. Most of this work would, of necessity, be performed with the assistance of outside consulting firms using data now existing at the Association, in addition to supplementing these information systems with their own expertise.

4. A study should be made of Conrail's passenger and commuter traffic. Conrail is the largest commuter rail operator in the nation and these operations account for approximately 10 percent of Conrail revenues and 22.5 percent of Conrail's train miles. Information should be developed which would permit Congress to evaluate what method of operation would be most beneficial to both local commuter authorities and Conrail. These analyses would be conducted by utilizing both in-house personnel and technical research firms when needed.

5. A number of mergers among connecting or competing railroads have been proposed or are under consideration. The impact of these mergers should be assessed and the results of these assessments incorporated in projections of future Conrail activity. A planned study will be expanded if S. 2527 is enacted.

6. A number of studies in the manpower area should be added to the current work program if S. 2527 becomes law. These include the projection of labor protection costs resulting from line rationalization. This can only be done by making detailed studies of the manpower impact of abandonments or transfers. In addition, better information is needed concerning changes in manpower requirements resulting from improvements in productivity.

7. An expanded study would be undertaken of Conrail's future capital structure. Future Federal funding requirements depend among other factors on the availability of non-Federal financing to meet Conrail's capital needs. Conrail's debt structure, as well as its earning capacity, impact on the availability of private financing. There are also a number of options for the form or type of Federal funding that should be considered. Future Federal funding might be in the form of interest bearing loans designed to finance specific capital programs. Consultants from the investment banking community would assist in conducting these studies.

8. Association staff would have to increase liaison with State and local governments and with other parties interested in the impact of the line rationalization plan. Such liaison will assure the incorporation of the public viewpoint and assist the implementation process.

Question 5. USRA has estimated that it would need an additional \$4 million for fiscal year 1981 if S. 2527 were enacted. In your testimony you indicated that the \$27.5 million for fiscal year 1982 would be "more than adequate." What figure would be more appropriate for fiscal year 1982? Could the \$4 million which you request for fiscal year 1981 be deducted from the \$27.5 million proposed for fiscal year 1982? If the \$4 million were not authorized, would the specific time periods have to be lengthened in order for you to meet your responsibilities under S. 2527?

Answer. It is very difficult for us to estimate our budgetary requirements for fiscal year 1982 at this time, since the pace of the litigation over the next 18 months will dictate the major share of these requirements. It would appear that by 1982 some slackening in the need for further preparation of expert testimony should occur. If this does actually occur then the \$27.5 million contained in S. 2527 could be "more than adequate." It is not possible to say what a reasonable reduction would be because of the uncertainties involved, and it is difficult to conceive of a situation in which it would be possible to reduce the \$27.5 million by as much as \$4 million. Some increase in the 1981 authorization of \$29.5 million is necessary to enable the Association to carryout the new tasks assigned by S. 2527. It cannot be assumed that changing the length of time available for the tasks would make it possible for us to get by without an increased authorization.

Senator LONG. Next we will call Mr. John L. Sweeney, senior vice president of Consolidated Rail Corporation.

STATEMENT OF JOHN L. SWEENEY, SENIOR VICE PRESIDENT, CONSOLIDATED RAIL CORPORATION

Senator LONG. We are pleased to have you, Mr. Sweeney.

Mr. SWEENEY. Mr. Chairman, I wanted to just briefly address a few comments to the Title V legislation, and reserve the balance of my comments for S. 2527.

There is no bill pending before the Congress today that is more important to Conrail's long-range financial future than the title V bill which is before you.

I think it is safe to say that if this bill is not enacted, Conrail is potentially exposed to \$1.3 billion of expenditures to meet employee benefits guarantees under the act, and I don't think it takes much mathematical consideration to understand that the expenditure of that \$1.3 billion could wipe out virtually all of the benefits we expect to achieve from deregulation legislation over the next decade.

So we are anxious that the bill be passed.

I would like to make one other observation about the bill itself. When we gave to the Department of Transportation the estimate of \$235 million that would be sufficient to pay out the claims that would arise under this bill, we were operating under the assumption that the draft bill would be effective on January 1, 1980. In that interim, we have been expending \$5 million a month to meet those payments.

So that every month that goes by, the \$235 million becomes \$5 million less of funds available to meet the requirements of the new bill. So for that reason, we would urge that this new legislation be enacted as expeditiously as possible, so that drain on both Conrail and Government funds can be reduced as quickly as possible.

I would now turn to S. 2527, a bill relating to the establishment of new procedures for the abandonment and transfer of Conrail rail properties. Mr. Chairman, there is no subject which has been as controversial for the rail industry as the abandonment of railroad trackage and other facilities. Despite the sweeping nature of both the 3R and the 4R acts, it was the light density line question that generated the most controversy and consumed spectacular amounts of the time and energy of those seeking solution to the Northeastern rail question.

Light density line issues inevitably managed to touch every institution concerned with rail transportation: the railroads themselves; shipping groups; individual shippers; government, at the executive and legislative levels; economic development and regional planning agencies; regulatory bodies; passenger associations; and those individual members of our society known as "rail fans."

As you recall, the final system plan procedures, as established under the 3R act, resulted in the reduction of approximately 23,000 miles in the Conrail system. The 4R act imposed a 2-year moratorium on any further Conrail abandonments, and established new procedures for abandonments in general.

I think, as has been pointed out today by the Chairman of the Interstate Commerce Commission, and I think it is a matter of conventional wisdom throughout the city of Washington, that the one area of massive dereliction in Conrail's management activities has been its failure to pursue the abandonment process.

But I think that we need to obtain the answers to four questions, and I doubt very much if there is anybody in this city that can provide adequate answers to these at the present time.

The first question: Do we now operate branch lines which are inherently and unrelievedly unprofitable, or are such lines most obvious victims of our present inefficient regulatory system? Two,

if they are not inherently uneconomic, what changes in regulatory procedure are necessary to bring those lines to profitability? Three, what are the corrective actions that need to be taken on any line to make it profitable? Or, what actions must we take that are essential to apply prior to our being able to develop a sound case for abandonment?

Four, can we insure that any significant abandonment program will result in a sufficient reduction in cost to match the decrease in revenue that occurs immediately as a result of the abandonment?

And finally, even though it may be somewhat unrelated to the deregulation process: what is Conrail's responsibility, acting in concert with other interested parties, to assess and protect the long-range public interest of the Northeast region as it relates to the preservation of an adequate transportation infrastructure?

As far as we're concerned, Mr. Chairman, these questions do not lend themselves to a swift or facile response, but we do believe that the legislation which you and Senator Cannon and others have just managed to see passed by the Senate of the United States is essential to our getting those answers.

The relaxation of maximum rate regulation contained in the Cannon-Long amendment will be a crucial factor in obtaining those answers, and perhaps of even greater importance is the reform of joint rate procedures contained in the Cannon-Bayh amendments which became a part of the final bill as a result of floor action.

That amendment specifically permits any railroad—but I don't think it's any secret that it's aimed primarily at giving Conrail additional flexibility—to introduce surcharges on any line that is below 3 million gross ton miles per mile. It would permit us to test those lines under a price standpoint.

There's not much of a complexity when one addresses branch line problems, and I think the issues can be stated rather simply.

The cost on most light density lines are higher than the revenues derived, especially when the long-term capital costs required for rehabilitation are included in that cost-revenue equation. And we do not believe that the present procedures of the Interstate Commerce Commission adequately assess those costs.

Under the present regulatory framework—and particularly under the present joint rate procedures—it is difficult to attack the revenue side of this problem because of the requirement that a carrier seeking a rate change must obtain the concurrence of any connecting carrier.

In all too many instances—even after we have tried to reduce the cost sides of the problem by shifting from everyday service to 2 or 3 days a week service, or by providing a short crew train, or implementing a consolidated labor agreement, or a track repair and rehabilitation effort, the imbalance between revenue and cost still remains such that revenue increases are essential.

And the amendment adopted on the floor of the Senate would permit such increases through the surcharges so permitted.

We believe the marketplace should be tested before any final decision on abandonment is reached. In some cases, the results of these surcharges will be known within several months. The customer will pay the increased rates or he will choose to divert either to another railroad or to another mode. In other cases, it may take

a considerably longer period of time to know whether these surcharges will be accepted.

For these reasons, we would urge that the abandonment transfer proposal contained in S. 2527 be modified to take into account the time required to test such pricing action. We would be pleased to work with the staff of this committee and subcommittee in drafting the necessary modifications, if the suggestion is found acceptable.

Mr. Chairman, we have made some underlying assumptions about the reason for the introduction of this bill by Senator Cannon. Senator Cannon alluded to some of those underlying assumptions in the introductory statement accompanying the bill. This committee, we realize, faces the question of whether or not Conrail will require additional funding. Inflation is clearly the No. 1 domestic problem, and a balanced budget has become one of the primary means of slowing the rate of inflation; therefore, any increased funding for any program clearly presents a problem for the Congress.

In introducing this bill, the Senator stated that the deregulation bill can provide only part of the answer for future funding. The bill which is before us for discussion today provides another tool by which that funding requirement can be decreased, because it could accelerate the process by which we eliminate some of the excess costs attributable to light density lines.

I think probably of most significance was the Senator's allusion to the fact that the recommendations of the United States Railway Association on additional funding could be a means of guidance to this committee. As I'm sure you would understand, we have given considerable thought to each of these issues.

As early as the middle of May we hope to have a definitive presentation to make to the world at large about our own judgment about what deregulation will provide in the way of additional revenue and decreased cost; our judgment about the likely profile of the Conrail physical plant, which is a function of deregulation; and additional capital funding requirements that are necessary to insure the physical integrity of that plant.

In all of the previous testimony on Federal funding, past, present, and future, Conrail has refrained from any observations about the finality of such funding. We have characterized the \$2.1 billion originally appropriated as a reasonable beginning. The \$1.2 billion authorized in 1978 was considered a necessary step to insure continued progress.

And we have consistently maintained that deregulation offers the best opportunity to minimize any future Federal requirements.

But I would close with this observation: we clearly understand that if additional Federal funding is required, it must be clearly demonstrated that the amounts so authorized will be that amount necessary to conclude our hopeful journey to self-sustainability.

I thank you, Mr. Chairman.

Senator LONG. Thank you very much for a thoughtful statement. I have quite a few questions here, and I would like to—this will take us over to the afternoon, if I don't submit them to be responded to in writing. I would appreciate that.

Thank you very much for your statement today.

[The statement and answers to questions of the committee follow:]

STATEMENT OF JOHN L. SWEENEY, SENIOR VICE PRESIDENT, CONSOLIDATED RAIL CORPORATION

Conrail appreciates this opportunity to express its views on two major legislative proposals, to which the Company's financial future is directly linked.

I would like to first discuss the provisions of the Administration's bill which would amend Title V of the Regional Rail Reorganization Act of 1973. Conrail is strongly in support of the adoption of this bill and would urge as swift a consideration as this Committee can possibly give.

The original estimates of program cost developed in 1973 assumed that almost all the benefits would be paid to employees who had been deprived of employment following the restructuring of the Northeast and Midwest railroads. Our experience has shown, and a GAO Report concludes, that monthly displacement allowances required by the law to be paid to certain full-time employees constitute most of the payments.

Protected employees are currently afforded a monthly guarantee based upon their average monthly compensation in 1974. Average compensation includes all straight time earnings, overtime earnings, arbitraries, penalty payments, and guarantee payments resulting from previous merger agreements. The monthly guarantees have been increased to reflect all general wage increases negotiated since 1974.

The use of average monthly compensation which includes overtime, etc., has resulted in an unacceptable number of "windfall" payments. Since employees' earnings vary from month to month, and since the statute currently requires that employees be made whole in any month in which their 1974 average is not attained, protected employees often receive guarantee payments even though they currently earn their 1974 level of compensation on an annual basis. Additionally, many fully employed employees receive guarantee payments as a result of the fact that a considerable amount of overtime was available to them in 1974.

The proposed amendments substitute four guarantee calculations for the formula described above.

Nonoperating employees will receive an hourly guarantee, based upon the rate of the position they held on September 1, 1979. This guarantee will be increased to reflect subsequent general wage increases, and will be increased whenever the employee, in the exercise of his or her seniority, is able to secure a higher rated position. If, as a result of a reduction in the number of positions available, a protected employee is required to exercise seniority to a position with an hourly rate less than the guarantee, he or she will receive a monthly guarantee payment representing the hourly differential multiplied by the number of hours in the new position's straight time work schedule for the claim month. If a protected employee is unable to retain any position, he or she will receive their guaranteed hourly rate for the number of hours they would have worked on a straight time basis if they had retained their previous position.

Maintenance of Way employees often work as portable equipment operators in the summer when extensive track rehabilitation is undertaken, and as trackmen in the winter when only routine maintenance can be performed. If the above described nonoperating formula were applied to them, they would receive automatic "windfall" payments for the winter months during which they customarily occupy positions which pay less.

To avoid these "windfall" payments, a separate calculation is proposed for Maintenance of Way employees. Each protected employee will be assigned a monthly guarantee equal to his or her 1974 average hourly earnings on a straight time basis, upgraded by subsequent general wage increases, and multiplied by 174 (i.e., the number of hours in a straight time work schedule in the average month). If a protected employee's current monthly guarantee is less than this value, a protected employee's earnings are less than the guarantee, a payment will be due equal to 75 percent of the difference. At the end of the calendar year the employee's annual guarantee will be compared to his or her annual earnings plus monthly guarantee payments. If the annual guarantee is larger the full difference will be paid. If the annual calculation demonstrates that all or a portion of the monthly guarantee payments represent an overpayment, the employee will be entitled to no further guarantee payments until the overpayment is recovered. In the calculation of guarantee payments on the monthly and the annual basis, credit will be taken for an employee's overtime earnings, except for those earnings received as a result of working more than two hours at the overtime rate on any given day.

It is proposed that Train and Engine Service employees retain their current monthly guarantees subject to two important modifications. Average 1977 Conrail earnings will be calculated for each ICC classification of operating employees. These values will be upgraded by subsequent general wage increases, and will constitute maxima. Those protected employees whose current monthly guarantees exceed the applicable maximum will have their guarantees reduced to the maximum. The second modification is an annual calculation in accordance with the Maintenance of Way formula described above. If a protected employee's earnings are less than the guarantee in any month, 75 percent of the difference will be paid. At the end of the calendar year, a comparison of guarantee and earnings on an annual basis will determine whether an additional payment will be made or whether future payments will be withheld pending recovery.

No change is proposed in the guarantee formula currently applicable to noncontract employees and employees who have been transferred. Noncontract employees receive salaries which do not include overtime compensation. Additionally, they customarily receive merit increases rather than general wage increases, so that with the exception of a single general wage increase their guarantees have not changed since the formation of Conrail. Consequently, they have not been the recipients of "windfall" payments as is the case with union represented employees.

Transferred employees have frequently purchased new homes at a price reflecting the standard of living they thought they were assured of on the basis of the current guarantee formula. A sudden reduction in their monthly income might place them in an untenable financial position. There are approximately 350 employees who have transferred.

When a protected employee is unable to hold a position with Conrail, the current statute provides that his or her monthly guarantee will be reduced by earnings in outside employment. If that employment is subject to the Railroad Retirement Act, credit is taken for all earnings. However, if the employment is not subject to the Railroad Retirement Act, credit is only taken for 50 percent of earnings. It is proposed that credit be taken for all outside earnings, whatever the source.

The current statute contains no provision enabling the suspension of guarantees in the event employees are unable to work due to Acts of God or strikes. It is proposed that the law be amended to include such a provision. It is not intended that the provision would be applied throughout the system as though it were a "decline in business" provision in the event a strike reduced Conrail's traffic.

The GAO had recommended upon the fact that employees are not currently required to claim their guarantee payments within a specified period of time. They concluded that the absence of such a requirement makes effective management of the program difficult, since old claims may be virtually impossible to verify, and since program costs are therefore difficult to estimate reliably. The proposed bill would require employees to submit claims within three months, and would require Conrail to approve or deny the claims within 150 days.

Title V currently provides that protected agreement employees who are unable to retain any position may be transferred to "bona fide vacancies" in their "craft and class". There is a substantial number of unemployed Conrail employees in the marine crafts, and unemployed Penn Truck Lines, Inc. truck drivers. No bona fide vacancies exist for these employees in their craft and class. Consequently, their guarantee payments represent a considerable ongoing liability. Since bona fide vacancies are available in other crafts and classes, it is proposed that the law be amended to enable such intercraft transfers. It may be necessary to train marine and PTL employees before they are able to assume their new duties.

The statute provides that the various carriers require to make protective payments shall be reimbursed therefor, in an aggregate amount not to exceed \$250 million. Within a year of Conrail's formation it became apparent that "windfall" payments to fully employed employees would soon deplete the authorization.

It is proposed that an additional \$235 million be authorized to fund the substantially reduced level of benefits afforded by these amendments. In the event this sum were not sufficient to fully fund the program, the carriers employing protected employees would be responsible for the payment of benefits without reimbursement.

I will turn now to S. 2527, a bill relating to establishment of new procedures for the abandonment and/or transfer of Conrail rail properties.

There is no subject which has been as controversial for the rail industry as the abandonment of railroad trackage and other facilities. Despite the sweeping nature of both the Regional Rail Reorganization Act of 1973 and the Railroad Revitalization and Regulatory Reform Act of 1976, it was the light density line question that generated the most controversy and consumed spectacular amounts of the time and energy of those seeking a solution to the Northeast rail question. Light density line

issues inevitably manage to touch every institution concerned with rail transportation; the railroads themselves, shipping groups and individual shippers, government executive and legislative, at all levels, economic development and regional planning agencies, regulatory bodies, passenger associations, and those individual members of our society best known as rail fans.

As you will recall, the Final System Plan procedures established under the RRR Act resulted in the reduction of the Conrail system from the approximately 23,000 miles operated by the bankrupt predecessors to the approximately 17,000 miles taken over by Conrail.

