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# RAILROAD RETIREMENT ANNUITY INCREASE—1980

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## HEARING

BEFORE THE

### COMMITTEE ON

### LABOR AND HUMAN RESOURCES

### UNITED STATES SENATE

NINETY-SIXTH CONGRESS

SECOND SESSION

ON

### S. 2979

TO AMEND THE RAILROAD RETIREMENT ACT OF 1974 AND THE INTERNAL REVENUE CODE OF 1954 TO ASSURE SUFFICIENT RESOURCES TO PAY CURRENT AND FUTURE BENEFITS AND TO EXTEND CERTAIN COST-OF-LIVING INCREASES

SEPTEMBER 25, 1980



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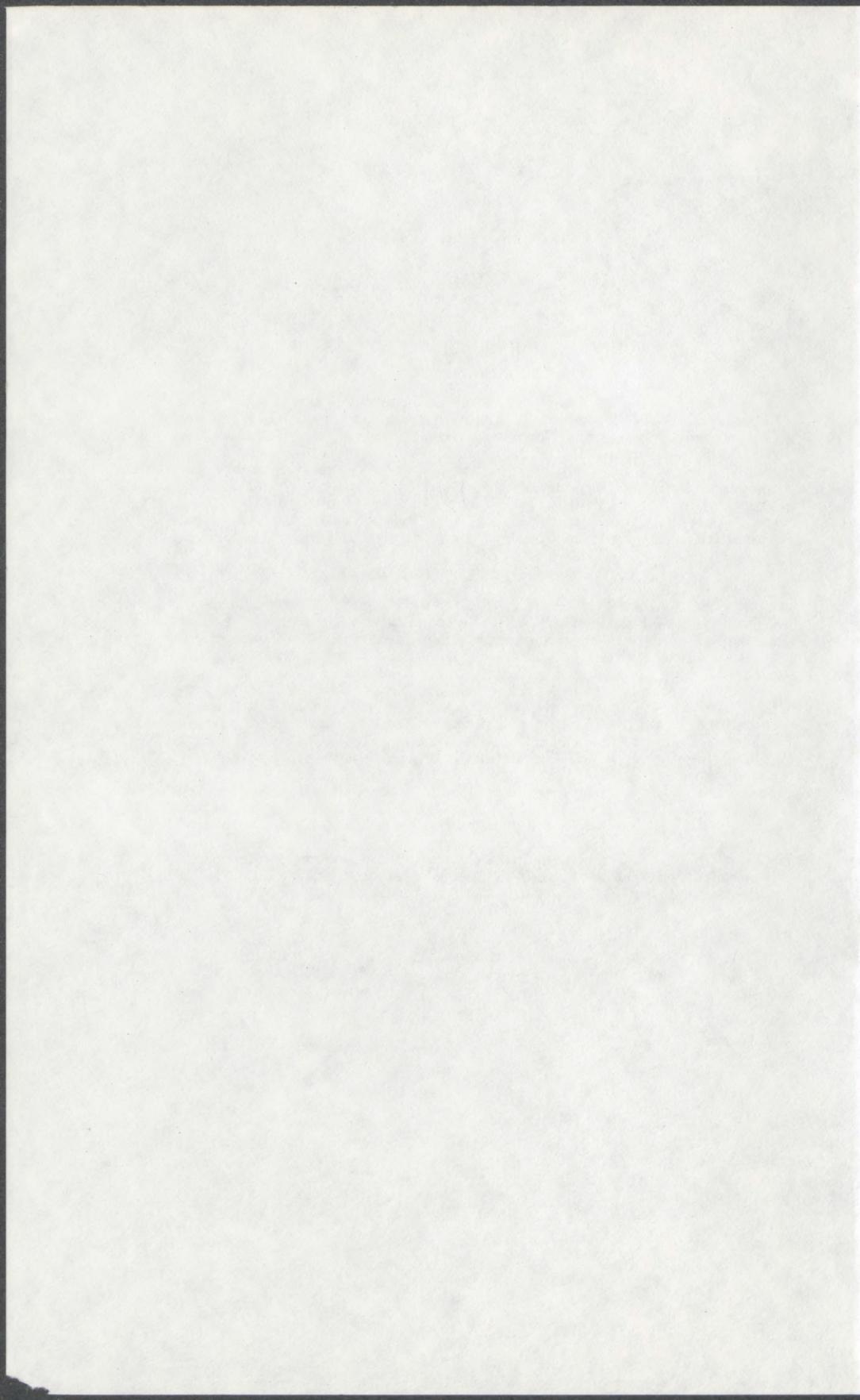
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# RAILROAD RETIREMENT ANNUITY INCREASE— 1980

THURSDAY, SEPTEMBER 25, 1980

U.S. SENATE,  
COMMITTEE ON LABOR AND HUMAN RESOURCES,  
*Washington, D.C.*

The committee met, pursuant to notice, at 9:40 a.m., in room 4232, Dirksen Senate Office Building, Senator Howard Metzenbaum, presiding pro tempore.

Present: Senator Metzenbaum.

## OPENING STATEMENT OF SENATOR METZENBAUM

Senator METZENBAUM. The hearing will come to order.

The committee will today consider S. 2979, a bill designed to address the financial problems confronting the Railroad Retirement System. I introduced this legislation on July 28, with the cosponsorship of Senators Mathias, Roth, Burdick, Melcher, McGovern, Church, Bayh, Williams, Culver, Ford, Hart, Baucus, Moynihan, Durkin, and Javits.

The word, "crisis," has been overworked in recent years, but there can be no doubt that it is the right word to describe the situation we shall examine this morning. The committee will give prompt attention to this legislation. The million railroad retirees should know that Congress is aware of the fund's problems, prepared to consider ways and means to make it solvent once again.

Today, we will hear testimony from members of the Railroad Retirement Board, labor representatives, and spokespersons for the railroad industry on this bill, and on any other steps they might suggest on how best to avert the human tragedy that bankruptcy will create for a million of our fellow citizens.

I will put my entire statement in the record, which is a bit longer than that which I have read.

I also will include in the record a statement of Senators Quentin Burdick, of North Dakota, and Wendell H. Ford, of Kentucky, which will be inserted immediately following my own statement.

[Senator Metzenbaum's full statement follows:]

## STATEMENT OF SENATOR HOWARD M. METZENBAUM

The committee will today consider S. 2979, a bill designed to address the financial problems confronting the railroad retirement system. I introduced this legislation on July 28 with the cosponsorship of Senators Mathias, Roth, Burdick, Melcher, McGovern, Church, Bayh, Williams, Culver, Ford, Hart, Baucus, Moynihan, Durkin, and Javits.

The word "crisis" has been overworked in recent years. But there can be no doubt that it is the right word to describe the situation we shall examine this morning.

The railroad retirement program began in 1935 primarily as a staff retirement plan intended to induce older workers to retire, making their jobs available to younger workers. The program was needed because railroad workers were excluded from social security coverage.

Over the years, disabled workers spouses and surviving spouses, children, and parents were added as beneficiaries under the railroad retirement program, so that the program coverage today is comparable to that provided by social security.

But, as with social security, the large increase in beneficiaries has also created problems for the fund. The total amount in the railroad retirement account has dwindled from \$4.1 billion in 1971 to less than \$1.9 billion at the end of 1979.

The underlying reason for this annual shortfall is the large number of retirees in the program as compared to the number of workers contributing to the fund.

In February 1979 the GAO reported that only 536,000 employees were making payments into a pension fund that must meet the needs of more than a million retirees. This impossible ratio, will change by 1995. But according to the 1979 annual report submitted by the President to Congress, 1995 is far too late. In fact, the fund could well go bankrupt in 1982—2 short years from now.

This is a grave situation for the million retired workers and dependents who rely on this pension to provide the necessities of life. And Congress should also be alarmed, because if we allow the fund to go broke, it will cause an additional burden on our social security and welfare system.

The proposal before us this morning is not meant as a long-term solution to the financial difficulty facing the fund. However, it will bring solvency to the fund while Congress considers a more comprehensive solution. It will maintain the current benefit formula until we can examine the benefit level more thoroughly. The bill only affects the tier 2 annuity component of the system which is the railroad industry pension—comparable to a private pension—and it does two things:

First, the bill would maintain the cost of living increases for pre- and post-retirement. Second, it would increase the tax that employers are required to pay into the fund on behalf of active workers.

I am pleased that the committee is giving prompt attention to this legislation. The million railroad retirees should know the Congress is aware of the fund's problems and is prepared to consider ways and means to make it solvent once again.

Today we will hear testimony from Members of the Railroad Retirement Board, labor representatives and spokesmen for the railroad industry on this bill and on any other steps they might suggest on how best to avert the human tragedy that bankruptcy will create for a million of our fellow citizens.

[The prepared statements of Senator Burdick and Senator Ford and text of S. 2979 follow:]

Prepared for hearing on the Railroad Retirement Act

STATEMENT BY SENATOR QUENTIN N. BURDICK ON S.2979

September 25, 1980

The income on which more than one million retired railroad workers, their spouses, and their widows rely on is in jeopardy.

The plain fact is that there will not be enough money in the railroad retirement account to pay for these annuities unless something is done by this Congress in this session.

From time to time in the past, we have heard of and dealt with problems of actuarial deficits or actuarial insufficiencies in the railroad retirement program. This time it is different. The problem is that there will not be enough cash in the railroad retirement account to pay annuities as they become due unless the Congress acts to replenish the account.

This condition of inability to pay debts when they become due is called insolvency. It provides a statutory basis for the petition in involuntary bankruptcy in a business context.

In this context, the depletion of the railroad retirement account means that when one of my retired railroad constituents in North Dakota goes to his mailbox for his monthly annuity check in some point in mid-1982, or mid-1983, there will be no check there. Nor will there be any checks for any of the retired employees anywhere else in the country if the insufficiencies of the railroad retirement account are permitted to continue.

The system is running out of money. More money is going out than is coming in, and we now find that this condition has been going on for far too long a period.

If railroad employment should continue to decline in the months ahead because of economic conditions, this insolvency point will be

reached in the middle of 1982. Even an economic upturn -- which now appears to be the case -- will simply postpone the day of insolvency by about one year -- that is in mid-1983.

What has to be done to avoid this collapse of the railroad retirement system -- is to increase railroad retirement input now -- in this session of Congress.

The bill, S.2979, now pending before the Senate Committee on Human Resources, which I cosponsored, does this. This bill proposes to increase the railroad retirement tax by just enough percentage points to pay these annuities as they become due -- and nothing more.

We are talking about more than one million beneficiaries and more than four billion dollars.

The reserve in the account is now falling so rapidly that it will drop below the solvency point unless something is done by this Congress. There must be lead time to rebuild this fund if we are to avoid a collapse. On the basis of what the railroad retirement industry can afford to pay, the lead time must begin on January 1, 1981. Revenues must be increased as of that date if a collapse in the system is to be avoided 18 to 24 months later.

The account must maintain a reserve of no less than three months of annuity payments or about one billion dollars at all times if the system is to insure payment of annuities as they become due.

S.2979 will do this. It will increase the railroad tax in an amount of three percent (3%) of payroll as of January 1, 1981. This is the minimum amount required to keep the system solvent.

If the Congress is to delay action on this emergency through its next

session of Congress, the amount of dollars required to maintain the system will be beyond the capacity of the railroads to respond. This will mean that the railroads will ask for some kind of support from the Federal Treasury to supply the short fall.

The time to act is now if we are to avoid this condition.

It is my hope and expectation that the Committee on Human Resources will report the bill favorably at the earliest possible moment and that the Senate will take up this measure promptly once it is reported.

I urge the Senate to take all steps necessary to keep faith with these hundreds of thousands of railroad retirees who depend upon this program for their subsistence.

Thank you.

STATEMENT OF SENATOR WENDELL H. FORD  
BEFORE THE SENATE LABOR AND HUMAN RESOURCES COMMITTEE  
HEARING ON S. 2979

MR. CHAIRMAN, the introductory remarks by Railroad Retirement Board Chairman William P. Adams contained in the 1979 Annual Report of the Board dramatically illustrate the scope of the problem which this legislation seeks to correct. Let me quote from that statement:

"The developments I have summarized threaten the viability of the railroad retirement and railroad unemployment insurance systems. This must be forthrightly addressed and the problem expeditiously resolved. Prompt, corrective action is necessary to assure continued availability of full uninterrupted benefits to current and former railroad workers, their dependents and their survivors. Failure to resolve the retirement financing problems jeopardizes both retirement and unemployment benefits."

Undoubtedly, some of our colleagues will, after reviewing the problems facing the system, contend that the handwriting is already on the wall and the numbers cannot be ignored. How can approximately 500,000 workers support retirees in excess of 1 million? Certainly, the declining nature of the system has placed a heavy burden on the system, but the Federal government must still maintain its commitment to a strong railroad retirement program.

For many of these annuitants, this represents the major source of their income. Many of the beneficiaries are widows of former railroaders. As of the end of 1978, almost 300,000 aged widows were receiving annuities. Their average age was almost 78. Several were over 100 years old. Disabled widows, widowed mothers and children also receive survivors benefits from the system.

A great many retirees and active workers have contacted me urging quick action on S. 2979. I understand their concerns and, quite frankly, their anger. These people paid into a system with the expectation of a secure future in return. Instead of security, they have been confronted with uncertainty and frustration. This is another example of the vast governmental machinery being unable to respond to the needs of the individual. We in Congress may confidently admit that the system can surely continue for another year or so, but that attitude provides no assurances in the least to the retired railroader or his widow. We have identified the problem and I see no reason why we have to wait for a crisis situation to develop before concluding that relief is necessary. I urge the committee to act expeditiously so that those dependant on the viability of the Railroad Retirement System are assured of the safety and soundness of their futures.

96TH CONGRESS  
2D SESSION

# S. 2979

To amend the Railroad Retirement Act of 1974 and the Internal Revenue Code of 1954 to assure sufficient resources to pay current and future benefits and to extend certain cost-of-living increases.

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## IN THE SENATE OF THE UNITED STATES

JULY 25 (legislative day, JUNE 12), 1980

Mr. METZENBAUM (for himself, Mr. MATHIAS, Mr. ROTH, and Mr. BURDICK) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

---

## A BILL

To amend the Railroad Retirement Act of 1974 and the Internal Revenue Code of 1954 to assure sufficient resources to pay current and future benefits and to extend certain cost-of-living increases.

1        *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*  
3 That (a) Section 3(b)(2) of the Railroad Retirement Act of  
4 1974 is amended by striking "1981" and substituting  
5 "1986".

6        (b) Section 3(d)(4) of such Act is amended—

1           (1) by striking "1981" and substituting "1986";  
2           and

3           (2) by striking "1980" each time it appears and  
4           substituting "1985".

