

AMTRAK REFORM AND PRIVATIZATION ACT OF 1997

SEPTEMBER 17, 1997.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SHUSTER, from the Committee on Transportation and Infrastructure, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 2247]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 2247) to reform the statutes relating to Amtrak, to authorize appropriations for Amtrak, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Amtrak Reform and Privatization Act of 1997”.

**TITLE I—PROCUREMENT REFORMS**

**SEC. 101. CONTRACTING OUT.**

(a) AMENDMENT.—Section 24312(b) of title 49, United States Code, is amended to read as follows:

“(b) CONTRACTING OUT.—(1) When Amtrak contracts out work normally performed by an employee in a bargaining unit covered by a contract between a labor organization and Amtrak, Amtrak is encouraged to use other rail carriers for performing such work.

“(2)(A) Amtrak may not enter into a contract for the operation of trains with any entity other than a State or State authority.

“(B) If Amtrak enters into a contract as described in subparagraph (A)—

“(i) such contract shall not relieve Amtrak of any obligation in connection with the use of facilities of another entity for the operation covered by such contract; and

“(ii) such operation shall be subject to any operating or safety restrictions and conditions required by the agreement providing for the use of such facilities.

“(C) This paragraph shall not restrict Amtrak’s authority to enter into contracts for access to or use of tracks or facilities for the operation of trains.”

(b) EFFECTIVE DATE.—Subsection (a) shall take effect 254 days after the date of the enactment of this Act.

**SEC. 102. CONTRACTING PRACTICES.**

(a) BELOW-COST COMPETITION.—Section 24305(b) of title 49, United States Code, is amended to read as follows:

“(b) BELOW-COST COMPETITION.—(1) Amtrak shall not submit any bid for the performance of services under a contract for an amount less than the cost to Amtrak of performing such services, with respect to any activity other than the provision of intercity rail passenger transportation, commuter rail passenger transportation, or mail or express transportation. For purposes of this subsection, the cost to Amtrak of performing services shall be determined using generally accepted accounting principles for contracting.

“(2) Any aggrieved individual may commence a civil action for violation of paragraph (1). The United States district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce paragraph (1). The court, in issuing any final order in any action brought pursuant to this paragraph, may award bid preparation costs, anticipated profits, and litigation costs, including reasonable attorney and expert witness fees, to any prevailing or substantially prevailing party. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

“(3) This subsection shall cease to be effective on the expiration of a fiscal year during which no Federal operating assistance is provided to Amtrak.”

(b) THROUGH SERVICE IN CONJUNCTION WITH INTERCITY BUS OPERATIONS.—(1) Section 24305(a) of title 49, United States Code, is amended by adding at the end the following new paragraph:

“(3)(A) Except as provided in subsection (d)(2), Amtrak may enter into a contract with a motor carrier of passengers for the intercity transportation of passengers by motor carrier over regular routes only—

“(i) if the motor carrier is not a public recipient of governmental assistance, as such term is defined in section 13902(b)(8)(A) of this title, other than a recipient of funds under section 5311 of this title;

“(ii) for passengers who have had prior movement by rail or will have subsequent movement by rail; and

“(iii) if the buses, when used in the provision of such transportation, are used exclusively for the transportation of passengers described in clause (ii).

“(B) Subparagraph (A) shall not apply to transportation funded predominantly by a State or local government, or to ticket selling agreements.”

(2) Section 24305(d) of title 49, United States Code, is amended by adding at the end the following new paragraph:

“(3) Congress encourages Amtrak and motor common carriers of passengers to use the authority conferred in sections 11322 and 14302 of this title for the purpose of providing improved service to the public and economy of operation.”

**SEC. 103. FREEDOM OF INFORMATION ACT.**

Section 24301(e) of title 49, United States Code, is amended by striking “Section 552 of title 5, this part,” and inserting in lieu thereof “This part”.

**SEC. 104. TRACK WORK.**

(a) OUTREACH PROGRAM.—Amtrak shall, within one year after the date of the enactment of this Act, establish an outreach program through which it will work with track work manufacturers in the United States to increase the likelihood that such manufacturers will be able to meet Amtrak’s specifications for track work. The program shall include engineering assistance for the manufacturers and dialogue between Amtrak and the manufacturers to identify how Amtrak’s specifications can be met by the capabilities of the manufacturers.

(b) ANNUAL REPORT.—Amtrak shall report to the Congress within 2 years after the date of the enactment of this Act on progress made under subsection (a), includ-

ing a statement of the percentage of Amtrak’s track work contracts that are awarded to manufacturers in the United States.

## **TITLE II—OPERATIONAL REFORMS**

### **SEC. 201. BASIC SYSTEM.**

(a) OPERATION OF BASIC SYSTEM.—Section 24701 of title 49, United States Code, and the item relating thereto in the table of sections of chapter 247 of such title, are repealed.

(b) IMPROVING RAIL PASSENGER TRANSPORTATION.—Section 24702 of title 49, United States Code, and the item relating thereto in the table of sections of chapter 247 of such title, are repealed.

(c) DISCONTINUANCE.—Section 24706 of title 49, United States Code, is amended—

(1) by striking subsection (b);

(2) by striking “NOTICE OF DISCONTINUANCE.—(1) Except as provided in subsection (b) of this section, at” and inserting in lieu thereof “TIME OF NOTICE.—At”;

(3) by striking “90 days” and inserting in lieu thereof “180 days”;

(4) by striking “a discontinuance under section 24704 or 24707(a) or (b) of this title” and inserting in lieu thereof “discontinuing service over a route”;

(5) by inserting “or assume” after “agree to share”;

(6) by striking “(2) Notice” and inserting in lieu thereof “(b) PLACE OF NOTICE.—Notice”; and

(7) by striking “section 24704 or 24707(a) or (b) of this title” and inserting in lieu thereof “subsection (a)”.

(d) COST AND PERFORMANCE REVIEW.—Section 24707 of title 49, United States Code, and the item relating thereto in the table of sections of chapter 247 of such title, are repealed.

(e) SPECIAL COMMUTER TRANSPORTATION.—Section 24708 of title 49, United States Code, and the item relating thereto in the table of sections of chapter 247 of such title, are repealed.

(f) CONFORMING AMENDMENT.—Section 24312(a)(1) of title 49, United States Code, is amended by striking “, 24701(a)”.

### **SEC. 202. MAIL, EXPRESS, AND AUTO-FERRY TRANSPORTATION.**

(a) REPEAL.—Section 24306 of title 49, United States Code, and the item relating thereto in the table of sections of chapter 243 of such title, are repealed.

(b) CONFORMING AMENDMENT.—Section 24301 of title 49, United States Code, is amended by adding at the end the following new subsection:

“(o) NONAPPLICATION OF CERTAIN OTHER LAWS.—State and local laws and regulations that impair the provision of mail, express, and auto-ferry transportation do not apply to Amtrak or a rail carrier providing mail, express, or auto-ferry transportation.”.

### **SEC. 203. ROUTE AND SERVICE CRITERIA.**

Section 24703 of title 49, United States Code, and the item relating thereto in the table of sections of chapter 247 of such title, are repealed.

### **SEC. 204. ADDITIONAL QUALIFYING ROUTES.**

Section 24705 of title 49, United States Code, and the item relating thereto in the table of sections of chapter 247 of such title, are repealed.

### **SEC. 205. TRANSPORTATION REQUESTED BY STATES, AUTHORITIES, AND OTHER PERSONS.**

(a) REPEAL.—Section 24704 of title 49, United States Code, and the item relating thereto in the table of sections of chapter 247 of such title, are repealed.

(b) EXISTING AGREEMENTS.—Amtrak shall not, after the date of the enactment of this Act, be required to provide transportation services pursuant to an agreement entered into before such date of enactment under the section repealed by subsection (a) of this section.

(c) STATE, REGIONAL, AND LOCAL COOPERATION.—Section 24101(c)(2) of title 49, United States Code, is amended by inserting “, separately or in combination,” after “and the private sector”.

(d) CONFORMING AMENDMENT.—Section 24312(a)(1) of title 49, United States Code, is amended by striking “or 24704(b)(2)”.

**SEC. 206. AMTRAK COMMUTER.**

(a) REPEAL OF CHAPTER 245.—Chapter 245 of title 49, United States Code, and the item relating thereto in the table of chapters of subtitle V of such title, are repealed.

(b) CONFORMING AMENDMENTS.—(1) Section 24301(f) of title 49, United States Code, is amended to read as follows:

“(f) TAX EXEMPTION FOR CERTAIN COMMUTER AUTHORITIES.—A commuter authority that was eligible to make a contract with Amtrak Commuter to provide commuter rail passenger transportation but which decided to provide its own rail passenger transportation beginning January 1, 1983, is exempt, effective October 1, 1981, from paying a tax or fee to the same extent Amtrak is exempt.”

(2) Subsection (a) of this section shall not affect any trackage rights held by Amtrak or the Consolidated Rail Corporation.

**SEC. 207. COMMUTER COST SHARING ON THE NORTHEAST CORRIDOR.**

(a) DETERMINATION OF COMPENSATION.—Section 24904 of title 49, United States Code, is amended—

(1) by striking subsection (b);

(2) by redesignating subsection (c) as subsection (b);

(3) in subsection (b), as so redesignated by paragraph (2) of this subsection—

(A) by striking “TRANSPORTATION OVER CERTAIN RIGHTS OF WAY AND FACILITIES” in the subsection head and inserting in lieu thereof “FREIGHT TRANSPORTATION”;

(B) by inserting “relating to rail freight transportation” after “subsection (a)(6) of this section” in paragraph (1); and

(C) by inserting “to an agreement described in paragraph (1)” after “If the parties” in paragraph (2); and

(4) by inserting after subsection (b), as so redesignated by paragraph (2) of this subsection, the following new subsection:

“(c) BINDING ARBITRATION FOR COMMUTER DISPUTES.—(1) If the parties to an agreement described in subsection (a)(6) relating to commuter rail passenger transportation cannot agree to the terms of such agreement, such parties shall submit the issues in dispute to binding arbitration.

“(2) The parties to a dispute described in paragraph (1) may agree to use the Surface Transportation Board to arbitrate such dispute, and if requested the Surface Transportation Board shall perform such function.”

(b) PRIVATIZATION.—Section 24101(d) of title 49, United States Code, is amended to read as follows:

“(d) MINIMIZING GOVERNMENT SUBSIDIES.—To carry out this part, Amtrak is encouraged to make agreements with the private sector and undertake initiatives that are consistent with good business judgment, that produce income to minimize Government subsidies, and that promote the potential privatization of Amtrak’s operations.”

**SEC. 208. ACCESS TO RECORDS AND ACCOUNTS.**

Section 24315 of title 49, United States Code, is amended—

(1) in subsection (e), by inserting “financial or” after “Comptroller General may conduct”; and

(2) by adding at the end the following new subsection:

“(h) ACCESS TO RECORDS AND ACCOUNTS.—A State shall have access to Amtrak’s records, accounts, and other necessary documents used to determine the amount of any payment to Amtrak required of the State.”

## **TITLE III—COLLECTIVE BARGAINING REFORMS**

**SEC. 301. RAILWAY LABOR ACT PROCEDURES.**

(a) NOTICES.—(1) Notwithstanding any arrangement in effect before the date of the enactment of this Act, notices under section 6 of the Railway Labor Act (45 U.S.C. 156) with respect to all issues relating to—

(A) employee protective arrangements and severance benefits, including all provisions of Appendix C-2 to the National Railroad Passenger Corporation Agreement, signed July 5, 1973; and

(B) contracting out by Amtrak of work normally performed by an employee in a bargaining unit covered by a contract between Amtrak and a labor organization representing Amtrak employees,

applicable to employees of Amtrak shall be deemed served and effective on the date which is 90 days after the date of the enactment of this Act. Amtrak, and each affected labor organization representing Amtrak employees, shall promptly supply specific information and proposals with respect to each such notice. This subsection shall not apply to issues relating to provisions defining the scope or classification of work performed by an Amtrak employee.

(2) In the case of provisions of a collective bargaining agreement with respect to which a moratorium is in effect 90 days after the date of the enactment of this Act, paragraph (1) shall take effect on the expiration of such moratorium. For purposes of the application of paragraph (1) to such provisions, notices shall be deemed served and effective on the date of such expiration.

(b) NATIONAL MEDIATION BOARD EFFORTS.—Except as provided in subsection (c), the National Mediation Board shall complete all efforts, with respect to each dispute described in subsection (a), under section 5 of the Railway Labor Act (45 U.S.C. 155) not later than 180 days after the date of the enactment of this Act.

(c) RAILWAY LABOR ACT ARBITRATION.—The parties to any dispute described in subsection (a) may agree to submit the dispute to arbitration under section 7 of the Railway Labor Act (45 U.S.C. 157), and any award resulting therefrom shall be retroactive to the date which is 180 days after the date of the enactment of this Act.

(d) DISPUTE RESOLUTION.—(1) With respect to any dispute described in subsection (a) which—

(A) is unresolved as of the date which is 180 days after the date of the enactment of this Act; and

(B) is not submitted to arbitration as described in subsection (c),

Amtrak and the labor organization parties to such dispute shall, within 187 days after the date of the enactment of this Act, each select an individual from the entire roster of arbitrators maintained by the National Mediation Board. Within 194 days after the date of the enactment of this Act, the individuals selected under the preceding sentence shall jointly select an individual from such roster to make recommendations with respect to such dispute under this subsection.

(2) No individual shall be selected under paragraph (1) who is pecuniarily or otherwise interested in any organization of employees or any railroad. Nothing in this subsection shall preclude an individual from being selected for more than 1 dispute described in subsection (a).

(3) The compensation of individuals selected under paragraph (1) shall be fixed by the National Mediation Board. The second paragraph of section 10 of the Railway Labor Act shall apply to the expenses of such individuals as if such individuals were members of a board created under such section 10.

(4) If the parties to a dispute described in subsection (a) fail to reach agreement within 224 days after the date of the enactment of this Act, the individual selected under paragraph (1) with respect to such dispute shall make recommendations to the parties proposing contract terms to resolve the dispute.

(5) If the parties to a dispute described in subsection (a) fail to reach agreement, no change shall be made by either of the parties in the conditions out of which the dispute arose for 30 days after recommendations are made under paragraph (4).

(6) Section 10 of the Railway Labor Act (45 U.S.C. 160) shall not apply to a dispute described in subsection (a).

#### SEC. 302. SERVICE DISCONTINUANCE.

(a) REPEAL.—(1) Section 24706(c) of title 49, United States Code, is repealed.

(2) Any provision of a contract, entered into before the date of the enactment of this Act between Amtrak and a labor organization representing Amtrak employees, relating to—

(A) employee protective arrangements and severance benefits, including all provisions of Appendix C-2 to the National Railroad Passenger Corporation Agreement, signed July 5, 1973; or

(B) contracting out by Amtrak of work normally performed by an employee in a bargaining unit covered by a contract between Amtrak and a labor organization representing Amtrak employees,

applicable to employees of Amtrak is extinguished. This paragraph shall not apply to provisions defining the scope or classification of work performed by an Amtrak employee.

(3) Section 1172(c) of title 11, United States Code, shall not apply to Amtrak and its employees.

(4) Paragraphs (1) and (2) of this subsection shall take effect 254 days after the date of the enactment of this Act.

(b) INTERCITY PASSENGER SERVICE EMPLOYEES.—Section 1165(a) of the Northeast Rail Service Act of 1981 (45 U.S.C. 1113(a)) is amended—

(1) by inserting “(1)” before “After January 1, 1983”;

(2) by striking “Amtrak, Amtrak Commuter, and Conrail” and inserting in lieu thereof “Amtrak and Conrail”;

(3) by striking “Such agreement shall ensure” and all that follows through “submitted to binding arbitration.”; and

(4) by adding at the end the following new paragraph:

“(2) Notwithstanding any other provision of law, agreement, or arrangement, with respect to employees in any class or craft in train or engine service, Conrail shall have the right to furlough one such employee for each employee in train or engine service who moves from Amtrak to Conrail in excess of the cumulative number of such employees who move from Conrail to Amtrak. Conrail shall not be obligated to fill any position governed by an agreement concerning crew consist, attrition arrangements, reserve boards, or reserve engine service positions, where an increase in positions is the result of the return of an Amtrak employee pursuant to an agreement entered into under paragraph (1). Conrail’s collective bargaining agreements with organizations representing its train and engine service employees shall be deemed to have been amended to conform to this paragraph. Any dispute or controversy with respect to the interpretation, application, or enforcement of this paragraph which has not been resolved within 90 days after the date of the enactment of this paragraph may be submitted by either party to an adjustment board for a final and binding decision under section 3 of the Railway Labor Act.”.

## TITLE IV—USE OF RAILROAD FACILITIES

### SEC. 401. LIABILITY LIMITATION.

(a) AMENDMENT.—Chapter 281 of title 49, United States Code, is amended by adding at the end the following new section:

#### “§ 28103. Limitations on rail passenger transportation liability

“(a) LIMITATIONS.—(1) Notwithstanding any other statutory or common law or public policy, or the nature of the conduct giving rise to damages or liability, in a claim for personal injury, death, or damage to property arising from or in connection with the provision of rail passenger transportation, or from or in connection with any rail passenger transportation operations over or rail passenger transportation use of right-of-way or facilities owned, leased, or maintained by any high-speed railroad authority or operator, any commuter authority or operator, any rail carrier, or any State—

“(A) punitive damages shall not exceed the greater of—

“(i) \$250,000; or

“(ii) three times the amount of economic loss; and

“(B) noneconomic damages awarded to any claimant for each accident or incident shall not exceed the claimant’s economic loss, if any, by more than \$250,000.

“(2) If, in any case wherein death was caused, the law of the place where the act or omission complained of occurred provides, or has been construed to provide, for damages only punitive in nature, the claimant may recover in a claim limited by this subsection for economic and noneconomic damages and punitive damages, subject to paragraph (1)(A) and (B).

“(3) For purposes of this subsection—

“(A) the term ‘actual damages’ means damages awarded to pay for economic loss;

“(B) the term ‘claim’ means a claim made, directly or indirectly—

“(i) against Amtrak, any high-speed railroad authority or operator, any commuter authority or operator, any rail carrier, or any State; or

“(ii) against an officer, employee, affiliate engaged in railroad operations, or agent, of Amtrak, any high-speed railroad authority or operator, any commuter authority or operator, any rail carrier, or any State;

“(C) the term ‘economic loss’ means any pecuniary loss resulting from harm, including the loss of earnings, medical expense loss, replacement services loss, loss due to death, burial costs, loss of business or employment opportunities, and any other form of pecuniary loss allowed under applicable State law or under paragraph (2) of this subsection;

“(D) the term ‘noneconomic damages’ means damages other than punitive damages or actual damages; and

“(E) the term ‘punitive damages’ means damages awarded against any person or entity to punish or deter such person or entity, or others, from engaging in similar behavior in the future.

“(b) INDEMNIFICATION OBLIGATIONS.—Obligations of any party, however arising, including obligations arising under leases or contracts or pursuant to orders of an administrative agency, to indemnify against damages or liability for personal injury, death, or damage to property described in subsection (a), incurred after the date of the enactment of the Amtrak Reform and Privatization Act of 1997, shall be enforceable, notwithstanding any other statutory or common law or public policy, or the nature of the conduct giving rise to the damages or liability.