The RRRR Act imposed a two-year moratorium on any further Conrail abandonments and established new procedures for abandonments in general. The bill we discuss today would revive a process similar to that followed in the Final System Plan effort. It calls for the United States Railway Association to prepare a plan for additional abandonments and transfers which would be forwarded to the Department of Transportation and the Interstate Commerce Commission, and then would be submitted to the Congress. If the Congress did not veto that plan, the Corporation would be permitted to abandon or transfer the lines so specific in the plan.

Over the course of the last two years, during which Conrail could have filed additional abandonment proposals, the abandonment process and the prospective results were carefully evaluated. We attempted to develop answers to the following questions:

(1) Do we operate branch lines which are inherently and unrelievedly unprofitable or are such lines the most obvious victims of our present inefficient regulatory system?

(2) If they are not inherently uneconomic what changes in regulatory procedure are necessary to bring such lines to profitability?

(3) What are the corrective actions which need to be taken on any line to make it profitable or are essential to apply prior to our being able to develop a sound case for abandonment?

(4) Can we ensure that any significant abandonment program will result in a sufficient reduction in cost to match the decrease in revenue that occurs immediately as a result of abandonment?

(5) What is our responsibility, in concert with other interested parties, to assess and protect the long range public interest of the Northeast region as it relates to the preservation of an adequate transportation infrastructure?

Mr. Chairman these questions do not lend themselves to swift or facile responses. But with the exception of question 5, each one of these responses is dependent upon the kind of regulatory reform which you have just guided through the Senate of the United States. The relaxation of maximum rate regulation contained in the Cannon-Long amendment will certainly be a crucial factor. Of perhaps even more importance to Conrail is the reform of joint rate procedures contained in the Cannon-Bayh amendment which became part of the final bill as a result of your floor action. Subsection (g)(2) of that amendment specifies the kind of pricing actions a carrier may take on lines which originate or terminate less than 3,000,000 gross ton miles of traffic per mile. It permits the carrier to institute surcharges which will produce compensatory revenue levels on specific commodities moving on light density lines. It is our judgment that such pricing initiatives will enable us to obtain, with a high degree of confidence, the answers to questions 1-4 above.

The underlying issues in any branch line problem are not normally complex. I think they can be stated as follows:

(1) The cost on most light density lines are higher than the revenues derived, especially when the long term capital cost arising from their rehabilitation are included in the cost/revenue equation.

(2) Under the present regulatory framework, and particularly under the present joint rate procedures, it is difficult to attack the revenue side of the question because of the requirement that a carrier seeking a rate change must obtain the concurrence of any connecting carrier.

(3) In all too many instances, even after we have tried to reduce the cost side by shifting from every day service to two or three days a week service, or by providing a short-crew train, or by implementing a consolidated labor agreement, or by a track repair and rehabilitation effort, the imbalance between revenue and cost still remains such that revenue increases are essential. Your amendment would permit such increases through surcharges.

We believe the marketplace should be tested before any final decision on abandonment is reached. In some cases the results of such surcharges will be known within several months. The customer will pay the increased rates or he will choose to divert either to another railroad or to another mode. In other cases, it may take a

considerably longer period of time to know whether the surcharges sought will be acceptable. For these reasons, we would urge that you abandonment/transfer proposal be modified to take into account the time required to test such pricing action. We would be pleased to work with your staff in drafting the necessary modifications, if you find our suggestion acceptable.

Mr. Chairman, we have made some assumptions about the underlying reasons for the bill which you have introduced. They were briefly alluded to in your introductory statement.

This Committee does face the question of whether or not Conrail will require additional funding. Inflation is clearly the number one domestic problem and a balanced budget has become one of the primary means of slowing the rate of inflation. Increased funding for any program clearly presents a problem for the Congress.

In introducing this bill, you stated that the deregulation bill can only provide part of the answer as to the magnitude of potential future funding for Conrail. The bill which is before us for discussion today would provide another tool by which that funding requirement might be decreased. It could accelerate the process by which we could eliminate some of the excess costs attributable to light density lines. And finally would have included a provision which would direct the United States Railway Association to recommend to the Congress what additional funding and structural changes, if any, might be required to ensure Conrail's profitability.

As I am sure you would understand, Conrail itself has given considerable thought to each of these issues. Perhaps as early as the middle of May, we believe we will be in far better position to give you our thoughts on those subjects. We are nearing the completion of a study designed to provide us with a series of long range projections of the additional revenues and decreased cost that may emerge from deregulation legislation, the likely profile of the Conrail physical plant which will be also a function of the deregulation bill, and the capital funding requirement to ensure the physical integrity of that plant structure.

All of those are obviously closely linked to the deregulation bill. As I have outlined above, the relaxed regulatory procedures need to be tested before those projections could be converted to a firm planning document. Only such a test can provide some assurance as to the funding which can be derived from a more competitive market situation and that which may have to be provided from public sources to insure that the plan can be fully implemented, particularly as it concerns capital funding requirements.

In all of its previous testimony on federal funding—past, present and future—Conrail has refrained from any observations about the finality of such funding. We have characterized the \$2.1 billion originally appropriated as a reasonable beginning. The \$1.2 billion authorized in 1978 was considered a necessary step to insure continued progress. And we have consistently maintained that a sound deregulation program offers the best opportunity to minimize any future federal funding.

But Conrail clearly understands that if additional federal funding is required, it must be clearly demonstrated that the amount so authorized will be that amount necessary to conclude the journey to self-sustainability.

QUESTIONS OF THE COMMITTEE AND THE ANSWERS THERETO

Question. Conrail's financial performance has been improving somewhat. To what extent has this been due to increased efficiency? Could you describe Conrail's efforts and future plans to improve operating efficiency? Does Conrail have structural or other changes in mind to help it achieve long-term self-sufficiency?

Answer. Conrail attributes a significant portion of its financial progress to increased efficiencies. We believe these efficiencies comprise almost three-quarters of the \$200 million decrease in losses between 1978 and 1979. Chief among these efficiency improvements were manpower reductions, increased productivity in both track work and equipment repair and substantial savings from crew consist, terminal improvement operations and administrative costs.

We plan to continue these efforts as well as seeking new efficiencies through improved plant and labor agreements.

As is the case with Conrail's abandonment plans, our structural changes would be largely premised on the flexibility which we trust will be provided in the final deregulation bill. It would be premature, absent our testing of the new deregulation tools, to plan any major structural changes.

Question. With regard to its program to defer rehabilitation, Conrail has stated that program cutbacks will result in certain amount of deferred maintenance and reduced efficiencies associated with asset improvement. Can Conrail quantify these

effects? To what extent will these cutbacks result in service degradation and a resulting diversion of traffic. In this regard Conrail has indicated that it does not consider a short-term reduction in capital spending to be critical. If the reduction were to continue beyond two years, when would the deferred maintenance situation become serious, if at all? In this regard, Conrail has indicated that cash will be available for catch-up spending in the event that the effects of the interim spending deferrals prove more severe than anticipated. Does this indicate that Conrail has a contingency plan? In the event that regulatory reform does not produce the expected results, how will the "catch-up" money be generated?

Answer. In response to the questions relating to Conrail's cutbacks in capital expenditures, we would answer as follows. The reduction in capital expenditure in the near term, followed by restoration of programs to levels comparable to those of the previous Plan in later periods, is a key mechanism underlying Conrail's ability to operate within the Federal investment limit without incurring other than short-term decreases in maintenance programs. To aid understanding of the extent of program changes, Tables 1 and 2 show the plan comparisons in constant 1979 dollars. Track rehabilitation expenditures, compared with the previous Plan, are shown in Table 1

TABLE 1.—TRACK REHABILITATION EXPENDITURES 1980–84

	(In millions of dollars)					
	1980	1981	1982	1983	Total 1980–83	1984
Current plan	\$183	\$197	\$287	\$339	\$1,006	\$334
Previous plan	333	328	321	315	1,297	
Current plan—higher (lower)	(150)	(131)	(34)	24	(291)	

As the table indicates, Conrail will significantly reduce its track expenditures in 1980 and 1981 in response to the funding constraints of this Plan, but will increase the track rehabilitation program in later years as cash from operations becomes available.

The total 1980–1983 reduction of \$291 million primarily reflects the lower volume of traffic that will be handled and the concentration of this volume over rehabilitated routes. Not only will this present opportunities for reductions of track on multiple track lines; it will also allow reuse of rail rendered excess by rationalization and thereby reduce requirements for purchasing new rail.

The temporary reduction in track expenditures is most severe in 1980. As shown in Table 1 above, the discretionary track program has been reduced by 45 percent in 1980, in constant dollar terms, relative to the previous Plan. This affects production units, as shown in Table 2.

TABLE 2.—DISCRETIONARY TRACK PROGRAM, 1980 PRODUCTION UNITS

	Current plan	Previous plan	Variance
Rail (miles):			
New	200	380	(180)
Fit	40	496	(456)
Total	240	876	(636)
Ties (millions)	1.3	3.2	(1.9)
Surfacing (passenger miles)	8,800	8,300	500

The most significant reduction in the Current Plan relative to the previous Plan is in the amount of fit rail available. This reduction is caused by two factors. First, the amount of fit rail made available depends on the amount of new rail laid; thus the cutback in new rail reduces the amount of fit rail.¹ Second, the previous Plan was optimistic in predicting when fit rail would be generated from plant reduction

¹ It should be noted that the basic (non-discretionary) track program requires about 150 miles of fit rail each year for derailments and other emergencies. Thus the 200 mile program of new rail releases fit rail to be used as follows: 150 miles for basic needs, 10 miles unuseable (scrap), and 40 miles to be included in the discretionary program.

programs. Conrail has imposed a temporary moratorium on its abandonment program pending the outcome of the regulatory reform deliberations.

The number of new ties to be installed was also greatly reduced from the previous Plan, but the amount of surfacing increased. At a cost of approximately \$4,000 per mile, surfacing is the least expensive method to keep a large number of miles of track from deteriorating despite rail and tie reductions.

The units for 1981 also remain considerably below the previous Plan, but for the 1982-83 the units approach previous levels. The relative size of basic vs. discretionary programs, improvements in gang productivity, and choice of projects are all areas of further examination prior to completing the 1980 plan.

Table 3 compares the Current Plan's Additions and Improvements expenditures with those of the previous Plan.

TABLE 3.—ADDITIONS AND IMPROVEMENTS EXPENDITURES, 1980-84

[In millions of 1979 dollars]

	1980	1981	1982	1983	Total 1980-83	1984
Current plan.....	\$84	\$104	\$146	\$149	\$483	\$149
March plan.....	140	136	126	118	520	
Current plan—higher (lower)	(56)	(32)	20	31	(37)	

The table shows that the A&I program will be increased over previous Plan levels in 1982 and 1983, following the cutbacks during the first two years to observe the funding limitations. Two major causes of this increase are the investment needed to provide terminal capacity for 1.8 million incremental tons of TOFC traffic converted from boxcars over the five-year period, and the signalling investment required when making track reductions in multiple-track territory. In addition, those investment requirements of a safety and environmental nature will be unaffected by regulatory change. Finally, there are many "carry-over" projects, such as Allentown Yard and Juniata Shops, that will remain desirable under regulatory change and which have been presumed to be completed.

To gain an understanding of the extent of rehabilitation deferrals implicit in operating within the \$3.3 billion currently authorized, it is first necessary to define a rehabilitation program appropriate to the reduced size of Conrail's system in a changed regulatory environment. Tables 4 and 5 compare appropriate spending levels and Planned spending for track rehabilitation and A&I projects over the five-year period.

TABLE 4.—ADDITIONS AND IMPROVEMENTS SPENDING

[In millions of 1979 dollars]

	1980	1981	1982	1983	1984	Total
Appropriate spending.....	\$121	\$137	\$136	\$136	\$136	\$666
Planned spending.....	84	104	146	149	149	632
Planned higher (lower)	(37)	(33)	10	13	13	(34)

TABLE 5.—TRACK REHABILITATION SPENDING

[In millions of 1979 dollars]

	1980	1981	1982	1983	1984	Total
Appropriate spending.....	\$261	\$285	\$282	\$279	\$279	\$1,386
Planned spending.....	183	197	287	339	334	1,340
Planned higher (lower)	(78)	(88)	5	60	55	(46)

As the tables indicate, during 1980 and 1981 Conrail will spend considerably less on both programs than would be appropriate to system size and volume. These

program cutbacks, necessitated by the funding limitation presumed in this Plan, will result in a certain amount of deferred maintenance and a reduction in efficiencies associated with asset improvement. However, to compensate for the initial cutbacks, Conrail has planned expenditures during 1982-1984—as cash from operations becomes available—that exceed “appropriate” levels for those years. As a result, Conrail’s five-year planned expenditures will be below “appropriate” levels by only \$34 million for A&I and \$46 million for track—despite the major initial cutbacks.

Conrail has not presumed to increase capital programs beyond the levels shown in Tables 4 and 5 because of the inherent “peaking” problems of manpower and related machinery.

As regards catch-up spending, Conrail has submitted two contingency plans. The first contingency would envision a substantial reduction in Conrail’s plant. It anticipates that approximately 10% of Conrail’s traffic would be eliminated, approximately 2,200 route miles would be abandoned and there would be an accompanying additional 10% reduction in employment. This contingency would assume a far more relaxed abandonment procedure.

Conrail has also offered a second contingency plan which, if we presumed no regulatory reform and no additional abandonments would require approximately \$780 million of additional Federal funding.

It should be noted that this analysis was submitted to the United States Railway Association in August 1979. Many events and economic developments have occurred in the intervening period which could affect those projections. The present inflation rate has obviously increased the cost of materials and supplies. The downturn in automobile and steel traffic on the railroad has been noticeably evident in recent months.

Question. Your statement indicates a preference for testing the marketplace under regulatory reform before decisions on abandonment or transfer are made. How long do you envision this waiting period to be? Are there not some lines which can be identified and action taken at this time? If legislation such as S. 2527 is not enacted, do you intend to continue your present policy with regard to abandonments which is apparently not to actively move toward plant rationalization? If Conrail were allowed to abandon all the lines it wanted to, how significant would the impact be of those abandonments, on improving Conrail’s profit and loss outlook?

Answer. We believe that a minimum period of one year would be appropriate to test the revenue questions raised by unprofitable lines. There are some lines which will, in all likelihood, not respond to surcharges—but such lines are also likely to represent the least problem from a cost standpoint—and thus, their abandonment will not materially improve our profit potential or reduce the government’s exposure.

If S. 2527 is not enacted, Conrail will continue its present policy of awaiting enactment of deregulation legislation, using the tools provided by that legislation to test the revenue potential of such lines, and then filing for abandonment.

Since we cannot determine, without a deregulation test, “all the lines” we would want to abandon, it is difficult to determine the effect of such an abandonment effort on our profit and loss outlook.

Question. You discuss the benefits of the joint-rate amendment to S. 1946, the Railroad Transportation Policy Act of 1980. Except for light density lines, such surcharges may be imposed up to 110 percent of average Rail Form A variable costs. Is this figure adequate to cover Conrail’s costs? What impact would it have on Conrail’s long-range financial picture?

Answer. Rail Form A does not fully measure Conrail’s own costs as we measure them within our own internal costing system (COSAC), but we believe it will provide a costing base, at 110 percent, that will allow us to recover our variable costs.

It is our judgment that the 110 percent surcharge provision, taken with the rest of the regulatory reform provisions in S. 1946, can substantially enhance Conrail’s long-range financial prospects. We estimate an increased earnings potential within a range of 100 to 150 million dollars a year when fully implemented.

Our estimate must be put within a range since only experience will reveal the full potential of the surcharge and cancellation provisions; the diversions of traffic which may occur; they yield of the new maximum rate regulations; and the benefits of the other features of S. 1946.

Question. Certain labor representatives have testified as to the discrimination in protection under S. 2530 against certain types of employees. How do you respond to this claim?

Answer. We assume that this question relates to alleged discrimination with respect to maintenance of way employees. These employees must be treated separately, in order to avoid making them the beneficiaries of windfall payments. Many maintenance of way employees work as highly paid portable equipment operators or foremen during the summer months when extensive track rehabilitation is undertaken, and as lesser paid trackmen during the winter when only routine maintenance can be performed. Some employees are unable to retain active employment during the winter. This annual work schedule has historically been characteristic of employment within their craft and class.

If maintenance of way employees' guarantees were calculated in the same manner as Other Than Train and Engine Service employees' guarantees, the maintenance of way employees would receive payments during the winter months equal to the differential between their highly paid and their lesser paid positions. These payments would be received even though the employees had not been "adversely affected with respect to compensation", and would result in their receiving payments in excess of their annual entitlement.

In order to avoid these excessive payments, the administration's bill proposes an annual straight time guarantee based upon the compensation the employees received prior to Conrail's assumption of the properties of the railroads in reorganization. This annual guarantee would be offset by certain overtime earnings, but only to the extent of two hours of work on any given day. This limitation would ensure that these employees do not receive federally funded benefits in excess of their annual entitlement, while at the same ensuring that employees who are actually "adversely affected" are adequately protected.

Question. Conrail's 1980 budget suggests an economic slowdown in the Northeast, and its 5-year plan dated August 1, 1979, is based on substantial capital spending cutbacks and reductions in Conrail's route system, made possible by regulatory reform. However, Conrail's estimate for Title V funding is reportedly based on the assumption that there will not be an economic recession or substantial employee layoffs. Is this not a contradiction? In this regard, GAO has stated that the estimate of money necessary under the proposed Title V program is too low due to unrealistic assumptions about the economy and regulatory reform. What is your response to this criticism?

Answer. Conrail's estimate of Title V funding assumes there will be no substantial and prolonged recession or radical rationalization of our system.

In our opinion, the GAO has not sufficiently considered the percentage of Conrail employees who are not protected by Title V. As of October 1979, 33 percent of Conrail employees had no such protection. An additional 14 percent of Conrail employees had less than lifetime protection, and are eligible to collect monthly displacement allowances for a period which may not exceed five years. Thus a total of 47 percent of all Conrail employees are not covered by the lifetime protection provisions of Title V. We believe that any moderate economic slowdown or selective elimination of routes will affect unprotected employees for the most part, and will not gravely threaten the Title V fund.