5           (c) Section 3(g) of such Act is amended—

6           (1) by striking "and" which immediately precedes  
7           clause (D) in the first sentence thereof;

8           (2) by inserting immediately before the period at  
9           the end of the first sentence thereof the following: "  
10          (E) the unadjusted Consumer Price Index for the cal-  
11          endar quarter ending March 31, 1981, with such index  
12          for the calendar quarter ending March 31, 1980, (F)  
13          the unadjusted Consumer Price Index for the calendar  
14          quarter ending March 31, 1982, with the higher of (i)  
15          such index for the calendar quarter ending March 31,  
16          1981, or (ii) such index for the calendar quarter ending  
17          March 31, 1980, (G) the unadjusted Consumer Price  
18          Index for the calendar quarter ending March 31, 1983,  
19          with the highest of (i) such index for the calendar quar-  
20          ter ending March 31, 1982, (ii) such index for the cal-  
21          endar quarter ending March 31, 1981, or (iii) such  
22          index for the calendar quarter ending March 31, 1980,  
23          (H) the unadjusted Consumer Price Index for calendar  
24          quarter ending March 31, 1984, with the highest of (i)  
25          such index for calendar quarter ending March 31,

1 1983, (ii) such index for calendar quarter ending March  
2 31, 1982, (iii) such index for calendar quarter ending  
3 March 31, 1981, or (iv) such index for calendar quarter  
4 ending March 31, 1980, and (I) the unadjusted Con-  
5 sumer Price Index for calendar quarter ending March  
6 31, 1985, with the highest of (i) such index for calen-  
7 dar quarter ending March 31, 1984, (ii) such index for  
8 calendar quarter ending March 31, 1983, (iii) such  
9 index for calendar quarter ending March 31, 1982, (iv)  
10 such index for the calendar quarter ending March 31,  
11 1981, or (v) such index for the calendar quarter ending  
12 March 31, 1980”;

13 (3) by striking “and (D)” from the last sentence  
14 and substituting “(D), (E), (F), (G), (H), and (I)”;

15 (4) by striking “and June 1, 1980,” from the last  
16 sentence and substituting “June 1, 1980, June 1,  
17 1981, June 1, 1982, June 1, 1983, June 1, 1984, and  
18 June 1, 1985”.

19 SEC. 2. Subsection (a) of section 3221 of the Internal  
20 Revenue Code of 1954 is amended—

21 (1) by inserting “(1)” immediately after “(a)” at  
22 the beginning thereof;

23 (2) by striking out “9.5 percent” and substituting  
24 “the percentage determined for a particular calendar  
25 year pursuant to paragraph (2)”;

1           (3) by adding at the end thereof the following new  
2 paragraphs:

3           “(2) For purposes of paragraph (1), the percentage ap-  
4 plicable for calendar year 1981 shall be 12.5 percent and the  
5 percentage applicable for any calendar year after 1981 shall  
6 be determined as follows, but shall not be less than 9.5 per-  
7 cent for any calendar year before 1986:

8           “(A) If the account balance-benefit ratio for a cal-  
9 endar year is less than 0.7 and is not greater than  
10 such ratio for the preceding calendar year, the percent-  
11 age applicable for that calendar year shall be equal to  
12 the percentage applicable for the preceding calendar  
13 year plus the percentage which is numerically equal to  
14 100 times the greater of (i) one-tenth of the amount by  
15 which 0.7 exceeds such ratio for the calendar year,  
16 with the amount computed after multiplying by one-  
17 tenth being rounded to the next higher 0.005, or (ii)  
18 one-tenth of the amount by which such ratio for the  
19 preceding calendar year exceeds such ratio for the cal-  
20 endar year, with the amount computed after multiply-  
21 ing by one-tenth being rounded to the nearest 0.005.

22           “(B) If the account balance-benefit ratio for a cal-  
23 endar year is less than 0.7 but is greater than such  
24 ratio for the preceding calendar year, the percentage  
25 applicable for that calendar year shall be equal to the

1 percentage applicable for the preceding calendar year  
2 less the percentage which is numerically equal to 100  
3 times one-tenth of the amount by which such ratio for  
4 the calendar year exceeds such ratio for the preceding  
5 calendar year, with the amount computed after multi-  
6 plying by one-tenth being rounded to the nearest  
7 0.005.

8 “(C) If the account balance-benefit ratio for a cal-  
9 endar year is at least 0.7 but is not greater than such  
10 ratio for the preceding calendar year, the percentage  
11 applicable for that calendar year shall be equal to the  
12 percentage applicable for the preceding calendar year  
13 plus the percentage which is numerically equal to 100  
14 times one-tenth of the amount by which such ratio for  
15 the preceding calendar year exceeds such ratio for the  
16 calendar year, with the amount computed after multi-  
17 plying by one-tenth being rounded to the nearest  
18 0.005.

19 “(D) If the account balance-benefit ratio for a cal-  
20 endar year is at least 0.7 and is greater than such  
21 ratio for the preceding calendar year, the percentage  
22 applicable for that calendar year shall be equal to the  
23 percentage applicable for the preceding calendar year  
24 less the percentage which is numerically equal to 100  
25 times the greater of (i) one-tenth of the amount by

1       which such ratio for the calendar year exceeds 0.7,  
2       with the amount computed after multiplying by one-  
3       tenth being rounded to the next higher 0.005, or (ii)  
4       one-tenth of the amount by which such ratio for the  
5       calendar year exceeds such ratio for the preceding cal-  
6       endar year, with the amount computed after multiply-  
7       ing by one-tenth being rounded to the nearest 0.005.

8       “(3) For purposes of this subsection—

9               “(A) The ‘account balance-benefit ratio’ for a cal-  
10              endar year shall be the ratio of (i) the adjusted cash  
11              balance of the Railroad Retirement Account as of the  
12              close of business on September 30 of the preceding cal-  
13              endar year, to (ii) the net benefit payments made from  
14              such account during the twelve consecutive calendar  
15              month period ending September 30 of the preceding  
16              calendar year.

17             “(B) The term ‘adjusted cash balance’ means the  
18             excess of (i) the sum of the cash balance of the Rail-  
19             road Retirement Account (as certified to the Railroad  
20             Retirement Board by the Secretary and as verified by  
21             such Board), plus tax and interest income due and  
22             owing under the Railroad Retirement Tax Act which  
23             the Railroad Retirement Board believes will be paid  
24             before December 31 of the calendar year in which the  
25             particular determination of the account balance-benefit

1 ratio is being made, and plus amounts of overpaid  
2 benefits from the Railroad Retirement Account which  
3 such Board expects to recover, over (ii) the total  
4 amount of benefits which the Railroad Retirement  
5 Board has determined are due from the Railroad Re-  
6 tirement Account but which have not been paid as of  
7 the close of business on September 30 of the calendar  
8 year in which the particular determination of the ac-  
9 count balance-benefit ratio is being made.

10 “(C) The term ‘net benefit payments’ means the  
11 excess of (i) the sum of all amounts expended from the  
12 Railroad Retirement Account during the twelve con-  
13 secutive calendar month period ending September 30  
14 of the calendar year in which the particular determina-  
15 tion of the account balance-benefit ratio is being made,  
16 including amounts expended in loans during such  
17 period either to the Railroad Retirement Supplemental  
18 Account pursuant to section 15(d) of the Railroad Re-  
19 tirement Act or to the railroad unemployment insur-  
20 ance account pursuant to section 10(b) of the Railroad  
21 Unemployment Insurance Act, plus the total amount of  
22 benefits which the Railroad Retirement Board has de-  
23 termined are due from the Railroad Retirement Ac-  
24 count but which have not been paid as of the close of  
25 business on September 30 of the calendar year in

1       which the particular determination of the account bal-  
2       ance-benefit ratio is being made, over (ii) the total  
3       amount of benefits which the Railroad Retirement  
4       Board had determined were due but were unpaid from  
5       the Railroad Retirement Account as of the close of  
6       business on September 30 of the calendar year preced-  
7       ing the calendar year in which the particular determi-  
8       nation of the account balance-benefit ratio is being  
9       made.

10           “(D) The Railroad Retirement Board is author-  
11       ized to use estimated amounts for the purpose of  
12       making the determinations required by this paragraph.

13           “(4) Not later than 30 days before the beginning of a  
14       calendar year, the Railroad Retirement Board shall deter-  
15       mine the account balance-benefit ratio for such calendar year.  
16       As soon as practicable after the date of such determination,  
17       the Railroad Retirement Board shall publish a notice in the  
18       Federal Register, and shall advise all employers, employee  
19       representatives, and the Secretary, of the ratio so determined  
20       and of the tax rate applicable under paragraph (1) for the  
21       calendar year for which such ratio was determined.”.

22           SEC. 3. The amendments made by sections 1 and 2 of  
23       this Act shall be effective January 1, 1981.

Senator METZENBAUM. We have three panels this morning. The Chair wishes to announce that at 11:30, I will have to leave. We have 1 hour and 50 minutes, and I therefore will allocate around 35 minutes to each panel. Therefore, I will ask each person who is speaking to summarize his statement, and the entire statement will be included in the record. We have about eight witnesses, and I will ask each one to confine himself to not more than 7 minutes.

Our first panel is the Honorable William P. Adams, Chairman of the Railroad Retirement Board; Mr. Charles J. Chamberlain, labor member of the Railroad Retirement Board, and Mr. Earl Oliver, management member of the Railroad Retirement Board.

Gentlemen, would you please be good enough to come to the table?

**STATEMENT OF HON. WILLIAM P. ADAMS, CHAIRMAN, RAILROAD RETIREMENT BOARD; CHARLES J. CHAMBERLAIN, LABOR MEMBER; EARL OLIVER, MANAGEMENT MEMBER; ROBERT LARSON, CHIEF ACTUARY; AND NORMAN SOLOMON, ASSISTANT; DALE ZIMMERMAN, GENERAL COUNSEL, A PANEL**

Mr. ADAMS. Mr. Chairman, for the record, I am William Adams, Chairman of the Board. On my right is Mr. Chamberlain, labor member of the Board. On my left is Mr. Oliver, management member of the Board. On Mr. Oliver's left, we have Mr. Robert Larson, our chief actuary, and on his left, Mr. Norman Solomon, his assistant. On Mr. Chamberlain's right is our General Counsel, Mr. Dale Zimmerman who, as of Monday, has also become our Acting Chief Executive Officer, just in case we get into technical questions.

Senator METZENBAUM. I am very happy to welcome all of you. I doubt very much that this morning's hearings will focus on the technical questions, but rather, I think we would like an overview of the positions of the respective parties.

Mr. ADAMS. Well, Mr. Chairman, in the interest of brevity, I would like to just briefly summarize my written statement.

This bill, which adds five additional cost-of-living increases and imposes a variable tax rate on the employers to fund the tier II portion of our retirement system, does propose a solution to the immediate problem of a possible cash shortage by 1982.

I agree that something should be done. Congress should act with something that would become effective in 1981 to avoid the possibility of a cash shortage in 1982.

Normally, legislation such as this has always been based upon negotiation and agreement between labor and management, and it is my understanding that negotiations are currently in progress. In my view, I think it would be better, of course, if all parties could, through negotiation and agreement, agree on one piece of legislation. But obviously, it is a serious problem that we might run out of cash in 1982, and it does need to be addressed immediately.

With your permission, I would like to yield to Mr. Chamberlain for his comments.

[The prepared statement of Mr. Adams follows:]

STATEMENT OF WILLIAM P. ADAMS,  
CHAIRMAN OF THE RAILROAD RETIREMENT BOARD  
ON S. 2979,  
BEFORE THE COMMITTEE ON LABOR AND HUMAN RESOURCES  
OF THE U. S. SENATE

Senator Metzenbaum and Members of the Committee, my name is William P. Adams, Chairman of the Railroad Retirement Board. Accompanying me is Mr. Charles J. Chamberlain, the Labor Member of the Board, and Mr. Earl Oliver, the Management Member of the Board. We appreciate the opportunity to appear before the Committee today to testify on the bill S. 2979.

The first section of S. 2979 amends section 3 of the Railroad Retirement Act of 1974 to provide five additional pre-retirement cost-of-living increases which would occur on January 1 of each of the years 1982 through 1986. In addition, section 3 of the Retirement Act is amended to add five additional post-retirement cost-of-living adjustments which would occur on June 1 of each of the years 1981 through 1985.

Section 2 of the bill amends section 3221(a) of the Internal Revenue Code of 1954 (the Railroad Retirement Tax Act) to increase the rate of tax imposed upon covered employers from 9.5 percent to 12.5 percent in calendar year 1981 and to automatically adjust the rate of tax each year thereafter based upon changes in the relationship between the adjusted cash balance of the Railroad Retirement Account as of the end of each fiscal year and the amount of benefits paid from the Account during the fiscal year. This relationship is referred to in the bill as the "account balance-benefit ratio". The account

balance-benefit ratio as of the end of a fiscal year (September 30), and the relationship of that ratio to the ratio at the end of the previous fiscal year, would determine the employer tax rate for the following calendar year. Thus, for example, the account balance-benefit ratio as of September 30, 1981, would be the ratio for calendar year 1982 and would determine the rate of tax imposed on employers for compensation paid in 1982.

Section 3 of the bill provides that the amendments made to the Retirement Act by the bill will take effect January 1, 1981. I believe that amendments to the Railroad Retirement Act must be made in the very near future to place the railroad retirement system on an actuarially sound basis and to avoid an immediate cash flow problem. The Board's Chief Actuary has estimated that on the basis of certain assumptions the railroad retirement system could run out of funds as early as 1982. Providing a remedy to these serious problems is obviously the first order of business at this time.

S. 2979 provides a solution to the most pressing concern of the railroad retirement system of providing adequate funding for current and future benefits by providing for a fluctuating tax rate on employers. Changes, such as those proposed in S. 2979, to the railroad retirement system are usually made based on negotiation and agreement between representatives of railroad labor and management, and, in my view, it would be beneficial if the problems of the system could be resolved by negotiations and

legislation supported by both parties. It is my understanding that such negotiations are presently in progress; however, it is imperative that Congress act to put the railroad retirement system on a sound financial basis effective in calendar year 1981. Unless this is done, the Board's Chief Actuary has, as I have stated, estimated that the system may be without funds in 1982.

Senator METZENBAUM. Fine. Thank you, Mr. Adams.

Let me say that the acting chairman of the committee and the committee recognize that there is a sense of urgency, and we do not want to wait until the very last moment. I think it is easier to solve the problem if we anticipate the problem. We strongly urge the parties to accelerate the process so that we do not have to resolve it on a political basis, but try to resolve it on a basis similar to that which has been used in the past.

Mr. Chamberlain?

Mr. CHAMBERLAIN. Thank you, Mr. Chairman. I am pleased to appear before your committee today to express my support for bill S. 2979. I, too, will summarize my statement, since it will be included in the record.

S. 2979 addresses our problem by amending the Railroad Retirement Tax Act to insure adequate financing of the system. This would be accomplished through a fluctuating employer tax rate patterned after the highly successful and efficiency system found in the Railroad Unemployment Insurance Act. This fluctuating tax rate is designed to permanently resolve the cash flow problems of the system. The significance to current beneficiaries and future retirees of a financing mechanism such as provided by this bill cannot be overemphasized. Obviously, the people covered by the railroad retirement system or any other retirement system desire assurance that money will be available to pay the retirement benefits which they have earned during their working lifetime. Enactment of the variable tax rate provisions contained in S. 2979 will provide the corrective measures needed.

Furthermore, a variable tax rate and only a variable tax rate can provide the assurance that the system will not at sometime in the future again face a financial crisis requiring corrective action.

Enactment of S. 2979 would not, of course, preclude continuing consideration of changes in the current benefit structure. In fact, enactment of a variable tax rate would, by eliminating the imminent threat to the benefits due current beneficiaries, provide the time needed to permit negotiations between the representatives of railroad labor and management on a comprehensive agreement as to the future financing and structure of benefits for the railroad retirement system.