“(c) EFFECT ON OTHER LAWS.—This section shall not affect the damages that may be recovered under the Act of April 27, 1908 (45 U.S.C. 51 et seq.; popularly known as the ‘Federal Employers’ Liability Act’) or under any workers compensation Act.

“(d) DEFINITION.—For purposes of this section, the term ‘rail carrier’ includes a person providing excursion, scenic, or museum train service, and an owner or operator of a privately owned rail passenger car.”.

(b) CONFORMING AMENDMENT.—The table of sections of chapter 281 of title 49, United States Code, is amended by adding at the end the following new item:

“28103. Limitations on rail passenger transportation liability.”.

## TITLE V—FINANCIAL REFORMS

### SEC. 501. FINANCIAL POWERS.

(a) CAPITALIZATION.—(1) Section 24304 of title 49, United States Code, is amended to read as follows:

#### “§ 24304. Employee stock ownership plans

“In issuing stock pursuant to applicable corporate law, Amtrak is encouraged to include employee stock ownership plans.”.

(2) The item relating to section 24304 of title 49, United States Code, in the table of sections of chapter 243 of such title is amended to read as follows:

“24304. Employee stock ownership plans.”.

(b) REDEMPTION OF COMMON STOCK.—(1) Amtrak shall, within 2 months after the date of the enactment of this Act, redeem all common stock previously issued, for the fair market value of such stock.

(2) Section 28103 of title 49, United States Code, shall not apply to any rail carrier holding common stock of Amtrak after the expiration of 2 months after the date of the enactment of this Act.

(3) Amtrak shall redeem any such common stock held after the expiration of the 2-month period described in paragraph (1), using procedures set forth in section 24311(a) and (b).

(c) ELIMINATION OF LIQUIDATION PREFERENCE AND VOTING RIGHTS OF PREFERRED STOCK.—(1)(A) Preferred stock of Amtrak held by the Secretary of Transportation shall confer no liquidation preference.

(B) Subparagraph (A) shall take effect 90 days after the date of the enactment of this Act.

(2)(A) Preferred stock of Amtrak held by the Secretary of Transportation shall confer no voting rights.

(B) Subparagraph (A) shall take effect 60 days after the date of the enactment of this Act.

(d) NOTE AND MORTGAGE.—(1) Section 24907 of title 49, United States Code, and the item relating thereto in the table of sections of chapter 249 of such title, are repealed.

(2) The United States hereby relinquishes all rights held in connection with any note obtained or mortgage made under such section 24907, or in connection with the note, security agreement, and terms and conditions related thereto entered into with Amtrak dated October 5, 1983.

(e) STATUS AND APPLICABLE LAWS.—(1) Section 24301(a)(3) of title 49, United States Code, is amended by inserting “, and shall not be subject to title 31” after “United States Government”.

(2) Section 9101(2) of title 31, United States Code, relating to Government corporations, is amended by striking subparagraph (A) and redesignating subparagraphs (B) through (L) as subparagraphs (A) through (K), respectively.

### SEC. 502. DISBURSEMENT OF FEDERAL FUNDS.

Section 24104(d) of title 49, United States Code, is amended to read as follows:

“(d) ADMINISTRATION OF APPROPRIATIONS.—Federal operating assistance funds appropriated to Amtrak shall be provided to Amtrak upon appropriation when requested by Amtrak.”.

**SEC. 503. BOARD OF DIRECTORS.**

(a) AMENDMENT.—Section 24302 of title 49, United States Code, is amended to read as follows:

**“§ 24302. Board of Directors**

“(a) EMERGENCY REFORM BOARD.—

“(1) ESTABLISHMENT AND DUTIES.—The Emergency Reform Board described in paragraph (2) shall assume the responsibilities of the Board of Directors of Amtrak 60 days after the date of the enactment of the Amtrak Reform and Privatization Act of 1997, or as soon thereafter as such Board is sufficiently constituted to function as a board of directors under applicable corporate law. Such Board shall adopt new bylaws, including procedures for the selection of members of the Board of Directors under subsection (c) which provide for employee representation.

“(2) MEMBERSHIP.—(A) The Emergency Reform Board shall consist of 7 members appointed by the President, by and with the advice and consent of the Senate.

“(B) In selecting individuals for nominations for appointments to the Emergency Reform Board, the President should consult with—

“(i) the Speaker of the House of Representatives concerning the appointment of two members;

“(ii) the minority leader of the House of Representatives concerning the appointment of one member;

“(iii) the majority leader of the Senate concerning the appointment of two members; and

“(iv) the minority leader of the Senate concerning the appointment of one member.

“(C) Appointments under subparagraph (A) shall be made from among individuals who—

“(i) have technical qualification, professional standing, and demonstrated expertise in the fields of intercity common carrier transportation and corporate management; and

“(ii) are not employees of Amtrak, employees of the United States, or representatives of rail labor or rail management.

“(b) DIRECTOR GENERAL.—If the Emergency Reform Board described in subsection (a)(2) is not sufficiently constituted to function as a board of directors under applicable corporate law before the expiration of 60 days after the date of the enactment of the Amtrak Reform and Privatization Act of 1997, the Chief Justice of the United States shall appoint a Director General, who shall exercise all powers of the Board of Directors of Amtrak until the Emergency Reform Board assumes such powers.

“(c) BOARD OF DIRECTORS.—Four years after the establishment of the Emergency Reform Board under subsection (a), a Board of Directors shall be selected pursuant to bylaws adopted by the Emergency Reform Board, and the Emergency Reform Board shall be dissolved.

“(d) AUTHORITY TO RECOMMEND PLAN.—The Emergency Reform Board shall have the authority to recommend to the Congress a plan to implement the recommendations of the 1997 Working Group on Inter-City Rail regarding the transfer of Amtrak’s infrastructure assets and responsibilities to a new separately governed corporation.”

(b) EFFECT ON AUTHORIZATIONS.—If the Emergency Reform Board has not assumed the responsibilities of the Board of Directors of Amtrak before March 15, 1998, all provisions authorizing appropriations under the amendments made by section 701 of this Act for a fiscal year after fiscal year 1998 shall cease to be effective.

**SEC. 504. REPORTS AND AUDITS.**

Section 24315 of title 49, United States Code, as amended by section 208 of this Act, is further amended—

(1) by striking subsections (a) and (c);

(2) by redesignating subsections (b), (d), (e), (f), (g), and (h) as subsections (a), (b), (c), (d), (e), and (f), respectively; and

(3) in subsection (d), as so redesignated by paragraph (2) of this section, by striking “(d) or (e)” and inserting in lieu thereof “(b) or (c)”.

**SEC. 505. OFFICERS’ PAY.**

Section 24303(b) of title 49, United States Code, is amended by inserting “The preceding sentence shall cease to be effective on the expiration of a fiscal year during which no Federal operating assistance is provided to Amtrak.” after “with comparable responsibility.”



**SEC. 506. EXEMPTION FROM TAXES.**

Section 24301(1)(1) of title 49, United States Code, is amended—

(1) by inserting “, and any passenger or other customer of Amtrak or such subsidiary,” after “subsidiary of Amtrak”;

(2) by striking “or fee imposed” and all that follows through “levied on it” and inserting in lieu thereof “, fee, head charge, or other charge, imposed or levied by a State, political subdivision, or local taxing authority, directly or indirectly on Amtrak or on persons traveling in intercity rail passenger transportation or on mail or express transportation provided by Amtrak or a rail carrier subsidiary of Amtrak, or on the carriage of such persons, mail, or express, or on the sale of any such transportation, or on the gross receipts derived therefrom”;

(3) by amending the last sentence thereof to read as follows: “In the case of a tax or fee that Amtrak was required to pay as of September 10, 1982, Amtrak is not exempt from such tax or fee if it was assessed before April 1, 1997.”.

## **TITLE VI—MISCELLANEOUS**

**SEC. 601. TEMPORARY RAIL ADVISORY COUNCIL.**

(a) **APPOINTMENT.**—Within 30 days after the date of the enactment of this Act, a Temporary Rail Advisory Council (in this section referred to as the “Council”) shall be appointed under this section.

(b) **DUTIES.**—The Council shall—

(1) evaluate Amtrak’s performance;

(2) prepare an analysis and critique of Amtrak’s business plan;

(3) suggest strategies for further cost containment and productivity improvements, including strategies with the potential for further reduction in Federal operating subsidies and the eventual partial or complete privatization of Amtrak’s operations; and

(4) recommend appropriate methods for adoption of uniform cost and accounting procedures throughout the Amtrak system, based on generally accepted accounting principles.

(c) **MEMBERSHIP.**—(1) The Council shall consist of 7 members appointed as follows:

(A) Two individuals to be appointed by the Speaker of the House of Representatives.

(B) One individual to be appointed by the minority leader of the House of Representatives.

(C) Two individuals to be appointed by the majority leader of the Senate.

(D) One individual to be appointed by the minority leader of the Senate.

(E) One individual to be appointed by the President.

(2) Appointments under paragraph (1) shall be made from among individuals who—

(A) have technical qualification, professional standing, and demonstrated expertise in the fields of transportation and corporate management; and

(B) are not employees of Amtrak, employees of the United States, or representatives of rail labor or rail management.

(3) Within 40 days after the date of the enactment of this Act, a majority of the members of the Council shall elect a chairman from among such members.

(d) **TRAVEL EXPENSES.**—Each member of the Council shall serve without pay, but shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

(e) **ADMINISTRATIVE SUPPORT.**—The Secretary of Transportation shall provide to the Council such administrative support as the Council requires to carry out this section.

(f) **ACCESS TO INFORMATION.**—Amtrak shall make available to the Council all information the Council requires to carry out this section. The Council shall establish appropriate procedures to ensure against the public disclosure of any information obtained under this subsection which is a trade secret or commercial or financial information that is privileged or confidential.

(g) **REPORTS.**—(1) Within 120 days after the date of the enactment of this Act, the Council shall transmit to the Amtrak board of directors and the Congress an interim report on its findings and recommendations.

(2) Within 270 days after the date of the enactment of this Act, the Council shall transmit to the Amtrak board of directors and the Congress a final report on its findings and recommendations.

(h) STATUS.—The Council shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.) or section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act).

**SEC. 602. PRINCIPAL PLACE OF BUSINESS.**

Section 24301(b) of title 49, United States Code, is amended—

- (1) by striking the first sentence;
- (2) by striking “of the District of Columbia” and inserting in lieu thereof “of the State in which its principal place of business is located”; and
- (3) by inserting “For purposes of this subsection, the term ‘State’ includes the District of Columbia. Notwithstanding section 3 of the District of Columbia Business Corporation Act, Amtrak, if its principal place of business is located in the District of Columbia, shall be considered organized under the provisions of such Act.” after “in a civil action.”.

**SEC. 603. STATUS AND APPLICABLE LAWS.**

Section 24301 of title 49, United States Code, is amended—

- (1) in subsection (a)(1), by striking “rail carrier under section 10102” and inserting in lieu thereof “railroad carrier under section 20102(2) and chapters 261 and 281”; and
- (2) by amending subsection (c) to read as follows:  
“(c) APPLICATION OF SUBTITLE IV.—Subtitle IV of this title shall not apply to Amtrak, except for sections 11301, 11322(a), 11502, and 11706. Notwithstanding the preceding sentence, Amtrak shall continue to be considered an employer under the Railroad Retirement Act of 1974, the Railroad Unemployment Insurance Act, and the Railroad Retirement Tax Act.”.

**SEC. 604. WASTE DISPOSAL.**

Section 24301(m)(1)(A) of title 49, United States Code, is amended by striking “1996” and inserting in lieu thereof “2000”.

**SEC. 605. ASSISTANCE FOR UPGRADING FACILITIES.**

Section 24310 of title 49, United States Code, and the item relating thereto in the table of sections of chapter 243 of such title, are repealed.

**SEC. 606. RAIL SAFETY SYSTEM PROGRAM.**

Section 24313 of title 49, United States Code, and the item relating thereto in the table of sections of chapter 243 of such title, are repealed.

**SEC. 607. DEMONSTRATION OF NEW TECHNOLOGY.**

Section 24314 of title 49, United States Code, and the item relating thereto in the table of sections of chapter 243 of such title, are repealed.

**SEC. 608. PROGRAM MASTER PLAN FOR BOSTON-NEW YORK MAIN LINE.**

(a) REPEAL.—Section 24903 of title 49, United States Code, and the item relating thereto in the table of sections of chapter 249 of such title, are repealed.

(b) CONFORMING AMENDMENT.—Section 24902(a)(1)(A) of title 49, United States Code, is amended by striking “and 40 minutes”.

**SEC. 609. BOSTON-NEW HAVEN ELECTRIFICATION PROJECT.**

Section 24902(f) of title 49, United States Code, is amended—

- (1) by inserting “(1)” before “Improvements under”; and
- (2) by adding at the end the following new paragraph:  
“(2) Amtrak shall design and construct the electrification system between Boston, Massachusetts, and New Haven, Connecticut, to accommodate the installation of a third mainline track between Davisville and Central Falls, Rhode Island, to be used for double-stack freight service to and from the Port of Davisville. Amtrak shall also make clearance improvements on the existing main line tracks to permit double stack service on this line, if funds to defray the costs of clearance improvements beyond Amtrak’s own requirements for electrified passenger service are provided by public or private entities other than Amtrak. Wherever practicable, Amtrak shall use portal structures and realign existing tracks on undergrade and overgrade bridges to minimize the width of the right-of-way required to add the third track. Amtrak shall take such other steps as may be required to coordinate and facilitate design and construction work. The Secretary of Transportation may provide appropriate support to Amtrak for carrying out this paragraph.”.

**SEC. 610. AMERICANS WITH DISABILITIES ACT OF 1990.**

(a) APPLICATION TO AMTRAK.—Amtrak, and with respect only to the facilities it jointly uses with Amtrak, a commuter authority, shall not be subject to any requirement under section 242(a) (1) and (3) and (e)(2) of the Americans With Disabilities

Act of 1990 (42 U.S.C. 12162(a) (1) and (3) and (e)(2)) until January 1, 1998. For stations jointly used by Amtrak and a commuter authority, this subsection shall not affect the allocation of costs between Amtrak and the commuter authority relating to accessibility improvements.

(b) CONFORMING AMENDMENT.—Section 24307 of title 49, United States Code, is amended—

- (1) by striking subsection (b); and
- (2) by redesignating subsection (c) as subsection (b).

**SEC. 611. DEFINITIONS.**

Section 24102 of title 49, United States Code, is amended—

- (1) by striking paragraphs (2), (3), and (11);
- (2) by redesignating paragraphs (4) through (8) as paragraphs (2) through (6), respectively;
- (3) by inserting after paragraph (6), as so redesignated by paragraph (2) of this section, the following new paragraph:
  - “(7) ‘rail passenger transportation’ means the interstate, intrastate, or international transportation of passengers by rail;”;
- (4) in paragraph (6), as so redesignated by paragraph (2) of this section, by inserting “, including a unit of State or local government,” after “means a person”; and
- (5) by redesignating paragraphs (9) and (10) as paragraphs (8) and (9), respectively.

**SEC. 612. NORTHEAST CORRIDOR COST DISPUTE.**

Section 1163 of the Northeast Rail Service Act of 1981 (45 U.S.C. 1111) is repealed.

**SEC. 613. INSPECTOR GENERAL ACT OF 1978 AMENDMENT.**

(a) AMENDMENT.—Section 8G(a)(2) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by striking “Amtrak,”.

(b) AMTRAK NOT FEDERAL ENTITY.—Amtrak shall not be considered a Federal entity for purposes of the Inspector General Act of 1978.

**SEC. 614. CONSOLIDATED RAIL CORPORATION.**

Section 4023 of the Conrail Privatization Act (45 U.S.C. 1323), and the item relating thereto in the table of contents of such Act, are repealed.

**SEC. 615. INTERSTATE RAIL COMPACTS.**

(a) CONSENT TO COMPACTS.—Congress grants consent to States with an interest in a specific form, route, or corridor of intercity passenger rail service (including high speed rail service) to enter into interstate compacts to promote the provision of the service, including—

- (1) retaining an existing service or commencing a new service;
- (2) assembling rights-of-way; and
- (3) performing capital improvements, including—
  - (A) the construction and rehabilitation of maintenance facilities and intermodal passenger facilities;
  - (B) the purchase of locomotives; and
  - (C) operational improvements, including communications, signals, and other systems.

(b) FINANCING.—An interstate compact established by States under subsection (a) may provide that, in order to carry out the compact, the States may—

- (1) accept contributions from a unit of State or local government or a person;
- (2) use any Federal or State funds made available for intercity passenger rail service (except funds made available for the National Railroad Passenger Corporation);
- (3) on such terms and conditions as the States consider advisable—
  - (A) borrow money on a short-term basis and issue notes for the borrowing; and
  - (B) issue bonds; and
- (4) obtain financing by other means permitted under Federal or State law.

**SEC. 616. CONFORMING AMENDMENTS.**

Part C of subtitle V of title 49, United States Code, is amended—

- (1) in section 24307(b)(3), as so redesignated by section 610(b)(2) of this Act, by striking “Interstate Commerce Commission” and inserting in lieu thereof “Surface Transportation Board”;
- (2) in section 24308—

- (A) by striking “Interstate Commerce Commission” in subsection (a)(2)(A) and inserting in lieu thereof “Surface Transportation Board”; and
- (B) by striking “Commission” each place it appears and inserting in lieu thereof “Board”;
- (3) in section 24311(c)—
- (A) by striking “Interstate Commerce Commission” in paragraph (1) and inserting in lieu thereof “Surface Transportation Board”;
- (B) by striking “Commission” each place it appears and inserting in lieu thereof “Board”; and
- (C) by striking “Commission’s” in paragraph (2) and inserting in lieu thereof “Board’s”;
- (4) in section 24902(j)—
- (A) by striking “Interstate Commerce Commission” each place it appears and inserting in lieu thereof “Surface Transportation Board”; and
- (B) by striking “Commission” each place it appears and inserting in lieu thereof “Board”; and
- (5) in section 24904(b), as so redesignated by section 207(a)(2) of this Act—
- (A) by striking “Interstate Commerce Commission” in paragraph (2) and inserting in lieu thereof “Surface Transportation Board”; and
- (B) by striking “Commission” each place it appears and inserting in lieu thereof “Board”.

**SEC. 617. MAGNETIC LEVITATION TRACK MATERIALS.**

The Secretary of Transportation shall transfer to the State of Florida, pursuant to a grant or cooperative agreement, title to aluminum reaction rail, power rail base, and other related materials (originally used in connection with the Prototype Air Cushion Vehicle Program between 1973 and 1976) located at the Transportation Technology Center near Pueblo, Colorado, for use by the State of Florida to construct a magnetic levitation track in connection with a project or projects being undertaken by American Maglev Technology, Inc., to demonstrate magnetic levitation technology in the United States. If the materials are not used for such construction within 3 years after the date of the enactment of this Act, title to such materials shall revert to the United States.

**SEC. 618. RAILROAD LOAN GUARANTEES.**

(a) **DECLARATION OF POLICY.**—Section 101(a)(4) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 801(a)(4)) is amended to read as follows:

“(4) Continuation of service on, or preservation of, light density lines that are necessary to continued employment and community well-being throughout the United States.”.