Question. It is my understanding that Conrail's recent crew consist agreements provide separation allowances to employees who give up their jobs as a result of the agreement, and that Conrail has been using Title V funds to pay these separation allowances. How much does Conrail expect the separation allowances to amount to over the next five years? If Conrail had to pay the separation allowances out of its own revenues, would the crew consist agreement still provide substantial improvement in Conrail's bottom line?

Answer. Conrail estimates that \$40 million of the \$235 million proposed authorization will be expended in the severance of Train Service employees pursuant to the Crew Consist Agreement. We believe that expediting attrition through severance is particularly cost effective. The severance payment, which may not exceed \$20,000, enables a reduction in crew size of one employee. The savings realized through this reduction are continuous, and in themselves justify the lump-sum expenditure. In addition, the severance of protected employees results in a reduction in the monthly displacement allowance payments to which these employees would otherwise be entitled.

However, despite the cost effectiveness of severance referred to above, Conrail's present financial posture is such that it could not afford to invest \$40 million immediately. In the absence of Federal funding, we would be unable to realize the labor savings which our current planning contemplates.

Question. Would you please provide the Committee with a copy of the Title V employee printout, including the protected rates or all agreement and non-agreement employees.

Answer. The computer printout which records Title V guarantees for all employees is contained in fourteen volumes comprising 8,019 pages. We are willing to furnish the entire printout if it is desired, but we would appreciate confirmation of this fact due to its bulk.

Question. How many agreement and non-agreement employees were working as of April 1, 1976? April 1, 1980?

Answer. The following table contains data derived from Conrail's monthly Reports to the Interstate Commerce Commission. The totals represent the number of employees who were in service in the middle of the month. The reports do not distinguish between agreement and nonagreement employees, but these figures have been estimated based upon known percentages of nonagreement employees within the various ICC Classifications.

	April 1976	February 1980
Agreement.....	88,229	71,439
Nonagreement.....	6,258	6,870
Total.....	94,487	78,309

¹ The February 1980 agreement count is distorted when compared to an April 1976 count. It is our estimate that the number for April 1980 will be approximately 3,500 higher than for February 1980. February is always our low employee count month, primarily because it is in that month that our traffic rehabilitation and other construction efforts are at their absolute lowest points. On the other hand by April 15 that construction count is rapidly approaching the high point.

Senator LONG. Next we will call the panel for labor: Mr. J. R. Snyder, national legislative director, United Transportation Union; Mr. J. E. Burke, vice president of the UTU; and Mr. Ole Berge, Maintenance of Way Employees; accompanied by Mr. William Mahoney, counsel.

STATEMENT OF J. R. SNYDER, NATIONAL LEGISLATIVE DIRECTOR, UNITED TRANSPORTATION UNION; ACCOMPANIED BY J. E. BURKE, VICE PRESIDENT; OLE BERGE, MAINTENANCE OF WAY EMPLOYEES; AND WILLIAM MAHONEY, COUNSEL, RAILWAY LABOR EXECUTIVES' ASSOCIATION

Senator LONG. Mr. Snyder, you are no stranger to this committee, this subcommittee. We are pleased to hear your views and thoughts on this subject.

Mr. SNYDER. Mr. Chairman, Senator Riegle, and staff.

Senator LONG. As a matter of fact, maybe you and I ought to go into business together.

Mr. SNYDER. Yes. Maybe we could get the trains back on the track in some of these locations. Right?

It's been indeed a pleasure, Mr. Chairman, on behalf of railroad labor to appear on the panel here which addresses legislation pending before your committee.

On my left, Mr. William G. Mahoney, counsel for the Railway Labor Executives Association; Mr. Jim Burke, vice president of United Transportation Union. And on my right, Mr. Ole Berge, president of Maintenance of Way Employees.

With your permission, we have prepared brief statements, conforming with the instructions, under your instructions. We would like our entire statement inserted into the record, if you don't mind.

It is my understanding some of the labor organizations will wish to issue additional views relating to the legislation while the record is open, with your permission.

Senator LONG. We will keep this record open for about 10 days so that they can file those statements.

Mr. SNYDER. Thank you very much, Mr. Chairman. I thank you for the privilege of testifying here today on behalf of the Railway Labor Executives Association.

Mr. Burke and Mr. Berge would each like to make a short statement on S. 2530 after my comments on S. 2527.

As indicated in my prepared testimony, the RLEA opposes the enactment of S. 2527 because, as written, it could be used to destroy Conrail through abandonment and transfers, and we know that there are those who would attempt to use such legislation for that purpose.

Section 5(b)(2) provides that the plan of rationalization submitted by the USRA to the Congress shall identify the properties to be abandoned; the properties to be operated by means of rail service continuation payments; and the properties to be transferred as proposed by Conrail in its submission under the act. There is nothing in that provision to prohibit the plan of rationalization from including transfers in addition to those proposed by Conrail. We believe that such limitation must be placed in the bill if it is to be enacted.

S. 2527 approaches the problem of Conrail in a negative manner, emphasizing abandonment and transfer. As pointed out in the joint staff report on Conrail alternatives, most of Conrail's problems are to be found in the inefficiencies inherent in its organization and its operation. According to the report, if Conrail was to abandon and transfer 22 percent of its present route miles—3,700 route miles—it would be able to realize a savings of only \$75 million, or about 9 percent of the amount needed to bring Conrail into the black.

If Conrail is ever to become viable, it must be through organizational and operational efficiencies. We respectfully suggest that S. 2527 be amended so as to direct the USRA to submit an indepth study of the changes necessary in Conrail in order to make it a profitable operation, together with its recommendations for realizing such changes.

The RLEA respectfully submits that only by positive legislative enactments will Conrail ever become a viable part of our rail network. Continued abandonments and transfers of its property will ultimately weaken it to a point at which nationalization will be our only alternative.

At this point I would like to call upon Mr. James E. Burke for a few remarks.

Mr. BURKE. Mr. Chairman, the RLEA's position on S. 2530 is set forth in detail in Mr. Snyder's prepared testimony. I would merely like to point out that the RLEA has some difficulties with S. 2530 as written, as Mr. Snyder notes in his prepared remarks. And we would welcome the opportunity of working with you and your staff in seeking a resolution to these problems.

One very serious problem affects the employees of Conrail, represented by the Brotherhood of Maintenance of Way Employees, and at this time I would like to call upon Mr. Ole M. Berge, president of that organization, to comment upon that problem.

Mr. BERGE. Mr. Chairman, I have a prepared statement which I ask be incorporated into the record as if read.

Mr. BERGE. S. 2530, as written, would single out maintenance-of-way employees for treatment different from employees in the other nonoperating crafts. In doing so, the bill works to the severe disadvantage of the maintenance-of-way employees. We submit that any distinctions between maintenance-of-way employees and other nonoperating employees have no application to the process of developing a fair and equitable formula for calculating displacement allowances for maintenance-of-way employees.

The formula as proposed in S. 2530 for maintenance-of-way employees would give to Conrail a license to lay off employees in the wintertime and to require excessive overtime of those employees in the summer, at no cost, under title V. In effect, Conrail would be able to balance overtime weeks against layoff weeks, thereby reducing or eliminating its obligation to pay premium or penalty pay for overtime hours.

The concept of premium or penalty pay for overtime hours is to discourage the use of overtime hours and thereby spread work among more employees and to create more jobs. The plan proposed in S. 2530, as far as maintenance-of-way employees are concerned, would reverse this policy. It would encourage the programing of overtime hours during warm months, thereby reducing the number of jobs available to the maintenance-of-way employees.

This overtime offset formula would not be applied to other nonoperating employees.

We cannot accept such discriminatory treatment. We insist upon parity with the employees in other nonoperating crafts.

Like other members of the RLEA, we stand ready and, indeed anxious, to work with you and your able staff in designing fair and equitable legislation to resolve this problem.

Thank you.

Mr. SNYDER. Mr. Chairman, that concludes our statement. We are open for any questions that you or the committee wish.

Senator LONG. I have a substantial number of them that have been prepared by the staff, and I would just like to submit them and I would appreciate if you would favor us with an answer, in writing, to those.

Mr. SNYDER. We would be delighted to, Mr. Chairman.

Senator LONG. I am optimistic and hopeful, Mr. Snyder, that we might be able to establish an employee stock ownership plan that might even result in employees' owning that railroad one of these days.

Can you tell me what is your latest thought on the subject? I am strongly in favor of employee stock ownership. I think it's a great thing for the workers, for them to own a piece of the action. My impression is, in most cases where the workers have had an option, that might make it succeed. What's the latest on your side over there about the talk of employee stock ownership proposal for Conrail?

Mr. SNYDER. Mr. Chairman, as you very well know, you and I have had long sessions on this, and our staff. We worked very hard on this approach. And during the last Congress, under the \$1.2

billion authorization that was incorporated in there, such a plan, provisions to set up such a plan under Conrail, it is my understanding at this point there has been some progress made between the Conrail and railway labor on the concept of the ESOP plan.

I must point out here we have had other problems, so many problems, with the Milwaukee and Rock Island, and we have had to spread ourselves pretty thin here. But there is some progress being made. We have made our commitment to you and the Congress here in the form of legislation, and certainly rail labor will follow that commitment.

Senator LONG. Thank you very much, sir.

Senator RIEGLE. Thank you, Mr. Chairman.

First of all, I want to welcome such a distinguished panel here today and say I appreciate the testimony and speaking for myself I will give very careful weight consideration to the full text of all your statements.

I would like to add to that, either now or for the record, that you would provide us with any amendments that you think ought to be made to title V and what changes, if any, that you would propose regarding S. 2530, which is the bill, of course, that's under consideration. And so I would welcome any specific recommendations you would have, in detail. And as I say, you're welcome to provide those for the record or now, whichever suits you best.

Mr. BURKE. We do have some legislative proposals, amendments, that we are working on now, particularly one that involves a time period in submitting of the claims. We think we can get beyond that. And we will submit, later on, some of these matters to you.

Senator RIEGLE. I think it's important that the committee have that, and I especially would like to have them. So, if you would make it a point to work with me and my staff on that, I would like to see what you have got to suggest.

Mr. BURKE. We will do that, sir.

Senator RIEGLE. That's all, Mr. Chairman.

Senator LONG. Thank you very much, gentlemen, for your appearance today.

Mr. SNYDER. Thank you, Mr. Chairman. It's always a pleasure to be before you.

Senator LONG. We're always pleased to have you.

Mr. SNYDER. We've got to take a ride down that Crescent. It is filled up to capacity now.

Senator LONG. It's operating to capacity?

Mr. SNYDER. Forty-nine percent increase since last year and the previous year.

Senator LONG. I am pleased to hear that. I haven't been on the Crescent on a long time, but I think it may be due. I appreciate your suggestion.

[The statements and answers to questions of the committee follow:]

STATEMENT OF J. R. SNYDER, CHAIRMAN, LEGISLATIVE COMMITTEE, RAILWAY LABOR EXECUTIVES' ASSOCIATION AND NATIONAL LEGISLATIVE DIRECTOR, UNITED TRANSPORTATION UNION

Mr. Chairman and members of the subcommittee, on behalf of the Railway Labor Executives' Association, its members and the employees of the Consolidated Rail Corporation whom they represent, I wish to express our appreciation for the opportunity to present your views on two subjects which we believe to be most vital to Conrail and its employees as well as to the transportation future of this country.

My name is J. R. Snyder. I am Chairman of the Legislative Committee of the Railway Labor Executives' Association and the National Legislative Director of the United Transportation Union. My office is located in the Railway Labor Building at 400 First Street, N.W., Washington, D.C. Accompanying me are UTU Vice President J. E. Burke, Chairman, RLEA Committee on Title V and Mr. William G. Mahoney, counsel to the Railway Labor Executives' Association.

The Railway Labor Executives' Association is an unincorporated association with which are affiliated the chief executive officers of all of the standard and international railway labor unions in the United States. The organizations whose chief executive officers are members of the RLEA are listed below:

- American Railway Supervisors Association
- American Train Dispatchers Association
- Brotherhood of Locomotive Engineers
- Brotherhood of Maintenance of Way Employees
- Brotherhood of Railroad Signalmen
- Brotherhood of Railway Carmen of the United States and Canada
- Brotherhood of Railway, Airline and Steamship Clerks
- Hotel & Restaurant Employees & Bartenders International Union
- International Association of Machinists and Aerospace Workers
- International Brotherhood of Boilermakers & Blacksmiths
- International Brotherhood of Electrical Workers
- International Brotherhood of Firemen & Oilers
- International Longshoremen's Association
- International Organization of Masters, Mates & Pilots
- National Marine Engineers' Beneficial Association
- Railroad Yardmasters of America
- Railway Employees' Department, AFL-CIO
- Sheet Metal Workers' International Association
- Seafarers International Union of North America
- Transport Workers Union of America
- United Transportation Union

The continued viable existence of Conrail is a matter of the highest importance to the economy of this nation, to our country's future transportation capabilities and, of course, to railroad employees, those on the many railroads which connect with Conrail as well as those employed directly by Conrail.

The two bills you are considering today will have serious effects upon the future of Conrail—one for ill; one for good.

S. 2527

In seeking a means by which we can lessen the federal subsidy for Conrail, we must be very careful to avoid creating a self-fulfilling mechanism for the destruction of that railroad.

Mr. Chairman, I am sure you recall vividly the great efforts which were expended by you and other members of the Congress as well as by many interested participants, including the RLEA, to secure enactment of legislation which would present the economic catastrophe which confronted this nation in 1972 when the Penn Central Railroad threatened to cease operations due to its total financial collapse. I think it can be safely said that the legislative results of those efforts have been a benefit not only to the Northeastern United States but to the entire nation. And while Conrail has not yet risen from the ashes of the bankruptcies of the Penn Central and the other Northeastern railroads which collapsed with it, there can be no doubt that without the legislation which created Conrail we would today be embroiled in a transportation crisis which would have this nation on its economic knees. I believe that everyone who had a part in the enactment of the 3R Act should be proud of that accomplishment. Conrail has cost the taxpayer a great deal of money, but it has been a cost which has had extremely beneficial effects upon the nation's economy. Indeed, its cost-to-benefit ratio has been much better than many

other past and continuing projects into which the taxpayer's money has been invested.

Conrail quite obviously is far from perfect and changes may have to be made in it, but there can be no argument that Conrail is vital to the viability of the rail transportation network of the United States. It must be continued in operation.

S. 2527 provides for a two-year authorization for the United States Railway Association. The RLEA heartily endorses and supports that objective. S. 2527, however, would also "mandate the formulation of a plan for the rationalization of the rail properties of Conrail." "Rationalization" is by no means synonymous with "minimizing federal subsidy." To the contrary, "rationalization" was coined as a euphemism for the deliberate, extensive reduction of the rail plant of the nation or any specific segment of that plant.

For reasons that have never been supported in any study that we are aware of, it has become the fashion in Government to believe that the transportation problems of this nation can be resolved by the reduction or "rationalization" of our rail network to two or three east-west and north-south very high-density lines owned by a very few rail corporations. Such a proposed solution to our railroad troubles might have been an acceptable theory for a doctoral thesis written before 1973; it is patently worthless today.

This nation does not dare strip itself of its most energy-efficient form of transportation at the threshold of an era during which rail transportation may well be the only feasible mode of transportation available for medium to long hauls.

S. 2527 is fashioned in such a way as to require eventual reductions in the plant of Conrail by abandonments and transfers of its lines and other facilities. Once the Congress has approved the recommendations of USRA, those recommendations will be carried out by Conrail even if it means transferring its best lines to its strongest competitors.

To consider S. 2527 as authorizing nothing more than a study with recommendations is to misinterpret that bill's clear effect. By placing the sanction of the Congress on the recommendations made under the bill, those recommendations must be carried into effect. Certainly, the Congress would not continue to appropriate funds for a railroad which was not carrying out recommendations the Congress had approved.

S. 2527 clearly requires much more than a study. Yet, couched as it is in terms of a study with recommendations, it may encourage the recommendation of abandonments and transfers which would not be made if it was realized from the outset that any recommendation made would not be considered merely academic but would be effectuated.

The RLEA opposes enactment of S. 2527. It will result in the decimation, and perhaps, total demise of Conrail at a cost to our economy and to the taxpayer far greater than the subsidy payments now being made for its support.

Even if RLEA were to consider enactment of S. 2527 to be consistent with the public interest, which it does not, Section 8 would require amendment in order to avoid depriving many employees of the protections the Congress provided them under Title V of the 3R Act in consideration of those employees' waiver of many rights which they had under federal law and collective bargaining agreements with the Penn Central and the other bankrupt carriers.

Section 8(a) would provide employees affected by abandonment of Conrail lines with the protections accorded employees under the abandonment provisions of the Interstate Commerce Act. Such a provision may be acceptable insofar as concerns employees not qualified for protection under Title V but would apparently attempt to supplant the Title V protection guaranteed other affected employees with the inferior Section 10903(b)(2) protection of the Interstate Commerce Act.

On the other hand, Section 8(b) would provide Title V protection to all employees affected by transfers. There should be no discrimination between employees affected by abandonments and those affected by transfers. All should be protected by Title V. This is particularly true in light of the changes which would be made in Title V by S. 2530.

S. 2530

The Administration, through the Department of Transportation, has proposed certain legislative changes in the method in which compensation guarantees are calculated under Title V of the 3R Act.

As you know, the sums authorized for payment of the employee benefits under Title V have been exhausted and it is essential that extension of the funding be enacted as soon as possible.

Representatives of the Railway Labor Executives' Association engaged in extensive discussions with representatives of the Office of Management and Budget, the

Department of Transportation, and Conrail regarding the Department's proposed changes in certain provisions of Title V. There is no question but that enactment of the proposed changes will substantially reduce the Federal expenditures under that Title.

As pointed out in Secretary Goldschmidt's letter to Vice President Mondale and Speaker O'Neill, there are four major changes in existing law which would be made by the Administration's proposal embodied in S. 2530. The first, and most important, of these changes is in the compensation "guarantee" set forth in Section 503 of the present law. Section 3 of the Administration's proposal would provide three types of monthly displacement allowances. The first would apply to the so-called non-operating crafts; the second would apply to the maintenance-of-way craft; and, the third would apply to the so-called "operating" crafts. President Berge of the Brotherhood of Maintenance of Way Employees finds serious fault with the proposal as it would apply to the maintenance-of-way craft and will address you on that problem in a moment.