Furthermore, it must be clearly recognized that reductions in the benefits payable to future retirees and their dependents cannot prevent the fund from running out of money. The system's cash problem is too immediate for such a solution. Unless the financial

interchange between the Railroad Retirement System and the social security system is put on a current basis, or unless Federal subsidies are provided, a tax increase is essential to prevent a disruption of the benefit payments due people who depend on such benefits for their livelihood.

In addition, another important factor. S. 2979 provides for the continuation of cost-of-living increases to the tier II component of railroad retirement annuities. In inflationary times such as we are experiencing at present, retired individuals, like all other individuals, need assurances that their incomes will keep abreast of increases in the cost-of-living.

While S. 2979 will not protect railroad retirement beneficiaries to the same degree as is true of social security beneficiaries, it does provide them the continuation of the current cost-of-living protections which would end without passage of such legislation.

In closing, I would like to emphasize the importance that some action be taken effective in calendar year 1981, if the system is to continue to pay benefits to the over 1 million retirees, dependents, and survivors currently on the rolls. Delaying any tax increase until 1982 would undoubtedly mean that additional measures, such as placing the financial interchange current or providing Federal subsidies, would be necessary to keep the fund from running out of money. Tax increases alone, if delayed until 1982, would not be an acceptable solution, because the tax rates would probably have to be so high the industry could not afford them.

The problem is serious, and the problem is immediate, and S. 2979 provides a solution, and I strongly urge its enactment.

Thank you.

[The prepared statement of Mr. Chamberlain follows:]

STATEMENT OF C. J. CHAMBERLAIN, LABOR MEMBER  
OF THE RAILROAD RETIREMENT BOARD,  
IN SUPPORT OF S. 2979  
BEFORE THE COMMITTEE ON LABOR AND HUMAN RESOURCES  
OF THE UNITED STATES SENATE

Mr. Chairman and Members of the Committee, my name is Charles J. Chamberlain. I am the Labor Member of the Railroad Retirement Board and am pleased to appear before you today to express my support for the bill S. 2979.

The railroad retirement system is currently operating with a long-term actuarial deficit and faces extremely serious short-term cash flow problems. Recent projections of the fund's cash income and outgo predict cash difficulties in 1982 or 1983 and thereafter, throughout the remainder of the 1980's, a lack of funds to pay benefits as they become due. These earlier predictions of financial difficulties than envisioned by the 14th Actuarial Valuation result largely from current economic conditions, which have created financial problems for the social security system as well as for the railroad retirement system.

S. 2979 addresses this problem by amending the Railroad Retirement Tax Act to assure adequate financing of the system. This would be accomplished through a fluctuating employer tax rate patterned after the highly successful and efficient system found in the Railroad Unemployment Insurance Act. This fluctuating tax rate is designed to permanently resolve the cash flow problems of the system.

The significance to current beneficiaries and future retirees of a financing mechanism such as is provided by this bill cannot be over emphasized. Obviously, the people covered by the

railroad retirement system, or any other retirement system, desire assurance that money will be available to pay the retirement benefits which they have earned during their working lifetimes. Yet during the past decade serious doubts have arisen on two separate occasions as to whether the financial security which railroad employees and their dependents have worked for and relied upon will be available when it is needed.

In 1970 questions were raised as to whether the benefits provided by the railroad retirement system were adequately financed. Because of these concerns, Congress established a Commission on Railroad Retirement to study the system and its financing for the purpose of making recommendations as to the measures necessary to provide adequate levels of benefits on a financially sound basis. In its report, which was submitted in 1972, the Commission found that if corrective measures were not taken the system would run out of money with which to pay benefits sometime in the mid-1980's.

After receiving this report, Congress instructed representatives of railroad labor and management to enter into negotiations that would take into consideration the specific recommendations of the Commission on Railroad Retirement and to submit their joint recommendations for restructuring the railroad retirement system in a manner which would insure its solvency. In June of 1974 a bill was introduced to implement the recommendations made by the representatives of labor and management in accordance with the Congressional directive, and

that bill was later enacted, with amendments, to provide the Railroad Retirement Act of 1974.

With the enactment of that legislation, the representatives of railroad labor, the representatives of railroad management, and the Congress all believed that the financial problems of the railroad retirement system had been resolved. Sadly, that did not prove to be true. In 1974, no one predicted, or could reasonably predict, the current historically high inflation rates which have caused benefits to rise to unexpectedly high levels merely to keep pace with increases in the cost of living. In 1974, no one predicted that the costs of paying dual benefit "windfall" amounts would increase to such an extent that the full-cost appropriations authorized by statute to fund these payments would not be made. In 1974, no one predicted the sharp increase in railroad unemployment which has caused the gap between employment taxes collected and the costs of benefits paid to widen. As a result, only six years after the enactment of the legislation designed to insure the system's solvency, the railroad retirement system is again faced with predictions that the fund will run out of money in the mid-1980's if corrective measures are not taken.

Enactment of the variable tax rate provisions contained in S. 2979 would provide the corrective measures needed. Furthermore, a variable tax rate, and only a variable tax rate, can provide the assurance that the system will not at some time in the future again face a financial crisis requiring corrective

action. With a variable tax rate, the system's solvency does not depend on the accuracy of predictions as to future economic conditions or future employment levels or numbers of future beneficiaries. Indeed, with the variable tax rate the fund will always be in actuarial balance and the concept of actuarial deficiency or surplus will not be applicable.

Objections have been raised to the variable tax rate by representatives of railroad management, largely because of the substantially higher tax rates which might result. Those representatives have urged that alternative methods of financing the system should be explored before tax increases are imposed, with the possible reduction of future benefits being one of the alternatives to be considered.

Enactment of S. 2979 would not, of course, preclude continuing consideration of changes in the current benefit structure. In fact, enactment of a variable tax rate would, by eliminating the imminent threat to the benefits due current beneficiaries, provide the time needed to permit negotiations between the representatives of railroad labor and management on a comprehensive agreement as to the future financing and structure of benefits for the railroad retirement system. Furthermore, it must be clearly recognized that reductions in the benefits payable to future retirees and their dependents cannot prevent the fund from running out of money. The system's cash problem is too immediate for such a solution. Unless the financial interchange between the railroad retirement system and the social

security system is put on a current basis or unless Federal subsidies are provided, a tax increase is essential to prevent a disruption of the benefit payments due people who depend on such benefits for their livelihoods.

In addition to resolving the system's serious financial problems, S. 2979 provides for the continuation of cost-of-living increases to the tier II component of railroad retirement annuities. In inflationary times such as we are experiencing at present, retired individuals, like all other individuals, need assurances that their incomes will keep abreast of increases in the cost of living. While S. 2979 would not protect railroad retirement beneficiaries to the same degree as is true of social security beneficiaries, it does provide them the continuation of the current cost-of-living protections which would end without passage of such legislation.

In closing, I would like to again emphasize that it is imperative that some action be taken effective in calendar year 1981 if the system is to continue to pay benefits to the over one million retirees, dependents, and survivors currently on the rolls. Delaying any tax increase until 1982 would undoubtedly mean that additional measures such as placing the financial interchange current or providing Federal subsidies would be necessary to keep the fund from running out of money. Tax increases alone, if delayed until 1982, would not be an acceptable solution because the tax rates would probably have to be so high that the industry could not afford them. The problem is serious and the problem is immediate. S. 2979 provides the solution. I strongly urge its enactment.

Senator METZENBAUM. Thank you very much, Mr. Chamberlain. I will hold my questions until each of you have spoken.

Mr. Oliver?

Mr. OLIVER. Mr. Chairman, I am Earl Oliver, a member of the Railroad Retirement Board, like my colleagues, for the past 3 years. I am that person the act describes as the member who shall be appointed from recommendations made by representatives of the employers.

Charles Hopkins, chairman of the National Railway Labor Conference, will testify at length. I have read his prepared statement and support it fully.

There is one point I should like to stress, however, and that is there is no need for tax increase legislation at this time.

The Board's best estimate is that the retirement fund will not reach a negative cash position until April 1983, and then only for a couple of months. It will be back in the black again in June, when the financial interchange takes place.

Management and labor are bargaining earnestly to resolve this and other railroad retirement problems and have set for themselves a target date of December 31, 1980. There is every reason to believe they can arrive at a negotiated solution, unless Congress disturbs the bargaining process by passing this bill.

Thank you.

Senator METZENBAUM. Thank you very much, Mr. Oliver.

As the Chair has already indicated, I do not believe we would be usurping the process. I would think that we would be meeting our responsibilities, which we will do if the parties themselves fail to move with dispatch. But that brings me to a concern that we have. You have testified—well, actually, it was part of Mr. Adams' testimony—that the fund faces possible bankruptcy by 1982. You indicate that there will be a cash deficit by April of 1983, but then it will be back in balance by June. We will hear a statement from Mr. Hopkins, representing the National Railway Labor Conference, suggesting that a negative balance might not appear until 1987 or 1991.

Now, frankly, the Chair is somewhat confused. One says 1982, the other says 1983, and then back in balance by 1983. The employer statement is 1987 or 1991. I wonder if you, Mr. Adams, might be good enough to clarify the situation?

Mr. ADAMS. Mr. Chairman, I am not sure that I can really clarify it in detail. However, these projections have been based on various economic assumptions—the rate of inflation, the level of employment in the industry. And the 1982 projection of the possibility of running out of funds would be what you might call the worst case scenario; if everything went very badly in all areas. It is possible—the last I knew, our actuary, based on some assumptions, said it would be possible to run out of money, possibly in April or May of 1982. Now, again, in June of 1982, the financial interchange would occur. So this would be like a 1 or possibly 2-month hiatus, under the worst case scenario.

I think what Mr. Oliver was referring to—and he can correct me if I am wrong—was that the most likely occurrence would be, say, a middle projection, would be sometime in 1983; again, early in the spring, and again in June of 1983, we would have a financial

interchange, and again we would have some money back in the Fund, we would be solvent.

Senator METZENBAUM. What does "financial interchange" mean?

Mr. ADAMS. Financial interchange is the payment that the Railroad Retirement Board receives from the social security trust fund. What the railroad retirement fund does is pay into the social security fund the amount of taxes that would be paid if all railroad workers were covered under social security. On an annual basis, the social security fund pays to the railroad retirement fund the amount of social security benefits those taxes have earned railroad employees. When we talk about putting that on a current basis, there is an average 15-month lag in our receipt of those payments. We received, for example, in June of 1980, the amount of money we paid out in the previous fiscal year. So, as much as a 20-month lag and as little as 9-month, average 15-month, lag on that.

Senator METZENBAUM. The Chair is going to declare a 4-minute recess. They need me for one vote in the Energy Committee, and they need me for a quorum. So we will be in recess for approximately 5 minutes.

[Short recess.]

Senator METZENBAUM. I think you were in the process, Mr. Adams, of explaining why different figures came up. Do you have your actuary with you?

Mr. ADAMS. Yes, sir. Just briefly, Mr. Chairman, I think what I was saying is the different dates would be either a pessimistic or a mediocre or an optimistic projection of what could happen.

I do want to make one point clear. When we talk about running out of money, say, in April or May of whatever year we are referring to, 1982, 1983, 1987, and then getting the fund replenished through the financial interchange in June of that year, that does not mean that that cures our problems when we get that money in June. When we reach the point where we have run out of sufficient funds in the account to pay all the benefits in, say, April or May, that interchange money that we would receive in June, plus the taxes we would collect, we estimate would carry us probably through the end of that year, like December of that year. Then the fund would be actually bankrupt.

Senator METZENBAUM. If Congress were to fully fund the windfall benefit, how much money would it mean to the account, and would it make the fund financially sound, and for how long?

Mr. ADAMS. The shortfall up to this year in the windfall appropriation has been about \$343 million. It will get worse, because right now, we are receiving \$350 million. The need for windfall right now is about \$500 million. So we are considerably short, and that problem will worsen as it continues. But right now, if it were fully funded, not counting any interest we may have earned on the money had we received it every year since 1976, we are about \$343 million actual dollars short in appropriations.

Now, our benefit payments are around \$460 million a month, so that would not solve our problem.

Mr. OLIVER. Mr. Chairman, may I add a footnote?

Senator METZENBAUM. Surely.

Mr. OLIVER. If the financial interchange were put on a current basis, that would stave off the cash shortage for a couple of years.

It would not solve the problem, but it would help give us time to solve the problem.

Senator METZENBAUM. Tell me this. How long do you think Congress should wait before it says, "It is time enough, and we are going to move"?

Mr. ADAMS. Well, if—and I believe, at least from the board's point of view, that we have to try to be prepared for the possibility of the worst case scenario, which would mean running out of money in 1982. It seems to me, then, that something has to be done effective in calendar 1981. If a tax increase is applied, then it seems to me it should be effective as early as possible in 1981.

Senator METZENBAUM. I understand the House Subcommittee on Transportation passed a bill last night which included (1) a phase-in of the financial interchange so it would be on a current basis, and (2) extending the cost of living increases 1 year and directing the board to prepare a recommendation for putting the fund on a financially sound basis. Do you have an opinion with respect to that legislation?

Mr. ADAMS. I heard about that last night, and I guess it happened last night. What it would obviously do would be buy some more time to at least give all parties concerned a chance to come up with a more permanent solution. As I understand it, by adding just 1 more year on cost of living and putting the interchange on a current basis, it would possibly defer any cash problems we might have for about 2 more years.

Senator METZENBAUM. The Chair will advise the parties who are in the negotiations that he would like to be advised prior to the time that we recess, which would be next week, as to what is the outside deadline, the date for us to wait, before we start to move this legislation and mark it up.

The Chair wishes to be cooperative, but the Chair usually likes to anticipate problems, not wait until they occur. If the parties can agree upon such a date, that is fine with me, but I would ask that such a date be indicated by next week. If not the Chair will indicate that he intends to press forward with respect to markup. I do not know what can be done in the "lame duck" session. I doubt if very much can be done. But he would then be prepared to move very rapidly immediately after Congress meets in January.

Thank you very much, gentlemen.

Senator METZENBAUM. Our next witness is Mr. Charles I. Hopkins, Jr., chairman of the National Railway Labor Conference, accompanied by David Lee, counsel.

We are happy to welcome you.

**STATEMENT OF CHARLES I. HOPKINS, JR., CHAIRMAN, NATIONAL RAILWAY LABOR CONFERENCE, ACCOMPANIED BY DAVID LEE, COUNSEL**

Mr. HOPKINS. For the record, Mr. Chairman, I am Charles I. Hopkins, Jr., chairman of the National Railway Labor Conference, and in that capacity, chief spokesman for practically all of the railroad industry in national level collective bargaining and other national level labor relations matters, including in particular reference to what is before your committee, matters of railroad retirement.

I understand that our full prepared text will be received in the record, and therefore, I will just extemporize, and I think probably it would be most pertinent if I depart from what would amount to a summary of the prepared statement and instead focus on some of the points that arose—

Senator METZENBAUM. Really the thrust of what your concerns are.