(b) **MAXIMUM RATE OF INTEREST.**—Section 511(f) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 831(f)) is amended by striking “shall not exceed an annual percentage rate which the Secretary determines to be reasonable, taking into consideration the prevailing interest rates for similar obligations in the private market.” and inserting in lieu thereof “shall not exceed the annual percentage rate which is equivalent to the cost of money to the United States.”.

(c) **MINIMUM REPAYMENT PERIOD AND PREPAYMENT PENALTIES.**—Section 511(g)(2) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 831(g)(2)) is amended to read as follows:

“(2) payment of the obligation is required by its terms to be made not less than 15 years but not more than 25 years from the date of its execution, with no penalty imposed for prepayment after 5 years;”.

(d) **DETERMINATION OF REPAYABILITY.**—Section 511(g)(5) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 831(g)(5)) is amended to read as follows:

“(5) either the loan can reasonably be repaid by the applicant or the loan is collateralized at no more than the current value of assets being financed under this section to provide protection to the United States;”.

## **TITLE VII—AUTHORIZATION OF APPROPRIATIONS**

**SEC. 701. AUTHORIZATION OF APPROPRIATIONS.**

(a) **CAPITAL EXPENDITURES.**—Section 24104(a) of title 49, United States Code, is amended to read as follows:

“(a) **CAPITAL EXPENDITURES.**—There are authorized to be appropriated to the Secretary of Transportation—

- “(1) \$230,000,000 for fiscal year 1995;
- “(2) \$230,000,000 for fiscal year 1996;
- “(3) \$224,000,000 for fiscal year 1997;
- “(4) \$501,000,000 for fiscal year 1998;
- “(5) \$516,000,000 for fiscal year 1999; and
- “(6) \$531,000,000 for fiscal year 2000,

for the benefit of Amtrak for capital expenditures under chapters 243 and 247 of this title.”.

(b) OPERATING EXPENSES.—Section 24104(b) of title 49, United States Code, is amended to read as follows:

“(b) OPERATING EXPENSES.—There are authorized to be appropriated to the Secretary of Transportation—

- “(1) \$542,000,000 for fiscal year 1995;
- “(2) \$405,000,000 for fiscal year 1996;
- “(3) \$365,000,000 for fiscal year 1997;
- “(4) \$387,000,000 for fiscal year 1998;
- “(5) \$292,000,000 for fiscal year 1999; and
- “(6) \$242,000,000 for fiscal year 2000,

for the benefit of Amtrak for operating expenses.”.

(c) ADDITIONAL AUTHORIZATIONS.—Section 24104(c) of title 49, United States Code, is amended to read as follows:

“(c) ADDITIONAL AUTHORIZATIONS.—In addition to amounts appropriated under subsection (a), there are authorized to be appropriated to the Secretary of Transportation—

- “(1) \$200,000,000 for fiscal year 1995;
- “(2) \$115,000,000 for fiscal year 1996;
- “(3) \$255,000,000 for fiscal year 1997;
- “(4) \$250,000,000 for fiscal year 1998;
- “(5) \$250,000,000 for fiscal year 1999; and
- “(6) \$250,000,000 for fiscal year 2000,

for the benefit of Amtrak to make capital expenditures under chapter 249 of this title.”.

(d) REDUCTION OF AMOUNTS.—Section 24104 of title 49, United States Code, is further amended by adding at the end the following new subsection:

“(g) REDUCTION OF AMOUNTS.—For each fiscal year, the total amount authorized to be appropriated under subsections (a) and (c) combined shall be reduced by any amount made available to Amtrak pursuant to the Taxpayer Relief Act of 1997 for that fiscal year.”.

(e) CONFORMING AMENDMENTS.—Section 24909 of title 49, United States Code, and the item relating thereto in the table of sections of chapter 249 of such title, are repealed.

(f) GUARANTEE OF OBLIGATIONS.—There are authorized to be appropriated to the Secretary of Transportation—

- (1) \$50,000,000 for fiscal year 1998;
- (2) \$50,000,000 for fiscal year 1999; and
- (3) \$50,000,000 for fiscal year 2000,

for guaranteeing obligations of Amtrak under section 511 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 831).

(g) CONDITIONS FOR GUARANTEE OF OBLIGATIONS.—Section 511(i) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 831(i)) is amended by adding at the end the following new paragraph:

“(4) The Secretary shall not require, as a condition for guarantee of an obligation under this section, that all preexisting secured obligations of an obligor be subordinated to the rights of the Secretary in the event of a default.”.

#### PURPOSE AND SUMMARY

On July 24, 1997, H.R. 2247, the Amtrak Reauthorization and Privatization Act of 1997 was introduced. Amtrak’s previous authorization expired on September 30, 1994. H.R. 2247 authorizes appropriations totaling \$3.37 billion over the fiscal years 1998–2000 for Amtrak and represents a thorough overhaul of Amtrak’s authorizing statutes, aimed at reducing costs and eliminating Federal micromanagement of Amtrak’s operations.

H.R. 2247 provides Amtrak with far greater flexibility in managing its work force. H.R. 2247 calls for an accelerated bargaining

process on the issue of contracting out work and on the issue of labor protection. At the end of the bargaining process (254 days in total), both Amtrak's statutory ban on contracting out work other than food and beverage service and pre-enactment contract terms that implement that ban, as well as all statutory and contract terms relating to labor protection, would lapse. At that point, labor and management could employ "self help" measures under the Railway Labor Act. Any union with a current contract moratorium in force at the date of enactment would begin negotiations when the moratorium expires.

Also, H.R. 2247 provides that Surface Transportation Board (STB) (*New York Dock*) labor protection standards do not apply in the event of an Amtrak bankruptcy and revises the Northeast Rail Service Act to restrict but not eliminate "flowback" labor protection rights for employees who joined Amtrak from Conrail or its predecessor railroads.

The bill also provides Amtrak with flexibility in designing and managing its route system. H.R. 2247 repeals Amtrak's current obligation to operate the "basic system" of routes (consisting primarily of routes inherited from private railroads in 1971), unless excused by financial emergency or insufficient funding. Under the legislation, Amtrak would decide the merits of various routes according to commercial potential, not arbitrary statutory preference. Further, the bill eliminates current statutory criteria for evaluating routes and services, and the statutory matching formula that currently applies to State-requested service. To assist the States in contributing to continued rail service in cases where Amtrak is no longer able to offer service entirely on its own, the bill provides for interstate compact pre-approval, allowing the States to enter into long-term agreements with each other that ensure stability in the provision of rail service.

H.R. 2247 establishes a new procedure by which commuter authorities on the Northeast Corridor would compensate Amtrak for their use of the Corridor. Under the current practice, commuter authorities pay Amtrak only for the incremental costs of their use of the Corridor, but not for the shared capital costs. Outside the Northeast Corridor, commuter authorities simply negotiate the terms of their use of right-of-way with the owner of the property, whether a State entity or a private freight railroad. H.R. 2247 would place Northeast Corridor commuter operators on the same footing as their off-Corridor counterparts by repealing the statutory formula by which commuters reimburse Amtrak. Henceforward, Amtrak and the commuter authorities would negotiate the terms for reimbursement according to standard business practices. Any disputes that could not be resolved by the parties would be submitted to binding arbitration, with the STB available as an arbitrator if chosen by the parties.

Further, H.R. 2247 contains dramatic financial reforms that will afford Amtrak many more options in obtaining private financing. The bill calls for Amtrak to redeem all of its common stock (now held with one exception by freight railroads), and removes the voting rights and liquidation preference of the preferred stock now held exclusively by the Department of Transportation. DOT's note and mortgage on the Northeast Corridor are extinguished as well.

This would have the benefit of removing DOT as a preferred creditor who stands ahead of other potential commercial lenders in all Amtrak financial transactions.

H.R. 2247 also provides for a new management structure at Amtrak to deal with Amtrak's financial crisis. Sixty days after enactment, the existing board of directors would be replaced by a 4-year emergency reform board to be appointed by the President in consultation with Congress. Board members would be required to have background and expertise in transportation and business management and would be confirmed by the Senate.

The bill also resolves an issue of long-standing concern to Amtrak and to the freight railroads over which Amtrak operates and removes a major barrier to the expansion of passenger rail service—exposure to tort liability from passenger train accidents. This exposure results from the usually involuntary participation of the freight railroad as a provider of facilities and infrastructure. H.R. 2247 establishes two limits on tort liability exposure of freight and passenger carriers who operate or provide facilities for rail passenger service: (1) a cap of \$250,000 or three times economic damages, whichever is greater, on punitive or exemplary damages, and; (2) a cap of \$250,000 above economic losses per claimant on non-economic damages. The bill also affirms that indemnity contracts between a passenger rail operator and any other party are fully enforceable without regard to any other law or public policy.

Finally, to assist Amtrak's efforts to reach financial stability and eventual removal from dependence on federal assistance, H.R. 2247 calls for the establishment of 7-member advisory council of business experts who have no affiliation with the railroad industry, Amtrak, or the United States government. Called the Temporary Rail Advisory Council (TRAC), this expert body is to submit an interim report within 120 days of enactment and a final report within 270 days of enactment. The reports are to evaluate Amtrak's performance, business plan, cost-containment and productivity-improvement strategies, and cost and accounting procedures and recommend actions Amtrak can take to reduce Federal subsidies to achieve a complete or partial privatization.

#### BACKGROUND AND NEED FOR LEGISLATION

A February 1995 General Accounting Office report, entitled "Intercity Passenger Rail: Financial and Operating Conditions Threaten Amtrak's Long-Term Viability," found that:

Amtrak's financial and operating conditions have declined steadily since 1990, and Amtrak's ability to provide nationwide service at the present level is now seriously threatened. \* \* \* It is unlikely that Amtrak can overcome its problems in financing, capital investments, and service quality—and continue to operate the present nationwide system—without significant increases in passenger revenues and/or subsidies from Federal, State, and local governments.

The GAO report confirmed what many Amtrak passengers have known for a long time—that underinvestment in Amtrak's equipment and facilities has begun to manifest itself in the form of de-

clining service quality and reduced reliability. For example, the GAO found that the average age of Amtrak's cars was 22 years—about equal to what it was when Amtrak began operations with used private railroad equipment in 1971. The advanced age of the cars was exacerbated by a slowdown in equipment overhauls due to funding shortages in the late 1980s. In 1993, heavy overhauls were overdue for nearly 40 per cent of Amtrak's fleet. This capital investment deferral has a cascading effect: investments are not made due to a lack of funds, so service quality deteriorates and passengers find other means of travel leading to a further decline in revenues.

In response to this crisis at Amtrak, the Committee ordered reported H.R. 1788 on September 21, 1995 as a bipartisan compromise bill. H.R. 1788, which is virtually identical to H.R. 2247, was passed on the House floor on November 30, 1995, by a rollcall vote of 406—4. H.R. 1788 represented a thorough overhaul of Amtrak's corporate structure and labor requirements aimed at rescuing Amtrak from potential liquidation and preserving intercity passenger rail service in this country. However, Amtrak legislation was not enacted into law during the 104th Congress.

Since the autumn of 1995 when H.R. 1788 was passed by the House, Amtrak's financial situation has grown even more precarious. The FY 1997 budget that was approved by the Amtrak Board of Directors allowed for a \$66 million cash shortfall for the fiscal year, meaning that Amtrak has had to borrow funds on an unsecured line of credit simply to meet basic operating expenses such as payroll. In more recent estimates, this year-end cash shortfall has risen to about \$80 million. In addition, Phyllis Scheinberg the GAO testified on March 12, 1997 at the hearing before the Subcommittee on Railroads that Amtrak's projected FY 1998 year-end cash shortfall is \$148 million, whereas Amtrak currently has a short-term line of credit of \$150 million, a mere \$2 million higher than the company's estimated borrowing needs.

In addition to this potential near-term shortage in operating funds, Amtrak has substantial unmet capital needs. According to the General Accounting Office, about \$2 billion is needed over the next 3 to 5 years to recapitalize the south end of the Northeast Corridor (Washington, DC to New York City) just to maintain existing service levels. In addition, another \$1.4 billion is needed to complete upgrades on the north end of the corridor to introduce high-speed service between New York City and Boston. Furthermore, in part because of the significant debt load that Amtrak has incurred during the last several years, an increasingly small portion of Amtrak's federal capital grant is being dedicated to general capital needs. In FY 1997, only \$12 million of the \$223 million capital grant is expected to be available for general capital, the rest being devoted to debt service, legal mandates and equipment overhauls.

In response to the financial crisis at Amtrak, the Committee appointed in April of this year a bipartisan panel of outside experts in various aspects of passenger transportation to recommend a plan to preserve and improve intercity rail passenger service in this country. The panel, known as the Working Group on Intercity Rail, consisted of 13 members with expertise in a wide range of areas,



including corporate finance, labor relations, and marketing. Although working under a tight deadline of sixty days, the panel reached the unanimous conclusion that Amtrak is facing a severe financial crisis, with a bankruptcy possible within the next six to twelve months. The panel also produced a proposal that was endorsed by 11 out of the 13 members. The thrust of the proposal is that responsibility for ownership and management of infrastructure should be vested in a separate corporation, called Amrail in the report, allowing Amtrak to focus its energies on operating passenger rail service. The main objectives of the proposal are to provide for increased infrastructure investment, including on rail corridors outside the Northeast Corridor, and also to allow for multiple operators of passenger rail service, thereby introducing competition into the provision of intercity passenger rail.

The Committee is extremely appreciative of the panel's efforts, especially in light of the fact that the members donated their time and energies with no compensation other than the satisfaction of serving their country on a matter of critical public importance. Because of the complexities involved in redesigning passenger rail service according to the panel's recommendations, the Committee has determined that there is insufficient time at this point, given the urgency of the Amtrak crisis, to pursue legislation implementing these recommendations. Instead, H.R. 2247 authorizes the new, emergency reform board of directors that is established in the bill to evaluate the panel's proposal and to make recommendations to Congress. Subsequent legislation would be required in order for the panel's recommendations to be implemented.

Although Amtrak has made progress in reducing costs during the last several years, the Committee believes, based on the testimony provided both by Amtrak and the GAO, as well as the unanimous findings of the Committee's Working Group on Intercity Rail, that a bankruptcy is a real possibility if significant reforms are not enacted. Additional federal subsidies alone simply cannot resolve the Amtrak crisis. The recently enacted Taxpayer Relief Act of 1997 (P.L. 105-34) provides for tax credits of up to \$2.3 billion to be paid to Amtrak for capital expenses if reform legislation is enacted into law. As mentioned earlier, Amtrak has significant unmet capital needs, on the order of \$5 billion to \$6 billion, according to the GAO. So, clearly the \$2.3 billion provided for in the tax bill, while certainly beneficial to Amtrak, cannot be viewed as a way to remedy Amtrak's financial ills; significant reforms that will allow Amtrak to operate more efficiently and compete effectively in the highly competitive intercity travel industry are essential. H.R. 2247 will go a long way toward accomplishing this goal.

#### LABOR REFORMS

The labor reforms in the bill represent a compromise that was worked out with the full participation of organized labor during the 104th Congress and was passed on the House floor with the support of labor, both political parties, and the Clinton Administration. The Committee has concluded that, given the even greater urgency of Amtrak's financial situation now, it is imperative that these compromise labor reforms are enacted as soon as possible, to en-

sure that Amtrak is able to achieve financial stability and avoid bankruptcy.

*Labor Protection.*—Currently, Amtrak is subject to statutory labor protection provisions for its own employees, commonly referred to as “C-2,” after the 1973 appendix to Amtrak’s operating agreements that specified the benefit package. The agreement was entered into under a statutory mandate, now recodified as 49 U.S.C. 24706(c), that Amtrak provide “fair and equitable arrangements” to protect employees whose jobs are affected by service discontinuances. Under the same statutory mandate, the freight railroads were required to make labor protection agreements covering their employees involved in the operation of Amtrak trains; these arrangements are known as the “C-1” appendix.

The C-2 agreement provides for one year of wage continuation for each year of prior service (up to a maximum of 6 years’ pay) to each employee whose job is terminated or pay and benefits reduced due to a route elimination or frequency reduction below three trains weekly. In a departure from all previous mandated labor protection arrangements for other railroads, the C-2 agreement applies to management employees of Amtrak, in addition to employees subject to collective bargaining agreements. Thus, Amtrak is unique in having each white-collar management employee eligible for up to 6 years of salary continuation if he or she can establish that the abolition of their positions (or adverse effect on salary and benefits) was due to a service discontinuance or frequency reduction below three times weekly.

A second feature of the Amtrak labor protection package is the “30-mile rule.” This provision stipulates that a covered employee can invoke the full wage-continuation and severance benefits if Amtrak seeks to move the employee’s work location 30 miles or more. Actually, if the employee already lives 30 or more miles from his or her work location, any transfer (1 mile, 5 miles, etc.) can trigger the option to take labor protection benefits in lieu of the transfer. In some cases the “30-mile rule” has been altered by subsequent contract.

The current labor protection mandates affect Amtrak’s operations in a wide variety of scenarios, ranging from service discontinuations (i.e., eliminating routes or reducing service below 3 trains per week) to partial or complete liquidation of Amtrak. For the extreme situation involving complete liquidation, the GAO has estimated that the total labor protection obligation of Amtrak would cost between \$2.1 billion and \$5.2 billion—up to more than five times the total annual Federal funding for Amtrak.

Even if liquidation options are not considered, the current requirements impose major operational handicaps on Amtrak. The 30-mile rule seriously reduces, and could virtually eliminate, Amtrak’s ability to redeploy its work force from the least promising routes to those with the most revenue potential. And in redesigning its route system to reduce costs, Amtrak has had to rely on frequency reductions (as distinguished from closure or relocation of routes) in many cases simply to avoid triggering C-2 payments.

The Committee notes that the actual payout of labor protection benefits—generally rather small up to now—is not the critical problem. Rather, it is the large and potentially debilitating opportunity

cost that the C-2 requirements impose on any attempts by Amtrak to streamline and redeploy its work force. In short, the real costs of statutorily mandated labor protection lie not in the actual payments to employees, but in the other continuing costs imposed on Amtrak by depriving it of the ability to make normal business decisions about redeployment of its personnel and equipment to match changing market conditions.

*Contracting Out.*—Congress has also imposed restrictions on Amtrak's ability to contract out work. Currently, Amtrak is subject to a statutory ban on contracting out all work other than food and beverage service if the contracting results in the layoff of a single employee in a bargaining unit. Thus, by the terms of the statute, an adverse effect on a single employee forecloses any contracting out, irrespective of cost savings or efficiency gains.

This ban is particularly onerous in light of Amtrak's tremendous backlog of unmet capital needs. Although usually considered to provide primarily operating savings through reduced labor costs, the ability to contract out for Amtrak is actually more important as a means to provide desperately needed capital savings. For example, Amtrak's maintenance facilities were built, in some cases, in the 19th century and are in a state of extreme disrepair. GAO's February 1995 report noted that at one major facility, Amtrak's newest diesel locomotives are too large to fit inside the locomotive shop building. Standing derailments are common at these facilities, and seats are stored outdoors because there is insufficient indoor storage space. The GAO has estimated that \$262 million is required to repair and modernize Amtrak's principal facilities.