As proposed, the compensation guarantees in many cases will be substantially reduced from what they have been under the existing Title V by eliminating from computation the overtime which the employees earned during the test year. In eliminating overtime as an element of the employee's guarantee, the Administration proposal departs from the Penn Central Merger Agreement protection and most other employee protection arrangements in the industry.

The Administration's proposal inserts a provision suspending payment of a monthly displacement allowance during periods of strikes, floods, and similar natural occurrences. This insertion is basically consistent with provisions found in protection agreements in the industry. The provision would also require a protected employee to claim his allowance within three months of entitlement thereto. We fear that this requirement will severely increase the load of paperwork of both Conrail and the unions. At the present time, employees withhold claims in areas that are disputed and await the filing of claims until the matter is resolved by arbitration. If the claim must be filed within three months, each employee believing he may have a claim, will be required to file it or forfeit it. Obviously, to protect himself the employee will file a claim thereby substantially increasing the paperwork burden of Conrail and the unions involved. In addition, while the employee is limited to 90 days, Conrail is given 150 days in which to decide the claim which he believe to be excessive.

The proposed legislation permits the corporation to make simultaneous offers of one job to four employees at a time. The present law requires the offer to be made to one employee at a time. By offering four people (who may be in four widely separated parts of the system) one job creates uncertainty in any employee seeking that job. This uncertainty and the confusion which would also ensue becomes compounded when there are 10 jobs available and they are offered to 40 employees. Each job is to be given to the most junior man bidding on it; but how can that be determined with any accuracy in the case of 40 people bidding on 10 jobs; for example, can one of the employees who is offered job A bid on job B if he is junior to the 4 employees who have been offered job B?

We were informed by representatives of the Department of Transportation that they felt it necessary to go to the four employees per job offer because of the provisions permitting maritime and Penn truckline personnel to be offered employment in other crafts. However, as proposed, the provision for offers of employment on a 4-to-1 basis applies to employees in all crafts.

In our opinion, changes made by Section 3 of the proposed legislation will substantially lessen Federal expenditures. The changes made by Section 4, which would insert the "Act of God" clause would also reduce Federal expenditures but the other changes made in that section, particularly the requirement that all claims be filed within three months may cost more than it is worth in terms of increased paperwork.

The changes suggested by Section 5 involving the marine and Penn truckline personnel will lessen Federal expenditures but the change proposed by that section to permit single job offers to be made to four employees at a time will promote confusion and may increase administrative expenses.

As I mentioned at the outset of this statement, President Berge of the Brotherhood of Maintenance of Way Employees has a very serious problem with the formula devised by the DOT in Section 3 of S. 2530 [proposed § 505(b)(2)] for computing the monthly displacement allowance of a maintenance of way employee. He would now like to present that statement.

Thank you.

STATEMENT OF O. M. BERGE, PRESIDENT, MAINTENANCE OF WAY EMPLOYEES

Mr. Chairman and Members of the Subcommittee: I should like to endorse the statement which has just been given by Mr. Snyder. With regard to S. 2530, he has supplied the Subcommittee with the full RLEA position on the administration proposal, and my additional comments will be limited to what I regard as rank discrimination against the maintenance of way employees for whom I speak.

The bill proposes to single out the maintenance of way employees for treatment different from the employees in the other non-operating crafts. These distinctions work to the severe disadvantage of the maintenance of way employees. There are, of course, differences in the work experience of these various crafts. Each may have its own characteristic to a degree. But whatever distinctions there may be, they have no application to the process of developing a fair and equitable formula for calculating displacement allowances.

Let me illustrate this proposed disparity of treatment which the bill would make between the maintenance of way employee and the other non-operating employees.

The bill provides that an employee in any non-operating craft other than Maintenance of Way would have an hourly guarantee based on his rate of pay for the position which he held on September 1, 1979. This guarantee would be increased each time his basic rate of pay is increased, either by a general wage increase or by movement to a higher rated position. The guarantee would be paid without deduction for any overtime hours which he may have worked.

Not so with the maintenance of way employee. The bill would assign him a monthly guarantee equal to his 1974 average hourly straight time earnings, adjusted by subsequent wage increases multiplied by 174, representing the average straight time monthly hours of work. The bill proposes that this monthly guarantee would be the lower of the guarantee calculated by this formula and the current guarantee which the employee is receiving. In other words, if the figure produced by this formula should be higher than the employee's current monthly guarantee, the lower or existing guarantee would be retained.

The employee would be paid 75% of the short fall between the guarantee and all earnings within any one month, straight time plus overtime.

Twenty-five percent of the shortfall would be retained by the carrier until the end of the year when a recapitulation would be made. It would then be determined whether the annual guarantee is larger than the annual earnings, straight time as well as overtime paid throughout each day of the year. A daily cap of two hours would be placed on the overtime offset.

If the annual guarantee is the larger of this sum, the difference would be paid to the employee. If smaller, the over payment would be charged against the guarantee for the following year.

The overtime hours which are introduced into this calculation are paid at the rate of time and one half the regular rate. In other words, two overtime hours requires pay for the equivalent of three hours straight time hours. Pay in terms of the equivalence of the extra hour represents the premium or penalty for the two hours of overtime actually worked.

Under the proposed system, the two overtime hours worked would be charged as a credit of three hours against the guaranteed payment owed for any month in the year or for any year.

The net effect of this proposal would be to eliminate a substantial part of overtime pay for overtime work whenever performed.

For example, if, in a given month, a man should work two overtime hours each day for the first two weeks in a month, he would be entitled to be paid for these twenty hours of overtime work on the basis of one and half times twenty hours or thirty hours overall. The overtime premium or penalty of ten hours would then be held as a potential offset against the guarantee for the balance of the month, or, indeed, for the balance of the year.

This would enable the carrier to lay off this man for a period of thirty hours during the rest of the month at no cost to it.

On an annual basis it would give the carrier a license to lay off in the winter time and to require excessive overtime in the summer time and still break even.

In effect, the carrier would be able to balance overtime weeks against lay off weeks, thereby reducing or eliminating its obligation to pay premium or penalty pay for overtime hours.

The concept of premium or penalty pay for overtime hours is to discourage the use of overtime hours and thereby to spread work among more employees and to create jobs. The plan proposed in this bill as far as maintenance of way employees are concerned would reverse this policy. It would encourage the programming of

overtime hours during the warm months, thereby reducing the number of jobs available for the maintenance of way employees.

This overtime offset formula would not be applied to other non-operating employees.

Prior to the advent of Conrail, the maintenance of way employees on this railroad suffered from a policy of deferred maintenance, which largely contributed to the collapse of the railroad. We are again being asked to accept deferral—this time of our right to share with the other non-operating employees fair treatment in the formula developed by this legislation.

We cannot accept this discriminatory treatment. We must insist upon parity with the employees in the other non-operating crafts.

Thank you.

QUESTIONS OF THE COMMITTEE AND THE ANSWERS THERETO

Question 1. Your statement expresses the belief that S. 2527 may be "creating a self-fulfilling mechanism for the destruction of Conrail," which is not the intention of the legislation. Would you please comment on precisely what provisions of the bills cause this concern, and what changes you might recommend in this regard?

Answer. The problem with S. 2527, as we see it, is that it approaches the problems presented by Conrail from a purely negative aspect. The bill emphasizes abandonment and transfer and only abandonment and transfer. The USRA is not requested by this bill to make any suggestions to Congress or anyone else as to a positive approach to resolution of Conrail difficulties. This bill will result in Conrail suggesting to USRA the lines it believes it can transfer and abandon. The USRA will make its recommendation, the ICC, after hearings, will make its recommendations, and the entire matter will be presented to the Congress which automatically "approves" these recommendations unless both Houses veto them.

The plan as finally submitted to the Congress has to identify those rail properties which should be abandoned (those recommended by Conrail and whatever additional lines may be recommended by USRA); shall identify those lines to be operated by means of rail service continuation payments; "or" those lines to be transferred as proposed by the corporation in its submission under the Act. There is nothing in S. 2527 to prohibit the plan from containing also additional recommended transfers which USRA may consider in the public interest.

Once the recommendations of the USRA have been "approved" by the Congress by its failure to veto them, they will have virtually the force of law particularly to the management of a railroad depending upon the Congress for its financial existence and who, therefore, must carry out the "will" of Congress when its expresses approval of recommendations to abandon and transfer that railroad's properties.

The major changes which RLEA would recommend be made in S. 2527 are:

1. Amend the bill to direct USRA to submit an in-depth study on the changes necessary to be made in Conrail in order to make it a profitable operation, together with its recommendations for realizing such changes.
2. Remove congressional sanction of the USRA recommendations.
3. Limit the recommendations to transfers "as proposed by the corporation in its submission" to USRA.
4. Clarify the protections to be afforded employees affected by the legislation.

[As the bill now stands, it would appear that all employees affected by transfers would receive the "Title V" protection of the 3R Act while employees affected by abandonment would not. It is also unclear as to whether employees now protected under Title V would have their protection under that provision of law affected.]

Question 2. You have indicated your opposition to S. 2527 on the basis that it would result in plant reductions. However, plant reductions can occur under the current law on abandonments and transfers, after appropriate input and review. The bill provides for input at various stages in the process—at USRA, which has various interests represented on its board, at the ICC, where hearings would be held, and in Congress. To what extent would the procedural protections afforded labor and other interested parties under S. 2527 similar to that under current law?

Answer. The procedural protections afforded parties under current law are dissimilar from those which would be provided under S. 2527 in that current law requires transfers and abandonments to be initiated by the railroad desiring them. The lines are selected on the basis of the railroad's business judgment and the requests are supported by evidence gathered by the railroad. Opponents of the abandonments or transfers are entitled to introduce evidence in opposition to that submitted by the railroad. A decision is then made by the regulatory agency based upon the evidence as submitted. That decision may be appealed by the losing party. S. 2527, on the

other hand, provides that lines in addition to those selected by Conrail may be submitted to the Congress by a government agency (USRA) on the basis of "recommendations" reached with or without the benefit of factual data. They may be overruled only by the joint action of both Houses of the Congress. Opponents have no opportunity to oppose except by offering opinions in opposition and the decisions regarding particular lines need not be supported by "evidence" in a legal sense. Obviously, there is no appeal from the action of Congress. Rather than a determination by an evidentiary process as is required under present law, S. 2527 would have determinations made on the bases of pre-existing theories of staff members of governmental agencies.

Question 3. You have indicated support for the proposed two-year authorization for USRA. The Department of Transportation is of the view that certain of USRA's functions should be transferred to it by December 31, 1981. What is your response to this proposal, in light of the proposed two-year authorization for USDA? Why do you support a two-year authorization?

Answer. The Department of Transportation attempts to have the functions of the USDA transferred to itself has been described by Traffic World as an "unabashed power grab." It would certainly appear that Traffic World has made a correct analysis of DOT objectives; however, DOT's "power grab" is designed primarily to achieve a long-existing goal of that Department. The goal of the Department of Transportation under President Ford to dismantle the Northeastern railroads and parcel them out by "controlled transfers" to other rail carriers remains unchanged under President Carter. The DOT has long fought for the demise of the USRA in order that it might begin to effectuate its "deadline-crisis" method of railroad restructuring used so successfully on the Milwaukee and the Rock Island. As intolerable and wasteful of railroad and human resources as has been the Milwaukee-Rock Island approach to railroad restructuring, it will have been like a picnic on a summer afternoon when compared with the waste, economic chaos, injury, and human suffering which would result in the Northeast and beyond by its application to Conrail.

Before DOT's goal can be achieved, it must first directly control Conrail itself. This it could accomplish by the transfer of all USRA functions (except for current litigation) to itself. DOT could then appoint the majority of the Conrail Board of Directors thereby controlling Conrail's management. DOT then will be able to eliminate selectively service and maintenance on those lines which it believes—from a governmental not a business point of view—should be abandoned; and, it can begin selling off the remaining lines to other railroads or to what it hopes would be "responsible entities".

During this entire period of time, DOT would have been the "banker" for the railroad it effectively controls and, following the conclusion of the valuation litigation, it will most likely be the owner of Conrail. In short, the Department of Transportation would become the sole proprietor of this nation's first fully nationalized rail carrier.

The RLEA has consistently opposed the DOT takeover of Conrail and the first step in that takeover, the elimination of USRA. Obviously, USRA must be terminated at an appropriate time. That time will come when it has served its purpose of placing Conrail on its feet or concluding that such a result is not possible. The RLEA supports a two-year authorization for USRA with the hope that it will be directed to submit to the Congress an in-depth study on the changes necessary in Conrail in order to make it a profitable operation, together with its recommendations for realizing such changes.

Question 4. You note that sums authorized for payment of the employee benefits under Title V have been exhausted and that it is essential that extension of the funding be enacted as soon as possible. The House bill, H.R. 6837 requires Conrail to continue payments in accordance with Title V for a 45-day period. S. 2530 would substantially reduce the federal expenditures under Title V, and thus it would appear that budgetary considerations call for expedited action on the bill. In this regard, do you believe that an extension, as proposed in H.R. 6837, is necessary and advisable at this time?

Answer. The RLEA is convinced that an extension of Conrail authority to make the payments required under Title V, as proposed in H.R. 6837, is absolutely necessary at this time. S. 2530 would substantially reduce the federal expenditures under Title V. However, funds in the Railroad Retirement Board account for the payment of Conrail statutory obligations under Title V were exhausted in February. The Conrail appropriation bill directed USRA to refrain from making any payments into the general fund of Conrail which would be used for Conrail obligations under Title V. Title V requires Conrail to continue such payments out of its general fund. The

employees continue to be vested with the right to receive such payments until such time as the law is changed. A suit is now pending in the United States District Court for the District of Columbia against Conrail seeking an order compelling Conrail to meet its statutory obligation by the payment to the employees of money owed them under existing law. Conrail has been placed in the untenable situation of owing its employees money under a statute and having Congress refuse to permit it to use congressionally appropriated funds for that purpose. H.R. 6837 would merely authorize Conrail to meet its statutory obligations under Title V until the modifications of that Title are enacted into law.

S. 2530 should be made effective on the date of its enactment. If it is made retroactively effective, it will conflict with the statutorily vested rights of employees under existing Title V and will result in extensive and expensive litigation against Conrail for the vindication of those rights. All such litigation could be avoided by permitting Title V to remain effective until Congress enacts a law (such as S. 2530) modifying it.

Senator LONG. Let us now hear from Mr. Les Hinds, Railroad Yardmasters of America.

Senator RIEGLE. I might just say, as he's coming to the table, that this is a man from my home State—of Detroit, Mich., and I particular want to welcome him on behalf of the Railroad Yardmasters of America, and say I am very interested in his testimony today.

STATEMENT OF LESLIE R. HINDS, PRESIDENT, YARDMASTERS OF AMERICA CR 76, MEMBER OF COALITION OF RAILROAD EMPLOYEES AND CONRAIL EMPLOYEES

Mr. HINDS. Thank you, sir.

Senator LONG. I am pleased to hear you, Mr. Hinds.

Mr. HINDS. Mr. Chairman, I beg your forgiveness, but this is my first opportunity to be here, so I have got a couple of other things that aren't in the prepared statement that I would like to point out. And I would like to have the opportunity to do that.

Senator LONG. Fine.

Mr. HINDS. We have had a very short time to prepare this, because of a lack of information filtered down to us until the last moment, and we have been rushed. And with the help of the Commerce Committee, we have been able to get our material together.

Senator LONG. We'll keep this record open for 10 days, and you can add to your statement if you would like to, Mr. Hinds, during that period of time. If you want to send us some additional information to support your statement, we will include it in the record in connection with your statement.

Mr. HINDS. Very good. Thank you, sir.

I am here today to testify and relate to you my concerns and the concerns of hundreds of other Consolidated Rail employees. In the last few months, the House of Representatives and the U.S. Senate have proposed and debated numerous bills that have dealt with amending the Regional Rail Reorganization Act of 1973.

The 93d Congress has spent a great deal of time, money, and energy working on the Regional Rail Reorganization Act of 1973. After many months of debates and hearings, this act became law. It was approved and praised not only by Congress, but it was approved and praised by the proposed Conrail management, the railroad labor organizations and the railroad employees.

This legislation was thorough and concise. It was also masterful in that it provided for the continuance of the railroads in the Midwest and Northeast regions. It provided for the saving of the rail properties, service to the consumers, and the protection of the railroad employees.

Title V, employee protection, section 501 through section 509 of the original act, were very specific and spelled out most thoroughly the protection provided for the railroad employees.

At this time, there was a formula that was used. As you can see, it spelled out total time paid for for the last 12 months, divided by 12; total monthly compensation equalled the MDA, monthly displacement allowance. This formula was applied to all employees across the board equally.

Over here, we have a rate based on a 1974 projected figure—indicating a 1 hour pay rate of \$6, amounting to \$48 a day, or \$1,056-a-month across-the-board. With an overtime rate figuring in 4 hours a day for 22 days, at time and a half, it amounted to an additional \$792 for a total month's earnings of \$1,848; total yearly earnings of \$22,176.

This, converted by the formula, amounted to an \$1,848 MDA guarantee. At this particular time the salaried employees were about 15 percent over the employees in the crafts. They had a salary rate of about \$1,214.40—which amounted to their MDA.

Unfortunately, the salaried employees were not credited with overtime.

Now, at the outset, the aggregate sum of \$250 million was allotted for the protection of the railroad employee, and most significant was the fact that this protection was provided equitably to all employees as pointed out. There was no discrimination involving certain classes of employees, no discrimination among crafts, or nonagreement employees. Everybody was treated equally.

Their protected rate was based on the total time paid for during the test period applied. However, there was a maximum monthly average set at—maximum set at \$2,500. This, however, could be increased by general wage increases after the specified implementation.

There were months that others and myself made in excess of \$5,000 per month; however, we took no exception to the \$2,500 maximum because we thought it was equitable.