Mr. HOPKINS. One point that I would like to address at the outset is your comment about a bill that you indicated passed last night on the House side, that emerged from the subcommittee. I was not aware of that. We had, just in the matter of the past couple of days, been advised that an idea or a proposal of that nature was pending, and what we were told was that there would be two ingredients, essentially, one being an additional year of extension of the current cost of living indexing provisions in the Railroad Retirement Act, and also a provision for a joint study or a report by the Railroad Retirement Board on permanent solutions with some kind of a deadline. In addition, a provision on a gradual basis for putting the financial interchange on a current, rather than the delayed basis, that we experience at present. That is the extent of my knowledge, and as I say, it came as a surprise to me to learn that something actually passed last night.

Senator METZENBAUM. I am sure you understand, Mr. Hopkins, that my information comes to me from staff. If he is unreliable, I will fire him in the morning, but he is usually reliable, and I assume that he knows what he is speaking about.

[Laughter.]

Mr. HOPKINS. I certainly accept that.

Senator METZENBAUM. The facts will speak for themselves, obviously.

Mr. HOPKINS. I think it might be well for me to speak to the question you raised about the confusion, and I would acknowledge that there is confusion, as to what numbers or set of numbers one might rely on in order to make a realistic assessment as to the condition of the railroad retirement account. As the others before me have said, one of the principal reasons for the seeming confusion and the profusion of numbers is the fact that we are dealing with projections off into the future, either for a short term of 5 or 6 years or, in the case of the actuarial projections, a period of some 75 years off into the future. Obviously, projections of that kind are extremely sensitive to the economic assumptions, principally, the employment levels in the industry, the interest assumption, the movement in the Consumer Price Index, and wage behavior. All of those factors interact together, and what assumptions one makes vary greatly what the projections look like.

In addition, however, is the fact that the imminence of a cash crisis for the railroad retirement account, quite apart from economic assumptions, is very crucially involved with whether or not the Congress fulfills the commitment that was made in 1974 to fully fund the dual benefit phaseout, or the so-called windfall. And whether or not the financial interchange with social security is put on a current basis.

While we have some difference with the organizations on many details of railroad retirement that are actively under negotiation,

there are many key points on which we are in agreement and have been for a long time, and among those are full funding of the dual benefit phaseout, as we had understood and expected would be the case with the enactment of the 1974 amendment, and putting the financial interchange on a current basis. There is no justification—and this was said by the nonpartisan Actuarial Advisory Board on Railroad Retirement—that there is no justification for the railroad retirement account to be in a creditor relationship to the social security account.

Now, if those two things come to pass—that is, there is an adequate funding of the dual benefit phase and if the financial interchange is put on a current basis, then we do not have an imminent cash crisis.

Now, it is that combination, together with what I think are fairly called realistic or intermediate economic assumptions, that—

Senator METZENBAUM. But Mr. Hopkins, if you did both of those you would merely be providing some funding for the railroad retirement fund, that one would come by an acceleration of the interchange funds, and the other would come from congressional appropriations. But the fact is that the railroad retirement fund still would not be actuarially sound. The outgo would be greater than the input, and that would merely be a delaying action. Doesn't it make sense to bite the bullet at the earliest possible moment, because the longer you delay it, the more you have to play catchup?

Mr. HOPKINS. I do not want to plunge into the confusing array of figures, but I think it is fair to say that those developments—that is, an adequate funding of the dual benefit phaseout, plus a current financial interchange—would accomplish more than just staving off the inevitable. That is not to say that there would not still be a cash shortfall probably in the late 1980s. And the financial interchange would be a one-time improvement in the cash condition of the railroad retirement account of a magnitude of about \$1.5 to \$1.6 billion.

Senator METZENBAUM. How did that come up? How did that procedure of the delayed interchange come about over a period of years?

Mr. HOPKINS. Well, it is a creature of statute, and correcting it would require a legislative change.

Senator METZENBAUM. Why was it put in originally? Why was it put in on a delayed basis? Why did the Congress do it earlier? I was not here, and I am not really that familiar with it. Why did it occur?

Mr. HOPKINS. Nor was I here, sir, so that I cannot speak with first-hand knowledge. I can only suppose that it seemed to those who were drafting the mechanism at the time a reasonable and practical way to do it. Perhaps not being sensitive to the potential it might represent to the cash depletion of the railroad retirement account, it was established in a way that protects both the social security account and the railroad retirement account from an actuarial standpoint, because the delayed payment is made with interest. So that on a long-term basis, the railroad retirement account is not adversely affected. The serious detriment occurs simply because \$1.5 billion or more of cash that should be there is not there.

Senator METZENBAUM. If you were asked to be a prognosticator, and you looked at the political realities and the financial condition of the social security fund, and the fact that the social security taxes are scheduled to go up, and all of the other aspects of that problem, do you think it is realistic to anticipate that there will be any change in the interchange procedures in the near future?

Mr. HOPKINS. Well, obviously, I speak from a vantage point. I think it is realistic, and I say that acknowledging the very serious problems of social security. But the facts are, as I understand them, that the problems of social security require changes that are quite apart from this financial interchange question. I think perhaps an oversimplified but fairly accurate way to put it is this, that if the financial interchange were made current, it would improve the cash position of the railroad retirement account to the extent that between 1 and 2 years' additional time would go by before there would be any possibility of a cash crisis. At the same time, that would not represent any detriment to the social security account by more than a matter of days. So the point is that whatever is done about the financial interchange is not going to affect the social security problems. Those problems are there, they are real, and they are very serious, but they are not affected in the slightest degree, I think fairly, by putting it on a current basis with the railroad retirement account.

Senator METZENBAUM. But realistically speaking, I do not think that you can anticipate that kind of impact on the social security fund, in view of the political realities that presently exist. Therefore, I think we have to talk about either a congressional resolution or a resolution by the parties.

Now, a principal point in your testimony is that Congress should wait until a compromise proposal between labor and management is produced. Now, I think you and I would both agree that Congress has the responsibility to concern itself about the interests of the 1 million retirees affected by this fund. Now, as a matter of procedure this has been a negotiated matter between representatives of the railroad unions, representatives of the railroad industry, on an informal basis. But the fact is that that is because the parties wanted it that way, and therefore, Congress acceded to it and cooperated with it.

I remember many years ago when I was in the Ohio General Assembly that it had been a precedent for many years for labor and industry to agree to the changes that would be made with respect to workmen's compensation legislation. And then one time, they did not do very well, and they did not come up with an agreement, and from that point on, the legislature moved forward on the subject.

But speaking only for myself, I want to say that I would be very happy to see labor and management resolve this matter, but I do not intend to delay the legislation while the parties wait until the very last moment. I have been in labor negotiations over the period of my lifetime, on both sides. I know that the usual procedure is to delay and wait until the last moment. I have indicated that I would like some date set by the parties beyond which the parties would recognize that the Congress would attempt to accelerate the process.

You, representing industry, do you feel there would be any difficulty in responding to the Chair's request that was indicated when the previous witnesses were before the committee?

Mr. HOPKINS. We are prepared to do that, and in fact, have been urging for some time, our original suggestion going back more than a year ago, that we set for ourselves a deadline of the end of this year by which time we will have forced a joint labor-management proposed bill on railroad retirement that would address the problems. The labor organizations have not accepted that, nor have they rejected it. I want to try to be fair to their position, and I think their position is that we want to continue to negotiate with you, but in the meanwhile, we will see if we cannot get something else through the Congress.

We have been prepared to commit to a deadline. We have engaged in vigorous negotiations for a number of months. And I think I would have to say the timetable is ambitious, but we on the management side are quite prepared to do our utmost to meet it, and if the organizations share our interest in achieving that deadline—and I think they do—I would say the odds are very promising that we will.

I would like to add that your analogy to workmen's compensation legislation that has emanated in one State or another as a result of negotiations or discussions between labor and management is not entirely analagous to the situation we have here, one reason being that in the 1974 amendments to the Railroad Retirement Act, in reporting those amendments, the Congress declared it to be the case that tier II of railroad retirement, which was the creature of the 1974 amendments, was in effect the railroad industry equivalent of a private pension plan, and that future changes in tier II should be the product of collective bargaining between labor and management. That is what we believe, that is our commitment, and that is what we are engaged in. We consider it unfortunate in the extreme that this bill should be representing, as it does, to some degree, at least, an impediment to the bargaining. And I think it is fair to say that if the bill were to pass, it would be the end of collective bargaining, because the organizations would have obtained more by an extreme degree than they really have asked for or hope to achieve in the collective bargaining and would have achieved more than I think anyone could expect from this industry by way of cost increases in order to finance the increased benefits that the bill would propose.

So even the possibility of passage, I think, would represent a disaster to the collective bargaining.

Getting, I think, to what is the central point of your question, trying to zero in on what I take it to be your central point in various questions, if the negotiations should fail and Congress then deems it necessary or appropriate to step in, next year is time enough to do that. We have set ourselves a timetable so that I think that by the next session of Congress, we would be in a position to make a judgment, and certainly, we would be prepared to report to you, and I am sure the organizations would, as well, just where we stand in the negotiations at that point. Hopefully, we will have reached a mutually acceptable resolution by that time.

Senator METZENBAUM. How much do you think this bill would cost?

Mr. HOPKINS. Well, let me just take a moment to set a context. This industry had one of its better years in calendar 1979 and earned railway operating income of about \$800 million. This bill would increase our costs for railroad retirement next year some \$300 million, and the unions estimate that by 1983, the railroad industry would be paying more than a billion dollars a year more in railroad retirement taxes than they otherwise would, and the tax rate at that time in 1983 would be 20.5 percent. So that is the disaster that I speak of.

Senator METZENBAUM. I understand. I hear you. What is the anticipated additional revenue—or, I guess not revenue, but bottom-line profit—that will go to the railroad by reason of deregulation?

Mr. HOPKINS. Certainly, I cannot answer that. I can only say that the hope of all concerned—organizations, as well as managements of the industry and all the others who played such a large role in achieving deregulation—is that this sets the stage for a resurgence of the industry.

What it means in bottom-line dollars depends upon what happens to traffic and revenues. Last year, the return on investment of the industry was 2.68, and the Interstate Commerce Commission has said that the industry requires a minimum of 11 percent rate of return on investment in order to be able to maintain the industry and advance it to the point where it will have the capacity to handle the expected traffic increases of the future. So that the best we can hope for in deregulation, I would say in the near term, is that we improve the profitability to a point where we can begin to approach the kind of levels of return that I think everyone agrees are imperative if the industry is going to survive in private enterprise.

Senator METZENBAUM. When they use the 11 percent figure, is that based on cost or is it based upon replacement value?

Mr. HOPKINS. As to what accounting—you are asking whether—

Senator METZENBAUM. There is a big difference, as we both recognize. An 11-percent return on cost could very well be—I am sure some of the equipment you buy is up two and three times what it originally cost 20 years ago.

Mr. HOPKINS. I do not speak as an authority, but as I understand it, they were and are talking about 11 percent rate of return on net investment. And I do not believe that for the purpose of that figure, the Interstate Commerce Commission was using replacement accounting methods. But I can certainly check that and correct the record if it needs correcting. But I think it was based upon what has been conventional accounting methods, given the existing net investment base in the railroad properties and the return on that net investment of 11 percent.

Senator METZENBAUM. Is much of the industry carrying forward a very substantial tax loss?

Mr. HOPKINS. It surely must be. I cannot offer figures—

Senator METZENBAUM. I would think that therefore, the 11 percent would be a higher actual figure because if you are carrying

forward a tax loss from yesteryear and you had 11 percent on an assumed tax rate of approximately 47 or 48 percent, you would be receiving something like 22 percent. But I do not know. I am merely asking, because I really do not know what the accounting situation is with respect to railroads, nor have I paid any attention to their P. & L.'s or their balance sheets. I am just sort of curious.

Mr. HOPKINS. Senator, you are getting into waters in which I tread only very gingerly.

Senator METZENBAUM. I do not want railroads to go under.

Mr. HOPKINS. But the rate of return on net investment that we use is related to net railway operating income, which is before taxes and debt service, as I understand it. And I am talking about net income, net railway operating income.

Senator METZENBAUM. It cannot be before debt service and appreciation. It just cannot be.

Mr. HOPKINS. Well, I may be mistaken, but I think it would be very difficult—

Senator METZENBAUM. Would you be good enough just to send me a letter on this subject, rather than have me explore it with you and take you into waters which are not your specialty, because I think it is relevant to our inquiry as to what the tax picture is, what the 11 percent relates to, and I think it would be helpful to clarify, at least for this member of the committee, my thinking on the subject. Certainly, nobody wants to do anything to create more problems for the railroad industry than they already have. While at the same time recognizing that there is a kind of responsibility that exists and that the employers themselves understand exists toward their retirees.

Mr. HOPKINS. I realize that the time is short, but it has not been said today, and I think should be said, that whatever our disagreements with the organizations may be now on railroad retirement or may be as the negotiations progress, we have much in common and much that has already been tentatively agreed. And one very important objective that we have in common is that the railroad retirement system not be allowed to dissolve and not be allowed to fail railroad people. So whatever the outcome may be of our negotiations and whenever that point in time may be, I think that that common principle or common objective will be reflected in the result.

Senator METZENBAUM. I think that is not only a matter of concern for those directly involved, but I think it is a matter of concern for the Nation as a whole, because certainly, we need the railroads of this country to be viable and profitable. So I think we all recognize that it is not an easy industry at this moment. We want it to be strong, and nobody wants to do anything to exacerbate the problems that already exist.

Mr. Hopkins, we look forward to working with you. I do have some questions that I may address to you in writing. I would appreciate that letter that I previously mentioned, and I will inquire of the railway labor spokespersons their views as to the deadline question, as well.

Thank you very much.

Mr. HOPKINS. Thank you very much, sir.

[The prepared statement of Mr. Hopkins follows:]

## STATEMENT ON S. 2979

by

CHARLES I. HOPKINS, JR.  
CHAIRMAN, NATIONAL RAILWAY LABOR CONFERENCE

I am the Chairman of the National Railway Labor Conference, a position that I have held since April 1, 1977. The Conference represents almost all of the nation's railroads in national collective bargaining with the unions representing their employees and in regard to other matters concerning labor-management relations in the railroad industry, including negotiations with the unions upon recommendations for proposed changes in the railroad retirement system. I am making this Statement on behalf of the railroads in opposition to S. 2979 because enactment of that bill, in our judgment, would undermine the integrity of the collective bargaining process in regard to railroad retirement issues, would drastically increase the very high employment taxes already imposed upon the railroads under the Railroad Retirement Tax Act, and would provide increases in railroad retirement benefits that cannot now be justified.

I understand that S. 2979 has been introduced at the request of and is supported by the Railway Labor Executives' Association, which is comprised of the leaders of most of the unions representing railroad employees. It proposes to increase the rate of the Tier II tax imposed upon the railroads alone from 9.5% of taxable payroll to 12.5% for calendar year 1981 and to provide for automatic further adjustments in subsequent years in amounts to be determined by a formula. It also would require pre-retirement and post-retirement cost-of-living increases in the Tier II benefits payable

for five additional years. The railroads strongly object to both of those proposals in and of themselves for reasons that I summarize below. I will discuss first, however, a more fundamental objection which goes to the bill in its entirety. In attempting to persuade the Congress to enact S. 2979, the unions would have the Congress subvert the collective bargaining process which the Congress, in enacting the Railroad Retirement Act of 1974 (P.L. 93-445), intended to give rise to future recommendations for changes in the railroad retirement system.