The ability to contract out would permit Amtrak to hire elsewhere for this work, saving the taxpayers \$262 million that could be spent to retain rail service or make improvements to service quality. Other railroads and suppliers to the railroad industry have the facilities to provide maintenance and other services to Amtrak without Amtrak's having to bear the very large cost of constructing (or replacing) and maintaining very expensive in-house facilities. In other words, even if the ability to contract out produced no labor cost savings at all, it would still be a vital necessity for Amtrak to obtain the use of adequate capital resources needed to provide continued rail passenger service.

#### PRIVATIZATION

When Congress created Amtrak in 1970, it established Amtrak as a corporation—not a Federal agency—under the laws of the District of Columbia. However, Amtrak's corporate structure contains a number of public features. For example, the Department of Transportation is the sole holder of preferred stock, which gives the Federal government a preference over common stockholders in claiming any Amtrak assets in the event of a liquidation. (Amtrak also has common stock—generally considered to have no market value, but carried on Amtrak's books at about \$93 million—which was issued to certain freight railroads at their option instead of a tax credit for the private railroads' cash or equipment "buy-ins" that helped provide Amtrak with its initial capital.) DOT also holds a 999-year lien on the Northeast Corridor, which means that title to the Northeast Corridor would revert to DOT if Amtrak were to

shut down. Further, Amtrak's board of directors is appointed by the President and the Secretary of Transportation, and the Secretary of Transportation is an ex officio member of the board of directors.

H.R. 2247 goes a long way toward clarifying Amtrak's status as a private entity. First, Amtrak is required to redeem its common stock at fair market value. Second, DOT's liquidation preference and voting rights that attach to its preferred stock are extinguished. Also, DOT's note and mortgage on the Northeast Corridor are relinquished. These steps will free Amtrak to enter into commercial financing arrangements that maximize the utility of Amtrak's assets, including its real estate holdings, without first having to obtain a DOT waiver. The bill encourages Amtrak to include employee stock ownership plans as part of any new stock issuances.

A key feature of H.R. 2247 is its change in the structure of the board of directors. Currently, the 9-member board of directors is appointed by the President and the Secretary of Transportation. In some cases, members must by law be selected from lists provided by certain interest groups pursuant to specific statutory recognition of the groups. The Committee is aware that some legal analysts consider the existing board to be a violation of the Appointments Clause of the Constitution, because some of the President's appointments are restricted to names from lists provided by outside groups.

H.R. 2247 would establish a new 4-year temporary emergency reform board of directors. This new board would establish the bylaws under which future boards of directors would be appointed, just as other private companies determine who sits on their boards. The only requirement imposed by H.R. 2247 for such future boards is that they include employee representation.

The temporary emergency reform board would be a 7-member board appointed by the President in consultation with the Congressional leadership. All members would be Senate-confirmed. If the temporary board is not in place 60 days after enactment, the Chief Justice of the United States would appoint a "director general" to exercise the powers of the board until the new board of directors is appointed. The main task of the temporary emergency reform board would be to usher Amtrak through its current fiscal crisis and to establish procedures for future boards to be selected. In addition, the emergency reform board is authorized to recommend a plan to Congress to restructure Amtrak, including restructuring recommendations of the Committee's Working Group on Intercity Rail.

#### LIABILITY REFORM

Reforms to Amtrak's liability arrangements with the freight railroads are tied directly to Amtrak's financial situation. The current liability arrangement leaves the freight railroads, over whose tracks Amtrak operates by law, potentially exposed to the full cost of a passenger rail accident. This could significantly raise Amtrak costs if the freight railroads were able to recover the cost of that liability, including insurance—if available—that they might have to purchase to cover their liability exposure.

The current liability arrangement between Amtrak and the freight railroads is tied to Amtrak's compulsory access to the freight railroads' rights-of-way. Outside the Northeast Corridor, Amtrak operates over the freight railroads' rights-of-way (except for two segments owned by Amtrak in upstate New York and in Michigan). Amtrak's access to freight railroad tracks and facilities is guaranteed by Federal law, so the freight railroads cannot refuse Amtrak access, but are entitled to compensation on an incremental cost basis. If Amtrak and the freight railroads cannot reach a voluntary agreement on the terms and conditions of access, the STB sets the terms, including the level of compensation. Payments by Amtrak for use of the freight railroad facilities total between \$90 million and \$100 million annually.

Amtrak's access and payments to the freight railroads are governed by access agreements first signed in 1971 when Amtrak began operations. Virtually all the existing agreements contain a "no-fault" indemnity provision stating that, regardless of fault, the freight railroad will bear all property and injury losses to its own equipment and personnel, and Amtrak will do the same for its equipment and personnel, including passengers.

However, after the 1987 Chase, Maryland, accident involving the collision of an Amtrak train and a Conrail freight locomotive, the U.S. District Court for the District of Columbia ruled that enforcement of the indemnification agreement between Amtrak and Conrail would violate public policy since gross negligence on the part of the Conrail locomotive engineer was alleged as the cause of the accident. This avoided a large taxpayer-funded expense in the short term, but in the long run convinced the entire freight industry that the indemnity agreements offered no real legal protection.

The Committee notes that, since Amtrak is a publicly-funded operation, limitations on liability are justified as a way to protect the taxpayers from large damages awards. In addition, Amtrak's operating costs are higher, even in the absence of a major damages award, due to the lack of liability limitations. Amtrak is already reserving nearly \$200 million on its books to cover liability exposure (including employee claims under the Federal Employers' Liability Act, which are unaffected by H.R. 2247). With the threat of runaway jury verdicts, Amtrak's liability, litigation, and insurance costs are higher, thus imposing added costs on the taxpayers.

It should be noted that there is precedent for limitations on liability in domestic transportation due to the taxpayer-funded nature of the activity. A number of State laws and court decisions have served to limit liability in taxpayer-funded transportation, including in New York (the Long Island Railroad), Pennsylvania (Southeastern Pennsylvania Transportation Authority), New Jersey (New Jersey Transit) and Illinois (Chicago Transit). In addition, a 1990 Federal law limits the liability exposure of the Virginia Railway Express commuter authority. In general, the rationale for imposing limitations on liability in public transportation is to encourage certain activities that yield substantial social benefits that otherwise would not be undertaken due to the exposure to liability, and to protect the taxpayers who ultimately bear the costs of tort liability incurred in providing the public transportation.

In addition, limitations should apply to the freight railroads, over whose track Amtrak operates, in the event of a passenger accident, because Amtrak has access to this track by virtue of a federal statute. In other words, the freight railroads did not invite Amtrak onto their tracks. In fact, they are not even fully reimbursed by Amtrak for its use of their track, again by virtue of a federal statute, which, in this case, requires Amtrak to compensate the freight railroads for the incremental costs only of its use of their tracks. In light of this fact, fairness dictates that some form of liability limitation apply to the freight railroads in the event of a passenger rail accident on their right-of-way.

The Committee rejects the contention that restrictions on liability will adversely impact rail safety. This allegation ignores the fact that there are significant incentives in place outside of tort liability for railroads to continue sound safety practices. Railroad safety is subject to regulation by the Federal Railroad Administration. Under current law, any single violation of a Federal safety law or regulation can subject an individual or a company to a fine from \$500 to \$10,000—with the maximum increased to \$20,000 for willful violations. (There is a separate schedule for violations of the Hours of Service Act.) Total civil penalties collected by the Federal Railroad Administration in FY 1996 were \$3.59 million.

In addition, in the wake of the 1987 Chase, Maryland, accident, in which the locomotive engineer who caused the accident was found to have been drug-impaired, Congress amended the Federal Railroad Safety Act to grant direct personal jurisdiction over railroad employees in safety-sensitive positions. (Previously, only the rail carrier itself had been subject to Federal regulation, penalties, and discipline.) Also, mandatory random drug testing, alcohol testing, and pre-employment drug testing became standard features of the Federal railroad safety program. In addition, Federal rail safety laws were amended to require Federal certification of engineers, using mandatory training standards and procedures analogous to FAA standards for pilots. It should also be noted that the locomotive engineer involved in the Chase, Maryland, accident was convicted on criminal manslaughter charges and was sent to prison. In short, it is clear that adequate incentives remain in place to ensure the continued safe operation of the nation's rail system.

The Committee believes that a crucial feature of the liability reform provision is the affirmation of the right of owners of rights-of-way and passenger operators to indemnify by contract. Because of the court ruling in the wake of the Chase, Maryland, accident, existing contractual indemnity arrangements do not afford a reliable allocation of risk among the contracting parties. Without the confirmation that indemnity agreements will be upheld in court, future passenger operations, whether commuter, high-speed rail, or intercity rail, will be placed in jeopardy as freight railroads resist taking on what is increasingly viewed as an unacceptable and uncompensated liability exposure.

#### STATE PARTICIPATION

One of the greatest changes at Amtrak during the last year is the increased participation on the part of the States in funding Amtrak service. The Committee is pleased that the States have ex-

hibited such strong support for Amtrak service and encourages their continued participation in preserving intercity rail service. Several features of H.R. 2247 are designed to assist the States in this endeavor.

From Amtrak's beginning in 1971 until this year, it has been unique among passenger transportation services in that its public funding came almost entirely from the Federal government. Both the highways and mass transit programs require a State match for Federal funds, and States and local entities contribute substantially to construction of airports. Until recently, however, outside of service that Amtrak initiated at State request, Amtrak service has been funded solely through farebox revenues and Federal subsidies.

With the route and service cutbacks that have taken place during the last several years, the States have shown strong support for Amtrak service and have begun to contribute significantly toward continuing Amtrak service that would otherwise have to be eliminated due to the funding shortage. This increased State participation in Amtrak service has raised a number of issues that are addressed in H.R. 2247. For example, one concern that States have had is what to do when service being threatened with elimination crosses State lines, and coordination between several States is required to preserve the service. H.R. 2247 establishes Congressional advance consent to multi-State agreements providing for State cooperation to support intercity rail service. This is meant to promote stable, long-term relationships among States who wish to enter joint ventures to retain or expand rail passenger service to supplement Amtrak's own operations. These interstate compacts could include agreements to retain existing service, commence new service, assemble rights-of-way, and perform capital improvements. The compacts could also provide for the States to borrow money on a short-term basis and to issue notes for borrowing. H.R. 2247 also requires longer advance notice to States of service discontinuances, to allow time to make alternative arrangements.

The States have also expressed an interest in having authority to contract for the provision of passenger rail service. H.R. 2247 would facilitate this in a number of ways. First, because Amtrak's prohibition on contracting out is repealed 254 days after enactment, States would be eligible to hire a contractor under Amtrak auspices to operate intercity passenger service. In fact, H.R. 2247 permits Amtrak to contract for the operation of trains only with States or State authorities. Second, Amtrak's right of first refusal on intercity routes is eliminated, which means a State (or private) entity would be free to initiate intercity rail passenger service without first obtaining Amtrak's consent.

A number of States have complained that Amtrak has taken an autocratic approach in its dealings with the States, and has exhibited an unwillingness to consider new marketing approaches and to share cost information. The Committee urges Amtrak to adopt a more cooperative approach with the States. As partners in the financing of intercity rail service they should participate in determining the type of service that is to be delivered. In addition, the Committee wants to ensure that Amtrak's cost information is made available to the States. To that end, H.R. 2247 requires that States have access to Amtrak's records, accounts and other necessary doc-

uments used to determine the amount a State is asked to reimburse Amtrak for rail service.

#### CONCLUSION

H.R. 2247 is designed to set Amtrak on a course to financial stability and preserve intercity passenger rail in this country. Many factors have contributed to Amtrak's problems, some going back to the legislation that created Amtrak in 1970. At that time, Amtrak was assigned the virtually impossible task of becoming a profit-making entity while being shackled by onerous cost and operational burdens that have no counterpart in private enterprise.

H.R. 2247 will go a long way toward freeing Amtrak from these impediments and allowing it to follow sound business practices, while providing for fair and equitable treatment of Amtrak's employees. The negotiated procedures for determining Amtrak's new labor protection requirements and terms for contracting out should produce standards that make more sense for a taxpayer-funded operation, while permitting Amtrak's employees to have a role in the determination of new terms. The clarification of Amtrak's status as a private enterprise will allow for more commercial financing alternatives, permitting Amtrak to achieve the maximum benefit from its assets. The new temporary reform board, whose members will be required to have expertise in intercity common carrier transportation and corporate management, will bring fresh ideas and a new start for Amtrak. Liability reform will lower the costs Amtrak is required to pay to the freight railroads for the use of their rights-of-way and protect the taxpayers against the possibility of runaway liability costs.

The Committee believes that enactment of H.R. 2247 is critical to Amtrak's survival. Without substantial reforms, Amtrak's very existence is threatened. Additional funding alone cannot solve all of Amtrak's problems. Dramatic changes must be made if Amtrak is to achieve the cost savings that will be required to achieve financial stability.

#### SECTION-BY-SECTION ANALYSIS AND DISCUSSION

##### *Section 1. Short title*

This section provides that the bill may be cited as the "Amtrak Reform and Privatization Act of 1997."

#### TITLE I—PROCUREMENT REFORMS

This title amends the Rail Passenger Service Act, recodified as 49 U.S.C. 24101 et seq. Each section is discussed below.

##### *Section 101. Contracting out*

This section repeals the current subsection that prohibits Amtrak from contracting out any work (other than food and beverage service) that affects one or more employees in a bargaining unit. Section 302 also extinguishes any limitations on contracting out in existing collective bargaining agreements. New terms and conditions for contracting out work will be established under a negotiated bargaining process contained in Title III.



Subsection (a) encourages Amtrak to use other rail carriers when contracting out and restricts Amtrak to entering into contracts for the operation of trains with States or State authorities. It also confirms that if Amtrak enters into a contract for the operation of trains, Amtrak will not be relieved of any contractual obligations it has entered into with other entities (including freight railroads) for the use of their facilities and that any contract operation shall be subject to operating and safety restrictions required by pre-existing contractual arrangements. In short, Amtrak will not be able to waive the contractual rights of a third party under a prior access agreement in order to grant access to a contract operator. Any contract operations would also be subject to applicable federal rail safety requirements. The subsection also clarifies that it does not restrict Amtrak's authority to enter into contracts for access to or use of tracks or facilities for the operation of trains.

Subsection (b) states that subsection (a) shall take effect 254 days after enactment.

*Section 102. Contracting practices*

This section prohibits Amtrak from engaging in below-cost bidding for any activity other than providing commuter and intercity service. It responds to complaints from private-sector businesses (including bus companies and providers of rail support services) that Amtrak has engaged in below-cost bidding to win sources of revenue. The section provides judicial remedies in Federal court for contract bidders who believe themselves to be the objects of below-cost competition by Amtrak. This section also addresses Amtrak's practices in arranging for connecting bus service, clarifying that such service must be truly supplemental to Amtrak rail service, and not an indirect Federal subsidy of competition with private-sector regular-route bus service.

Subsection (a) prohibits Amtrak from submitting a bid for contract work other than providing intercity rail transportation, commuter rail transportation, or mail or express transportation, at a price that is below Amtrak's cost for performing the service. Generally accepted accounting principles are to be used in calculating Amtrak's costs. In addition, subsection (a) provides that any aggrieved individual may commence a civil action against Amtrak for violation of this requirement in the United States district courts. The court is authorized to award bid preparation costs, anticipated profits, and litigation costs to any prevailing or substantially prevailing party. The subsection is only effective as long as Amtrak is receiving Federal operating subsidies.

The Committee has received a number of complaints from companies that compete with Amtrak for contract work, such as track maintenance, on the ground that they are being underbid by Amtrak. They contend that Amtrak is taking advantage of its Federal subsidy to bid below its costs in order to generate short-term revenues. The Committee is concerned about these allegations for two reasons. One is fairness. It is not the intent of Congress that Amtrak use its Federal grants to undercut private companies, who presumably earn a profit and pay taxes. The other is that below-cost bidding, while possibly generating increased revenues for Amtrak in the short-term, will produce losses in the long-term that

could only serve to increase Amtrak's need for Federal subsidies. The problem is exacerbated by what many contend are Amtrak's unorthodox accounting procedures, which make it difficult to determine the true costs of a particular job. H.R. 2247 calls for Amtrak to employ generally accepted accounting principles so that the costs of Amtrak's activities can be more accurately measured.

Subsection (b) prohibits Amtrak from making contractual arrangements with charter bus operators to carry both Amtrak and non-rail passengers. Future charter bus contracts will be for carrying only passengers who have had a prior movement by rail, or will have a subsequent movement by rail. The subsection specifically disclaims any effect on State or local government-funded bus operations connecting with Amtrak service or motor carriers receiving Federal assistance under Section 5311 of Title 49 or to ticket selling agreements. Subsection (b) also authorizes consultation between Amtrak and other passenger carriers under the "pooling" provisions of the Interstate Commerce Act.

The Committee is concerned that some of the charter bus operations, which Amtrak enters into to provide connecting feeder bus service to its intercity rail network, may be diverting non-rail passengers who otherwise would ride the regular common carrier bus operating on that route. The Committee believes that Amtrak's charter bus service should be available for Amtrak passengers only. A recent GAO report found that Federal funds are not used to subsidize Amtrak's thruway bus operations, and that, in fact, Amtrak's operating subsidy would increase in the absence of its thruway bus operations. The Committee therefore encourages Amtrak to continue its charter bus service. Subsection (b) is designed to ensure that regular common carrier bus companies are not subjected to unfair competition from Amtrak, while not affecting bus service that is funded by State and local governments or from Section 5311 funds.

#### *Section 103. Freedom of Information Act*

This section repeals the current provision making Amtrak subject to FOIA. As a corporation, not an agency, Amtrak would not be subject to FOIA absent specific legislation to the contrary. This responds to complaints from Amtrak and others that public access to Amtrak commercial information allows businesses bidding on Amtrak services to obtain access to competitors' information that would not be available in the normal course of business. This change does not affect Congressional access to Amtrak's records, including GAO audits.

#### *Section 104. Track work*

This section requires Amtrak to establish an outreach program within one year of enactment to work with domestic track work manufacturers to increase the likelihood they will be able to meet Amtrak's specifications for track work. The section also requires a report to Congress within 2 years of enactment on the progress made, including a statement of the percentage of Amtrak's track work contracts awarded to domestic manufacturers.

## TITLE II—OPERATIONAL REFORMS

*Section 201. Basic system*

This section relieves Amtrak of the obligation to operate the basic system of routes that was largely inherited from the private railroads when Amtrak began operations in 1971.

Subsection (a) repeals the current provision that requires Amtrak to provide intercity rail passenger transportation within the basic system unless excused by financial emergency. Also repealed is Amtrak's right of first refusal, which provides that no person can operate intercity rail passenger transportation over an Amtrak route without Amtrak's consent.

Subsection (b) repeals the current statutory directive to prepare a route-structure and to operate the "basic system" described above. It also repeals a requirement that Amtrak evaluate routes connecting various corridors for economic promise; this requirement is considered surplusage in light of the overall intent to let Amtrak management make operational decisions with as little micromanagement by Congress as possible.

Subsection (c) lengthens from 90 days to 180 days the current requirement that Amtrak give advance notice of route discontinuances, but eliminates the statutory requirement concerning discontinuances due to a lack of funds. The increased advance notice of proposed discontinuances should afford affected State and local governments a better opportunity to make alternative arrangements, including other forms of rail passenger service.