How did we make this kind of money? Through our negotiated labor contracts, and by being good workers. But one of the specific items called for in the original act of 1973 was that the organization implement one new agreement. Of course, we argued a little about giving this up, or changing that, but my organization was one of the first to comply. Management continuously commented on the changes by saying, "Don't worry about the changes. Title V will protect your older employees. We want to adjust and change the agreements for the new employee hiring out, and what they don't have they won't miss, and we will become a profitable railroad."

That makes sense.

Well, Conrail started maneuvering and changes started happening, and title V started to receive the claims. The protected rates were circulated and claims were circulated, and the inevitable

happened—management and higher supervision started complaining and talking about the alleged rates certain people had. Envy and jealousy and hatred set in. Everyone in management was awed by the personal rates of their subordinates. They couldn't figure out how a switchman or a yardmaster or a clerk could accumulate large protected rates. You see, they forgot that the men involved had worked long hours, their days off and had various arbitraries listed in their agreements that added to their total earnings.

They never thought of the time that a man put in or the hours he was away from home to earn this money. They only looked at the net amount on the man's check, and this infuriated them.

But to be fair to them, they did have some management people that put in long hours, too; however, because they were salaried employees, and not hourly, their longer hours were not reflected in wages. Because of company policy, they were only allowed to put down 40 hours a week, even though they may have put in 60 hours.

In this sense, they had a complaint, but not all of them—only about 30 percent.

This has since been corrected. And by "corrected," I might point out—going back to that original monthly rate on straight time basis, the agreement monthly rate was \$1,056; a monthly salary rate was \$1,214.40. What amounts to approximately 70 percent rate increase in salaried supervision—that same rate, the agreement MDA being \$1,848, the adjusted salary rates have been brought up to \$2,064.48, based on those same factors. Their rates have since been corrected. With their merit increases, their monthly salary rates have been increased, whereas the \$1,214.40 is worth \$2,064.48, based on these same figures. (See charts.)

At the time the rest of them jumped on the wagon for the ride. Normally, they worked their 8 hours a day, took their 1- to 2-hour lunch, their early quit, and went home.

Now, this is where the problem starts. Instead of complying with title V and following the specific steps as spelled out in the original act of 1973, because of their upset and disturbed attitudes, they started to abuse the employees applying for title V and they started looking for loopholes and how they could avoid paying it.

In their efforts to try and save money that was legitimately due certain employees, they misappropriated other moneys and paid it out to employees that were not entitled to such moneys.

One of the worst things that could have happened was to place Conrail management in charge of the title V administration. Most everyone I met in this office could not answer the questions, nor did they know why people were applying. Their main concern was that the agreement people had higher protected rates than they did. When the title V employee protection was explained to the employees across the entire Conrail system—and that's at the outset of Conrail—the same individuals were in favor of the program, but when they started to administer the title V payments, they became disillusioned at every turn and attempted to secure new interpretations of the law.

These new interpretations they desired were strictly in conflict with the law as spelled out and were continuously in the carrier's favor, thereby slowly eroding some of the protection set up for the employees by Congress.

The unhappy and envious administrators of title V again made a mess of the protected employees title V program.

Then labor relations and transportation entered the picture. Labor relations would talk to trainmasters and between them they would publish the protected rates for the jobs. Trainmasters would not tell what a job was actually going to make. He would indicate that it was a straight 8-hour job, no overtime. An actual \$3,000-a-month job would be published as being a \$1,400-a-month job.

Then the superintendent and transportation department heads would get hold of local supervision in another area that had a \$3,000-a-month job working and tell him to cut overtime.

The end result is you would have a protected man with a high guarantee working on a \$1,400-a-month job and applying for his guarantee, and you would have a man with no guarantee or a low guarantee working and making actual wages of \$3,000. Management—either through mismanagement or deliberate abuse of title V—quickly eroded the fund. Many is the time that you could hear various officials say:

Cut your budget. We'll show a savings. Let them get it from title V. That's not our money. If we run out—so what?

Employees were given severance pay when they were in no way adversely affected by any changes or loss of pay. There have been some cases of men having only 1 or 2 weeks to go before they retired. This, of course, was money from heaven, and the matter of \$20,000, severance pay a retirement gift.

There were others that were allowed to leave that had 20 or 25 years to work, and did not have maximum guarantees that were not adversely affected. This enabled them to step out, invest in a business or take a long vacation.

After and during this abuse of title V, other employees were hired or nonprotected employees continued to work, when the above employees were severed. Many employees were threatened with discipline if they indicated they wanted to apply for the guarantee. Many were told that they didn't have one, and they didn't know any better.

Management salaries were increased 20 percent, 30 percent, 40 percent and more over a 2- or 3-year period to alleviate their plight. Most had no complaint at all. When they worked an 8-hour day during the test period, they received a salary based on that.

With all the employees that had to be severed, there still seemed to be room for sons and daughters and other family members of management personnel. Many were put into positions that could just as well have been filled by the protected employees. There were jobs that could be filled with employees that would be working for their money, but management refused to fill them.

I will skip a little bit, sir, and get to the part of this—there seemed to be other title V legislation circulation that calls for a change in the original act of 1973, the purported purpose being to improve the fairness and equity of the protection provided to railway employees under title V of the Regional Rail Reorganization Act. The legislation points out the original act contains inequities that hinder the Consolidated Rail Corp. from achieving improved management of certain protected employees.

This legislation is not really directed to improve certain conditions, as it implies, but is a piece of legislation that directly discriminates against the M of W and the nonoperating crafts. The inequities the carrier refers to are not really a result of problems with title V but in truth are the result of their lack of managerial ability.

In the case of the nonoperating employees and M of W employees, they are paid 8-hour pay for 8 hours' work. Nothing wrong with this. It is just good business and accepted practice. My organization, the Railroad Yardmasters of America, is on record asking that management treat all employees this way. We feel all employees should be paid for time worked. We do not believe in early quits or paying employees for time not worked, but management feels that this is not a good business practice, and they have seen fit to allow certain operating employees to work only 3 or 4 hours and go home.

For this, of course, these employees are paid 8 full hours. In many cases, they see fit to pay 10 or 12 hours or more for employees that work only 6 or 7 hours.

Now, if management wants to tolerate this type of practice and to run their business in this manner, we cannot consider these inequities in title V—we can only consider these inequities in management's ability to manage. And we also consider this misappropriation of title V moneys.

Our organization and other nonoperating crafts had extreme faith in the original Rail Reorganization Act of 1973. We endeavored to do our part to implement a new agreement that would benefit Consolidated Rail Corp. These crafts gave up many jobs and protected overtime, job conditions and past practices. Most of this will not be able to be recovered.

These crafts also allowed changes that affected their earning power. By affecting their earning power—I have a chart here, profile based on actual figures today.

If you take the noncontract employee, same man we compared in the original picture—if he is making \$40,436 a year today and the operating departments are making \$40,000 and the M of W man is making \$40,000 and the nonoperating man is making \$40,000—that's equitable under title V.

Under S. 2530, the noncontract man will maintain his \$40,000 level; the operating departments will maintain their \$40,000 level; the M of W will be moved down to \$24,000; and the nonoperating people will be moved down to \$24,000.

In the first case, where there is a loss, noncontract nor the operating departments receive losses.

The M of W will lose \$16,272 in that program, and a nonoperating person will lose an effective \$16,272. And if there's going to be a gain, there has been a gain all along for noncontract—they have been balanced and improved. The operating departments stand one more gain, whereas in the crew consensus law, they have a share plan program which will increase their wages because they're not counted into the law.

The M of W people recover free overtime after the 2-hour segment that is sectionalized in the law and the nonoperating people have no way to gain. They'll be back to their flat 40-hour week

with no opportunities to gain the improvements that they had before the title V came into effect.

Conrail, under title V, was given certain rights that they would not have been able to negotiate away in the absence of title V.

We had faith in title V and we had faith in Congress and Conrail's ability to properly manage the title. Conrail could never have made any progress in this area if our nonoperating employee for 1 minute thought they would be deceived in the future.

We, the nonoperating people, have already given up enough. We should not be asked by Conrail or Congress to give up any more because of Conrail managements inability to manage. Title V is not the cause of this failure. The ability, the attitudes, the inexperience of and the personal performances of Conrail's managers has caused them the problems in their endeavors to become profitable.

We agree that there are a couple of sections in the National Rail Reorganization Act that could be amended, such as changing section 505(1)(B), whereas the carrier should be able to deduct all moneys earned, and not just 50 percent of the employee's outside earnings.

There are a couple of other areas that could be changed. If title V is followed as spelled out in the original act, it can be controlled. It is basically a sound piece of legislation. The act of 1973 was to provide equal protection to all employees and we feel if amendments are made to title V they should maintain equal protection to all employees covered under the original act.

And in that vein, if the nonoperating people have to forgo their entire protected guarantees, we'd be willing to do it, with the exception we would then ask that the operating people and management be dropped accordingly.

Attempts should not be made to change the law to provide improved protection for noncontract employees and the changes should not discriminate in any respect as to the manner the members of the crafts are protected. Again, I say all the crafts exchanged their contract protection for title V, and no one should be allowed—nor should they entertain to abrogate the employee protection as spelled out in the original act of 1973.

The inequities are not in title V, but in management's ability to manage.

My feelings, and the feelings of the people I represent, are that title V be maintained in its original form as set forth in the act of 1973, and that before any changes are incorporated that there be an investigatory commission appointed to look into the abuses of title V by management.

And we ask that if the committee is made up of labor and other people, that one of our group are allowed to participate.

Senator RIEGLE [presiding]. Thank you for your testimony.

We've got another witness we have to hear from this morning. We're pressed on time, so I'm going to ask you to respond to some questions for the record, the first of which will be any suggestions that you have in terms of who might best be put in charge of administering title V in the future. I'm going to have you not respond now, because I want to get to our next witness. But that will be one of the items. And I will have the staff approach you on the other items that I'd like to have you respond to for the record.

It may well be that the chairman has some questions for the record. Therefore, we would ask you to respond to those as well.

We appreciate your testimony today, and we will give it very careful consideration.

Mr. HINDS. Thank you, sir. Thank you for allowing us to be represented.

[The statement, supplemental statement, and answers to questions of the committee follow:]

STATEMENT OF LESLIE R. HINDS, PRESIDENT, RAILROAD YARDMASTERS OF AMERICA, CONRAIL 76, MEMBER OF COALITION OF RAILROAD EMPLOYEES AND CONRAIL EMPLOYEES

I am here today to testify and relate to you my concerns and the concerns of hundreds of other Consolidated Rail Employees. In the last few months, the House of Representatives and the United States Senate have proposed and debated numerous bills that have dealt with amending the Regional Rail Reorganization Act of 1973.

The 93rd Congress spent a great deal of time, money and energy working on the Regional Rail Reorganization Act of 1973. After many months of debates and hearings, this Act became law. It was approved and praised, not only by Congress but it was approved and praised by the proposed Conrail management, the Railroad Labor Organizations and the Railroad employees. This legislation was thorough and concise. It was also masterful in that it provided for the continuance of the Railroads in the Midwest and Northeast Regions. It provided for the saving of the rail properties, service to the consumers, and the protection of the Railroad employees.

Title V—Employee Protection—Sections 501, 502, 503, 504, 505, 506, 507, 508, and 509 of the original Act were very specific and spelled out most thoroughly the protection provided for the Railroad employee.

At the outset, the aggregate sum of \$250,000,000 was allotted for the protection of the Railroad employee, and most significant was the fact that this protection was provided equitably to all employees. There was no discrimination involving certain classes of employees, or no discrimination among crafts or non-agreement employees. Everyone was treated equally. Your protected rate was based on your total time paid for during the test period applied. However, there was a maximum monthly average set at \$2,500. This, however, could be increased by general wage increases after the specified implementation.

There were months that others and myself made in excess of \$5,000 per month. However, we took no exception to the \$2,500 maximum because we thought it was equitable.

How did we make this kind of money—through our negotiated labor contracts and by being good workers, but one of the specified items called for in the original Act of 1973 was that the organization implement one new agreement. Of course, we argued a little about giving up this or changing that, but my organization was one of the first to comply. Management continuously commented on the changes by saying "Don't worry about the changes—Title V will protect your older employees. We want to adjust and change the agreements for the new employee hiring out, and what they don't have they won't miss and we will become a profitable Railroad." Makes sense!

Well, Conrail started maneuvering and changes started happening and Title V started to receive claims. Protected rates were circulating and claims were circulating and the inevitable happened. Management and higher supervision started circulating and talking about the alleged rates that certain people had. Envy and jealousy and hatred set in. Everyone in management was awed by the protected rates of their subordinates. They couldn't figure out how a Switchman or a Yardmaster or a Clerk could accumulate large protected rates. You see, they forgot that the men involved had worked long hours, their days off and had various arbitraries listed in their agreements that added to their total earnings. They never thought of the time a man put in or the hours that he was away from home to earn this money. They only looked at the net amount on the man's check and this infuriated them, but to be fair to them, they did have some management people that put in long hours too. However, because they were salaried employees and not hourly, their longer hours were not reflected in wages. Because of Company policy, they were only allowed to put down 40 hours a week even though they may have put in 60 hours. In this sense, they had a complaint, but not all of them—only about 30 percent. This has since been corrected. At the time, the rest of them just jumped on

the wagon for the ride. Normally they worked their 8 hours a day, took their 1 to 2 hour lunch and their early quit and went home.

Now, here is where the problem starts. Instead of complying with Title V and following the specific steps as spelled out in the original Act of 1978, because of their upset and disturbed attitudes, they started to abuse the employees applying for Title V and they started looking for loopholes in how they could avoid paying it. In their efforts to try and save money that was legitimately due certain employees, they misappropriated other monies and paid it out to employees that were not entitled to such monies.

One of the worst things that could have happened was to place Conrail management in charge of the Title V administration. Most everyone that I met in this office could not answer the questions nor did they know why people were applying. Their main concern was that the Agreement people had higher protected rates than they did. When the Title V employee protection was explained to the employees across the entire Conrail system, these same individuals were in favor of the program, but when they started to administer the Title V payments, they then became disillusioned and at every turn attempted to secure new interpretations of the Law. These new interpretations that they desired were strictly in conflict with the law as spelled out and were continuously in the Carrier's favor thereby slowly eroding some of the protection set up for the employees by Congress. The unhappy and envious administrators of Title V again made a mess of the protected employees Title V Program.

Then Labor Relations and Transportation entered the picture. Labor Relations would talk to Trainmasters and between them they would publish the protected rates for the jobs. Trainmasters would not tell what a job was actually going to make. He would indicate that it was a straight 8 hour job, no overtime. An actual \$3,000 a month job would be published as being a \$1,400 a month job. Then the superintendent and Transportation Department Heads would get hold of local supervision in another area that had a \$3,000-a-month job working and tell him to cut the overtime. The end result is you would have a protected man with a high guarantee working on a \$1,400 a month job and applying for his guarantee and you would have a man with no guarantee or a low guarantee working and making actual wages of \$3,000. Management, either through mis-management or deliberate abuse of Title V quickly eroded the fund. Many is the time that you could hear various officials say "Cut your budget—we'll show a savings—let them get it from Title V. That's not our money. If we run out, so what?"

Employees were given severance pay when they were in no way adversely affected by any changes or loss of pay. There have been cases of men having only 1 or 2 weeks to go before they retired. This, of course, was money from heaven, a Retirement gift. There were others that were allowed to leave that had 20 or 25 years to work and did not have maximum guarantees and were not adversely affected. This enabled them to step out and invest in a business or take a long vacation.

After and during this abuse of Title V, other employees were hired or non-protected employees continued to work when the above employees were severed. Many employees were threatened with discipline if they indicated they wanted to apply for their guarantee. Many were told they didn't have one and they didn't know any better.

Management's salaries were increased 20, 30, 40 percent and more over a two to three year period to alleviate their plight. Most had no complaint at all. When they worked an 8 hour day during the test period and they received a salary based on that—their total earnings—that's what they were rated at.

With all the employees that had to be severed, there still seemed to be room for sons and daughters and other family members of management personnel. Many were put into positions that could just as well have been filled by protected employees. There are jobs that could be filled with employees that could be working for their money, but management refuses to fill them. There are areas where employees have continuously refused work or were not called to work because of ignorance to the agreements. These same people are allowed to collect on Title V when they should not be eligible.

Consolidated Rail management has strongly stated many times that they cannot possibly make a go of their Corporation without the Title V portion of the Regional Rail Reorganization Act of 1973 being changed. Hogwash! If they had not augmented their budget and misappropriated the funding, they would still have been working off the first \$250,000,000. There is a monumental amount of work being contracted out that could be handled by protected employees. They call it progress—I call it a waste of Title V monies.

There seems to be other Title V legislation circulating that calls for a change in the original Act of 1973. The purported purpose being "to improve the fairness and equity of the protection provided to railroad employees under Title V of the Regional Rail Reorganization Act of 1973. The legislation points out that the original Act contains inequities that hinder the consolidated rail corporation from achieving improved management of certain protected employees. This legislation is not really directed to improve certain conditions as it implies, but it is a piece of legislation that directly discriminates against the M of W and the non-operating crafts. The inequities the Carrier refers to are not really the result of problems with Title V but in truth are the result of their lack of managerial ability.

In the case of non-operating employees and M of W employees, they are paid 8 hours pay for 8 hours work. Nothing wrong with this—it is just good business and accepted practice. My Organization, The Railroad Yardmasters of America, is on record asking that management treat all employees this way. We feel that all employees should be paid for time worked. We do not believe in early quits or paying employees for time not worked, but management feels that this is not a good business practice, and they have seen fit to allow certain operating employees to work only 3 or 4 hours and go home. For this, of course, these employees are paid 8 full hours. In many cases they see fit to pay 10 or 12 hours or more pay for employees that work only 6 or 7 hours. Now, if management wants to tolerate this type of practice and to run their business in this manner, we cannot consider this inequities in Title V. No, we can only consider this inequities in management's ability to manage. We may also consider this mis-appropriation of Title V monies.