A. Enactment of S. 2979 Would Undermine  
Collective Bargaining on Railroad Retirement Issues

The Railroad Retirement Act of 1974 (the "1974 Act") amended, and in effect replaced, the Railroad Retirement Act of 1937, so as to provide a restructured railroad retirement system on a sound financial basis. Following a Report by a Commission on Railroad Retirement, established by the Congress to study the railroad retirement system (P.L. 91-377), the Congress in 1973 (P.L. 93-69) directed the railroads and the unions representing their employees to establish a joint committee for the purpose of negotiating and agreeing upon "joint recommendations for restructuring the railroad retirement system in a manner which will assure the long-term actuarial soundness of such system, which recommendations shall take into account the specific recommendations of the Commission on Railroad Retirement." The Congress also directed that those joint recommendations by the railroads and unions "shall be specific and shall be presented in the form of a draft bill." The railroads and unions did establish a joint negotiating committee

and, after long and arduous negotiations necessitated by the highly complex and difficult issues involved, they did reach agreement upon joint recommendations which, in 1974, were submitted to the Congress in the form of a draft bill. The 1974 Act resulted from the enactment of that bill without any significant substantive changes. See H. Rept. No. 93-1345, at 27-28; S. Rept. No. 93-1163, at 26-27.

A fundamental aspect of the restructured railroad retirement system, which was thus agreed upon by the railroads and unions and enacted by the Congress, is a "two tier" system of taxes and benefits: one of which (Tier I) generally provides for taxes and benefits equivalent to those imposed or afforded by the social security system (including the automatic application of legislative changes therein), and the second of which (Tier II) constitutes in essence a company pension plan for railroad employees, over and above the social-security level and based solely on railroad employment and compensation. As the congressional committees which recommended enactment of the 1974 Act recognized, Tier II thus constitutes "in essence, a company pension program administered, for historical reasons, by the Federal Government," and those committees accordingly contemplated that "[f]uture changes in Tier II benefits will arise out of collective bargaining between the railroads and the unions." H. Rept. No. 93-1345, at 16-17; S. Rept. No. 93-1163, at 16-17.

This reflects the view, with which I fully concur, that Tier II of the railroad retirement system not only involves issues that in all other industries are wholly settled through collective bargaining, but also that the long-term integrity and solvency of the railroad retirement system can

best be protected by the collective bargaining process. If the Congress should enact changes in Tier II benefits and taxes at the behest of one of the parties, such as the unions are now proposing in S. 2979, without awaiting joint recommendations arrived at through collective bargaining, railroad retirement once again will become a political football. The Congress will be buffeted by conflicting political pressures to make changes that have not been subjected to the discipline and control of collective bargaining.

Our concern in this regard is enhanced by the fact that such retirement benefits in essence are, like other fringe benefits, simply a part of the total cost to the railroads, and of the total compensation to their employees, for labor. The current national agreements between the railroads and railroad unions, which cover the years 1978, 1979, 1980 and the first quarter of 1981, in themselves increased the wages and other contractual benefits paid by the railroad by some 35 to 40%. That very expensive settlement would be grossly distorted if the Congress, at the behest of the unions, should enact S. 2979 so as to almost immediately increase the Tier II taxes paid by the railroads in an amount approximating 3% of their total payroll.

Moreover, when such railroad retirement issues are dealt with in collective bargaining as part of a total package, concessions on one side in regard to a railroad retirement issue often can be justified by concessions on the other side in regard to another issue or issues, so that an overall agreement can be reached by both sides with due consideration of all aspects of the total situation. A recent example of how this may work

is provided by the latest agreements between the steel manufacturers and the United Steel Workers which, as I am informed, converted 33 cents per hour that otherwise would have been added to basic wages under a cost-of-living provision to use in funding certain increases in pension benefits. As I also am informed, that amount is the equivalent of some 3% of total wages under the agreements, and thus is similar in that regard to the percentage by which the railroads' payroll costs would be increased under the bill proposed by the unions. That sort of give and take will be much more difficult in railroad labor negotiations, if not impossible, if Tier II retirement benefits and taxes are made a political issue to be decided by the Congress.

The railroads recognize that some changes need to be made in the railroad retirement system, and we hope to reach agreement upon recommendations to the Congress for such changes by the end of this year in negotiations which are now in progress with the unions.

Experience with the interpretation and application of the 1974 Act by the Railroad Retirement Board has revealed some costly inequities that were not contemplated when that statute was recommended by the railroads and unions and enacted by the Congress. They do not necessarily threaten the financial solvency of the system on a long-term basis, since the latest triennial valuation of the railroad retirement account -- the Fourteenth Valuation published in September of 1979 with regard to the status of the account as of the end of 1977 -- estimated an actuarial surplus of 2.08% of taxable payroll on the basis of assumptions that included no changes in

the existing law. However, four other actuarial estimates based on other sets of assumptions predicted actuarial deficits ranging from 0.65% to 4.61% of taxable payroll. I believe that it is fair to say that, under any realistic assumptions as to future inflation, there is no long-term actuarial deficit if the existing law is not changed. A more immediate problem, and a more important one on a short-term basis, is the cash flow or balance in the railroad retirement account. The Fourteenth Valuation predicted a negative balance at some time between 1987 and 1991 on all but the most favorable set of assumptions, and I understand that more recent estimates by the staff of the Railroad Retirement Board suggest that a negative balance may occur as early as for some months in 1982 or 1983 although that is by no means certain.

Because of their recognition that some changes are needed, the railroads proposed to the unions that railroad retirement be included in the issues to be considered and resolved in the national negotiations which resulted in the current national agreements. We had some discussions apart from those national negotiations and indeed seemed to be in tentative agreement upon recommendations for a number of changes in the 1974 Act, but the unions never were willing to dispose of the railroad retirement issues in connection with that round of national negotiations and the agreements reached in 1978 and 1979 did not cover those issues. Since then, the railroads from time to time have continued to urge the unions to commence serious negotiations about railroad retirement with the intent and purpose of reaching agreement by the end of this year upon recommendations to the Congress for comprehensive changes that should dispose of the matter for at least some years to come. In the spring of this year, the unions agreed to commence such negotiations

and they have since been underway and, it seems to me, to be making substantial progress. At this very time, a technical committee (composed of technical consultants to the railroads and unions with the assistance of the technical staff of the Railroad Retirement Board) is studying various suggested alternatives so as to determine their costs and other effects. When that committee reports around the end of this month, it is my hope and expectation that progress towards agreement will be even more substantial and I continue to believe that there is a good prospect of an agreement by the end of this year. That continues to be the goal of the railroads and if the unions will join with us in further good faith bargaining it should be realized with little or no slippage. It is discouraging, however, that the unions are now urging the Congress to enact S. 2979, despite our negotiations, as that approach is antithetical to a negotiated agreement.

I do not propose at this time to go into the details of those negotiations, particularly since neither side has yet asserted final positions with regard to many matters. I think it fair to say, however, that the approaches which have seriously been urged by the unions, much less those suggested by the railroads, have little resemblance to what is proposed in S. 2979 either as to taxes or as to cost-of-living increases. It is my considered judgment that enactment of S. 2979 would disrupt the ongoing negotiations and make it much more difficult, if not impossible, for the parties to reach agreement upon the comprehensive changes in railroad retirement that should be enacted by the Congress.

To afford some notion of the kind of problems that are being tackled in the negotiations, but are entirely ignored by S. 2979, I will briefly mention one of the most serious insofar as long-term costs and

thus any potential actuarial deficit in the railroad retirement account are concerned. Under the 1974 Act, an employee with 30 or more years of railroad service may retire at age 60 with full retirement benefits, including a Tier I benefit equivalent to what social security would pay if he retired at age 65. Since the earliest retirement age under the Social Security Act is 62 and even then the benefit payable is reduced 20% from what would be payable if the beneficiary had retired at 65, the financial interchange with the social security system does not recompense the railroad retirement system for any part of the Tier I benefit paid between ages 60 and 62 or for 20% of the Tier I benefit paid after age 62. Thus, that cost plus the entire cost of the Tier II portion of the benefit is borne by the railroad retirement account without any recompense through the financial interchange.

The cost of this provision has been enhanced by an unanticipated result when, as interpreted by the Railroad Retirement Board, the Tier I benefit is calculated on the assumption that the employee is in fact age 65, with the result that his Tier I portion is higher than that of an employee with identical years of service and compensation who in fact retires at age 65, and by a 1977 amendment to the Social Security Act which can have the effect of increasing the amount of the Tier I benefit that is not recompensed. Moreover, the Tier I portion, including the unrecompensed 20%, is subject to cost-of-living increases measured by 100% of the change in the CPI, with the result that the unrecompensed Tier I benefit, and thus its cost, in time may exceed the full Tier II benefit and the cost thereof. For these and perhaps other reasons, the rate of early retirement and the cost of that provision to the railroad retirement account has been far

greater than was estimated when the 1974 Act was under consideration, and it has become increasingly obvious that the provision must be examined in our negotiations.

That is only one, even if one of the most important, of many provisions of the 1974 Act with respect to which either substantive or technical revisions need be considered by the negotiators. Some of them are controversial, others appear to be readily acceptable to both the railroads and the unions, but all of them take time and serious good faith negotiations to work out in detail and fit into an overall package upon which both sides can agree.

I want to emphasize that the negotiators are not neglecting the cash flow problem, and I believe it is fair to state that the railroads and unions already fundamentally agree as to the most appropriate means of resolving that problem. Indeed, an earlier House bill introduced at the behest of the unions (H.R. 5144) contains provisions that the railroads are willing to accept which would remedy any problem in that regard. Immediate relief would be provided by placing the financial interchange and windfall appropriations on a current basis. Permanent relief would be provided by authorizing temporary borrowings from the General Treasury, when necessary, with the amounts thus borrowed to be repaid with interest when the necessary funds become available.

Under the existing law, there is a lag of as much as 18 months in the payment by the social security trust funds to the railroad retirement account of the amounts owing to that account under the financial interchange.

While interest is paid so that the delay does not significantly affect the long-term financial condition of the railroad retirement account, the delay is a very important factor in the cash-flow problem. It has been estimated that placing the financial interchange on a current basis would postpone the incidence of any shortages in the railroad retirement account by between one and two years. On the other hand, the amounts involved would not significantly affect the cash flow of the much larger social security trust funds. Furthermore, as the Actuarial Advisory Committee pointed out, in its July 26, 1979 Statement to the Railroad Retirement Board in connection with the Fourteenth Actuarial Valuation of the Railroad Retirement Account: "It is manifestly unfair to require the Railroad Retirement System to, in effect, lend funds to Social Security." Placing the financial interchange on a current basis would terminate that unfairness as well as significantly alleviating the cash-flow problem facing the railroad retirement account.

In enacting the 1974 Act, the Congress recognized that the cost of phasing out windfall dual benefits should be paid out of the General Treasury. Section 15(d) of that Act authorizes the appropriation, each year over the 25-year period beginning with fiscal year 1976 and ending with fiscal year 2000, of "such sums as the Board determines to be necessary on a level basis" to pay those phaseout costs as reduced by certain interest earnings of the railroad retirement account. The Railroad Retirement Board was directed to "re-evaluate" its estimates as to the amounts needed to pay such costs every three years in connection with the actuarial

valuations of the railroad retirement account. Both the General Accounting Office and the Railroad Retirement Board have recommended that this method should be replaced by a "pay-as-you-go plan" under which the appropriations to cover the costs of the phaseout windfall benefits would be kept reasonably current with the payment of such benefits. Appropriation of those costs on a current basis would avoid the uncertainties inherent in the actuarial estimates that must be made under the existing procedure. More importantly for present purposes, the existing procedure has exacerbated the present cash-flow problem of the railroad retirement account since, during the early years when the windfall payments are reaching a peak, the costs are greater than the estimated amounts to be appropriated, and the consequent adverse effect upon the cash balance of the railroad retirement account has been enhanced by the failure of the Congress thus far to appropriate the full estimated amounts.

Thus, for the period between January 1, 1975 and December 31, 1979, the amount appropriated by the Congress to fund the payment of windfall benefits was more than \$600 million less than the amount actually paid. This is attributable in part to the failure of the Congress to appropriate the full amount called for by the 1974 Act, but even if that had been done there would have been a shortfall of about \$300 million. I note that OMB, in recommending the reduced appropriations, has justified such recommendations on the grounds that the Administration was proposing legislation to similarly reduce the windfall benefits payable, but insofar as I am aware such legislation never has been seriously considered and certainly it has

not been enacted by the Congress. The railroads believe that the Congress should fulfill the obligation it assumed when it enacted the 1974 Act to fund the windfall benefits provided for therein out of the General Treasury, but if the Congress is not willing to do so it should eliminate or reduce those benefits accordingly.

The committee reports on the 1974 Act explained at length why it would be unfair to impose the cost of phasing out windfall benefits upon either the railroads or present employees. H. Rep. No. 93-1345, at 2-9; S. Rep. No. 93-1163, at 2-9. Moreover, prior to the 1974 Act, the payment of windfall benefits cost the railroad retirement account over \$4 billion, none of which has been reimbursed to that account from the General Treasury or the financial interchange, and investment of funds in the railroad retirement account was restricted to government obligations paying interest much less than otherwise could be obtained through prudent investment policies. And, while the 1974 Act changed those investment restrictions, the increased interest income resulting therefrom is utilized under the Act to reduce the amounts which otherwise are to be appropriated out of the General Treasury for payment of the costs of phasing out windfall benefits. In view of these circumstances, it seems both just and reasonable to ask that the cost of phasing out windfall benefits be fully funded out of the General Treasury on a current basis.

While placing the financial interchange and the windfall appropriations on a current basis certainly would substantially delay the occurrence of any cash shortage in the railroad retirement account, that might not be sufficient to avoid the problem altogether. The underlying difficulty is that there has been a "bulge" in the relative number of beneficiaries as

compared to active employees which is expected to peak in the 1980s before gradually subsiding. That is why the system may incur temporary cash shortages even though it is financially sound over the long term. Neither increased taxes nor reduced benefits is a fair or appropriate means of dealing with such a temporary and unusual problem. If any amounts that may be necessary to avoid such temporary shortages can be borrowed from the General Treasury and then repaid with interest, artificial distortions in taxes and benefits can be avoided without any significant long-term cost to the General Treasury.

Finally, there is no emergency which requires immediate legislation. It is debatable whether the railroad retirement system is in a deficit position at all on a long-term basis, and the most pessimistic predictions as to when the cash flow problem will first result in a negative balance in the railroad retirement account do not place that occurrence before some time in 1982. Thus, action by the Congress next year clearly would be in time to avoid such an occurrence. As I have stated, the railroads intend to exert every reasonable effort to reach an agreement with the unions by the end of this year upon joint recommendations to the Congress, and it is my belief that that can be done if the unions also exert such an effort. Certainly, such an agreement should be reached or the negotiations have reached a point where it has become plain that the collective bargaining process has failed in ample time for the Congress in its next session fully to consider what should be done and to enact appropriate legislation. In the meantime, the collective bargaining process should be given an opportunity

to work without being frustrated through enactment by the Congress of legislation such as S. 2979 which is supported only by the unions and is completely one-sided.