Subsection (d) eliminates annual reporting requirements keyed to the operation of the "basic system" of routes.

Subsection (e) repeals the obligation of Amtrak to operate what were formerly known as "Section 403(d) trains," which were commuter operations frozen as of 1981.

Subsection (f) makes a conforming technical amendment.

The Committee believes that, as part of its efforts to reduce costs and wean itself from dependence on Federal subsidies, Amtrak should have the flexibility to operate like a business. By freeing Amtrak of obligations to operate a system that has, for the most part, remained static since 1971, the Committee intends for Amtrak to evaluate its route system and make alterations according to commercial potential, rather than arbitrary statutory criteria.

The Committee encourages Amtrak to take full advantage of the opportunity to increase ridership and revenues on all its routes by better serving the bicycling market. The Committee urges Amtrak to collaborate with bicycle, rail passenger, and other organizations to test different approaches to accommodate bicyclists, including improvements in baggage car accommodations, design accommodations on new and retrofitted passenger coach railcars, and station bicycle parking. The Committee also urges Amtrak to use this collaborative process to develop guidelines for when and how to better accommodate bicyclists and to reference these guidelines when purchasing new passenger coach railcars or undertaking heavy interior overhauls of existing passenger coach railcars.

*Section 202. Mail, express, and auto-ferry transportation*

Subsection (a) repeals Amtrak's special status as a carrier of mail and express, and eliminates the presumed monopoly rights of Amtrak over auto-ferry service.

Subsection (b) preserves Amtrak's immunity from State law requirements on these subjects.

*Section 203. Route and service criteria*

This section repeals the statutory criteria for evaluating routes and service, as well as procedures for obtaining Congressional approval for changes in such criteria.

*Section 204. Additional qualifying routes*

This section repeals provisions governing possible additional routes suggested for Amtrak operation by the Secretary of Transportation.

*Section 205. Transportation requested by States, authorities, and other persons*

Subsection (a) repeals the procedure governing Amtrak operation of State-assisted "Section 403(b)" trains. The current matching formula governing this service, according to the General Accounting Office, causes Amtrak to lose more than four dollars for every dollar of appropriations for these operations. In practice, the financial losses inflicted by this formula have led Amtrak to announce the termination of all fund-matching arrangements and to insist upon full-cost-recovery contracts with States wishing to have Amtrak operate State-requested service. Therefore, this provision merely conforms the statute to current financial realities and Amtrak practice.

Subsection (b) frees Amtrak from any obligations under "Section 403(b)" arrangements entered into prior to enactment.

Subsection (c) amends the policy goal pertaining to State and local cooperation with Amtrak to emphasize the option of collective arrangements involving multiple States and other governmental units.

Subsection (d) makes a conforming technical amendment.

While the Committee wants to ensure that Amtrak has flexibility in designing its route system according to market potential, the Committee is also interested in ensuring that States that wish to provide for continued rail service that has been targeted for elimination are given an adequate opportunity to do so. The Committee is aware that, in some cases, a State may be unable to produce the funding for continued rail service in the short term due to the timing of a State budget cycle or other temporary cash flow obstacle. The Committee urges Amtrak to accommodate the needs of these States and, where possible, preserve service that would otherwise be eliminated until such time that the States are able fully to fund the service. The changes made by H.R. 2247 to the notification procedures for service discontinuances are also intended to afford an opportunity for timely State action.

*Section 206. Amtrak Commuter*

This section repeals the chapter of the Rail Passenger Service Act that authorized a separate subsidiary known as “Amtrak Commuter,” which was never operated. The section preserves certain provisions reaffirming Amtrak’s and commuter authorities’ existing trackage rights and commuter authorities’ existing exemption from state and local taxes.

*Section 207. Commuter cost sharing on the Northeast Corridor*

This section replaces the current method of arriving at cost-sharing agreements between Amtrak and commuter operators on the Northeast Corridor with a negotiation and arbitration process. The current practice is based on statutory provisions and a 1983 decision by the Interstate Commerce Commission that established that commuter railroads on the Corridor pay trackage rights fees based on the principle of “avoidable costs.” Under this approach, the commuter railroads pay a fee to Amtrak that represents the costs incurred by Amtrak resulting from commuter use of the Corridor which Amtrak would not otherwise incur. This allows Amtrak to receive reimbursement for the incremental costs of commuter use of the Corridor, but not for shared capital costs.

Under the new approach established in this section, Amtrak and the commuters will negotiate the terms and costs of commuter use of the Corridor without Federal statutory dictates. (During consideration of the bill, the Committee rejected replacement of the existing mandate with a fully allocated cost mandate.) Any disputes that cannot be resolved by the parties are to be submitted to binding arbitration, with the Surface Transportation Board available as an arbitrator at the discretion of the parties.

Subsection (a) clarifies that Amtrak and commuter authorities will set the terms of commuters’ reimbursement to Amtrak without Federal statutory dictates.

Subsection (b) establishes the Surface Transportation Board as a potential arbitrator of unresolved disputes at the discretion of the parties.

Subsection (c) adds privatization to Amtrak’s policy goals.

The Committee is aware that some commuter operators on the Northeast Corridor have multi-year operating agreements with Amtrak that are still in effect. The Committee intends that those agreements should be honored. Any new terms would only go into effect after the expiration date of existing agreements. In addition, nothing in this section is meant to be interpreted as disallowing the current terms of reimbursement to be reemployed when agreements are renegotiated. The section is intended to avoid having the outcome of these negotiations be predetermined by Federal statute. To ensure that commuter operators have access to all necessary information in the negotiation process, the Committee urges Amtrak to make available to commuter operators an accounting of all funds spent on the facilities that they utilize. The Committee does not intend for Amtrak to include in its reimbursement price any extraneous costs beyond those imposed by the commuter operations. In fact, as noted below, Section 208 of H.R. 2247 requires that States have access to any Amtrak records used to determine the amount

of any payment required by Amtrak, in order to ensure open and fair accounting of these costs.

*Section 208. Access to records and accounts*

This section assures GAO access to Amtrak's financial records and accounts, and provides States with access to all financial materials relating to charges that Amtrak requires be paid by those States.

TITLE III—COLLECTIVE BARGAINING REFORMS

*Section 301. Railway Labor Act procedures*

This section establishes an accelerated 164-day Railway Labor Act bargaining process on labor protection and contracting out issues.

Subsection (a) requires that "section 6 notices" on labor protection and contracting out are deemed to have been served and effective 90 days after enactment. (These notices are the means for initiating collective-bargaining negotiations, as provided in Section 6 of the Railway Labor Act.) Amtrak and the labor unions are required to supply specific information and proposals regarding each notice. The notices will have no effect on provisions defining the scope or classification or work performed by Amtrak employees. For any labor contract that contains a moratorium on new negotiations in effect 90 days after enactment, section 6 notices will be deemed served and effective on the expiration date of the moratorium.

Subsection (b) requires that all National Mediation Board mediation efforts be completed 180 days after enactment.

Subsection (c) allows the parties to request voluntary arbitration for unresolved disputes and requires any award to be retroactive to 180 days after enactment.

Subsection (d) establishes a procedure for resolving outstanding disputes. For any unresolved dispute 180 days after enactment, Amtrak and the labor union are required each to select an individual from the National Mediation Board's roster of arbitrators. Within 194 days after enactment, these individuals will jointly select one individual to make recommendations regarding the unresolved dispute. Individuals who have a pecuniary or other interest in an organization of employees or a railroad are not eligible to be selected. The subsection provides for compensation for the individuals to be fixed by the National Mediation Board. The neutral selected by the parties is required to make recommendations regarding any unresolved dispute within 224 days after enactment. There is a 30-day cooling-off period after the recommendations are made, during which no changes can be made by the parties to the dispute. If this entire process produces no agreement, both labor and management are legally free to employ "self-help" (including strikes and unilateral management action) under the Railway Labor Act. Presidential Emergency Board procedures under the Railway Labor Act would not apply.

*Section 302. Service discontinuance*

Subsection (a) repeals Amtrak's statutory labor protection requirement. In addition, Amtrak contractual obligations relating to

labor protection, including all provisions of Appendix C-2 to the National Railroad Passenger Corporation Agreement signed July 5, 1973, and all contract terms relating to contracting out, are extinguished 254 days after enactment. Subsection (a) also provides that ICC (*New York Dock*) labor protection standards do not apply in the event of a bankruptcy. Finally, subsection (a) revises the Northeast Rail Service Act provisions to reflect a Conrail-labor agreement on restricting but not eliminating “flowback” labor protection rights for employees who joined Amtrak from Conrail or its predecessor railroads.

The Committee is aware of considerable attention focused on the possible effect of this amendment on labor protection provided to employees of private railroads and public transit authorities. This issue arises because of the explicit cross-reference and consequent interdependence of the respective Federal statutes governing labor protection for Amtrak, freight railroads, and transit.

The oldest of these Federal mandates is the required payment of labor protection (salary continuation and wage-protection) benefits to employees adversely affected by railroad mergers and abandonments regulated by the Interstate Commerce Commission. Begun by the ICC as a matter of administrative discretion in the late 1930s, labor protection in mergers and related inter-carrier transactions was statutorily mandated by the Transportation Act of 1940, and has been required ever since. Similarly, later amendments to the Interstate Commerce Act extended this mandate to railroad abandonments. The ICC established the actual level of such protections at a maximum of 4 years’ pay (one year for each year of prior service).

In 1964, with the enactment of the Urban Mass Transit Act (now the Federal Transit Act), employees of transit systems affected by the reorganizations and consolidations resulting from receipt of Federal transit grants were required to be protected at the same level as ICC merger and abandonment protection—4 years. (This level was established by the regulations of the implementing agency, the Department of Labor.) Receipt of Federal transit assistance is conditioned upon such protective arrangements being in place. This is known, from its original statute, as “Section 13(c)” labor protection, now recodified as 49 U.S.C. 5333(b). Transit labor protection arrangements must “provide benefits *at least equal to* benefits established under section 11326 [the ICC merger and abandonment protection standard].” 49 U.S.C. 5333(b)(3) (emphasis added).

When Amtrak was established by the Rail Passenger Service Act, Congress required in Section 405(a)–(c) that “fair and equitable arrangements” be made for employees adversely affected by service discontinuances. When Appendix C-2 was certified by the Secretary of Labor, the maximum level of protection was set at 6 years’ pay, a 50 percent increase over the existing freight rail and transit protection.

In 1976, the Railroad Revitalization and Regulatory Reform (“4R”) Act explicitly linked freight (and derivatively transit) labor protection to the level required to be paid by Amtrak. The amended Interstate Commerce Act provision, now recodified as 49 U.S.C. 11326, requires the ICC to provide “a fair arrangement *at least as protective* \* \* \* as the terms imposed under this section [before en-

actment of the 4R Act] *and the terms imposed under \* \* \* section 24706(c)* [the Amtrak labor protection mandate] (emphasis added)". As a result of this 1976 change, the ICC was required to increase maximum merger and abandonment labor protection levels from 4 years to 6 years pay; this was accomplished by the Commission in *New York Dock Railway—Control—Brooklyn Eastern District*, 360 I.C.C. 60 (1979). (The ICC Termination Act of 1995 abolished the ICC and assigned the remaining economic regulation of railroads to the new decisionally independent Surface Transportation Board, affiliated with the Department of Transportation., and confined the *New York Dock* protection requirements to transactions involving only larger freight railroads.) Because the ICC standard increased from 4 to 6 years, the cross-reference in the transit laws also required the Department of Labor to mandate a correlative increase in "section 13(c)" transit protection. See 29 C.F.R. Part 215, 43 Fed. Reg. 13558 (March 31, 1978). It is clear from this legislative and regulatory history of the related provisions that the Amtrak labor protection mandate was used to force both freight railroad and transit labor protection maximums up by 50 per cent through the applicable statutory cross-references. H.R. 2247 repeals the Amtrak mandate at the end of the 254-day bargaining process. Therefore, the question presented is: what effect, if any, does the repeal of the Amtrak labor protection mandate have upon existing freight railroad and transit labor protection standards?

The freight standards are the key component of the analysis, because they control (directly) the level of protection required in STB-regulated mergers and abandonments and they control (indirectly, by virtue of the cross-reference in 49 U.S.C. 5333(b)) the level of required transit protection. After the 254-day delay provided for in the bill, the Amtrak statute would be repealed, leaving the STB statute (49 U.S.C. 11326) to require only that merger and abandonment protection levels be "at least as protective as \* \* \* the terms imposed under this section before February 5, 1976 [the 4R Act] and the terms established under section 24706(c) of this title [the Amtrak standard]." See H.R. 2247, Section 302 (a) and (c).

The plain language of a statute is the most basic and reliable guide to its interpretation. The post-enactment language of 49 U.S.C. 11326 would require that the STB merger and abandonment protection levels be "at least as protective" as the 4-year pre-4R Act level and the Amtrak mandate level. Once the Amtrak mandate has been repealed, what is the status of the *New York Dock* STB standard? Clearly it is not automatically superseded; just as the ICC had to implement the 1976 amendments administratively in the *New York Dock* case, so too the STB will have to deal with the effects of the Amtrak repeal.

It is worth noting that because of the "at least" nature of the cross-reference, the standard selected by the STB's predecessor, the ICC, after the 1976 amendments could have been greater than 6 years, because a 7-year level, for example, would have been "at least" equal to the 6-year Amtrak standard. This was confirmed by the court reviewing the ICC's *New York Dock* decision in *New York Dock Railway v. United States*, 609 F.2d 83, 92 (2d Cir. 1979), citing *Railway Labor Executives Assn. v. United States*, 339 U.S. 142 (1950). Correlatively, after enactment of H.R. 2247, the current 6-



year New York Dock standard will still be “at least” as protective as the 4-year pre-4R Act level. *Any modification of the present labor protection standards for freight railroad mergers and abandonments will require administrative action by the STB.* It is also worth noting that whether a particular Amtrak agreement remains in effect does not determine the regulatory authority and discretion of the STB to revise its *New York Dock* standards in light of an intervening change in the law. After all, there were presumably contracts in effect governing both freight-railroad and transit employees in 1976 when the 4R Act forced the ICC and the Department of Labor to amend (and increase the level of) their existing labor protection standards and regulations.

The Committee also notes that removing the reference to section 24706(c) from section 11347 could have been misconstrued as contradicting the basic design of the accelerated bargaining process provided for in H.R. 2247—to delay repeal of the Amtrak labor protection mandate until the end of the accelerated bargaining process. Prior to that date, the current statutory obligations apply to Amtrak—and derivatively to the STB’s standards. Based upon the plain language of the existing statute and the amendments contained in H.R. 2247, the STB would have the administrative discretion to revise its existing *New York Dock* standards to reflect the repeal of 49 U.S.C. 24706(c).

As noted earlier, however, because of the “at least” language in the STB statute, the agency would not be required to lower the existing standards solely because of the changes contained in H.R. 1788. A necessary corollary of the STB’s administrative authority to revisit the *New York Dock* standards is that, if the STB were to revise those standards, the Department of Labor would have a corresponding duty to re-examine transit labor protection, due to the explicit linkage and cross-reference of its labor protection statute (49 U.S.C. 5333(b)), requiring DOL to maintain standards “at least equal” to the STB level of protection required under 49 U.S.C. 11326.

#### TITLE IV—USE OF RAILROAD FACILITIES

##### *Section 401. Liability limitation*

This section imposes limits on tort liability in the event of a rail passenger accident and confirms the right of rail passenger operators and owners of rights-of-way to contractually indemnify each other for liability arising out of rail passenger accidents.

Subsection (a) places the following caps in claims for personal injury, death or damage to property arising from rail passenger accidents: punitive damages limited to three times economic loss or \$250,000, whichever is greater; noneconomic loss limited to \$250,000 greater than economic loss. Limits apply on a per person, per accident basis. The subsection provides that, in any place where the law provides only for punitive damages for an event resulting in death, a claimant would be eligible to receive both non-economic and economic damages, subject to the limits described above.

Subsection (a) also reaffirms the powers of passenger rail operators and entities providing facilities and infrastructure to enter into

contractual indemnity arrangements to allocate the cost of liability incurred under the limits described above. These indemnification agreements are essential to facilitating passenger, commuter, and excursion rail service, especially in light of the absence of an arm's length economic relationship between these carriers and the freight railroads whose facilities are required for their operation, since the indemnification agreements are part of the contractual consideration. The uncertainty of enforcement of such agreements has become a major barrier to the expansion of commuter and passenger service and an outright obstacle to high-speed rail service since the decision in *National Railroad Passenger Corp. v. Consolidated Rail Corp.*, 698 F. Supp. 951 (D.D.C. 1988). The Committee believes that the public interest is best served by facilitating rail passenger service through legislation providing that once rail passenger transportation indemnification agreements are negotiated, they will be enforced. Accordingly, the Committee is overruling the *National Railroad Passenger Corporation* case in order to restore indemnitees' confidence in the enforceability of their indemnification agreements. No inference is to be drawn from the inclusion of this provision about the enforceability of any rail passenger transportation indemnification agreement for any obligation arising before the effective date of this provision.

#### TITLE V—FINANCIAL REFORMS

##### *Section 501. Financial powers*

Subsection (a) repeals the statutory requirements relating to stock issuances (preferred and common). The subsection is replaced with an encouragement that Amtrak use employee stock ownership plans (ESOPs) in any future stock issuances.

Subsection (b) requires Amtrak to redeem all of its common stock for fair market value within 2 months of the date of enactment. This stock was issued to private railroads in exchange for donations of start-up equipment when Amtrak was formed. The liability reform provision will not apply to rail carriers who do not relinquish their common stock within the 2-month deadline. In addition, Amtrak is required to utilize its condemnation powers to redeem any stock still outstanding after the 2-month deadline.

Subsection (c) eliminates the liquidation preference of DOT's preferred stock effective 90 days after enactment. The Secretary's voting rights are also extinguished 60 days after enactment. Subsection (d) eliminates DOT's note and mortgage on the Northeast Corridor.

Subsection (e) removes Amtrak from the Government Corporations Act.

##### *Section 502. Disbursement of Federal funds*

This section provides that Amtrak is to receive federal operating assistance funds for a fiscal year upon request.

##### *Section 503. Board of directors*

This section calls for the appointment of a new 7-member board of directors, called the Emergency Reform Board, who will be charged with setting Amtrak on a course to financial stability dur-

ing the board's 4-year tenure. The new board will develop bylaws under which future boards of directors are to be selected.

Section (a) repeals the current statutory structure for Amtrak's board of directors and requires the Emergency Reform Board to assume its responsibilities 60 days after enactment. Successor boards are required to include employee representation. The Emergency Reform Board is to be appointed by the President as follows: 2 members each in consultation with the Speaker of the House of Representatives and the Majority Leader of the Senate; 1 member each in consultation with the Minority Leader of the House of Representatives and the Minority Leader of the Senate; 1 member appointed by the President. All members are required to have background and expertise in transportation and corporate management, and to be confirmed by the Senate. Employees of Amtrak, the United States Government, and representatives of rail labor or rail management are ineligible.