Our Organization and other non-operating crafts had extreme faith in the Regional Rail Reorganization Act of 1973. We endeavored to do our part to implement a new agreement that would benefit Consolidated Rail Corporation. These crafts gave up many jobs and protected overtime, job conditions and past practices. These crafts also allowed changes that affected their earning power. Note, these changes were not given up for naught, but they were exchanged for the Employee Protection, provided under Title V, that same protection that Consolidated Rail Corporation now wishes to abrogate. Under Title V they were given certain rights that they would not have been able to negotiate away in the absence of Title V. We had faith in Title V and we had faith in Congress, and Conrail's ability to properly manage the Title V monies. Conrail could never have made any progress in this area if the non-operating employees for one minute thought that they would be deceived in the future. We, the Non-Operating people, have already given up enough.

We should not be asked by Conrail or Congress to give up any more because of Conrail management's inability to manage. Title V is not the cause of this failure. The ability, the attitudes, the inexperience of, and the personal performances of Conrail's managers has caused them the problems in their endeavors to become profitable.

We agree that there are a couple of sections in the Regional Rail Reorganization Act of 1973 that could be amended such as changing Sec. 505(1)C, whereas the Carrier should be able to deduct all monies earned and not just 50 per centum of an employee's outside earnings. If Title V is followed as spelled out in the original Act, it can be controlled. It is basically a sound piece of legislation. The Act of 1973 was to provide equal protection to all employees and we feel that if amendments are made to Title V, they should maintain equal protection to all employees covered under the original Act. Attempts should not be made to change the law to provide improved protection for non-contract employees and the changes should not discriminate in any respect as to the manner the members of the crafts are protected.

Again, I say all the crafts exchanged their contract protection for Title V and no one should be allowed nor should they entertain to abrogate the Employee Protection as spelled out in the original Act of 1973.

The inequities are not in Title V, but in management's ability to manage.

My feelings and the feelings of the people I represent are that Title V be maintained in its original form as set forth in the Regional Rail Reorganization Act of 1973 and that before any changes are incorporated that there be an Investigatory Commission appointed to look into the abuses of Title V by Management.

If you need additional witnesses or testimony as to the abuse of Title V or the mishandling of the employees or misappropriation of the funds, they can be made available.

SUPPLEMENTAL STATEMENT OF LESLIE R. HINDS

Mr. Chairman, the employees that I am here representing sincerely appreciate the opportunity that you have given us to express our concerns and our views in

regards to the proposed Bill titled S. 2530. Not only do we thank you for this, we also thank you for the additional time that you graciously extended to us and other concerned parties.

In reviewing Bill S. 2530, our experience has led us to believe that many learned people do not seem to understand the consequences of this Bill. There seems to be an overwhelming amount of Conrail Management influence, and Conrail Management recommendations in the Bill's proposals.

Most of us have been around a long time and have had some unique experiences with the present management personnel. This experience has had an effect on the trust that we can place in their recommendations. Most of the recommendations that are made result in disastrous shortcomings for Agreement employees further down the road.

Remember the book "The Rise and Fall of the Penn Central." Think about the consequences. Most of the people that are making recommendations today are the people that made the recommendations then.

At this time we would like to point out some inequities that were included in the Regional Rail Reorganization Act of 1973. We will first cite the appropriate section that we feel caused certain inequities and we will then express our views as to how we propose they should have read so as to not have put a burden on Conrail or Title V.

Existing Law

Sec. 501(6) "deprived of employment" means the inability of a protected employee to obtain a position by the normal exercise of his seniority rights with the Corporation after properly electing to accept employment therewith or the subsequent loss of a position and inability by the normal exercise of his seniority rights under the applicable collective bargaining agreements to obtain another position with the Corporation: Provided, however, that provisions in existing collective bargaining agreements of a railroad in reorganization, which do not require a protected employee, in the normal exercise of seniority rights, to make a change in residence, in order to maintain his protection, will be preserved and will also be extended and be applicable to all other protected employees of that same craft or class. It shall not, however, include any deprivation of employment by reason of death, retirement, resignation, dismissal or disciplinary suspension for cause, failure to work due to illness or disability, nor any severance of employment covered by subsections (d) and (e) of Section 505 of this Title;

Proposal

Sec. 501(6) should have continued with:

A protected employee shall not be paid if deprived of employment due to the employee's failure to work due to strike, fire, flood, snowstorm, hurricane, earthquake, tornado or other similar natural occurrence that causes a suspension of operations in whole or in part and precludes performances of the work which would have been performed by the incumbents of the positions to be abolished, or the work which would have been performed by the incumbents. (Provided that the payment of monthly displacement allowances shall be resumed upon termination of the emergency or upon exercise of the employee's seniority if the emergency deems it necessary to permanently terminate the position or work of the employee.)

Comment

This could result in considerable savings to Title V through overpayments and other errors.

Existing Law

Section 501(9) "Change in Residence" means transfer to a work location which is located (A) outside a radius of 30 miles of the employee's former work location and further from his residence than was his former work location or (B) is located more than 30 normal highway routes miles from his residence and also further from his residence than was his former work location.

Proposal

Section 501(9) should not have been written to include 30 mile clause—but should have read:

(9) "Change in Residence" means transfer to a work location which is located (A) outside of an employee's normal exercise of seniority rights or (B) in the case of a non-agreement employee, outside the distance covered by existing Company policy.

Comment

This section in its present form has allowed an enormous amount of Title V monies to be paid out. Example: An employee's Monthly Displacement Allowance was determined by computing the total compensation he received for working where his seniority rights allowed him to work. Under the present act, you have many employees collecting Title V monies because they do not have to travel over 30 miles to cover the same work they performed while earning their MDA. This is wrong and costly to Title V. In the 1960's-1970's many employees had moved to urban areas and well away from their work. Title V should not be asked to compensate these employees because of terminology. There are presently many employees that cover only one or two assignments because of the 30 mile limit. They earned their MDA covering 10 or 15 assignments.

Existing Law

Section 504—Collective-Bargaining Agreements.

Comment

The Carrier and the National Mediation Board have not been conducive to nor have they attempted to expeditiously handle disputes. Long delays cause an undue burden on Title V.

Existing Law

Section 505—Employee Protection.

Section 505(a) Equivalent Position—A protected employee whose employment is governed by a collective-bargaining agreement will not, except as explicitly provided in this Title, during the period in which he is entitled to protection, be placed in a worse position with respect to compensation, fringe benefits, rules, working conditions, and rights and privileges pertaining thereto.

Comment

We propose that Bill S. 2530 amending the Title V protection, destroys this protection. The compensation, fringe benefits, rules, working conditions, and rights and privileges that we previously enjoyed, would be lost to us.

We lost numerous working conditions, rights and privileges, job opportunities and earning power by exchanging labor contracts away for the security of the Title V protection. The MDA employee protection was the basis for our giving Conrail what they thought was beneficial. It is ludicrous to believe that our employee protection prevents them from becoming profitable. The mis-management of these Title V funds, and some of the inequities in the 3-R Act that we point out, are the reasons that Title V is being eroded away. We are also of the opinion that Conrail management tends to over-emphasize the negative and most always forgets to mention the positive. They quickly point out facts like "we had one supervisor supervising 220 employees" but they fail to point out or they forget that they abandoned miles of rails or they eliminated jobs while they doubled or tripled the supervisory positions in these depleted areas. As we mentioned earlier, Conrail tends to cite extreme situations in emphasizing their plight with Title V. However, if this Committee would examine Conrail's records, answers to the following questions would bear out the facts:

1. What was the ratio of non-agreement personnel to the agreement personnel, that worked on the properties prior to April 1, 1976?
2. What is the ratio of non-agreement personnel to the agreement personnel that presently work on the properties as of April 1, 1980? And the related cost?
3. Where is Title V money being spent?
 - (a) Severance Pay—how was it paid out, to whom, and why?
 - (b) Just what Crafts are actually a burden to Title V and the actual numbers of employees involved with protected rates?
 - (c) How many overpayments were made that they cannot recover, and how would this happen?
 - (d) What were the rates of the management positions in 1974 and what is the ratio they increased up to April 1, 1980? Include general wage increases and merit increases so they reflect actual earning power (not just MDA)
 - (e) Have there been non-agreement personnel that were not protected employees transferred under Title V appropriations?
 - (f) How much Title V money was spent in the implementation of the Crew Consist Rule?
 - (g) How much Title V money was used because of non-compliance with Sec. 506 of the 3-R Act "Contracting work out" when employees could have done the

work more efficiently and at less cost, instead the employees claims were a drain on Title V.

(h) How much Title V money was paid out in inflated prices on the sale of homes? (Rates exceeding the standard rate of inflation.)

(i) How much Title V money went to employees because management tried to improve their operating budgets through the mis-representation of job earning power (Highest rated job)

(j) How many employees were promoted, given a lesser rate, and told to collect the rest from Title V?

We could go on and on but we feel that the records should more than support our position. It is imperative that these questions are asked and answered before a just decision can be made on the feasibility of Senate Bill S. 2530. We also feel that once these questions are answered, it will be obvious that there is no reason to discriminate against the Non-Operating and M of W Crafts.

Existing Law

Section 505(b)—Monthly Displacement Allowance—A protected employee, who has been deprived of employment or adversely affected with respect to his compensation shall be entitled to a monthly displacement allowance computed as follows:

1. Said allowance shall be determined by computing the total compensation received by the employee, including vacation allowances and monthly compensation guarantees, and his total time paid for during the last 12 months immediately prior to his being adversely affected in which he performed compensated service more than 50 per centum of each of such months, based upon his normal work schedule, and by dividing separately the total compensation and the total time paid for by 12, thereby producing the average monthly compensation and average monthly time paid for; and, if an employee's compensation in his current position is less in any month in which he performs work than the aforesaid average compensation, he shall be paid the difference, less any time lost on account of voluntary absences other than vacations, but said protected employee shall be compensated in addition thereto at the rate of the position filled for any time worked in excess of his average monthly time.

Proposal

Section 505(b)1—add to the above:

Provided, That, any time paid for in excess of an employee's average monthly compensation will be held against the next month the employee is adversely affected.

Comment

This would give Conrail the right to deduct excess payments in any given month from the amount claimed in the next month that the employee had the right to collect a monthly displacement allowance.

Existing Law

Section 505(b)(1)B

The said monthly displacement allowances shall be reduced by the full amount of any unemployment compensation benefits received by the protected employees and shall be reduced by an amount equivalent to any earnings of said protected employee in any employment subject to the Railroad Retirement Act and 50 per centum of any earnings in any employment not subject to the Railroad Retirement Act.

Proposal

Section 505(b)(1)B

The said monthly displacement allowance shall be reduced by the full amount of any employment compensation benefits received by the protected employee and shall be reduced by an amount equivalent to any earnings of said protected employee in any employment subject to the Railroad Retirement Act and 100 per centum of any earnings in any employment not subject to the Railroad Retirement Act.

Comment

This would allow Conrail to save a considerable amount of money that is not now deductible under Title V. Wages paid for other than railroad service, should be chargeable against a Title V Claim.

Existing Law

Section 506—Contracting Out—All work in connection with the operation or services provided by the Corporation on the rail lines, properties, equipment or facilities acquired pursuant to the provisions of this Act and the maintenance,

repair, rehabilitation, or modernization of such lines, properties, equipment, or facilities which has been performed by practice or agreement in accordance with provisions of the existing contracts in effect with the representatives of the employees of the classes or crafts involved shall continue to be performed by said Corporation's employees, including employees on furlough. Should the Corporation lack a sufficient number of employees, including employees on furlough, and be unable to hire additional employees, to perform the work required, it shall be permitted to subcontract that part of such work which cannot be performed by its employees, including those on furlough, except where agreement by the representatives of the employees of the classes or crafts involved is required by applicable collective-bargaining agreements. The term "unable to hire additional employees" as used in this section contemplates establishment and maintenance by the Corporation of an apprenticeship, training, or recruitment program to provide an adequate number of skilled employees to perform the work.

Comment

Conrail has continued to abuse this section of the Act and it has caused a massive drain on the Title V monies. Many of the Contractors hired do poor work and charge exorbitant fees, while qualified employees are forced to Title V.

Those are some of our views on the existing Title V. We feel Conrail has misrepresented the facts and we agree to the inequities that we pointed out.

Senator Riegle asked a question of our group—"Who do we think should administer Title V?" In answer to this, we feel that the Railroad Retirement Board and their personnel would do a much better job of handling the funds. They are experienced and they are not involved with the operation or personnel as is Conrail management. They are a Government Agency which tends to make them much more accountable for Government funds.

S. 2530

In doing additional research of this Bill, we find that Conrail has influenced its writing to the degree that this Bill would truly jeopardize every agreement employee's position with the Company. There is no part of this Bill that could be condoned by Congress if they knew the facts. To introduce it by saying "To improve the fairness and equity of the protection provided to rail employees—" is misrepresentation of the Bill.

The fact is, the Bill is designed to effectively remove the protection afforded by the Regional Rail Reorganization Act of 1973.

The Carrier is attempting to move the test year from 1974 to 1977 for the operating crafts. This time span is already into the Conrail operation and no way reflects the earnings that these people made prior to Conrail. In 1977 track work was going on all over and trains were cut down in many locations. Conrail was cutting overtime on crews and forcing them to go to Title V for payment of lost wages.

Then they want to use 1974 for the M of W. Of course, this year there was very little track work going on and this would not reflect the large production gangs working in 1977. Why not use 1977 for the M of W? Of course not. The rates would improve to a higher level instead of dropping.

We feel that the test year should remain as 1974 or 1975. Working conditions, earning power, past practices, jobs, rights and privileges started to change April 1, 1976.

The Bill takes nothing away from non-agreement personnel—takes a small portion of monies away from the operating crafts and eliminates practically all the monies from the M of W and the non-operating crafts. Enclosed you will see how this is possible through the charts that we have made available.

Conrail is quick to point out that non-agreement personnel should not have their protection changed because these people are accustomed to a "standard of living" and they purchased homes "assured" of their protection. A sudden "reduction" in their "monthly income might place them in a untenable financial position."

Many of my people are now wondering how they will be able to keep the homes they purchased because they were "assured" of their protection and they are also concerned as to how their "standard of living" will change.

Since July of 1978, the non-operating crafts have lost hundreds of jobs with forecasts of more to come. We feel that Conrail is trying to rush this Bill through, so that their liability under the 3-R Act is relieved. While relieving Conrail of their responsibilities, S. 2530 will cause hardship and economic disaster to the families of the non-operating and M of W crafts.

We also question how a sailor or a truck driver of 50 years of age will accustom himself to pounding spikes on a track gang. This Bill allows for this to happen. We cannot concur with this type of legislation.

Conrail has deferred its maintenance programs for 1980 and 1981. They also have been refraining from abandonments of branch lines and closing of some facilities. They indicate that this is so they may have an opportunity to improve their marketing program. We suspect that the passage of S. 2530 would surely put them in a position for mass abandonments and transferring of properties.

We also question Page 12 (7) of the Bill S. 2530. In reviewing testimony of many of the proponents of this Bill, we get an uneasy feeling as to what kind of outside earnings can be subtracted from an employee's protected rate. You almost see their testimony trying to allow lottery winnings, inheritances, and personal injury settlements coming under deductible compensation.

It would be proper to clarify this clause.

TITLE V

The following is the formula used to figure the Monthly Displacement Allowance for all employees that were protected under Title V:

Agreement Employees: (Operating-Non-Operating and M of W Crafts) All Agreement employees were working under various labor contracts that called for overtime, arbitraries, constructive allowances, penalty payments, holiday pay, vacation pay, etc. The year 1974 was used as a test period to reflect an employee's average yearly compensation. This total compensation was divided by 12 months and the monthly displacement allowance was established.

All agreement employees (operating-nonoperating-M of W)

[Using a \$6.00 per hour rate for explanation purposes]

Hourly rate (1 hour).....	6.00
Daily rate (8 hours x \$6.00).....	48.00
Monthly rate (22 days x \$48.00).....	1,056.00
Total additional compensation (88 hrs. x 1½).....	792.00
Monthly rate (1,056)+total other compensation (792)=	1,848.00
Total monthly compensation (1,848) x 12 months.....	22,176.00

¹Total yearly compensation.

Applying Title V Formula—

Total yearly compensation (22,176.00 ÷ 12 months = \$1,848.00 (MDA).

Total monthly displacement allowance each employee (Operating-Nonoperating-M of W entitled to \$1,848.00 per month.

S. 2530

Under the proposed Bill S. 2530, the employees whom were allotted equal protection under Title V will be discriminated against under S. 2530. The following profile will show how certain employees will incur considerable losses while others will remain the same. Using the same \$6.00 rate we used for the Title V profile, we will apply the new formulas.

Nonoperating	M of W	Operating
Total yearly compensation, \$22,176. 22,176 ÷ 12 = \$1,848 (title V).	Total yearly compensation, \$22,176 22,176 ÷ 12 = \$1,848 (title V)	Total yearly compensation, \$22,176. \$22,176 ÷ 12 = \$1,848 (title V).

1,848 - 792 = \$1,056.

1,056 ÷ 22 ÷ 8 = \$6.00 (S. 2530).

The new formula takes away all other compensation that he was entitled to under title V. His earning power drops from \$1,848 per month to \$1,056 per month, a loss of \$792 per month.

$\$6.00 + 9.00 \div 2 = \7.50 average $\$22,176 \div 12 = \$1,848$ (S. 2530).

$\$7.50 \times 174 = \$1,305$ (S. 2530)

The new formula takes away all other compensation except the average hourly rate $\times 174$. His earning power drops from \$1,848 per month to \$1,305 per month, a loss of \$543 per month. Could incur a loss back to \$1,056 if he did not operate equipment at a high rate—a loss of \$792, also.

The new formula is the same as the old. His earning power is the same—he loses nothing.

A rate of \$6.00 was used across the board to indicate the inequities of the formulas. The M of W employee could incur greater losses if he did not have his hourly wage average increased by being a heavy equipment operator, etc.

We will now show the effects of S. 2530's formula as applied to the four different categories, using projected rates for 1980.

We will assume that an employee from each group had a maximum protected rate of \$2,500.00 as established in 1974. Applying the general increases to each category, the MDA would have rose to approximately \$3,370.00 per month, with an annual rate of \$40,436.