B. The Provisions of S. 2979 Are  
Objectionable Even Apart from the Effect of  
the Bill's Enactment upon Collective Bargaining

While the effect of the enactment of S. 2979 upon collective bargaining with respect to railroad retirement issues is sufficient reason in itself for a quick burial of the legislation, there are other compelling reasons why the railroads object both to the tax increases and to the benefit increases which the bill would impose.

1. The proposed tax increases. The provisions of the bill (section 2) increasing the Tier II employment taxes payable by the railroads are truly shocking, and it is hard to believe that they seriously can be intended. Substantial concern has been expressed in the Congress and in the country at large about the increases in social security taxes effective under existing law on January 1, 1981, when the tax rate on both employers and employees will increase by 0.52% of taxable compensation. Those increases in social security taxes will automatically be reflected under existing law in similar increases on January 1, 1981 in the Tier I railroad retirement taxes payable by both the railroads and their employees. Yet, the bill proposes to increase the tax rate of the Tier II railroad retirement taxes payable by the railroads alone by 3% of taxable payroll effective January 1, 1980, and would establish a formula under which further adjustments in that Tier II tax automatically would be imposed in subsequent years. An employment tax burden

that already is crushing would become catastrophic with respect to a railroad industry that already is in deep financial trouble and at a time when the railroads, like much of the rest of the economy, are suffering from the effects of depressed economic conditions.

Employment taxes are imposed upon the railroads and their employees by the Railroad Retirement Tax Act, which is Chapter 22 of the Internal Revenue Code, 26 U.S.C. §§ 3201-3233. Those taxes already have reached the point where they are almost unbearable insofar as the railroads are concerned.

The social security tax rate applicable at any particular time to employees (26 U.S.C. § 3101) and to employers (26 U.S.C. § 3111) in other industries automatically is applicable to the railroads (26 U.S.C. § 3221(b)) and to their employees (26 U.S.C. § 3201), and those provisions also automatically apply a monthly maximum on taxable compensation that is 1/12th of social security's annual maximum. That tax rate presently is 6.13% of taxable compensation with respect to both employers and employees, is scheduled under existing law to increase in 1981 to 6.65%, and further increases are now scheduled for 1982, 1985, 1986 and 1990 when the tax rate will become 7.65%. Social security's annual maximum on taxable compensation is the same as the "contribution and benefit base" (26 U.S.C. § 3121(a)) under Section 230 of the Social Security Act, 42 U.S.C. § 430. That base and thus the annual maximum generally has been increased annually pursuant to an indexing formula (based upon increases in annual taxable wages) in Section 230, but a 1977 amendment (P.L. 95-216) mandated a series of arbitrary increases (expected to be larger than the formula would provide) for the years 1978-1981 after

which the formula will again apply. Those arbitrary amounts are \$25,900 for 1980 and \$29,700 for 1981, which result in monthly maximums for these Tier I railroad retirement taxes of about \$2158 for 1980 and of \$2475 for 1981. Since the maximums on taxable compensation are also the maximums on creditable compensation for purposes of determining social security benefits and the Tier I portion of railroad retirement benefits, increases in taxable compensation also increase the amount of those benefits insofar as based upon an employee's creditable compensation.

In addition to those Tier I taxes, the railroads alone pay a Tier II tax which is fixed at 9.5% of monthly taxable compensation (26 U.S.C. § 3221(a)). While the monthly maximum on such taxable compensation also generally is 1/12th of social security's annual maximum, when the Congress in 1977 amended Section 230 of the Social Security Act to provide the arbitrary increases referred to above, it declined to make those increases applicable to the maximum taxable and creditable compensation for purposes of Tier II of the railroad retirement system. Rather, the Congress provided in the last sentence of the amended Section 230(c) that such maximums should continue to be increased in accordance to the formula without regard to the arbitrary increases. Thus, the current monthly maximum for this Tier II tax is \$1700, which is equivalent to an annual maximum of \$20,400. That maximum will be further increased under the formula on January 1, 1981 and (assuming continued wage inflation) on January 1 of subsequent years.

Furthermore, the railroads alone also pay a supplemental tax at a rate applicable to man-hours of compensated work which is fixed quarterly

by the Railroad Retirement Board at a level intended to make "available sufficient funds . . . to pay supplemental annuities" (26 U.S.C. § 3221(c)). That rate currently is 12.5 cents for each such man hour. While the employment taxes thus payable by the railroads cannot simply be added to reach a total, because of the differences in the tax bases, in all they result in the railroads paying employment taxes which this year amount to about 15% of Tier I taxable compensation as compared to the 6.13% paid by employers in other industries.

Despite that crushing burden imposed by existing law, the bill would increase the Tier II tax rate imposed upon the railroads from 9.5% to 12.5% effective January 1, 1981. If that increase should be enacted, the employment taxes payable by the railroads will be increased by some \$300 million in 1981 even apart from the increase of some \$100 million which will result from the scheduled increase in the Tier I tax and an additional increase of about \$70 million which will result from the scheduled increase in the Tier II maximum on taxable compensation. The magnitude of such tax increases and their shattering impact upon the railroads can perhaps to some extent be realized when contrasted with the fact that the net operating income of all railroads for 1979 was slightly less than \$800 million, which was the most favorable for any year since 1966. Hence, the increased tax burden in 1981 could virtually eliminate potential profits, forcing even more railroads into bankruptcy and necessitating reductions in maintenance and service by most, if not all, railroads. The railroads' rate of return on net investment in 1979 was only 2.68%, that rate has not exceeded 3% since 1966, and often has been under 2% in recent years. The Interstate

Commerce Commission regards a 11% rate as being necessary to afford the railroads an adequate return on capital investment under current conditions.

But that is not all even though in itself it should be sufficient to demonstrate the utter unreality of the bill's tax provisions. For the years after 1981, the Tier II tax rate imposed upon the railroads alone would automatically be adjusted as of the commencement of the year in accordance with the balance-benefit ratio of the railroad retirement account as of the preceding September 30th, except that the rate could not be adjusted below 9.5% before 1986. While that "floor" affords another demonstration of the completely one-sided nature of the proposed legislation, I doubt if it is significant as the formula can be expected to generate further tax increases rather than decreases for years to come. Indeed, the Railway Labor Executives' Association has been quoted as estimating that the Tier II tax rate imposed upon the railroads may be increased to as much as 20.5% by 1983 requiring the payment of "very close to \$2 billion total for that year" in Tier II taxes, an increase of about \$1 billion over what existing law requires. If that should occur, it is doubtful whether there would be much of a railroad industry left to pay such taxes.

Any such automatic formula for increasing the rate of employment taxes payable by the railroads alone is virtually certain to be self-destructive. The Congress is aware of the perilous financial conditions of much of the railroad industry, including the bankruptcy in recent years of the Penn Central, the Rock Island, the Milwaukee and a number of smaller railroads. Such drastic increases in the employment tax burden, which would

not be shared by the trucking industry and other competitors of the railroads, almost certainly would push others over the line into bankruptcy, and necessitate reductions in maintenance, service, mileage operated and thus in employment by even those railroads that are in relatively healthy condition. Such decreases in employment and thus in taxable payroll would generate ever higher increases in the tax rate in an effort to support the benefits payable from an ever-decreasing employment base, even if the benefits payable remained static. And, a statutory scheme under which the railroads automatically would be assessed whatever additional taxes are necessary to pay for benefit increases would encourage the unions, the employees they represent and existing beneficiaries to pressure the Congress in the future for ever greater increases in benefits. In short, the adoption by the Congress of such an amendment would be disastrous to the railroads and to the public interest in adequate and efficient rail transportation, and in the long run also to railroad employees whose employment opportunities would be reduced and to retirees whose benefits would be placed in jeopardy.

That the unions themselves recognize the excessive burden that would result from the tax provisions of the bill is evidenced by the fact that they have not proposed a similar amendment in regard to the taxes imposed upon employee representatives by 26 U.S.C. § 3211. Those union officials heretofore have paid a tax that in effect combines the taxes paid by employees and the railroads, including the Tier II tax that is now fixed at 9.5%. That tax rate would continue to be fixed at 9.5% with regard to the employee representatives, although immediately increased to 12.5% and made adjustable to even higher levels with regard to the railroads.

To summarize, the railroads oppose as strongly as they can the proposed increases in Tier II taxes. Even apart from the principle that changes in Tier II taxes and benefits should be based upon joint recommendations arrived at through collective bargaining, the railroads simply cannot afford the increased taxes which would result from enactment of the unions' bill.

2. The proposed benefit increases. Under the 1974 Act, a portion of the Tier II benefit amounts automatically are increased by 65% of the change in the CPI between September 1976 and the September preceding the employee's year of retirement or calendar year 1981, whichever is earlier; and after retirement, a portion of the Tier II benefit amounts automatically were increased on June 1 of 1977, 1978, 1979 and 1980 by 32.5% of the increase in the CPI during the preceding year ending on March 31. Section 1 of S. 2979 would extend those automatic pre-retirement increases for five more years through 1985 and would extend those automatic post-retirement increases for five additional years on June 1 of 1981, 1982, 1983, 1984 and 1985. The railroads also are opposed to that proposal even apart from the effect of enactment of the bill upon collective bargaining.

When the 1974 Act was being considered in negotiations with the unions, the railroads readily agreed to cost-of-living increases in the Tier I or social-security portion of railroad retirement benefits that are equivalent in time and amount to such increases in social security benefits (measured by 100% of the increase in the CPI), and the 1974 Act so provides, so that railroad retirees are assured the protection against cost-of-living increases

that generally is available to retirees from other industries. The railroads were very reluctant to agree to any automatic cost-of-living increases in the Tier II portion of railroad retirement benefits, however, particularly since most private pension plans in other industries did not provide for such increases. Nonetheless, a few major pension plans had recently included provisions for limited automatic cost-of-living increases and it was thought that this might represent the beginning of a trend, so the railroads finally agreed in 1974 that the 1974 Act should include the provisions for Tier II cost-of-living increases described above, in view of the limitations upon both the extent and the times of such increases.

In fact, the anticipated trend to include such provisions in private pension plans did not develop, and I understand that provisions for automatic cost-of-living increases in such plans are as rare or even rarer than in 1974. I am informed that no major industry has a collectively-bargained pension plan that provides for automatic cost-of-living increases in benefits. To mandate such increases for five more years in addition to the four years which the railroads and unions agreed upon as a limited feature of the 1974 Act would tend to rivet those provisions into the law on a permanent basis however unjustified they otherwise might be. This is a matter with respect to which the railroads are prepared to negotiate with the unions, and in fact one that is being considered in the ongoing negotiations although the unions, as well as the railroads, have suggested approaches that differ substantially from the one proposed in the bill. But regardless of what eventually may be worked out in that regard, it is worth repeating

that railroad retirement beneficiaries are assured of the same cost-of-living increases that are afforded to social security beneficiaries, with respect to the Tier I portion of their benefits, so that they have as much protection against inflation as is provided by the social security system even if the 1974 Act never is amended.

C. Conclusion

For these reasons, the railroads adamantly oppose the enactment of S. 2979. It would impose an immediate increase of almost one-third in the Tier II taxes imposed upon the railroads alone, even though the employment taxes imposed on the railroads already are between two and three times as much as the employment taxes imposed on employers in other industries and thus have reached any reasonable limit. By providing for automatic future increases in the Tier II taxes payable by the railroads alone, the intolerable burden which the bill would thus impose would continue to increase without further resort to collective bargaining or to the Congress. And, this burden would be further enhanced by additional pre-retirement and post-retirement cost-of-living increases in Tier II benefits which have few, if any, counterparts in the pension plans through which other industries supplement social security benefits. This would be done even though the economy as a whole is in the midst of a recession and even though the financial problems of the railroads are more severe than those of industry generally and for many years their earnings have been abnormally low even in the best of times.

Even more fundamentally, as I stated at the outset, the bill as a whole represents an effort by the unions to have the Congress enact railroad retirement legislation at their unilateral request, and thus would subvert

the intention of the Congress in enacting the 1974 Act to have future changes brought about through its action upon recommendations jointly negotiated by railroad labor and management. Its enactment would upset ongoing negotiations which I firmly believe otherwise will result in joint recommendations, if the parties exert the same good faith effort that they have in recent months, that will provide a comprehensive solution to the problems of the railroad retirement system for years to come that will be acceptable to all concerned in time to be considered and acted upon by the Congress next year.

I appreciate this opportunity to present the view of the railroads that I represent in opposition to S. 2979, particularly since it involves matters of large importance to the railroads in regard both to the principles which would be adversely affected and to the costs that would ensue if that bill should be enacted.

Senator METZENBAUM. Our last panel is Mr. O. M. Berge, chairman of the Railroad Retirement Committee, Railway Labor Executives' Association, accompanied by Mr. James R. Snyder, chairman, legislative committee of the RLEA, and Mr. Edward D. Friedman, counsel.

Gentlemen, you may divide your time as you please. I have been updated as to my own time commitments, and I will have to walk out of here on 11:15 on the button, which is one-half hour from now.

**STATEMENT OF O. M. BERGE, CHAIRMAN, RAILROAD RETIREMENT COMMITTEE, RAILWAY LABOR EXECUTIVES' ASSOCIATION, ACCOMPANIED BY JAMES R. SNYDER, CHAIRMAN, LEGISLATIVE COMMITTEE, RLEA; AND EDWARD D. FRIEDMAN, COUNSEL**

Mr. BERGE. Thank you, Mr. Chairman.

My name is Ollie Berge, and I am appearing here today as chairman of the Railroad Retirement Committee of the Railway Labor Executives' Association and as president of the Brotherhood of Maintenance-of-Way Employees, to testify in support of Senate bill 2979.

Appearing with me are James R. Snyder, chairman of the legislative committee of the Railway Labor Executives' Association; and Mr. Edward Friedman, the committee's counsel.

I will summarize my position and request that my formal statement be made a part of the record.

The RLEA was organized more than 50 years ago for the purpose of promoting the common interests and the welfare of railroad workers and their families, both active and retired, and nowhere in its history has it dealt with a matter of more importance to these people than the subject matter of this bill. What is at stake here is the life or death of the railroad retirement program.

The program is going broke. This is the view of the more than 2 million railroad people for whom the railroad retirement program

promises the reward for a lifetime of hard and often dangerous work.

The leadtime required to build up the account sufficiently beyond the insolvency point requires that a moderate tax increase in the tax rate to the carriers be set now. If we wait until next year or the year after, what will be needed is an immediate infusion of heavy dollars over a very short period of time, too heavy to be absorbed by the railroad industry alone.

Senator METZENBAUM. Mr. Berge, let me inquire at this point. The Chair has asked that the parties set their own deadlines. Mr. Hopkins has indicated that they are prepared to set a deadline for the conclusion of negotiations by December 31 of this year. He indicated that railway labor has not indicated a willingness to agree upon some particular deadline.

I have asked that we be advised no later than next week as to what that deadline is, as set by the parties themselves. Do you have a position on this subject?

Mr. BERGE. We had initially set a deadline of May 15 a year ago, trying to get negotiations off of dead center and some progress made. We feel that the deadline has passed, and the time to act on this is now, because it is a real emergency.

Senator METZENBAUM. But in view of the fact that the Senate is going to recess next week, and getting a quorum together is well nigh impossible in some committees these days, what would you suggest be that deadline, or are you suggesting that it would be today or yesterday? Is that what your point is?

Mr. BERGE. I would suggest that the deadline should be just as quickly as the Senate can act on it.