The subsection provides that if the Emergency Reform Board is not sufficiently constituted to function as a board of directors 60 days after enactment, the Chief Justice of the United States will appoint a temporary "director general" to exercise board powers until the new board takes office. The subsection also authorizes the Emergency Reform Board to recommend to Congress a plan to implement the recommendations of the 1997 Working Group on Intercity Rail regarding the transfer of Amtrak's infrastructure assets and responsibilities to a new separately governed corporation.

Subsection (b) requires that if the Emergency Reform Board is not in place by March 15, 1998, Amtrak funding authorizations beyond Fiscal Year FY 1998 will lapse.

#### *Section 504. Reports and audits*

This section repeals Amtrak's obligation to submit a route-by-route annual performance report to Congress and the obligation of the Secretary of Transportation to submit a report to Congress evaluating Amtrak's report. H.R. 2247 would retain Amtrak's obligation to submit an annual report and legislative agenda to Congress, as well as the requirement that Amtrak have an annual independent audit of its financial statements. In addition, the General Accounting Office maintains its rights of access to any relevant Amtrak records needed to conduct an audit.

#### *Section 505. Officers' pay*

This section provides that the current salary cap for Amtrak executives will lapse in the first year after a fiscal year when Amtrak does not receive Federal operating subsidies.

#### *Section 506. Exemption from taxes*

This section clarifies that Amtrak's current tax exemption from State and local taxes includes sales or other passenger taxes on tickets or services. This is in response to a recent Supreme Court decision that could be construed to authorize such taxes. The section also ends local exceptions to tax exemptions that were provided in prior statutes. The provision is not intended to confer a tax exemption on individuals or companies selling goods or services to Amtrak.

## TITLE VI—MISCELLANEOUS

*Section 601. Temporary Rail Advisory Council*

This section establishes a special expert body to review Amtrak's business methods and accounting procedures.

Subsection (a) requires that the Temporary Rail Advisory Council (TRAC) be appointed within 30 days after enactment.

Subsection (b) establishes the duties of TRAC, including an analysis of Amtrak's business plan and recommendations for further cost containment aimed at an eventual privatization of Amtrak.

Subsection (c) establishes the procedure for appointment of TRAC members. The seven members are to be appointed as follows: 2 members by the Speaker of the House of Representatives; 1 member by the Minority Leader of the House of Representatives; 2 members by the Majority Leader of the Senate; one member by the Minority Leader of the Senate; one member by the President. Members are required to have expertise and professional standing in transportation and corporate management. Employees of Amtrak, the United States Government, and representatives of rail labor or rail management are ineligible.

Subsection (d) allows TRAC members to receive compensation for per diem expenditures.

Subsection (e) requires the Secretary of Transportation to provide administrative support for the TRAC.

Subsection (f) requires Amtrak to provide the TRAC with access to any records that it needs to carry out its duties. The TRAC is required to keep confidential any items that could place Amtrak at a competitive disadvantage if disclosed.

Subsection (g) requires that the TRAC submit to the Amtrak board of directors and to the Congress an interim report within 120 days of enactment, and a final report within 270 days of enactment.

Subsection (h) exempts the TRAC from the Federal Advisory Committee Act and the Freedom of Information Act.

*Section 602. Principal place of business*

This section repeals the current requirement that Amtrak be headquartered in the District of Columbia. This is in keeping with the general thrust of the legislation to allow Amtrak to operate like a private business, which includes selecting the most appropriate location for its headquarters without Federal intervention.

*Section 603. Status and applicable laws*

This section amends the current provision concerning Surface Transportation Board jurisdiction of Amtrak to clarify that only limited provisions of the Interstate Commerce Act apply to Amtrak: access to terminal facilities, pooling agreements, protection against double State income taxation of employees, and liability standards for damage to shipments in transit. The section explicitly disclaims any effect on Amtrak's status as an employer under the Railroad Retirement Act and the Railroad Unemployment Insurance Act.

*Section 604. Waste disposal*

This section defers Amtrak's statutory deadlines for full compliance with retention-toilet retrofit requirements to 2000 in lieu of 1996, to allow for retirement of older cars and avoid costly retrofitting of cars about to be retired.

*Section 605. Assistance for upgrading facilities*

This section repeals obsolete and executed provisions about safety-related repairs to Amtrak stations.

*Section 606. Rail safety system program*

This section repeals a provision specifying the contents of Amtrak's internal safety program.

*Section 607. Demonstration of new technology*

This section repeals a redundant provision on Amtrak use of high-speed rail technology. This matter has been addressed in recent high-speed rail legislation conferring authority on the Federal Railroad Administration in this field.

*Section 608. Program master plan for Boston-New York main line*

Subsection (a) repeals an obsolete provision on planning for upgrade of the northern segment of the Northeast Corridor.

Subsection (b) makes a technical conforming amendment.

*Section 609. Boston-New Haven electrification project*

This section requires Amtrak to design and construct its electrification project between New Haven, Connecticut, and Boston, Massachusetts, to accommodate the installation of a third mainline track between Davisville and Central Falls, Rhode Island. In addition, if funds are provided, Amtrak is to make clearance improvements on the existing main line tracks to permit double-stack service on this line.

The Committee intends this section as a clarification of Amtrak's responsibilities vis-à-vis a proposed freight rail infrastructure project in Rhode Island. Amtrak's electrification project is to be designed so as not to prejudice the possibility of the installation of a third track between Davisville and Central Falls, Rhode Island. However, Amtrak is in no way obligated to provide funds for this project, which is being undertaken for the exclusive benefit of local freight rail and shipping interests.

*Section 610. Americans With Disabilities Act of 1990*

Subsection (a) defers Amtrak's statutory deadlines under the Americans with Disabilities Act (ADA) for passenger cars, station, and facility modifications to January 1, 1998. This section has no effect on ADA requirements for procurement of new rail cars.

Subsection (b) makes a technical, conforming amendment.

*Section 611. Definitions*

This section adds a new definition of "rail passenger transportation," to the recodified Rail Passenger Service Act, a term which had been previously undefined. It also clarifies that a unit of State

or local government, but not necessarily such a government's contractor, can be included under the definition of rail carrier.

*Section 612. Northeast Corridor cost dispute*

This section repeals an executed and obsolete provision directing the Interstate Commerce Commission to settle a specific dispute.

*Section 613. Inspector General Act*

Subsection (a) removes Amtrak from coverage under the Inspector General Act on the ground that Amtrak is not a government agency.

Subsection (b) clarifies that Amtrak shall not be considered a Federal entity for purposes of the Inspector General Act of 1978.

*Section 614. Consolidated Rail Corporation*

This section repeals an obsolete provision enacted prior to Conrail's privatization specifying the composition of Conrail's board of directors.

*Section 615. Interstate rail compacts*

Subsection (a) provides for advance consent by Congress to multi-state agreements to support and fund intercity rail passenger service and related facilities. This avoids the need for individual Congressional consent legislation each time such a compact is negotiated.

Subsection (b) establishes the financial arrangements that an interstate compact may provide for including borrowing money on a short-term basis and issuing bonds.

While the interstate compact provision is designed to ease the way for agreements between States, the Committee is aware that it does not provide a remedy for rail lines that cross an international border, such as the Pacific Northwest Corridor that stretches from Eugene, Oregon, through Seattle, Washington, to Vancouver, British Columbia, Canada. In order to ease the way for rail routes that cross international borders, a treaty is needed similar to the "Open Skies" agreement that the United States and Canada have signed to enhance air travel. Such a treaty would provide opportunities for bilateral international cooperation and investment in improved rail passenger service. While legislative treatment of this issue is beyond the scope of H.R. 2247, the Committee urges the Administration to negotiate such agreements as may be necessary to enable the United States and Canadian Federal, State or provincial, and local government funds to be used in compacts between the United States and Canadian provinces comparable to the interstate rail compacts authorized in this section.

*Section 616. Conforming amendment*

This section changes Interstate Commerce Commission to Surface Transportation Board in a number of places where it appears in Part C of subtitle V of Title 49.

*Section 617. Magnetic levitation track materials*

This section requires the Federal Railroad Administration to transfer from the Transportation Technology Center in Pueblo, Col-

orado, to the state of Florida, certain surplus aluminum materials for use in magnetic levitation research.

*Section 618. Railroad loan guarantees*

This section makes amendments to the 4R Act Section 511 loan guarantee program to make the program more user-friendly. It adds continuation of service on light density lines to the policy goals, caps the annual percentage rate to be charged at the cost of money to the United States, and allows prepayments with no penalties after five years.

TITLE VII—AUTHORIZATION OF APPROPRIATIONS

*Section 701. Authorization of appropriations*

Subsection (a) authorizes funds for Amtrak capital expenditures in the amount of:

- (1) \$230,000,000 for fiscal year 1995;
- (2) \$230,000,000 for fiscal year 1996;
- (3) \$224,000,000 for fiscal year 1997;
- (4) \$501,000,000 for fiscal year 1998;
- (5) \$516,000,000 for fiscal year 1999; and,
- (6) \$531,000,000 for fiscal year 2000.

Subsection (b) authorizes funds for Amtrak operating expenses in the amount of:

- (1) \$542,000,000 for fiscal year 1995;
- (2) \$405,000,000 for fiscal year 1996;
- (3) \$365,000,000 for fiscal year 1997;
- (4) \$387,000,000 for fiscal year 1998;
- (5) \$292,000,000 for fiscal year 1999; and
- (6) \$242,000,000 for fiscal year 2000.

Subsection (c) authorizes funds for Amtrak expenditures for Northeast Corridor improvements in the amount of:

- (1) \$200,000,000 for fiscal year 1995;
- (2) \$115,000,000 for fiscal year 1996;
- (3) \$255,000,000 for fiscal year 1997;
- (4) \$250,000,000 for fiscal year 1998;
- (5) \$250,000,000 for fiscal year 1999; and
- (6) \$250,000,000 for fiscal year 2000.

Subsection (d) requires that the total amounts authorized for each fiscal year under subsections (a) and (c) combined be reduced by any amount made available to Amtrak pursuant to the Taxpayer Relief Act of 1997 for that fiscal year.

Subsection (e) makes a technical conforming amendment.

Subsection (f) authorizes funds for guaranteeing obligations of Amtrak under Section 511 of the Railroad Revitalization and Regulatory Reform Act of 1976 in the amount of:

- (1) \$50,000,000 for fiscal year 1998;
- (2) \$50,000,000 for fiscal year 1999; and
- (3) \$50,000,000 for fiscal year 2000.

These amounts are for the subsidy component only (not face value) of guaranteed loans for infrastructure improvements.

Subsection (g) amends Section 511 program requirements to overturn the current DOT policy requiring that the Federal guar-

antor come ahead of even pre-existing creditors as a condition of making any guaranteed loan.

#### HEARINGS

The Subcommittee on Railroads held a hearing on the current Amtrak financial condition on March 12, 1997. Testimony was received from the following witnesses: Mr. Thomas M. Downs, President and CEO, National Railroad Passenger Corporation; Honorable Donald M. Itzkoff, Deputy Administrator, Federal Railroad Administration; Ms. Phyllis Scheinberg, Associate Director for Transportation Issues, U.S. General Accounting Office.

#### COMMITTEE CONSIDERATION

On July 30, 1997, the Committee met in open session and ordered reported H.R. 2247, the Amtrak Reform and Privatization Act of 1997, as amended, by a recorded vote of 36 to 30, a quorum being present. The Subcommittee on Railroads was discharged.

Clause 2(1)(2)(B) of rule XI requires each committee report to include the total number of votes cast for and against on each rollcall vote on a motion to report and on any amendment offered to the measure or matter, and the names of those members voting for and against.

An amendment in the nature of a substitute was offered by Mr. Oberstar. This amendment includes all the provisions of H.R. 2247 except the following: Section 101, which repeals the current subsection that prohibits Amtrak from contracting out any work (other than food and beverage service) that affects one or more employees in a bargaining unit; Title III, which establishes an accelerated Railway Labor Act bargaining process on the issues of labor protection and contracting out; and Title IV, which places caps on tort liability in rail passenger accidents and confirms the right of rail passenger operators and owners of rights-of-way to contractually indemnify each other for liability arising out of rail passenger accidents. The amendment failed by a vote of 31 to 37 as follows:

YEAS	NAYS
Barcia	Bachus
Blumenauer	Baker
Borski	Bass
Boswell	Bateman
Brown	Blunt
Clement	Boehlert
Clyburn	Coble
Costello	Cook
Cramer	Cooksey
Cummings	Ehlers
Danner	Emerson
DeFazio	Ewing
Filner	Fowler
Holden	Fox
Johnson, Texas	Franks
Johnson, Wisconsin	Gilchrest
Lampson	Granger
Lipinski	Horn



McGovern	Hutchinson
Mascara	Kelly
Menendez	Kim
Millender-McDonald	LaTourette
Nadler	LoBiondo
Norton	Metcalf
Oberstar	Mica
Pascrell	Molinari
Poshard	Ney
Sandlin	Pease
Tauscher	Petri
Traficant	Pickering
Wise	Pitts
	Quinn
	Riggs
	Taylor
	Thune
	Watts
	Shuster

The bill was favorably reported to the House by a vote of 36 to 30.

YEAS	NAYS
Bachus	Barcia
Baker	Blumenauer
Bass	Borski
Blunt	Boswell
Boehlert	Brown
Coble	Clement
Cook	Clyburn
Cooksey	Costello
Ehlers	Cramer
Emerson	Cummings
Ewing	Danner
Fowler	DeFazio
Fox	Filner
Franks	Johnson, Texas
Gilchrest	Johnson, Wisconsin
Granger	Lampson
Horn	Lipinski
Hutchinson	McGovern
Kelly	Mascara
Kim	Menendez
Latourette	Millender-McDonald
Lobiondo	Nadler
Metcalf	Norton
Mica	Oberstar
Molinari	Pascrell
Ney	Poshard
Pease	Sandlin
Petri	Tauscher
Pickering	Traficant
Pitts	Wise
Quinn	

Riggs  
Taylor  
Thune  
Watts  
Schuster

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, oversight findings and recommendations have been made by the Committee as reflected in this report.

COST OF THE LEGISLATION

Clause 7 of rule XIII of the Rules of the House of Representatives does not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974 has been timely submitted prior to the filing of the report and is included in the report. Such a cost estimate is included in this report.

COMPLIANCE WITH HOUSE RULE XI

1. With respect to the requirement of clause 2(1)(3)(B) of rule XI of the Rules of the House of Representatives, and 308(a) of the Congressional Budget Act of 1974, the Committee references the report of the Congressional Budget Office included below.

2. With respect to the requirement of clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform and Oversight on the subject of H.R. 2247.

3. With respect to the requirement of clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 2247 from the Director of the Congressional Budget Office.

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, September 16, 1997.*

Hon. BUD SHUSTER,  
*Chairman, Committee on Transportation and Infrastructure,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed revised cost estimate for H.R. 2247, the Amtrak Reform and Privatization Act of 1997. This estimate supersedes the estimate provided on September 11, 1997.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Clare Doherty (for Federal costs), Kristen Layman (for the State and local impact), and Jean Wooster (for the private-sector impact).

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

*H.R. 2247—Amtrak Reform and Privatization Act of 1997*

Summary: H.R. 2247 would authorize appropriations totaling \$3.4 billion for Amtrak's capital expenses and operating expenses and the Northeast corridor improvement program, including \$150 million to guarantee loans to Amtrak over the 1998–2000 period. But the legislation also would reduce the total amounts authorized to be appropriated—with the exception of the authorizations for loan guarantees—by an amount, each year, up to the sum made available to Amtrak in that year by the Taxpayer Relief Act of 1997 (Public Law 105–34). That law authorized payments to Amtrak totaling \$2.3 billion, contingent on the enactment of Amtrak reform legislation. Those payments are expected to be made in two equal annual installments in 1998 and 1999.

H.R. 2247 would provide Amtrak with flexibility in its contracting, operating, labor, and liability practices; establish a temporary rail advisory council; and replace the current Board of Directors with an emergency reform board. In addition, this bill would give states the ability to create interstate rail compacts.

H.R. 2247 also would require the Secretary of Transportation to transfer the title to the aluminum reaction rail, power rail base, and other magnetic levitation track materials currently at the Transportation Technology Center in Pueblo, Colorado, to the state of Florida. If the materials are not used within three years after the date of enactment, title to them would revert other federal government. This transfer would result in a loss of offsetting receipts to the federal government, thereby affecting direct spending. As a result, pay-as-you-go procedures would apply to the bill.

H.R. 2247 contains two intergovernmental mandates as defined in the Unfunded Mandates Reform Act of 1995 (UMRA). Because of uncertainties about how the language exempting Amtrak from direct and indirect taxation would be interpreted, CBO cannot determine whether total tax losses to states and localities resulting from this bill would exceed the threshold established in UMRA (\$50 million in 1996, adjusted annually for inflation).

H.R. 2247 would impose new federal private-sector mandates on Amtrak. CBO estimates that the costs of those mandates would not exceed the statutory threshold (\$100 million adjusted annually for inflation) in any one year.

Estimated cost to the Federal Government: CBO estimates that the gross amounts authorized in the bill would be reduced to \$50 million for both fiscal years 1998 and 1999 because of the bill's provision specifying reductions up to the amounts made available under the Taxpayer Relief Act of 1997. The \$2.3 billion made available by that act would offset all of the bill's authorizations for 1998 and 1999 except those for the newly authorized loan guarantees. Because no part of the \$2.3 billion is to be paid to Amtrak in 2000, there would be no reduction in the gross authorization for that year. On balance, H.R. 2247 would authorize net funding of about \$1.2 billion over the 1998–2000 period: \$3.4 billion in gross amounts, reduced by approximately \$2.2 billion of the \$2.3 billion in total anticipated payments to Amtrak under the Taxpayer Relief Act. The costs of this legislation fall within budget function 400

(transportation). The estimated budgetary impact of H.R. 2247 is shown in the following table.

*Basis of estimate*

*Spending subject to appropriation*

This estimate is based on the yearly authorization levels specified by the bill. Outlay estimates are based on historical spending rates for Amtrak. CBO estimates that outlays for operating expenses would equal obligations for that purpose each year, capital expenditures would occur at a rate of 40 percent in the year of obligation and 60 percent in the following year, and outlays for the Northeast corridor improvement program would occur at a rate of 20 percent in the first year, 50 percent in the second year, and 30 percent in the third year. While the legislation would give Amtrak the ability to receive all of its federal operating assistance at or near the beginning of each fiscal year, CBO expects that this change in the apportionment of funds to Amtrak would not affect the rate at which the funds are spent.

In estimating outlays of the \$50 million authorized for each year to support loan guarantees, CBO assumes that 50 percent of the loans authorized to be guaranteed each year would be disbursed in the first year and 50 percent in the following year.

[By fiscal year, in millions of dollars]

	1997	1998	1999	2000	2001	2002
SPENDING SUBJECT TO APPROPRIATION						
Spending under current law:						
Budget authority <sup>1</sup> .....	843	0	0	0	0	0
Estimated outlays .....	886	364	117	25	0	0
Proposed changes:						
Gross authorization:						
Estimated authorization level .....	0	1,188	1,108	1,073	0	0
Estimated outlays .....	0	662	1,024	1,064	544	75
Reductions under section 701(g): <sup>2</sup>						
Estimated authorization level .....	0	-1,138	-1,058	0	0	0
Estimated outlays .....	0	-637	-974	-510	-75	0
Spending under H.R. 2247:						
Estimated authorization level <sup>1</sup> .....	843	50	50	1,073	0	0
Estimated outlays .....	886	389	167	579	469	75
CHANGES IN DIRECT SPENDING						
Estimated budget authority .....	0	-1	0	0	0	0
Estimated outlays .....	0	-1	0	0	0	0

<sup>1</sup>The 1997 level is the amount appropriated for that year.