The Operating-Non-Operating-M of W employee would thus have earning power or protected rate of \$40,436. The Non-Agreement employee in this same category would have increased his salary to about \$45,000 to \$55,000 per year. Utilizing the formula, we break down the rates in the following manner:

FORMULA S. 2530

	Noncontract	Operating	M of W	Nonoperating
1980 salary with merit increases for nonagreement.....	\$45,000-\$55,000			
1980 annual MDA for the 4 categories.....	40,400	\$40,400	\$40,400	\$40,400
1980 monthly MDA for the 4 categories.....	3,370	3,370	3,370	3,370
S. 2530 formula would change the annual MDA rate to.....	¹ 45,000-\$55,000	35,500	22,800	22,800
	² 40,400			
S. 2530 formula would change the monthly MDA rate to.....	³ 3,370	3,000	1,900	1,900
Loss of earning power annually.....	(⁴)	4,500	17,640	17,640

¹ Salary.

² MDA.

³ No change.

⁴ None.

Note how all categories of employees start at the same annual MDA rate or earning power of \$40,000—(Non-Contract Salary of \$45,000 to \$55,000.)

Note how through the application of S. 2530 Formula, Non-Contract employees stay at the same level of MDA, and the Operating Crafts fall 12 percent less than Non-Contract MDA.

Note how the M of W and Non-Operating Crafts drop 44 percent less than Non-Contract employees and they fall 36 percent less than the Operating Crafts.

Note also that for the Operating, Non-Operating and M of W Crafts, their MDA represents their basic earning power; however, a Non-Contract employee's salary, in this category, has earning power increased well over the MDA rate.

Under S. 2530, it sure looks like certain Crafts are going to have to change their "Standard of Living" because it definitely will not be what they were "assured of" through Title V.

In closing, we might add that in their efforts to streamline the Consolidated Rail System, Management has effectively reduced the organized labor forces and have effectively built huge staffs of non-Union employees.

There are many locations where Union employees have been eased out and Management has assumed responsibility for these locations. By operating in this fashion, various programs of sheer waste have been initiated through poor Management practices. If called upon, we can produce witnesses to all of the testimony given in front of your Committee.

QUESTIONS OF THE COMMITTEE AND THE ANSWERS THERETO

Question 1. You indicate in your testimony on page three that, "one of the worst things that could have happened was to place management in charge of the Title V Administration." Who should be placed in charge of administering Title V and why?

Answer. We are of the opinion that Title V should be administered by the Railroad Retirement Board. The RRB is a government agency and presently oversees the Retirement fund, sick benefits, and unemployment benefits, etc. They readily have access to many of the records that are needed to properly administer Title V. With some additional programming they could assume the entire program, and do a much better job. Employees would be less apt to entertain false claims, and the RRB would undoubtedly be more thorough in their accountability and responsibility of government funds.

Question 2. Could you give the Committee some further examples of abuses in the Administration of Title V payments?

Answer:

1. Overpayments to employees not entitled to same.
2. Management suppresses payment for some employees and allows payment to other employees. (Discrimination)
3. Management reverts to augmenting their budget by publishing misleading rates on assignments.
4. Non-agreement employees who are non-protected employees are transferred with the assistance of Title V funding.
5. Management promotes employees to supervisory positions and instead of paying them their protected rate, they pay them a lesser rate and force them to collect the difference from Title V.
6. Title V money was used in the implementation of the "Crew Consist" program.
7. Employees are allowed to drop assignments or they are not called for assignments and they still collect Title V. These same employees made their MDA's by covering these same assignments and should be covering them now.

Question 3. You indicate on page 6 that "there is a monumental amount of work being contracted out that could be handled by protected employees." What are some examples?

Answer:

1. Track work given to outside contractors and employees forced to go to Title V. Quality of work is poor.
2. Wrecking service performed by outside contractors and the carrier pays exorbitant fees for this service such as a contractor doing 35 minutes work and billing for 5 hours work. Also outside contractors billing for x pieces of heavy equipment and the actual number of pieces were less.
3. Management orders improper equipment to cover the job and then reverts to using outside contractors to do the work. Company employees go to Title V.

Question 4. How are employees currently informed of their employee protection rights and what problems—if any—arise out of the current system?

Answer. Employees always get the runaround when they ask questions about their protected rates. Immediate supervisors infer to their subordinates that certain Title V claims are not applicable to them.

Administrators of Title V claim employees failed to protect work when employees indeed protected their work. Poor records are kept on this situation.

Senator RIEGLE. Let me now call Mr. Herbert McLure, who's the Associate Director of Community and Economic Development of the General Accounting Office; who is accompanied by Mr. Frederick German.

STATEMENT OF HERBERT McLURE, ASSOCIATE DIRECTOR, COMMUNITY AND ECONOMIC DEVELOPMENT DIVISION, GENERAL ACCOUNTING OFFICE; ACCOMPANIED BY FREDERICK GERMAN; AND JAMES SLATERBECK, SUPERVISORY AUDITORS

Mr. McLURE. Mr. Riegle, I'm Herb McLure. This is Fred German and James Slaterbeck.

Senator RIEGLE. Thank you.

What I would like to do is include your statements in the record and have you summarize as much as you can and stay within the time limit.

Mr. McLURE. That's fine.

We have reviewed S. 2530, containing DOT's proposed changes in title V. And in general, we believe the bill would solve many of the problems we identified in an earlier report of ours, December 5 report.

There are a few areas we don't think the legislation adequately addresses, and I will try to summarize.

In general—well, Conrail estimated that the additional \$235 million authorization would be adequate, and that's based on Conrail's estimate that employee protection benefits revised by DOT amendments would cost \$213.2 million under certain economic and regulatory conditions, with a contingency factor of about 10 percent thrown in.

FRA reviewed Conrail's estimate and concluded it was reasonable. They stated in testimony to the House Subcommittee on Transportation and Commerce that the estimate was based in part on the assumption that there will not be a severe business downturn or an extensive reduction of the existing Conrail system.

These assumptions appear to contradict Conrail's plans for the next 5 years and their 1980 budget, which causes us to be skeptical that the additional \$235 million will be adequate.

Conrail has reduced its planned capital spending programs for the next 2 years by almost \$400 million, reductions that will substantially affect maintenance-of-way employment levels.

Further, Conrail's strategy for achieving future profitability is strongly rooted in regulatory reforms that would permit it to stop providing service over a substantial part of its system, another factor that seems likely to reduce Conrail's employment levels and increase demands for employment protection payments.

Conrail's budget for 1980 anticipated a sagging economy, and Conrail expected its projected losses to increase by \$100 million by 1980. It now seems clear that the United States is entering a recession which will affect Conrail's traffic levels and revenues, possibly adding to its need for employee protection funding. These all seem to contradict the assumptions upon which Conrail based its estimate.

Nevertheless, if Conrail is willing to accept responsibility for its employee protection costs that exceed its estimate, it seems logical to base the authorization on that amount even though we think it may be too low.

We don't believe Conrail employee protection responsibilities will make or break Conrail. And if Conrail is not able to become profitable in the next few years, a different solution to Northeast rail service and more Federal fundings will most likely be needed anyway.

However, we are concerned that a low estimate by Conrail will unfairly penalize the other employees subject to the title V provisions, including Amtrak. If Conrail's estimate is too low and as a result it gobbles up all the title V funding, the other employees will also have to pay for employee protection out of their own

pockets. Therefore, we suggest that you consider reserving 5 to 10 percent of the funding for employers other than Conrail.

The existing title V provisions provide that an employee who was working for 5 or more years on the effective date of the Rail Act is entitled to employee protection benefits until age 65. This means that a 25-year-old person, when the Rail Act became effective, could be eligible to receive benefits for 40 years.

The proposed title V modifications don't change these provisions. When the Congress passed the Rail Act, it had been advised that most of the protection payments would be needed for termination and separation allowances rather than for monthly allowances, and the \$250 million would be sufficient.

Because monthly allowances have constituted the bulk of the protection payments and have increased the program's cost beyond original expectations, we believe the program should be limited to bring it more in line with original intentions.

One way to do this would be to limit protection to a specific period. Another way would be to freeze annual guarantees. If annual guarantees were frozen, escalating wages would exceed guarantees within a relatively short time, thereby making the working employee ineligible for a monthly allowance.

On the other hand, fully displaced employees would remain eligible for the type of assistance we thought was intended by the Rail Act.

The Rail Act protects employees much longer than other federally established employee protection programs. The program developed pursuant to the Rail Passenger Service Act of 1970, for example, had a 6-year limit.

More recently, employee protection legislation for the Milwaukee Road was passed in November 1979, and a bill covering Rock Island employees is now being considered.

Both of these programs limit employee protection to 3 years. Federally mandated employee protection programs for other industries also have shorter protection periods than title V. The redwood employee protection program of 1978, for example, limited protection to 6 years for most employees.

We recognize DOT's proposed changes to the Rail Act will reduce the scope and cost of the employee protection program, which was one of our intents in recommending a time limit for program benefits.

However, we also think that a more consistent Federal approach to employee protection within the rail industry and among all industries is desirable to provide fair treatment to all workers affected by Federal interventions.

We therefore continue to believe that a time limit should be placed on the benefits provided by this program.

In our December 5 report, we concluded the Rail Act did not provide for adequate Federal oversight of the employee protection program, and recommended that the Congress amend the program to assign oversight and audit responsibility to DOT. DOT, instead, has proposed the responsibility be assigned to USRA.

We think DOT is a better choice, because it is a permanent part of the executive branch, whereas USRA is not a Federal agency and is apparently an organization with a limited life expectancy.

DOT's proposal would allow marine crafts' employees and unemployed Penn Truck Line employees to transfer to other employment crafts or classes, and provides for retraining programs to make the changes possible.

As we stated in our report, we think this change is needed, but we think it should be generally available rather than limited to the two specific worker categories.

An agreement Conrail negotiated to reduce the size of its train crews provides for separation allowances to employees who give up their jobs as a result of the agreement.

Conrail has been using title V funds to pay these separation allowances. We believe Congress intended title V to protect employees affected by the consolidation itself, and not by subsequent unrelated events.

Conrail and the USRA don't agree with us. They believe title V was intended to be used for purposes like the separations resulting from the agreement.

Although we concluded Conrail's use of the fund does not violate the terms of the law, we believe Congress should clarify its intent as to what the funds should be used for.

If the Congress intends that the fund be used for purposes like the agreement to reduce crew sizes, it should make that intent clear.

That concludes the prepared statement. I'll be happy to answer any questions you may have.

Senator RIEGLE. I'm going to ask that you respond to some questions for the record that we will make available to you, rather than go into those now.

And I think the Chairman may have some. And I intend to have some.

But I thank you for your testimony.

[The statement and answers to questions of the committee follow:]

STATEMENT OF HERBERT R. McLURE, ASSOCIATE DIRECTOR, COMMUNITY AND ECONOMIC DEVELOPMENT DIVISION, GENERAL ACCOUNTING OFFICE

Mr. Chairman and Members of the Subcommittee, as you requested, we have reviewed S. 2530 which contains the Department of Transportation's (DOT's) proposed changes to the title V employee protection provisions. We believe the bill would solve many of the problems we identified in our December 5, 1979 report entitled "Employee Protection Provisions of the Rail Act Need Change" (CED-80-16). However, we believe there are some important areas of concern not adequately addressed by the proposed legislation.

New estimate of title V program costs

As we pointed out in our December 5 report, estimates of how much the title V employee protection program would eventually cost varied widely, ranging from \$884 million to \$1.7 billion. We found various problems with the estimating procedures used and did not feel that any of the estimates were reliable. Accordingly, we recommended that the Congress require a more carefully thought out estimate of the title V liability be calculated. We also recommended in our report that the Congress assign oversight responsibility for the title V program to a Federal agency and that that agency would be a logical one to develop the estimate.

The proposed legislation includes an additional authorization of \$235 million. According to the Federal Railroad Administration (FRA), the additional \$235 million authorization was based on Conrail's estimate that employee protection benefits as revised by DOT's amendments would cost \$213.2 million under certain economic and regulatory conditions, with a contingency factor of about 10 percent, or \$21.3 million thrown in. The contingency factor was to provide funds for other employers

that have filed for employee protection under the act, and to provide a small margin for error. Conrail apparently agreed to pay for its employee protection costs exceeding the estimate out of its own revenues.

FRA reviewed Conrail's estimate and concluded it was reasonable. FRA stated in testimony to the House Subcommittee on Transportation and Commerce on February 21, 1980, that the estimate was based in part on the assumption that there will not be a severe business downturn or an extensive reduction of the existing Conrail system. These assumptions appear to contradict Conrail's plans for the next 5 years and their 1980 budget, which causes us to be skeptical that the additional \$235 million will be adequate.

On March 10 of this year, we issued a report to the Chairman of the House Subcommittee on Transportation and Commerce outlining Conrail's capital spending plans through 1983 ("Conrail's reduced capital program could jeopardize the northeast rail freight system," CED-80-56). Conrail's 5-year business plan dated August 1, 1979, called for reduced capital spending during 1980 and 1981, and catch-up spending in the later years. Conrail's strategy was to stay within the current Federal investment limit of \$3.3 billion. The key assumption in Conrail's plan was that regulatory reform will make it possible for Conrail to earn sufficient revenues to rejuvenate its capital programs in 1982.

Conrail has reduced its planned capital spending programs for the next 2 years by almost \$400 million, reductions that will substantially affect maintenance-of-way employment levels. Further, Conrail's strategy for achieving future profitability is strongly rooted in regulatory reforms that would permit it to stop providing service over a substantial part of its system, another factor that seems likely to reduce Conrail's employment levels and increase demands for employee protection payments.

Conrail's budget for 1980, submitted to the U.S. Railway Association (USRA) on November 15, 1979, anticipated a sagging economy and Conrail expected its projected losses to increase by about \$100 million. It now seem clear that the United States is entering a recession which will affect Conrail's traffic levels and revenues, possibly adding to its need for employee protection funding. These factors seems to contradict the assumptions upon which Conrail reportedly based its estimate.

Nevertheless, if Conrail is willing to accept responsibility for its employee protection costs that exceed its estimate, it seems logical to base the authorization on that amount even though we think it may be low. We do not believe employee protection responsibilities will make or break Conrail, and if Conrail is not able to become profitable in the next few years, a different solution to northeastern rail service and more Federal funding will most likely be needed anyway. However, we are concerned that a low estimate by Conrail will unfairly penalize the other employers subject to the title V provisions, including Amtrak. If Conrail's estimate is too low and, as a result, it gobbles up all the title V funding, the other employers will also have to pay for employee protection out of their own pockets. Therefore, we suggest you consider reserving 5 to 10 percent of the funding for the employers other than Conrail.

Limiting the period of employee protection

The existing title V provisions provide that an employee who was working for 5 or more years on the effective date of the Rail Act (January 2, 1974) is entitled to employee protection benefits until age 65, unless they die, resign, or are fired, or unless entitlement is suspended for one of the reasons specified in the law, such as refusal to exercise seniority to an available position. This means that a person 25 years old when the Rail Act became effective could be eligible to receive benefits for 40 years. The proposed title V modifications do not change this provision. When the Congress passed the Rail Act, it had been advised that most of the protection payments would be needed for termination and separation allowances rather than for monthly allowances and that the \$250 million fund would be sufficient. Because monthly allowances have constituted the bulk of the protection of payments and have increased the program's cost beyond original expectations, we believe the program should be limited to bring it more in line with original intentions. One way to do this would be to limit protection to a specific period of time. Another way would be to freeze annual guarantees. If annual guarantees were frozen, escalating wages would exceed guarantees within a relatively short time, thereby making the working employee ineligible for a monthly allowance. On the other hand, fully displaced employees would remain eligible for the type of assistance which was apparently intended in the Rail Act.

The Rail Act protects employees much longer than other federally established employee protection programs. The program developed pursuant to the Rail Passenger Service Act of 1970, for example, had a 6-year limit. More recently, employee

protection legislation for the Milwaukee Road was passed in November 1979 and a bill covering Rock Island employees is now being considered by the Congress. Both of these programs limit employee protection to 3 years.

Federally mandated employee protection programs for other industries also have shorter protection periods than title V. The Redwood Employee Protection Program of 1978, for example, limited protection to 6 years for most employees.

We recognize that DOT's proposed changes to the Rail Act will reduce the scope and cost of the employee protection program which was one of our intents in recommending a time limit for program benefits. However, we also think that a more consistent Federal approach to employee protection within the rail industry and among all industries is desirable to provide fair treatment to all workers affected by Federal interventions. We therefore continue to believe that a time limit should be placed on the benefits provided under this program.

Assigning responsibility for monitoring the program to a Federal agency

In our December 5 report, we concluded the Rail Act did not provide for adequate Federal oversight of the Employee Protection Program, and recommended that the Congress amend the program to assign oversight and audit responsibility to DOT. DOT has proposed the responsibility be assigned to USRA. We think DOT is a better choice because it is a permanent part of the executive branch, whereas USRA is not a Federal agency and is apparently an organization with a limited life expectancy.

Retraining provisions for marine employees and Penn Truck employees

DOT's proposal would allow Marine Crafts' employees and unemployed Penn Truck Lines, Inc., workers to transfer to other employment crafts or classes, and provides for retraining programs to make the changes possible. As we stated in our report, we believe this change is needed, but think it should be generally available rather than limited to the two specific worker categories.

Clarifying how the funds are intended to be used

An agreement Conrail negotiated to reduce the size of its train crews provides for separation allowances to employees who give up their jobs as a result of the agreement. Conrail has been using title V funds to pay these separation allowances. We believe the Congress intended title V to protect employees who were affected by the consolidation itself, and not by subsequent, unrelated events.

Conrail and the United States Railway Association do not agree with us. They believe title V was intended to be used for purposes such as the separations resulting from the agreement.

Although we concluded Conrail's use of the fund does not violate the terms of the law, we believe the Congress should clarify its intent as to what the funds may be used for. If the Congress intends that the fund be used for purposes such as the agreement to reduce crew sizes, it should make that intent clear.