Senator METZENBAUM. Well, I would like to ask you to discuss the subject with others in railway labor. We are not going to be able to act upon it this moment, that is obvious. We conceivably could act upon it when we return November 12.

I would prefer that we not start the legislation moving and then get the parties to actually negotiate. I would prefer that they negotiate before that. That being the case, would it be agreeable with you if a deadline were to be set as of, perhaps, November 12, the first day we are returning, and would railway labor agree to that; since you said you would agree to yesterday, that would seem to be a not unreasonable position to take.

Mr. BERGE. Well, we are agreeable to cooperating in every respect. I believe the work that has to be done by the actuaries is such that it would be difficult to reach an agreement with the carriers by November 11. But certainly, we are willing to make an honest and good-faith effort.

Senator METZENBAUM. That, I think, is the old Armistice Day, and I think that is a good day to set as the deadline.

I would just ask the railway labor spokespersons to see whether or not that date could not be used as a deadline. That is still almost 2 months from now, and there does not seem to be any reason why, if you are ever going to come to an agreement, you could not come to an agreement by that date. The Chair will announce that unless there is some strong or persuasive reason to the contrary, that I would not feel constrained to wait beyond that point to try to move this bill in committee.

Mr. BERGE. Railway labor is willing to pursue your suggestion, sir.

Senator METZENBAUM. Please proceed.

Mr. BERGE. Thank you.

Further delay, in my opinion, is likely to mean nothing more and nothing less than system insolvency, requiring the Congress to bail it out with tax dollars. This must not be allowed to happen. The time for action is now, while there is still time to generate enough cash within the industry itself to raise the reserves to a level sufficient to guarantee continuity of the system without a massive infusion of general tax dollars.

The RLEA has appeared many times before this committee to press for the enactment of a bill, but never before has it advocated passage of a bill so vital to the interests of the railroad workers as Senate bill 2979.

While the railroad retirement worked well enough during its earlier years, it began having financial problems in the 1950's and 1960's, largely caused by declining railroad employment following the employment bulge of the war and the early postwar years. The words "actuarial deficit" began to surface with more and more frequency, until finally in the early 1970's, the program began to show alarming deficits in the range of 9 percent. Most of this erosion resulted from the payment of the windfall dual benefit.

The Railroad Retirement Act of 1974 restructured the program into a two-tiered system of benefits. Tier I represents a social security component computed under the social security benefit formulas, on the basis of the employee's combined railroad and non-railroad earnings.

Tier II represents the staff level component based on railroad services only.

The financing of tier I is the same as social security. The tier I tax rate is the same as the social security tax rate. It is levied on wages subject to a maximum taxable compensation ceiling identical to social security. The calculations of tier I benefits are based upon social security indexing to adjust for inflation.

The tier II benefit resembles a private pension benefit. It is noncontributory. The carrier pays the full amount of the tax based on wages subject to a maximum taxable compensation ceiling which is lower than the social security ceiling.

The existing law provides for preretirement indexing of tier II components over a period of 4 years ending January 1, 1981, which are based on lifetime earnings. The indexing is based on 65 percent of the percentage increase in the Consumer Price Index between September 1976 and the September preceding the year of retirement through 1980.

Current law also provided for a once-a-year postretirement cost-of-living adjustment over a period of 4 years ending June 30, 1980, equal to 32.5 percent of the rise in the Consumer Price Index.

To my knowledge, there is no disagreement on the unqualified need for some form of indexing. Senate bill 2979 simply continues existing policy in this respect.

Receipts to cover these expenditures of the system in the form of tier I and tier II benefits, spouses' and survivor annuities, have been short over the past decade. The reason for this steady deterio-

ration is that for too long, more dollars were going out than were coming in. The bulk of the funds paid into the railroad retirement account comes from the receipt of payroll taxes and from the financial interchange.

As shown above, the shortfall between railroad retirement revenue and paid benefits show, by the declining balance in the reserve account, from \$4 billion in April 1971 to \$1.8 billion in April 1980. This represents an erosion of \$2.2 billion over the past decade, with a further projected erosion of another \$1.7 billion as of April 1982, even on the basis of the intermediate economic assumptions.

Senate bill 2979 would check this downward spiral at the earliest point and would stabilize the system within a few years. S. 2979 would do this in two steps. The first step involves an increase of 3 percent in the tier II tax rate for calendar year 1981. The second step would be the imposition of a variable tax rate covering the years thereafter. The variable rate will go up or down as the railroad retirement reserve account rises or falls.

The rate is a sliding rate designed to insure that the balance in the account will not drop below 25 percent of the annual benefit payment. An increase or decrease in the tax rate would be triggered by the up or down movement in the account at the end of each year. These rates, as high as they may seem, will be totally accurate to generate the dollars needed to avoid cashlessness, insolvency, and default unless S. 2979 is acted upon now. The size of the rates necessary to be paid by the carriers if congressional action is not taken this session will surely result in the carriers coming to the Congress themselves for a general tax revenue subsidy.

In closing, I would like to recall to the committee the testimony of the former chairman of the National Railway Labor Conference in 1974 in which he assured this committee that—

Railroad industry is perfectly prepared to fund the railroad retirement system in every respect in which it bears a reasonable resemblance to any other private industry pension plan, and what that means is that if somehow these figures go askew and we run into difficulty in the future because we have not put enough money in with relation to the benefits that are being paid, we will fund that, we will take care of it—that is our responsibility.

We have been trying for more than 2 years to persuade the conference committee to take action with us to avoid the impending collapse of the program.

As pointed out earlier, we began to make progress some months ago following the scheduling of hearings. Unfortunately, on the basis of our progress until now, it appears that an agreement will not be reached in time to permit legislative action during this session of Congress.

Therefore, on behalf of the hundreds of thousands of retired and active workers, their dependents and survivors, we urge this committee to take prompt action on this bill within the few remaining weeks of this Congress.

It is imperative that a bill be enacted by the Congress before the close of this session.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Berge follows:]

STATEMENT OF O. M. BERGE

ON BEHALF OF

THE RAILWAY LABOR EXECUTIVES' ASSOCIATION

BEFORE THE

COMMITTEE ON HUMAN RESOURCES

UNITED STATES SENATE

ON S. 2979

THE RAILROAD RETIREMENT BENEFITS OF 1980

Mr. Chairman and Members of the Committee:

My name is O. M. Berge. I am appearing here today as Chairman of the Railroad Retirement Committee of the Railway Labor Executives' Association to testify in support of S. 2979. Appearing with me are James R. Snyder, Chairman of the Legislative Committee of the Railway Labor Executives' Association, and Edward D. Friedman, the Committee's counsel.

As the members of this subcommittee know, the RLEA is an association of 21 standard and international labor organizations representing the classes and crafts of all of the employees employed by the Class 1 railroads in the United States.

The RLEA was organized more than 50 years ago for the purpose of promoting the common interests and the welfare of railroad workers and their families, both active and retired, and nowhere in its history has it dealt with a matter of more importance to these people than the subject matter of this bill.

What is at stake here is the life or death of the railroad retirement program.

The program is going broke. This is the view of the more than two million railroad people for whom the railroad retirement program promises the reward for a lifetime of hard and often dangerous work.

The simple facts are that the current Tier II retirement tax of 9.5% will not produce enough funds to keep the system in the black through 1982 or 1983. Each additional month aggravates the problem--puts the system deeper in the hole--and increases the risk of insolvency before the end of the next Congress.

The experts have warned that if something is not done now in this Congress, the fund will fall so far behind that the 3% tax increase such as provided by S. 2979 will not be sufficient to ward off the crisis.

The lead time required to build up the account sufficiently beyond the insolvency point with a moderate tax rate will have been lost. If we wait until next year or the year after--what will be needed is an immediate infusion of heavy dollars over a very short period of time--too heavy to be absorbed by the railroad industry alone.

The representatives of the carriers who will testify will undoubtedly have a different version for the necessity of this bill. They will say that the system is not expected to become insolvent at least until a proposal negotiated between the Railway Labor Executives' Association ("RLEA") and them can be presented to the 97th Congress next year or in 1982. Their assertion is illusory because negotiations have been going on for more than 2 years, and there is no indication that the carriers will modify their positions sufficiently to rescue the system in time for legislation in this session of Congress.

Further delay is likely to mean nothing more and nothing less than system insolvency, requiring the Congress to bail it out with tax dollars.

This must not be allowed to happen. The time for action is now, while there is still time to generate enough cash within the industry itself to raise the reserves to a level sufficient to guarantee continuity of the system without a massive infusion of general tax revenues.

S. 2979 will accomplish this.

It is a basic and simple bill.

It provides for a variable tax rate designed to produce enough funds to avoid a systemic disaster. The tax rate will garner precisely what is necessary to maintain a reserve in the account of not less than 25 percent of the annual payout. Without S. 2979, the danger of insolvency will be ever present.

RLEA has appeared many times before this Committee to press for the enactment of a bill. But never before has it advocated passage of a bill so vital to the interests of railroad workers than S. 2979.

The carriers' assertions that a negotiated bill will be forthcoming in time to avoid collapse of the system does not bear analysis in light of their past behavior. They have dragged their feet for most of the 2 years of negotiations despite the urgent need for prompt action on this subject. Their attitude has run the gamut from polite indifference at the start of the negotiations to a gradually developing position of listening to RLEA proposals with some comments and few suggestions or counter-proposals. The RLEA set a deadline of March of 1979 for agreement, which passed without notice by the carriers.

It has become an absolute necessity for the RLEA to present a legislative proposal which will reverse the downward spiral of the railroad retirement account. Since we are now nearly into the last quarter of this calendar year, it is manifestly apparent that unless there is action on an emergency bill this session, a collapse will be unavoidable.

This will be a tragedy without comparison, for the railroad industry has one of the oldest pension systems in the country. The original pensions were established more than 100 years ago. However, the early promises of pensions were largely illusory. Although 75 percent of railroad workers were covered by pension plans by the mid-1920's, less than two out of every ten workers actually qualified for a pension upon becoming too old to work.

The benefits these few people were paid were small. About one-fourth of the 50,000 pensions in force in 1933 provided for payments of \$6.50 per week. The average was about \$14 per week. These meager amounts were drastically reduced during the period of the Great Depression when some railroads eliminated pensions altogether.

It was in this setting that the railroad retirement system was born in 1935 upon an understanding between labor and management that it would become the basic retirement system for the entire industry. Railroad employees have never been covered by the social security system.

While the railroad retirement worked well enough during its early years, it began having financial problems in the 1950's and 1960's, largely caused by declining railroad employment following the employment bulge of the war and the early postwar years. The words "actuarial deficit" began to surface with more and more frequency until finally in the early 1970's the program began to show alarming deficits in the range of 9 percent. Most of this erosion resulted from the payment of the windfall dual benefit.

The result was the Railroad Retirement Act of 1974 which restructured the program into a two tier system of benefits.

Tier I represents a social security component computed under the social security benefit formulas on the basis of the employee's combined railroad and non-railroad earnings.

Tier II represents the staff level component based on railroad services only.

The financing of Tier I is the same as social security. The Tier I tax rate is the same as the social security tax rate. It is levied on wages subject to a maximum taxable compensation ceiling identical to social security. The calculations of Tier I benefits are based upon social security indexing to adjust for inflation. A 100% cost of living increase is applied automatically each year to Tier I as in social security.

The Tier II benefit resembles a private pension benefit. It is non-contributory. The carrier pays the full amount of the tax based on wages subject to a maximum taxable compensation ceiling which is lower than the social security ceiling.

The existing law provides for preretirement indexing of Tier II components over a period of 4 years ending January 1, 1981, which are based on lifetime earnings. The indexing is based on 65% of the percentage increase in the Consumer Price Index between September 1976 and the September preceding the year of retirement through 1980.

Current law also provided for a once each year post-retirement cost-of-living adjustment over a period of 4 years ending June 30, 1980, equal to 32.5% of the rise in the Consumer Price Index.

To my knowledge, there is no disagreement on the unqualified need for some form of indexing. S. 2979 simply continues existing policy in this respect.

The average Tier I benefit paid to one-half million railroad retirees after offset for a dual social security benefit, amounted to \$305 in the last fiscal year. The average Tier II benefit, including those who did not retire from railroading until after 1974, averaged \$129

The average combined Tier II and II amount for this group was, therefore, \$434. To this must be added the supplementary annuity awards, which average about \$41 per month covering employees who retire before their 65th birthday. Also excluded from this description is the dual benefit windfall, now in the process of being phased out under the 1974 legislation.

To the foregoing must be included the spouse's annuity, covering almost a quarter of a million wives of railroad workers. Here the average is \$210 as of the end of the last fiscal year.

Finally, we should mention the 330,000 survivor's annuities, averaging \$314 a month.

The total cost of operating this system for the last fiscal year was \$4.647 billion or \$331 million more than the previous fiscal year and \$828 million more than in fiscal year 1977.

Receipts to cover these expenditures have been short over the past decade.

This shortfall is evidenced by the accelerating deterioration in the balance of the railroad retirement account, as shown

by the following comparison of the balances in the account on April 30, 1971, with April levels in recent years as follows:

1971	\$4.092 billion
1975	\$3.063 billion
1978	\$2.021 billion
1979	\$1.801 billion

It is estimated by the Railroad Retirement Board's Chief Actuary that the balance in the account will drop to a low of \$657 million before May, 1981, if economic conditions continue to be unfavorable.

Even if economic conditions show some improvement and railroad employment holds reasonably steady, the estimated level for April 1981 will drop to \$1.102 billion dollars, and in 1982 will fall to a shocking \$192 million.

This means even if economic conditions improve somewhat over the next few months, the account will drop to the danger point of one billion dollars representing two and one half months of benefit payments and will fall well below that point in 1982.

The reason for this steady deterioration is that for too long more dollars are going out than are coming in.

The bulk of funds paid into the railroad retirement account comes from receipt of payroll taxes and from the financial interchange.

Each percentage point of the payroll tax levied on taxable wages produces about \$100 million dollars. The combined Tier I and Tier II taxes produced \$2.29 billion dollars in the last fiscal year.

The second major source of funds paid into the account comes from the financial interchange. This is a form of reinsurance in

which railroad employees and their families are reinsured under social security. Interchange transfers between the two systems are made annually to place the social security trust funds in the same position they would have been in, had railroad employees been covered by social security rather than by railroad retirement.

The tax dollars that the social security trust funds would have received each year if social security coverage included railroad employees is compared with the additional benefit dollars that social security would have paid to railroad employees, their spouses, or survivors. The difference in the two amounts is transferred to railroad retirement if the benefit amount is higher or to social security if the tax amount is greater. This calculation takes place in October of each year. The interchange of dollars owing to either system is made during the following June. There is, thus, an average of a 15-month delay on reimbursement.

The balance thus far has favored the railroad retirement program. The financial interchange accounted for \$1.477 billion of railroad retirement receipts in the last fiscal year.

The railroad retirement balance sheet may be broken down as follows:

Payroll	\$2.290 billion
Financial Interchange	\$1.477 billion
Advances for payments of social security benefits	\$ 265 million
Dual Benefit Transfer	\$ 313 million
Interest on Investment	<u>\$ 186 million</u>
Total	\$4.532 billion

As shown above, the short fall between railroad retirement revenues and expenses that has increased each year is evidenced by the declining balance in the reserve from \$4.092 billion in April, 1971, to \$1.801 billion in April, 1980. This represents an erosion of \$2.2 billion over the past decade with a further projected erosion of another \$800 million as of April, 1981, and another \$1.7 billion as of April, 1982, even on the basis of intermediate economic assumptions.