<sup>2</sup>Section 701(g) of H.R. 2247 would reduce the amounts authorized to be appropriated—with the exception of the funding for loan guarantees (\$50 million a year for 1998 through 2000)—by an amount, each year, up to the sum made available to Amtrak in that year by the Taxpayer Relief Act of 1997. That act provided \$2.3 billion to Amtrak, recorded on the budget as a decrease in revenues in 1998 and 1999.

Based on information from the Federal Railroad Administration (FRA), CBO estimates that expenses associated with the establishment of a temporary rail advisory council and the outreach program and annual report related to track work manufacturers would be less than \$200,000 a year. In addition, CBO estimates that expenses associated with the director general would be \$250,000 a year. The director general would be required if the newly created emergency reform board is not functioning within 60 days after enactment. Expenses associated with the council, the outreach program, the annual report, the emergency reform board, and the di-

rector general would be subject to the availability of appropriated funds.

*Direct spending*

H.R. 2247 would require the Secretary of Transportation to transfer the title to the aluminum reaction rail, power rail base, and other magnetic levitation track materials currently at the Transportation Technology Center in Pueblo, Colorado to the State of Florida. If the materials are not used within three years after the date of enactment, title to them would revert to the Federal Government. Based on information from FRA, CBO estimates that this transfer would result in a loss of receipts to the Federal Government. FRA was planning to sell the materials and estimates that the government would collect \$1 million in 1998 from their sale. CBO assumes that the State of Florida would use the materials within three years so a transfer back to the Federal Government would not occur. Therefore, the Federal Government would lose about \$1 million in offsetting receipts, which would be recorded as an increase in outlays of that amount.

*Revenues*

In section 615, the Congress would grant consent to states with interests in intercity passenger rail service to enter into interstate compacts to promote the provision of this service. This consent extends to compacts to furnish high-speed rail transportation, and to issue bonds to obtain financing for the provision of intercity passenger rail service. Under present law, state and local governments may issue tax-exempt bonds to obtain financing for certain types of rail facilities, including commuter rail, as is currently operated by Amtrak, and high-speed rail, which has been contemplated as a replacement for lines that have been or are operated by Amtrak. States that elect to form such compacts would probably issue tax-exempt bonds to finance their enterprise. It is possible, therefore, that the total volume of tax-exempt bonds outstanding could increase as a result of this provision, and that there would be a resulting decrease in receipts to the Federal Government. However, the possibility of the formation of such interstate compacts is so speculative at this time that we do not believe it would be appropriate to include an estimate of their possible effects on Federal receipts in the scoring of this legislation.

The Taxpayer Relief Act of 1997 authorizes payments to Amtrak totaling \$2.3 billion, contingent on enactment of Amtrak reform legislation. While enactment of H.R. 2247 would presumably satisfy this requirement, the cost of the \$2.3 billion has already been attributed to the Taxpayer Relief Act and is not charged to this bill.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act of 1985 specifies pay-as-you-go procedures for legislation affecting direct spending or receipts. H.R. 2247 would affect direct spending because it would require the Secretary of Transportation to transfer the title to the aluminum reaction rail, power rail base, and other magnetic levitation track materials currently at the Transportation Technology Center in Pueblo, Colorado, to the State of Florida. CBO estimates that this transfer would result in a loss of \$1 million in offsetting receipts (an in-

crease in direct spending) to the Federal Government in fiscal year 1998.

*Estimated impact on State, local, and tribal governments*

*Mandates*

H.R. 2247 would exempt Amtrak from the property tax levied on it by the town of Beech Grove, Indiana. It would also exempt Amtrak's passengers and other customers from most state and local taxes, fees, and charges. Such preemptions of state and local taxing authority would constitute intergovernmental mandates under UMRA. Because of uncertainties about how the language exempting Amtrak from direct and indirect taxation would be interpreted, CBO cannot determine whether total tax losses resulting from this bill would exceed the threshold established in UMRA (\$50 million in 1996, adjusted annually for inflation).

Amtrak currently pays approximately \$1 million per year in local property tax on a maintenance facility located in Beech Grove, Indiana. The bill would exempt Amtrak from such taxes assessed after April 1, 1997. CBO estimates Beech Grove would lose tax revenue totaling approximately \$5 million over the next five years.

Section 506 would exempt Amtrak's passengers and customers from most state and local taxes, fees, or charges, whereas current law exempts only Amtrak and its subsidiaries. Under current law, it is possible that the 1995 Supreme Court ruling, *Oklahoma Tax Commission vs. Jefferson Lines*, could be used in the future to justify the imposition of state taxes on Amtrak's interstate passenger tickets and possibly on its interstate mail or freight transportation services. No state has attempted to impose such a tax and, therefore, CBO estimates that this mandate would result in no cost over the next five years. Nonetheless, by exempting Amtrak's passengers from most state and local taxes, enactment of this bill would foreclose a potential future source of state and local revenues. In fiscal year 1996, Amtrak collected about \$840 million from ticket sales and about \$61 million from mail and express services.

In addition, the tax exemption allowed in section 506 would apply to taxes, fees, and charges imposed "directly or indirectly" on Amtrak. It is unclear what the phrase "directly or indirectly" means. Information from Amtrak and the Federal Railroad Administration indicates that this provision is not intended to confer a tax exemption on individuals or companies selling goods or services to Amtrak. If this interpretation prevails, then tax losses are unlikely to be significant. If interpreted broadly, however, the language could prompt vendors or suppliers contracting with Amtrak to claim state tax exemptions. This could result in significantly lower tax revenues for affected states. CBO currently has no information concerning the likelihood that third-party contractors would attempt to claim tax exemptions under this provision.

*Other impacts*

H.R. 2247 contains a number of other provisions that, while not mandates, could affect the budgets of state and local governments.

The bill would prohibit Amtrak from submitting below-cost bids to provide certain services for local governments and commuter au-

thorities with respect to any activity other than the provision of intercity rail passenger transportation, commuter rail transportation, or mail express transportation. There is no such prohibition in current law. To the extent that Amtrak would otherwise make below-cost bids on future contracts, state and local transportation authorities would have to pay more for contracted services. Because Amtrak currently does not have any below-cost contracts and because not many activities could be affected, it is unlikely that this provision will result in significant costs.

The bill contains a provision that would help assure the enforceability of certain contracts between operators of rail passenger services—some of which are state and local governments—and owners of rights-of-way and other facilities. The need for this provision arises because of concern about liability in the case of an accident. This concern is the result of a court decision that required Conrail to pay substantial damages for a collision between an Amtrak train and a Conrail train, despite the existence of a contract limiting Conrail's liability. Without enactment of this provision, it is possible that owners of rail rights-of-way, such as Conrail, would press rail passenger operators, including state and local commuter rail authorities, for higher compensation to cover this increased risk when current operating agreements come up for renegotiation. CBO cannot estimate how much more commuter authorities might have to pay for the use of freight rail tracks in the absence of this legislation.

The bill would also grant states access to Amtrak's records, accounts, and other documents used to determine the amount of any payment to Amtrak required of the state. While many of these documents are currently available to the public, the process of obtaining them is time-consuming and cumbersome.

The bill would make it easier for Amtrak to discontinue routes by repealing some route requirements and eliminating Congressional review of changes to Amtrak's route and service criteria. However, a related provision would allow states to enter into interstate compacts to retain existing intercity passenger rail services or create new services. These compacts could finance their activities by issuing notes or bonds. This change would make it easier for states to provide any services discontinued by Amtrak.

State and local governments could face higher costs if they decided to pay for the provision of any services that Amtrak discontinued. However, CBO has no information on which routes, if any, Amtrak would discontinue if these changes were to become law. Indeed, some industry experts argue that the net effect of the bill would be to increase Amtrak's overall efficiency and, thus, the likelihood that it would be able to maintain its existing services.

#### *Estimated impact on the private sector*

H.R. 2247 would impose new federal private-sector mandates on Amtrak. CBO estimates that the cost of those mandates would not exceed the statutory threshold (\$100 million adjusted annually for inflation) in any one year.

Amtrak was incorporated as a private company under the laws of the District of Columbia by the Rail Passenger Service Act of 1970. Under current budgetary treatment, Amtrak is not consid-

ered a federal entity, although its Board of Directors is appointed by the President and the U.S. Department of Transportation is the only holder of Amtrak preferred stock, the only voting stock of the corporation.

Section 101 would reduce an existing mandate pertaining to contracting out, while imposing a new, less stringent, requirement. Under current law, Amtrak cannot contract out work, other than food and beverage services, which would result in any layoffs. This section would allow Amtrak to contract out for all services except the operation of trains (that is, for engine and train crews). Amtrak would be restricted to contracting with only a state or state authority for the operation of trains.

Section 102 would prohibit Amtrak from submitting any bids for the performance of services for less than Amtrak's cost, based on generally accepted accounting principles. Intercity rail passenger transportation, commuter rail passenger transportation, or mail or express transportation would be excluded from this mandate. Amtrak believes that this provision, especially because it is likely to be enforced through judicial proceedings, would probably prevent it from winning some contracts and subsequently cause Amtrak to lose revenues. Although Amtrak has had a substantial contracts in the past that could have been effected by this restriction, it currently does not have any such contract. Thus, CBO estimates that Amtrak would not incur significant costs in the form of lost revenues as a result of this provision.

Section 102 also place some restrictions on Amtrak's ability to enter into contracts with intercity bus operators. In particular, this section would allow Amtrak to enter into a contract for through service and joint fares only for the movement of passengers who have had prior or subsequent movement by rail. According to Amtrak, these restrictions would not affect its operations. Thus, Amtrak would not incur any cost because of this provision.

Section 104 would require that Amtrak establish an outreach program to work with U.S. track work manufacturers to increase the likelihood that the manufacturers would meet Amtrak's specifications. This program would also require Amtrak to provide engineering assistance for the manufacturers. Two years after enactment of this bill, Amtrak would report to the Congress on the progress of its outreach program. Because this program would not greatly expand Amtrak's current practice, CBO estimates that the incremental costs would be negligible.

Section 201 would increase from 90 days to 180 days the notice that Amtrak must provide when it plans to discontinue service. These changes would provide a state, regional or local authority, or another person additional time to consider assuming or sharing the cost of the discontinued service. This section also would repeal a provision that allows Amtrak to discontinue service because of the lack of appropriations without providing any minimum notice. As a result of these changes, Amtrak would be required to provide 180 days notice in all cases of service discontinuance and would incur additional costs for running trains in those service areas. Amtrak officials say it currently does not plan to discontinue any service. However, based on Amtrak's recent experience, CBO estimates that the cost of continuing a potentially affected route would average



from \$110,000 a month to \$1.2 million a month, for approximately three months, depending on the route.

*Previous CBO estimate*

On September 11, 1997, CBO provided its initial cost estimate for H.R. 2247, as ordered reported by the House Committee on Transportation and Infrastructure. That estimate reflected an error in the interpretation of the provision requiring reductions from the bill's gross authorizations. This revised estimate corrects that error, and reflects a net three-year authorization of about \$1.2 billion, whereas our original estimate has a three-year total of about \$1.1 billion. All other aspects of the estimate are unchanged.

On July 22, 1997, CBO provided a cost estimate for S. 738, the Amtrak Reform and Accountability Act of 1997, as ordered reported by the Senate Committee on Commerce, Science, and Transportation on June 26, 1997. S. 738 does not include provisions included in H.R. 2247 for new loan guarantees or for the transfer of magnetic levitation materials. In addition, S. 738 has different authorization levels than H.R. 2247.

Estimate prepared by: Federal costs: Clare Doherty; Federal revenues: Mark Booth; Impact on State, local, and tribal governments: Kristen Layman; and Impact on the private sector: Jean Wooster.

Estimate approved by: Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee believes that the bill will not have any inflationary impact on the prices and costs in the operation of the national economy. The bill is designed to lower Amtrak's costs and allow it to operate more efficiently, thus preserving jobs and alternatives to highway and air travel. These factors should contribute to lowering the costs of travel, and thus have an anti-inflationary impact.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause (2)(1)(4) of rule XI of the Rules of the House of Representatives, committee reports on a bill or joint resolution of a public character shall include a statement citing the specific powers granted to the Congress in the Constitution to enact the measure. The Committee on Transportation and Infrastructure finds that Congress has the authority to enact this measure pursuant to its powers granted under Article I, Section 8 of the Constitution.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in roman):

## TITLE 49, UNITED STATES CODE

\* \* \* \* \*

### SUBTITLE V—RAIL PROGRAMS

#### PART A—SAFETY

CHAPTER		Sec.
201.	GENERAL .....	20101
	* * * * *	

#### PART C—PASSENGER TRANSPORTATION

245.	AMTRAK COMMUTER .....	24501
	* * * * *	

### PART C—PASSENGER TRANSPORTATION

#### CHAPTER 241—GENERAL

\* \* \* \* \*

#### § 24101. Findings, purpose, and goals

(a) \* \* \*

\* \* \* \* \*

(c) GOALS.—Amtrak shall—

(1) \* \* \*

(2) minimize Government subsidies by encouraging State, regional, and local governments and the private sector, *separately or in combination*, to share the cost of providing rail passenger transportation, including the cost of operating facilities;

[(d) MINIMIZING GOVERNMENT SUBSIDIES.—To carry out subsection (c)(11) of this section, Amtrak is encouraged to make agreements with the private sector and undertake initiatives that are consistent with good business judgment and designed to maximize its revenues and minimize Government subsidies.]

(d) *MINIMIZING GOVERNMENT SUBSIDIES.—To carry out this part, Amtrak is encouraged to make agreements with the private sector and undertake initiatives that are consistent with good business judgment, that produce income to minimize Government subsidies, and that promote the potential privatization of Amtrak's operations.*

#### § 24102. Definitions

In this part—

(1) \* \* \*

[(2) “avoidable loss” means the avoidable costs of providing rail passenger transportation, less revenue attributable to the transportation, as determined by the Interstate Commerce Commission under section 553 of title 5.

[(3) “basic system” means the system of intercity rail passenger transportation designated by the Secretary of Transportation under section 4 of the Amtrak Improvement Act of 1978

and approved by Congress, and transportation required to be provided under section 24705(a) of this title and section 4(g) of the Act, including changes in the system or transportation that Amtrak makes using the route and service criteria.】

【(4)】 (2) “commuter authority” means a State, local, or regional entity established to provide, or make a contract providing for, commuter rail passenger transportation.

【(5)】 (3) “commuter rail passenger transportation” means short-haul rail passenger transportation in metropolitan and suburban areas usually having reduced fare, multiple-ride, and commuter tickets and morning and evening peak period operations.

【(6)】 (4) “intercity rail passenger transportation” means rail passenger transportation, except commuter rail passenger transportation.

【(7)】 (5) “Northeast Corridor” means Connecticut, Delaware, the District of Columbia, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, and Rhode Island.

【(8)】 (6) “rail carrier” means a person, *including a unit of State or local government*, providing rail transportation for compensation.

(7) “*rail passenger transportation*” means *the interstate, intrastate, or international transportation of passengers by rail*;

【(9)】 (8) “rate” means a rate, fare, or charge for rail transportation.

【(10)】 (9) “regional transportation authority” means an entity established to provide passenger transportation in a region.

【(11)】 “route and service criteria” means the criteria and procedures for making route and service decisions established under section 404(c)(1)–(3)(A) of the Rail Passenger Service Act.】

#### § 24104. Authorization of appropriations

【(a) CAPITAL ACQUISITION AND CORRIDOR DEVELOPMENT.—(1) Not more than \$250,000,000 may be appropriated to the Secretary of Transportation for each of the fiscal years ending September 30, 1993, and September 30, 1994, for the benefit of Amtrak to make capital expenditures under chapters 243–247 of this title.

【(2) In addition to amounts that may be appropriated under section 24909 of this title, not more than the following amounts may be appropriated to the Secretary for the benefit of Amtrak to make capital expenditures under chapter 249 of this title:

【(A) \$220,000,000 for the fiscal year ending September 30, 1993.

【(B) \$250,000,000 for the fiscal year ending September 30, 1994.

【(3)(A) Not more than 15 percent of each of the amounts appropriated under paragraphs (1) and (2) of this subsection is available for transportation described in subparagraphs (B) and (C) of this paragraph.

【(B) Amounts made available under subparagraph (A) of this paragraph shall be used to develop new intercity rail passenger transportation on corridors between cities undergoing significant

population growth and in which the transportation reasonably can be expected to provide travel times comparable with other surface transportation modes. An amount may be expended for the transportation only if a State requests the transportation and the State and Amtrak agree that—

[(i) Amtrak will pay at least 90 percent of the cost of acquiring rolling stock for the transportation; and

[(ii) the State will pay at least 90 percent of the cost of improving the right of way, including track structure, signal systems, passenger station facilities, highway and pedestrian grade crossings, and other safety equipment and facilities.

[(C) Amounts made available under subparagraph (A) of this paragraph shall be used to begin new long distance intercity rail passenger transportation. An amount may be expended for the transportation only if a State requests the transportation and the State and Amtrak agree that—

[(i) Amtrak will pay at least 75 percent of the cost of acquiring rolling stock for the transportation; and

[(ii) the State will pay at least 90 percent of the cost of improving the right of way, including track structure, signal systems, passenger station facilities, highway and pedestrian grade crossings, and other safety equipment and facilities.

[(D) Section 24704 of this title applies to the operating expenses of transportation described in subparagraphs (B) and (C) of this paragraph.

[(b) OPERATING EXPENSES.—(1) Not more than \$381,000,000 may be appropriated to the Secretary for each of the fiscal years ending September 30, 1993, and September 30, 1994, for the benefit of Amtrak for operating expenses. Not more than 5 percent of the amounts appropriated for each fiscal year shall be used to pay operating expenses under section 24704 of this title for transportation in operation on September 30, 1992.

[(2)(A) Not more than the following amounts may be appropriated to the Secretary for the benefit of Amtrak for operating losses under section 24704 of this title for transportation beginning after September 30, 1992:

[(i) \$7,500,000 for the fiscal year ending September 30, 1993.

[(ii) \$9,500,000 for the fiscal year ending September 30, 1994.

[(B) The expenditure by Amtrak of an amount appropriated under subparagraph (A) of this paragraph is deemed not to be an operating expense when calculating the revenue-to-operating expense ratio of Amtrak.

[(c) MANDATORY PAYMENTS.—(1) Not more than \$150,000,000 for the fiscal year ending September 30, 1993, and amounts that may be necessary for the fiscal year ending September 30, 1994, may be appropriated to the Secretary to pay—

[(A) tax liabilities under section 3221 of the Internal Revenue Code of 1986 (26 U.S.C. 3221) due in those fiscal years that are more than the amount needed for benefits for individuals who retire from Amtrak and for their beneficiaries;

[(B) obligations of Amtrak under section 8(a) of the Railroad Unemployment Insurance Act (45 U.S.C. 358(a)) due in those

fiscal years that are more than obligations of Amtrak calculated on an experience-related basis; and

[(C) obligations of Amtrak due under section 3321 of the Code (26 U.S.C. 3321).