QUESTIONS OF THE COMMITTEE AND THE ANSWERS THERETO

Question 1. In its March 10, 1980, report on Conrail, GAO concluded that the curtailment of capital spending by Conrail in 1980 and 1981 to stay within the current \$3.3 billion Federal funding would create an unacceptably risk to the Federal investment in Conrail. For the record, briefly explain how GAO arrived at that conclusion.

Answer. Our conclusion that Conrail's capital spending plans are unacceptable risky is based on Conrail's technical judgment about the spending levels needed to prevent its system from deteriorating and our uncertainty about the outcome of regulatory reform. In its August plan, Conrail said that during 1980 and 1981 it will spend considerably less on track rehabilitation and additions and improvements than would be appropriate for its system size and volume. It said that these program cutbacks will result in a certain amount of deferred maintenance and a reduction in efficiencies associated with asset improvement. Conrail intends to have higher-than-normal spending in 1982 and future years and it expects to pay for the catch-up costs with increased revenues that will be made possible by regulatory reform.

We think the logic of the situation argues for continued capital spending at least at the level needed to keep the system in its current condition. This is not a technical judgment, but instead was reasoned out as follows. If Conrail follows its current plan and defers capital spending, two things could happen: It might be able to increase its revenues enough to provide the funds needed to rejuvenate its rehabilitation and maintenance programs, or it could continue to lose money, and

would either have to seek additional funding from the Government or continue deferring its capital programs.

On the other hand, if Conrail continued capital spending at the level needed to maintain the system in its current condition, it would require additional Federal funding in 1982. If it is able to increase revenues enough to provide funds for capital programs, the need for additional Federal funding would be minimized because catch-up maintenance and rehabilitation would not be needed and Conrail would be able to pay for its own capital programs sooner. Even if Conrail continued to lose money, the need for additional Federal funding would still be minimized because catch-up maintenance would not be needed.

Question 2. Your report states that during 1980-1981 Conrail plans to reduce its track maintenance below normalized levels. What is a "normalized level," and how were the standards established? In this regard, DOT has responded to this GAO report by stating that Conrail's continuing to provide a "normalized" track rehabilitation program severely oversimplifies the complex issue of the size and type of fixed plant Conrail needs for its future traffic base. Do you have any comment on this assertion?

Answer. Normalized maintenance is the amount of track work needed to maintain the status quo of the rail system's physical plant. Levels are determined by the expected life of rail and ties, and the traffic frequency and weight. Conrail told us that normal maintenance for their system would amount to about 725 miles of rail per year (425 miles of new rail and 300 miles of second hand rail). USRA's estimates of normal maintenance for Conrail are slightly lower.

In its comments, DOT was asserting that Conrail's traffic levels and tonnages are lower than predicted, so that life expectancies of rail, ties, and other materials would be increased, and annual requirements to maintain the status quo would be reduced. To the extent traffic and tonnages are down, we agree with DOT. However, we doubt that Conrail would spend its discretionary capital on marginal projects, for several reasons.

Conrail has been doing more than normal maintenance for only 3 years, after 15 or more years of less-than-normal spending by the bankrupt predecessors. While its system is substantially better than it was when acquired, much rehabilitation is still needed on lines and yards that will unquestionably remain in the system. Conrail estimates that even with complete deregulation, substantial catch-up spending would be needed after only 2 years of deferrals. This indicates to us that capital spending cutbacks are occurring in areas that Conrail believes will remain essential, and that the essential system will deteriorate during the years of below-normal spending.

Question 3. In its conclusions to this report, GAO said that current Conrail estimates for reduced traffic and net income for 1980 and 1981 cause doubt as to whether Conrail can generate sufficient revenue to support increased investment programs in 1982 to make up for the reduced capital spending by Conrail in 1980 and 1981. How did GAO arrive at this conclusion? To what extent do you believe that regulatory reform could provide the necessary cash flow in this regard?

Answer. Our conclusion was based on our review of budget and alternative plans submitted by Conrail to USRA for 1980 and 1981.

On November 15, 1979, Conrail released a 1980 budget which significantly changed financial projections made in August. Slower economic growth was forecasted which resulted in lower traffic and revenue. Forecasts of losses were increased by 35 percent and Federal drawdown estimates were increased by 23 percent. The August Business Plan forecasted a net loss of \$253 million for 1980 but the November budget increased that estimate by \$88 million to \$341 million. The need for Federal funds in 1980 was estimated to be \$585 million.

In addition to the 1980 budget, Conrail also submitted to the United States Railway Administration a revised forecast for the second year—1981—of the 5-year business plan. The 1981 forecast included two financial projections; a base plan and an alternate plan. The base plan assumes modest regulatory reform and that capital programs (track rehabilitation and additions and improvements programs) would be maintained at the levels projected in the August Business Plan. In contrast, Conrail's alternate plan assumes diminished results due to the continuation of regulation restraints and increases capital programs to normal and/or appropriate levels.

For the base plan, Conrail expects a net loss of \$26 million in 1981 as compared to a \$170 million profit projected in the August plan. Conrail also forecasted a \$144 million cash deficit in 1981 which it felt may not require additional Federal funding if it could be handled through internal actions. The 1981 alternate plan projects a loss of \$128 million or about a \$298 million variance from the \$170 million net income anticipated in the August plan.

Regulatory reform could help Conrail's cash flow in several ways depending on the form it takes and the economics of the marketplace. For example, greater rate freedom would allow Conrail to manipulate prices to improve its cash flow. If successful, innovative pricing policies could also generate more profitable traffic and reduce unprofitable traffic. When coupled with eased exit controls, pricing policies could also help Conrail adjust its plant size and contain its costs. However, since there is little experience with unregulated pricing in railroading, market reaction to pricing changes is difficult to predict, and we consider Conrail's estimates of the effects of deregulation unreliable, although our review indicated the methods Conrail used to prepare the estimates were reasonable. USRA's model of Conrail's system indicated that Conrail's operating results would be more strongly affected by management improvements than by changes made possible by regulatory reform.

Question 4. As alternatives to deferred capital spending by Conrail, your March 10th report suggested various congressional options including pledging of additional funds, enactment of regulatory reforms, and/or an alternative solution to rail problems in the Northeast. Do you have any recommendations in this area? Is S. 2527 the type of solution you had in mind? To what extent could the joint rate provisions included in the Senate and House rail reform bills significantly affect Conrail's revenues? Did you consider such reform as part of the GAO study?

Answer. Our report did not contain a specific recommendation, but observed that an optimum solution may well involve all the elements we mentioned. We were vague because we believe the possible approaches are interdependent, and that no one option is likely to be the ultimate answer. For example, regulatory reform could encompass a broad range of changes, and the extent of additional funding needed will clearly depend on what the reforms turn out to be.

S. 2527 is not what we had in mind. Although we see advantages to shippers and funding agencies in having a level of certainty about future rail service as S. 2527 would provide, we think it would make more sense to see what regulatory reforms allow Conrail to achieve in the pricing area, before starting to excise parts of the system. Price elasticities of demand may turn out to be entirely different than Conrail anticipates, and lines expected to be losers may turn out to be winners. Many such surprises occurred in the airline industry after it was deregulated.

We have no analytic basis for estimating the effects of proposed joint rate provisions. We did not estimate the effect of any particular element of regulatory reform, and believe it would be very difficult to do so with any confidence because of the interdependency of all the elements of reform.

Question 5. In recent testimony before a House Committee, you discussed your March 10, 1980, GAO report on the need for additional funding for Conrail. In your remarks before the House Committee, you seem to have avoided giving a specific recommendation with regard to the need for additional funding for Conrail. You said that Congress should balance the needs of Conrail against other priorities such as reducing Government expenditures. It is very important for Congress to have reliable information on the extent of Conrail's need for additional funding and the level of urgency of that need. Please discuss your findings in this regard. How would you assess this need? If there is no need to constrain Federal outlays, would GAO recommend appropriating additional funds? In this regard, in its report, GAO stated that Conrail might require an additional \$587 million authorization for 1981 if it were to maintain more appropriate capital spending levels. How valid is that estimate?

Answer. Conrail will have to substantially increase its capital spending in 1982 and beyond to make up for cutbacks in 1980 and 1981. The question is whether Conrail will be able to generate the necessary funds internally. We will be pleasantly surprised if they can. However, we think the risk Conrail is taking is needless and will cost more in the long run, whoever pays for it.

If there were no need to constrain Federal outlays, we would have recommended Congress pledge additional funding for Conrail to encourage a normal capital spending program.

The \$587 million estimate is one Conrail submitted to USRA as an alternative to its August 1979 Business Plan, and we did not validate it. We believe it represents a "worst case" and describes the most Federal funding that would be needed for 1981. If Conrail's estimates of its operating results for the next 2 years are reasonably accurate, Federal funding needs with a normal capital spending program would be much smaller than \$587 million in 1981.

Question 6. Your Conrail report as transmitted states that Conrail and USRA agreed with your findings and conclusions. Is that still the case?

Answer. No. The statement in the report transmitted to the Subcommittee was not accurate and we have changed it. Conrail reviewed a draft of our report, and we

understood they agreed with our findings. However, Conrail later informed us they do not agree with our conclusion that reduced capital spending poses an unacceptable risk to Conrail's future. They believe they will be able to generate sufficient revenues as a result of regulatory reforms to prevent serious deterioration from occurring. Conrail also disagrees with our suggestion that its capital spending plans jeopardize the Northeast rail system or that what it is doing in any way resembles Penn Central's maintenance deferrals.

Our policy is to give affected organizations a reasonable opportunity to comment on our findings before we release reports, unless congressional requestors instruct otherwise. Such comments are objectively considered and recognized in our reports. If significant changes are subsequently made in our findings and recommendations, we attempt to afford the organization another opportunity to comment before the report is issued. We have always tried to follow this policy in our dealings with Conrail. However, because of the deadline imposed on us by the Subcommittee on Transportation and Commerce, and because we did not believe we had made substantial changes to our position and report message, we did not ask for Conrail's subsequent comment on our March 10 report.

USRA's staff also reviewed our draft reports, and generally agreed with our findings. However, the staff was not officially representing USRA's board of directors, and we should not have characterized their agreement as USRA's position.

Question 7. Certain labor representatives will testify as to the discrimination in protection under S 2530 against certain types of employees. How do you respond to this claim?

Answer. As we pointed out in our December 5, 1979, report and our testimony, there are some aspects of the title V program that do seem to discriminate against certain types to employees. For example, there are a number of provisions that treat union and nonunion employees differently. Some of DOT's proposed amendments also seem to discriminate (1) among employees within Conrail, as in the case of providing for training and transfer for only Penn Truck and marine craft employees; and (2) among employees in various industries and railroads, by providing longer protection for Conrail employees than for employees in other organizations affected by Federal intervention.

Senator RIEGLE. The committee is adjourned.

[Whereupon, at 11:45 a.m., the hearing was adjourned.]

[The following information was subsequently received for the record:]

STATEMENT OF RONALD H. SUPERSON

In reviewing testimony of Mr. Sweeney, Mr. Snyder, Mr. Hinds, and bills S. 2530, S. 2527, and H.R. 6698, I would like to give my testimony in support of Mr. Hinds. I find no lies or halftruths or discrimination in Mr. Hind's testimony. However, I find discrimination in Mr. Sweeney, Mr. Snyder, and bills S. 2530 and H.R. 6698.

Congress has given us ten days to present facts. Here are some hard, cold facts we will have to live with if Senate bills S. 2530, S. 2527, and H.R. 6698 are passed.

The regional Rail Reorganization Act of 1973 and Title V employee protection of that act would organize seven bankrupt railroads into a rail system that might work. This rail system is needed by America.

Title V is there to protect all the employees from reorganization changes, such as the selling of terminals and track mileage to other railroads or just abandoning them completely. In these changes, jobs would certainly have to go or be transferred. Title V was there to protect the wages of people dumped or adversely affected from the reorganization.

These adversities might have happened right away or anytime after consummation of Conrail, maybe one, ten, or twenty years later. These people needed protection because, what would you think if reorganization happened to you?

(i) You think of your future and your family's future. Maybe you are young enough at the time to move on to another job, but Conrail tells you, "We need you, don't leave" and because you are a railroad man at heart, you choose to stay. But, now and behold, ten years later the company tells you, "We don't need you now." But, by this time you are too old to go job hunting. You cannot get one!! But, you need monies for your family. What do you do now!!

(2) You had put your faith into the company, but you were eaten up by reorganization. The company is not hurting. You and your family are hurting. Thanks to Title V of the reorganization act, you and your family are okay.

(3) Reorganization means improvements. This will mean a change in the way you work and in your earning power. By this, I mean your overtime will drop because of more employees, or new and modern equipment. Other things happen also through the sale of properties to other railroads. Again, your earning power has dropped because your territory has been shortened. Thanks to Title V your wages are protected.

(4) Your home terminal might be sold to another railroad, and in taking employment with this other railroad, you may not be able to hold the same job. You may have to take a lesser paying job. Thanks to Title V, your wages again are protected. These are only a few facts of how important Title V wage protections are to the employees of Conrail.

Title V has created some windfall through the above mentioned facts for some employees. The affects of Title V have become a way of life for all the employees and their families. In the Title V Law we are guaranteed wage protection until we reach 65 years of age, we took faith in this law. A sudden reduction in our monthly income will place us in an untenable financial position. Some people have bought bigger and better homes, some have increased the size of their families, some have taken on different financial positions, and some are sending their kids to college. A sudden loss of these windfalls will certainly ruin families and affect their lives. We put our trust and faith in the laws made by Congress, and we live by them. Everybody thought that the government would not take away what they have given through law.

How can Mr. Sweeney of Conrail differentiate between transferred employees and other employees. We took on the same type of obligations as the transferred employees with our Title V guarantees. The paragraph of his testimony on page 4 differentiating between transferred employees and other employees is in itself discriminatory. He further expands his discrimination in how much his new formula of Title V will pay and when. He also takes no mind of asking Congress for funds to retain a man 40, 50, or 60 years old who has been a truck driver, a mechanic or a marine craft employee to drive spikes or some other job he has no business doing. This is nothing but an insult to a man's intelligence and integrity. Do you take a watchmaker and turn him into a ditch digger?

Therefore, with the discrimination against classes or crafts, and the employees of Conrail I am very much against bill S. 2530.

Why should the good employees of Conrail be the ones to bear the brunt of Conrail's mis-managements and also it's mis-managing of Title V.

We railroad People are very very vital to the American people and the government. Congress has proven and said this to us many many times, because it will not let the railroad employees strike for better pay or other protection and working conditions. Some rail contracts are so archaic, that they are unreal! The upgrading and modernization of some contracts in itself would save Title V monies.

For example, I am now being paid (through agreement) for Saturday, but not working on that day. The pay we receive for Saturday is at a straight time rate because we are considered monthly rated employees. How nice for the company! They can work us overtime for as many hours as they wish in a single day or call us out from home for no extra compensation (which is done most frequently) for working in our craft. This being awakened at 2, 3, or 4 in the morning or being called out on a holiday or working overtime in our craft just for 8 straight time hours on Saturday. The work performed on call outs or overtime is done 99 percent of the time without supervision. We are to make all the decisions, and some of these may get us fired. All this for 8 hours straight time on Saturday. The only time we get overtime is when we work out of our job classification during these 6 days and on Sunday. This also is a joke. If we work more than 8 hours on Sunday, the pay is time and one half for all work. Again, how nice for the company! No double time until the first 16 hours is worked.

If there were agreements for us with a normal industry pay scale for overtime, this certainly would be more fair to the employees and would certainly save Title V monies.

I earned my Title V guarantee with my knowledge of the workings of the whole department. I was covering as much as three extra jobs, because the company (Penn Central) had no one to fill them at the time. But there were times when I would work these extra jobs and not get paid one cent. Penn Central still owes me for 32 hours overtime I worked. In doing this work, I worked out of my craft, out of my seniority district, and out of my country. This work was performed in Canada. The Canadians got paid by the Canadian Parliament, forcing the company to pay them. I, an American, have to this day not received one penny for this work. This kind of treatment still prevails on Conrail today. I call them abuses to the workers. The

company has a very loose attitude towards agreements and workers. Conrail's management thinks nothing of having you do something outside the agreement and then tell you to file a claim for the monies. This, I call bad management, because it immediately builds a very bad moral and working problem.

Another thing they do is tell you to do a certain job. At this job there is no supervision, so you do the work. Job complete, you feel and know its a good job, but maybe two weeks later he sees the job and gives you hell and then starts telling you how it should have been done. This is nit-picking and it creates morale problems. I could go on and on with situations of management's ineptness to manage, but I feel it is a futile effort. This brings about mis-use and mis-management of Title V funds. The Title V facts of mis-use are as follows:

(1) I overheard both sides of a phone conversation between my committee man and labor relations. This conversation pertained to a claim that should have been paid by the company—but was not. This claim was for a Title V protected employee. During this conversation a statement was made by labor relation. The statement was as follows: "Why are you pursuing this claim so hard, Mr. so and so got paid by Title V." Also, my committee man told me that during the formal appeal, labor relations threatened to mess with Mr. so and so's Title V and then my committee man would have to try and get it back.

The fact is, the company tried to and did let Title V be an instrument in settling a claim, because to this day, the man has not been paid the claim. This is not right! Six other employees worked along side of Mr. so and so and got paid after much argument. But, Mr. so and so did not get paid because he filed a claim.

(2) How can the company distribute Title V fairly to employees when the employees don't even have a copy of a contract!! (mainly M&W track forces). How can these people, for well over a year, work for a company and know how to govern themselves in respects to getting a claim for pay due them. The monies for claims paid could be deducted from Title V payments.

(3) How can a Title V officer offer a payment of \$20,000 to retire at age 62? I personally saw a letter sent to a man about to retire that contained this information:

In this letter, \$20,000 would drop to \$17,000 at age 62½ and keep dropping until age 65. What a nice retirement present!! It is a known fact that companies would like all people over 60 to retire. This Title V retirement present is not in Title V Law. How can they offer this?

I could get more Title mis-use facts, but I am pressed for time. So, since time is short for us Conrail employees to give testimony, I will close. I hope I have presented the facts I know about Title V and some of the management problems. Also, my feelings to you, in a way so that you understand what is going on at Conrail.