S. 2979 would check this downward spiral at the earliest point and would stabilize the system within a few years.

S. 2979 would do this in two steps.

The first step involves an increase of 3 percent in the Tier II tax rate for the calendar year 1981.

The second step would be the imposition of a variable tax rate covering the years thereafter. This variable rate will go up or down as the railroad retirement reserve account rises or falls.

The rate is a sliding rate designed to insure that the balance in the account will not drop below 25 percent of the annual benefit payment. Since the annual benefit payment runs in the neighborhood of four billion dollars, the minimum account balance under this proposal would be about one billion dollars, equal to two and one-half months of benefit payments. Throughout the year, the account goes up and down like a rollercoaster, largely due to the practice of a lump sum payment of financial interchanges. Thus, the actuaries tell us that the account would periodically drop to this level in April of each year prior to the receipt of the financial interchange payment.

Any increase or decrease in the tax rate would be triggered by the up or down movement in the account at the end of each fiscal year.

If the account balance divided by the account payout for one calendar year is lower than it was for the previous year, the railroad retirement tax rate would go up.

If this ratio between account balance and account payout for a given calendar year is higher than it was for the previous year, then the tax rate will go down.

The adjustment factor is aimed at keeping the account balance-benefit ratio at about 70 percent as of the end of the fiscal year. If the balance is held at 70 percent in October, it will drop to about 25 percent in April.

We are told that if the account balance-benefit ratio were to be pegged at some point less than 70 percent, for instance, 60 percent, the account balance would drop below 25 percent at its low point in April, which the actuaries regard as insufficient.

Because the cash flow problem is so severe that the tax rate under S. 2979 will rise for a few years until equilibrium is established and will fall to lower levels after thereafter, it is estimated that the Tier II tax rate may rise to 16 percent in 1982, and, perhaps, to 20 percent in 1983.

These rates, high as they may seem, will be totally accurate to generate the dollars needed to avoid cashlessness, insolvency, and default unless S. 2979 is acted upon now. The size of the rates necessary to be paid by the carriers if Congressional action is not taken this session will surely result in the

carriers coming to the Congress themselves for a general tax revenue subsidy.

The carriers can be expected to emphasize that there are other methods of curing the cash flow problem in the account. However, the payment of the windfall benefit on a current basis by the Treasury will prevent further erosion on this account but will not relieve the cash flow crisis since it amounts to about \$150 million annually. Further, putting the financial interchange payments from social security on a current basis while clearly desirable and feasible, is not likely to be achieved within the short period of time within which the railroad retirement account must be relieved. In short, these two methods of infusing some cash into the railroad retirement account are far too little far too late to solve the immense cash flow problem currently threatening the solvency of the railroad retirement system.

In closing, I should like to recall to the Committee the testimony of the former Chairman of the National Railway Labor Conference in 1974 in which he assured this Committee that:

"That railroad industry is perfectly prepared to fund the railroad retirement system in every respect in which it bears a reasonable resemblance to any other private industry pension plan, and what that means is that if somehow these figures go askew and we run into difficulty in the future because we have not put enough money in with relation to the benefits that are being provided, we will fund that, we will take care of it--that is our responsibility.

We have been trying for more than two years to persuade the Conference Committee to take action with us to avoid the impending collapse of the program. As pointed out earlier, we began to

make progress some months ago following the scheduling of hearings. Unfortunately, on the basis of our progress until now, it appears that an agreement will not be reached in time to permit legislative action during this session of Congress.

Therefore, on behalf of the hundreds of thousands of retired and active workers, their dependents and survivors, we urge this Committee to take prompt action on this bill within the few remaining weeks of this Congress.

It is imperative that a bill be enacted by the Congress before the close of this session.

Thank you.

Senator METZENBAUM. Thank you, Mr. Berge.

Do you have any comments with respect to the House subcommittee action last evening?

Mr. BERGE. I just heard of it this morning.

Senator METZENBAUM. I am sure that the railway management assumed that you had caused it. Now you indicate that you, too, just heard of it. I am shocked that the Congress is proceeding on its own in an area such as this.

Mr. BERGE. It is quite possible that we did have some influence in that line, sir.

Senator METZENBAUM. Jim Snyder, I think, is indicating you did.

Mr. BERGE. I would defer the response to that question to the legislative representative of the RLEA.

Mr. SNYDER. We were aware of the action, Mr. Chairman. Just a few days ago, we had some Republicans on the minority side who were very vitally interested in this, and a proposal was made on the minority side, such as what the House subcommittee took action last night in the form of a substitute amendment—the same bill that we are discussing here.

In reviewing the amendment very carefully with Mr. Friedman here, and just briefly mentioning it to Chairman Berge, we felt like it was a very good compromise, we felt it was important, and we felt like maybe the carriers would get off center and support such a proposal, because it has been pointed out here that negotiations in real good faith have been going on for 2 years now. There were on the House side proposals made by the two chairmen of the House Interstate and Foreign Commerce Committee to insert a railroad retirement bill to correct the crisis in the railroad retirement system in the railroad deregulation bill. However, this became very controversial, and inasmuch as the Rock Island legislation was rejected by the courts, then it became almost an impossibility. But it was strictly the understanding, inasmuch as railway labor played a major role in the railroad deregulation, that it should be finalized today, which will provide billions of dollars for the industry, which we were very much interested in and were glad to play a part in,

with a lot of time and hard work and efforts, pounding the Hall here, on railroad deregulation.

But it has always been our understanding, particularly on the House side, that once the deregulation was passed to help the industry, then we would take care of the railroad retirement system.

So I think this kind of gives you an answer as to why that action, because we feel like it is very important. They have occasionally been dragging their feet on this, and it is very important, because the longer it is drawn out, it is going to cost the industry more, and then it becomes more complicated. On behalf of our legislative committee and railway labor, we certainly appreciate your efforts in this and your staff efforts in this, in trying to arrive at a reasonable solution. I hope that was not a speech, but those are some facts that I was aware of.

Mr. Friedman might wish to briefly comment on the amendment that was passed in the House last night.

Senator METZENBAUM. Very briefly, Mr. Friedman, in doing so, tell me how it would help if that measure were to proceed forward, because as I understand it, there are three parts to it. One is to phase in the financial interchange so it will be on a current basis; second is to extend the cost of living increases 1 year, and then the third part and most important, as I see it, is directing the Board to prepare recommendations for putting the fund on a financially sound basis. Now, that is where we are at the moment. That is what you are negotiating about, putting the fund on a financially sound basis; that is what this legislation is about. How is the Board going to do something more—how is the Board going to achieve anything that the parties themselves cannot agree upon and that the Congress may have to wrestle with directly?

Mr. FRIEDMAN. I think that raises a philosophical question as to how the Railway Labor Act came about and how it has been handled legislatively over the past 40 years. It is generally known as a measure which results in agreed-upon amendments. There has been some talk as to whether or not the agreements constitute collective bargaining, but they do not constitute collective bargaining. These are efforts by the parties to work out legislative problems, to eliminate controversy from a legislative problem. And they have done that more or less successfully over 40 years. At some points during that long history, there were disagreements, there was an inability to eliminate the controversy in the bill, and controversial bills were pressed before the Congress, and one or the other side prevailed. So the amendments have not always been agreed upon.

And I think your question basically is—and in other years, in the 1972 legislation, the bill formed a committee consisting of the parties to make recommendations. This one directs the Board to come up with something. And after all, the Board is the expert body, it is the administrative agency charged with the responsibility for administering this program. It knows more about the intricacies of this program than anybody in this room. And they are in a position to make suggestions or recommendations as to how this program can be put on a sound basis. That note is a departure from the precedent of the parties getting together to try to agree

upon. I do not think it is bad. I think the Board has a responsibility. Traditionally, the Board has assisted each of the parties in the negotiation process and does play a major role in the negotiations.

Senator METZENBAUM. Could somebody please respond as to how far along you are in the negotiation process? Have you made any headway?

Mr. BERGE. Not very far. At the present time, we have an economist and an actuary working for the committee. The Carrier Conference Committee has an economist, I believe, and an actuary, and they, together with the actuaries of the Retirement Board, are exploring some of the things we discussed to determine what the impact is on benefits and whether they are revenue saving or whether they are cost items. It is very technical work and very time consuming. It takes a very long time, because these people do this in addition to their normal duties.

That committee, which we refer to as a technical committee because it is a committee of experts, is meeting tomorrow morning, and they tell me that they will have a report for the respective committees, my committee and Mr. Hopkins' committee, shortly thereafter.

Senator METZENBAUM. Mr. Berge, the industry suggested that a variable tax could cripple the industry financially. It occurs to me that a variable tax could have some impact upon their ability to raise funds in the marketplace, or from the banking institutions. That would certainly harm them. Has railway labor given any thought to this subject, and do you have a response to that?

Mr. FRIEDMAN. The concept of a variable tax was drawn from the railway unemployment compensation law, and that does provide for a variable tax and has, I think, since its inception. The rate goes up or down as the reserves go up or down.

I think the problem here is that there has been too long a delay in repairing the shortfall. Every year for 10 years, the railroad retirement account is paying out more money than it is paid in, and as you said earlier, we are now in a catchup phase. And because it is a catchup phase, more dollars are required now than will be required once the system catches up.

Senator METZENBAUM. So do you agree that it will go to a 20-percent rate?

Mr. FRIEDMAN. No. The estimates made by the actuary, on the basis of their assumptions, would be that the rate could go as high as 19 or 20 percent in 1983 or 1984, and then would drop thereafter. It would drop after that period. I think one of the problems is that that money has to come from someplace. In other words, this system cannot continue unless enough dollars go in to pay the benefits. And I think we have been attempting to negotiate for 2 years to work this out, and now it is suggested that we can wait still longer. And every year we wait is going to require more money. That is why we feel if we go on much longer, the carriers are going to come to the Congress and say, "We need either a loan from the Federal Treasury, or we need a Federal subsidy." And this has always been a private system, a system which was financed within the industry itself. It has never been supported by tax dollars.

Senator METZENBAUM. Gentlemen, I appreciate your comments. The Chair is going to recess the hearing, but before doing so, I would like to ask Mr. Hopkins whether or not he finds anything unreasonable in the November 11 or 12 date. Is that a fair target date? You had indicated December 31. They are saying yesterday, and November 11 or 12 seems to be a reasonable point of time. Do you have any special difficulty with that?

Mr. HOPKINS. No, sir. We are prepared to live up to the deadline that we have imposed, to so speak, on ourselves. Beyond that, I am not prepared to commit the people I represent.

Senator METZENBAUM. I understand.

Mr. HOPKINS. We certainly want to be cooperative in every way. I have no problem with our jointly reporting to your committee on any date that you might set, but I do have great difficulty with our being disabled in the negotiations by being required to come up with a joint resolution by November 12 or whatever date, on pain that if we do not, of having a bill passed that is a labor bill that would grant them benefits beyond what any organized group in the United States enjoys, and that would impose on our industry a greater cost of pension benefits than any company or industry in the United States.

Senator METZENBAUM. Well, Mr. Hopkins, let me make this observation. There is legislation before the committee. It is labor sponsored. The Chair is the author of that legislation. But the Chair recognizes, railway labor recognizes, you recognize, and the Congress recognizes that the final piece of legislation in any area does not always resemble the original draft. So that although your point is, "Well, if we have to be negotiating against that bill, that is what is going to pass," as the author of the bill, yes, I would press for passage of that bill. But I have been in enough battles around here, and have won some and lost some, that I know that sometimes the give-and-take process helps to get legislation through. And railway labor is not unrealistic about that fact.

Therefore, I would say to you that yes, I am saying that I want to move a bill if you cannot get together. My position is that there is a timeliness in moving a bill. That is not to say that you must, in those negotiations, say, "Well, this will cost us 10 percent less than that bill, and therefore, we ought to take it," because as a former businessman and as a former labor lawyer, I understand that there is a give and take in the process. And I do not wish to put you under a disadvantage by reason of the fact that there is legislation pending. I think there is no disadvantage that I put either party under by saying that I will attempt to get a bill through Congress if you cannot do it on your own. Exactly what the final framing of that bill will be will depend upon the give and take of the process and may also depend upon what happens on November 4, and none of us can kid ourselves about that.

So the main message I am giving to you is to get off dead center both of you, get down into the real negotiations that someday you all thought you were going to get into, and come up with the product or the end result so that Congress can say that labor and management have again agreed upon this and move the legislation on that basis. If you do not do that, then we will have to take it

into our own hands, and it will not be as good a result, of that I am certain.

Mr. HOPKINS. Mr. Chairman, we are prepared to do that in management, and I am quite confident that the organizations are, as well. I would only add one note, and this is in reference to what Chairman Berge has said. We are on all sides of this process dependent in a very large measure on the experts—our own, their own, and the Railroad Retirement Board experts—and this is an enormously complex subject. So that we cannot do an intelligent job unless and until we have the date. We now have it, and they are meeting tomorrow, as Chairman Berge has said. But I think it would be a mistake for all concerned, including, of course, the Congress, to even consider passing something that does not represent a thorough absorption and intelligent use of expert input that we expect to get.

Senator METZENBAUM. The Chair heard that the experts are doing their work on a part-time basis. I think it is time to put them on a full-time basis and overtime, if necessary. Let us move, and if they are doing something else, let us relieve them of those other responsibilities so that they can get you the answers and them the answers so that the matter can get resolved.

Mr. HOPKINS. That was not a misstatement as intended. I think the reference there was to the experts on the Railroad Retirement Board; they have a full-time job to do. Those with whom we consult on the railroad side have made themselves available, and will, on virtually a full-time basis. I would hope the same would be true of the consultants employed by the organizations. I do not know whether that is the case.

But for our part, whatever our handicaps may be, that is not one.

Senator METZENBAUM. Thank you very much. The Chair is about to adjourn this hearing.

Mr. BERGE. I did not mean to infer that they were working on a part-time basis. But as Mr. Hopkins said, the Railroad Retirement Board people do have their functions to perform, and we are imposing extra work, and I am sure that they are working long hours and have been trying very hard. And, certainly, the technical people working for us are available on a full-time basis from this point on. One of the individuals has not been, but I am assured that he will be from this point on.

Senator METZENBAUM. I think that clarifies the matter.

Mr. HOPKINS. I think it is only fair to say, too, sir, that whatever our problems and disagreements may be, we are agreed that we are most fortunate in having the kind, quality, and caliber of people we do at the Railroad Retirement Board and the technical personnel. They provide just invaluable assistance to all of us in trying to resolve this problem.

Senator METZENBAUM. The Chair would just observe that over a lifetime I have been involved in any labor negotiations, I do not know of any instance in which I have seen the high degree of respect, cooperation, and relationship that exists in this industry. It is not exactly similar to that which I have seen existing in some other industries, and I congratulate you on that.

Having congratulated you upon your respect for each other and the quality of your representation, now let me urge you to get this matter resolved as promptly as possible.

The meeting stands adjourned.

[Whereupon, at 11:15 a.m., the committee was adjourned.]

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