[(2) Amounts appropriated under this subsection are not a United States Government subsidy of Amtrak.

[(d) PAYMENT TO AMTRAK.—Amounts appropriated under this section shall be paid to Amtrak under the budget request of the Secretary as approved or modified by Congress when the amounts are appropriated. A payment may not be made more frequently than once every 90 days, unless Amtrak, for good cause, requests more frequent payment before a 90-day period ends. In each fiscal year in which amounts are authorized to be appropriated under this section, amounts appropriated shall be paid to Amtrak as follows:

[(1) 50 percent on October 1.

[(2) 25 percent on January 1.

[(3) 25 percent on April 1.]

(a) CAPITAL EXPENDITURES.—*There are authorized to be appropriated to the Secretary of Transportation—*

(1) \$230,000,000 for fiscal year 1995;

(2) \$230,000,000 for fiscal year 1996;

(3) \$224,000,000 for fiscal year 1997;

(4) \$501,000,000 for fiscal year 1998;

(5) \$516,000,000 for fiscal year 1999; and

(6) \$531,000,000 for fiscal year 2000,

*for the benefit of Amtrak for capital expenditures under chapters 243 and 247 of this title.*

(b) OPERATING EXPENSES.—*There are authorized to be appropriated to the Secretary of Transportation—*

(1) \$542,000,000 for fiscal year 1995;

(2) \$405,000,000 for fiscal year 1996;

(3) \$365,000,000 for fiscal year 1997;

(4) \$387,000,000 for fiscal year 1998;

(5) \$292,000,000 for fiscal year 1999; and

(6) \$242,000,000 for fiscal year 2000,

*for the benefit of Amtrak for operating expenses.*

(c) ADDITIONAL AUTHORIZATIONS.—*In addition to amounts appropriated under subsection (a), there are authorized to be appropriated to the Secretary of Transportation—*

(1) \$200,000,000 for fiscal year 1995;

(2) \$115,000,000 for fiscal year 1996;

(3) \$255,000,000 for fiscal year 1997;

(4) \$250,000,000 for fiscal year 1998;

(5) \$250,000,000 for fiscal year 1999; and

(6) \$250,000,000 for fiscal year 2000,

*for the benefit of Amtrak to make capital expenditures under chapter 249 of this title.*

(d) ADMINISTRATION OF APPROPRIATIONS.—*Federal operating assistance funds appropriated to Amtrak shall be provided to Amtrak upon appropriation when requested by Amtrak.*

\* \* \* \* \*

(g) REDUCTION OF AMOUNTS.—*For each fiscal year, the total amount authorized to be appropriated under subsections (a) and (c)*

*combined shall be reduced by any amount made available to Amtrak pursuant to the Taxpayer Relief Act of 1997 for that fiscal year.*

\* \* \* \* \*

## CHAPTER 243—AMTRAK

Sec.

24301. Status and applicable laws.

\* \* \* \* \*

**[24304. Capitalization.]**

24304. *Employee stock ownership plans.*

\* \* \* \* \*

**[24306. Mail, express, and auto-ferry transportation.]**

\* \* \* \* \*

**[24310. Assistance for upgrading facilities.]**

24311. Acquiring interests in property by eminent domain.

24312. Labor standards.

**[24313. Rail safety system program.]**

**[24314. Demonstration of new technology.]**

24315. Reports and audits.

### § 24301. Status and applicable laws

(a) STATUS.—Amtrak—

(1) is a **[rail carrier under section 10102]** *railroad carrier under section 20102(2) and chapters 261 and 281* of this title;

(2) shall be operated and managed as a for-profit corporation; and

(3) is not a department, agency, or instrumentality of the United States Government, *and shall not be subject to title 31.*

(b) PRINCIPAL OFFICE AND PLACE OF BUSINESS.—**[The principal office and place of business of Amtrak are in the District of Columbia.]** Amtrak is qualified to do business in each State in which Amtrak carries out an activity authorized under this part. Amtrak shall accept service of process by certified mail addressed to the secretary of Amtrak at its principal office and place of business. Amtrak is a citizen only **[of the District of Columbia]** *of the State in which its principal place of business is located* when deciding original jurisdiction of the district courts of the United States in a civil action. *For purposes of this subsection, the term “State” includes the District of Columbia. Notwithstanding section 3 of the District of Columbia Business Corporation Act, Amtrak, if its principal place of business is located in the District of Columbia, shall be considered organized under the provisions of such Act.*

**[c) APPLICATION OF SUBTITLE IV.—(1) Part A of subtitle IV of this title applies to Amtrak, except for provisions related to the—**

**[A) regulation of rates;**

**[B) abandonment or extension of rail lines used only for passenger transportation and the abandonment or extension of operations over those lines;**

**[C) regulation of routes and service;**

**[D) discontinuance or change of rail passenger transportation operations; and**

**[E) issuance of securities or the assumption of an obligation or liability related to the securities of others.**

**[(2) Notwithstanding this subsection—**

**[A) section 10721 of this title applies to Amtrak; and**

[(B) on application of an adversely affected motor carrier, the Surface Transportation Board under part A of subtitle IV of this title may hear a complaint about an unfair or predatory rate or marketing practice of Amtrak for a route or service operating at a loss.]

(c) *APPLICATION OF SUBTITLE IV.*—*Subtitle IV of this title shall not apply to Amtrak, except for sections 11301, 11322(a), 11502, and 11706. Notwithstanding the preceding sentence, Amtrak shall continue to be considered an employer under the Railroad Retirement Act of 1974, the Railroad Unemployment Insurance Act, and the Railroad Retirement Tax Act.*

\* \* \* \* \*

(e) *APPLICATION OF CERTAIN ADDITIONAL LAWS.*—[Section 552 of title 5, this part,] *This part and, to the extent consistent with this part, the District of Columbia Business Corporation Act (D.C. Code § 29–301 et seq.) apply to Amtrak.*

[(f) *LAWS GOVERNING LEASES AND CONTRACTS.*—The laws of the District of Columbia govern leases and contracts of Amtrak, regardless of where they are executed.]

(f) *TAX EXEMPTION FOR CERTAIN COMMUTER AUTHORITIES.*—*A commuter authority that was eligible to make a contract with Amtrak Commuter to provide commuter rail passenger transportation but which decided to provide its own rail passenger transportation beginning January 1, 1983, is exempt, effective October 1, 1981, from paying a tax or fee to the same extent Amtrak is exempt.*

\* \* \* \* \*

(l) *EXEMPTION FROM TAXES LEVIED AFTER SEPTEMBER 30, 1981.*—(1) *Amtrak or a rail carrier subsidiary of Amtrak, and any passenger or other customer of Amtrak or such subsidiary, is exempt from a tax [or fee imposed by a State, a political subdivision of a State, or a local taxing authority and levied on it], fee, head charge, or other charge, imposed or levied by a State, political subdivision, or local taxing authority, directly or indirectly on Amtrak or on persons traveling in intercity rail passenger transportation or on mail or express transportation provided by Amtrak or a rail carrier subsidiary of Amtrak, or on the carriage of such persons, mail, or express, or on the sale of any such transportation, or on the gross receipts derived therefrom after September 30, 1981. [However, Amtrak is not exempt under this subsection from a tax or fee that it was required to pay as of September 10, 1982.] In the case of a tax or fee that Amtrak was required to pay as of September 10, 1982, Amtrak is not exempt from such tax or fee if it was assessed before April 1, 1997.*

\* \* \* \* \*

(m) *WASTE DISPOSAL.*—(1) *An intercity rail passenger car manufactured after October 14, 1990, shall be built to provide for the discharge of human waste only at a servicing facility. Amtrak shall retrofit each of its intercity rail passenger cars that was manufactured after May 1, 1971, and before October 15, 1990, with a human waste disposal system that provides for the discharge of human waste only at a servicing facility. Subject to appropriations—*

(A) the retrofit program shall be completed not later than October 15, ~~1996~~ 2000; and

\* \* \* \* \*

(o) *NONAPPLICATION OF CERTAIN OTHER LAWS.*—*State and local laws and regulations that impair the provision of mail, express, and auto-ferry transportation do not apply to Amtrak or a rail carrier providing mail, express, or auto-ferry transportation.*

**§ 24302. Board of directors**

**[(a) COMPOSITION AND TERMS.—(1) The board of directors of Amtrak is composed of the following 9 directors, each of whom must be a citizen of the United States:**

**[(A) the Secretary of Transportation.**

**[(B) the President of Amtrak.**

**[(C) 3 individuals appointed by the President of the United States, by and with the advice and consent of the Senate, as follows:**

**[(i) one individual selected from a list of 3 qualified individuals submitted by the Railway Labor Executives Association.**

**[(ii) one chief executive officer of a State selected from among the chief executive officers of States with an interest in rail transportation. The chief executive officer may select an individual to act as the officer's representative at board meetings.**

**[(iii) one individual selected as a representative of business with an interest in rail transportation.**

**[(D) 2 individuals selected by the President of the United States from a list of names consisting of one individual nominated by each commuter authority for which Amtrak Commuter provides commuter rail passenger transportation under section 24505 of this title and one individual nominated by each commuter authority in the region (as defined in section 102 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 702)) that provides its own commuter rail passenger transportation or makes a contract with an operator (except Amtrak Commuter), except that—**

**[(i) one of the individuals selected must have been nominated by a commuter authority for which Amtrak Commuter provides commuter rail transportation; or**

**[(ii) if Amtrak Commuter does not provide commuter rail passenger transportation for any authority, the 2 individuals shall be selected from a list of 5 individuals submitted by commuter authorities providing transportation over rail property of Amtrak.**

**[(E) 2 individuals selected by the holders of the preferred stock of Amtrak.**

**[(2) An individual appointed under paragraph (1)(C) of this subsection serves for 4 years or until the individual's successor is appointed and qualified. Not more than 2 individuals appointed under paragraph (1)(C) may be members of the same political party.**



[(3) An individual selected under paragraph (1)(D) of this subsection serves for 2 years or until the individual's successor is selected.

[(4) An individual selected under paragraph (1)(E) of this subsection serves for one year or until the individual's successor is selected.

[(5) The President of Amtrak serves as Chairman of the board.

[(6) The Secretary may be represented at a meeting of the board only by the Deputy Secretary of Transportation, the Administrator of the Federal Railroad Administration, or the General Counsel of the Department of Transportation.

[(b) CUMULATIVE VOTING.—The articles of incorporation of Amtrak shall provide for cumulative voting for all stockholders.

[(c) CONFLICTS OF INTEREST.—When serving on the board, a director appointed by the President of the United States may not have—

[(1) a financial or employment relationship with a rail carrier; and

[(2) a significant financial relationship or an employment relationship with a person competing with Amtrak in providing passenger transportation.

[(d) PAY AND EXPENSES.—Each director not employed by the United States Government is entitled to \$300 a day when performing board duties and powers. Each director is entitled to reimbursement for necessary travel, reasonable secretarial and professional staff support, and subsistence expenses incurred in attending board meetings.

[(e) VACANCIES.—A vacancy on the board is filled in the same way as the original selection, except that an individual appointed by the President of the United States under subsection (a)(1)(C) of this section to fill a vacancy occurring before the end of the term for which the predecessor of that individual was appointed is appointed for the remainder of that term. A vacancy required to be filled by appointment under subsection (a)(1)(C) must be filled not later than 120 days after the vacancy occurs.

[(f) BYLAWS.—The board may adopt and amend bylaws governing the operation of Amtrak. The bylaws shall be consistent with this part and the articles of incorporation.]

### **§ 24302. Board of Directors**

(a) *EMERGENCY REFORM BOARD.*—

(1) *ESTABLISHMENT AND DUTIES.*—*The Emergency Reform Board described in paragraph (2) shall assume the responsibilities of the Board of Directors of Amtrak 60 days after the date of the enactment of the Amtrak Reform and Privatization Act of 1997, or as soon thereafter as such Board is sufficiently constituted to function as a board of directors under applicable corporate law. Such Board shall adopt new bylaws, including procedures for the selection of members of the Board of Directors under subsection (c) which provide for employee representation.*

(2) *MEMBERSHIP.*—(A) *The Emergency Reform Board shall consist of 7 members appointed by the President, by and with the advice and consent of the Senate.*

(B) *In selecting individuals for nominations for appointments to the Emergency Reform Board, the President should consult with—*

(i) *the Speaker of the House of Representatives concerning the appointment of two members;*

(ii) *the minority leader of the House of Representatives concerning the appointment of one member;*

(iii) *the majority leader of the Senate concerning the appointment of two members; and*

(iv) *the minority leader of the Senate concerning the appointment of one member.*

(C) *Appointments under subparagraph (A) shall be made from among individuals who—*

(i) *have technical qualification, professional standing, and demonstrated expertise in the fields of intercity common carrier transportation and corporate management; and*

(ii) *are not employees of Amtrak, employees of the United States, or representatives of rail labor or rail management.*

(b) *DIRECTOR GENERAL.—If the Emergency Reform Board described in subsection (a)(2) is not sufficiently constituted to function as a board of directors under applicable corporate law before the expiration of 60 days after the date of the enactment of the Amtrak Reform and Privatization Act of 1997, the Chief Justice of the United States shall appoint a Director General, who shall exercise all powers of the Board of Directors of Amtrak until the Emergency Reform Board assumes such powers.*

(c) *BOARD OF DIRECTORS.—Four years after the establishment of the Emergency Reform Board under subsection (a), a Board of Directors shall be selected pursuant to bylaws adopted by the Emergency Reform Board, and the Emergency Reform Board shall be dissolved.*

(d) *AUTHORITY TO RECOMMEND PLAN.—The Emergency Reform Board shall have the authority to recommend to the Congress a plan to implement the recommendations of the 1997 Working Group on Inter-City Rail regarding the transfer of Amtrak's infrastructure assets and responsibilities to a new separately governed corporation.*

### **§ 24303. Officers**

(a) *APPOINTMENT AND TERMS.—Amtrak has a President and other officers that are named and appointed by the board of directors of Amtrak. An officer of Amtrak must be a citizen of the United States. Officers of Amtrak serve at the pleasure of the board.*

(b) *PAY.—The board may fix the pay of the officers of Amtrak. An officer may not be paid more than the general level of pay for officers of rail carriers with comparable responsibility. The preceding sentence shall cease to be effective on the expiration of a fiscal year during which no Federal operating assistance is provided to Amtrak.*

### **§ 24304. Capitalization**

[(a) *STOCK.—Amtrak may have outstanding one issue of common stock and one issue of preferred stock. Each type of stock is eligible*

for a dividend. The articles of incorporation of Amtrak shall provide that—

【(1) each type of stock must be fully paid and nonassessable;

【(2) common stock has a par value of \$10 a share; and

【(3) preferred stock has a par value of \$100 a share.

【(b) LIMITATIONS ON OWNERSHIP AND VOTING.—(1) A rail carrier or person controlling a rail carrier—

【(A) may not hold preferred stock of Amtrak; and

【(B) may vote not more than one-third of the total number of shares of outstanding common stock of Amtrak.

【(2) Additional common stock owned by a rail carrier or person controlling a rail carrier is deemed to be not outstanding for voting and quorum purposes.

【(c) PREFERRED STOCK DIVIDENDS AND LIQUIDATION PREFERENCES.—The articles of incorporation of Amtrak shall provide that—

【(1) its preferred stock has a cumulative dividend of at least 6 percent a year;

【(2) if a dividend on the preferred stock is not declared and paid or set aside for payment, the deficiency shall be declared and paid or set aside for payment before a dividend or other distribution is made on its common stock;

【(3) the preferred stock has a liquidation preference over the common stock entitling holders of preferred stock to receive a liquidation payment of at least par value plus all accrued unpaid dividends before a liquidation payment is made to holders of common stock; and

【(4) the preferred stock may be converted to common stock.

【(d) ISSUANCE OF PREFERRED STOCK TO SECRETARY.—(1) Not later than 30 days after the close of each fiscal quarter, Amtrak shall issue to the Secretary of Transportation preferred stock equal, to the nearest whole share, to the amount paid to Amtrak under section 24104(d) of this title during the quarter.

【(2) Preferred stock issued under this subsection or section 304(c)(1) of the Rail Passenger Service Act is deemed to be issued on the date Amtrak receives the amounts for which the stock is issued.

【(3) An amendment to the articles of incorporation of Amtrak is not required for issuing preferred stock under this subsection.

【(e) TAXES AND FEES ON PREFERRED STOCK.—A tax or fee applies to preferred stock issued under this section only if specifically prescribed by Congress.

【(f) NONVOTING CERTIFICATES OF INDEBTEDNESS.—Amtrak may issue nonvoting certificates of indebtedness, except that an obligation with a liquidation interest superior to preferred stock issued to the Secretary or secured by a lien on property of Amtrak may be incurred when preferred stock issued to the Secretary is outstanding only if the Secretary consents.

【(g) INSPECTION RIGHTS.—Stockholders of Amtrak have the rights of inspecting and copying set forth in section 45(b) of the District of Columbia Business Corporation Act (D.C. Code § 29-345(b)) regardless of the amount of stock they hold.】

**§ 24304. Employee stock ownership plans**

*In issuing stock pursuant to applicable corporate law, Amtrak is encouraged to include employee stock ownership plans.*

**§ 24305. General authority**

(a) ACQUISITION AND OPERATION OF EQUIPMENT AND FACILITIES.—(1) \* \* \*

\* \* \* \* \*

(3)(A) *Except as provided in subsection (d)(2), Amtrak may enter into a contract with a motor carrier of passengers for the intercity transportation of passengers by motor carrier over regular routes only—*

*(i) if the motor carrier is not a public recipient of governmental assistance, as such term is defined in section 13902(b)(8)(A) of this title, other than a recipient of funds under section 5311 of this title;*

*(ii) for passengers who have had prior movement by rail or will have subsequent movement by rail; and*

*(iii) if the buses, when used in the provision of such transportation, are used exclusively for the transportation of passengers described in clause (ii).*

(B) *Subparagraph (A) shall not apply to transportation funded predominantly by a State or local government, or to ticket selling agreements.*

[(b) MAINTENANCE AND REHABILITATION.—Amtrak may maintain and rehabilitate rail passenger equipment and shall maintain a regional maintenance plan that includes—

[(1) a review panel at the principal office of Amtrak consisting of members the President of Amtrak designates;

[(2) a systemwide inventory of spare equipment parts in each operational region;

[(3) enough maintenance employees for cars and locomotives in each region;

[(4) a systematic preventive maintenance program;

[(5) periodic evaluations of maintenance costs, time lags, and parts shortages and corrective actions; and

[(6) other elements or activities Amtrak considers appropriate.]

(b) BELOW-COST COMPETITION.—(1) *Amtrak shall not submit any bid for the performance of services under a contract for an amount less than the cost to Amtrak of performing such services, with respect to any activity other than the provision of intercity rail passenger transportation, commuter rail passenger transportation, or mail or express transportation. For purposes of this subsection, the cost to Amtrak of performing services shall be determined using generally accepted accounting principles for contracting.*

(2) *Any aggrieved individual may commence a civil action for violation of paragraph (1). The United States district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce paragraph (1). The court, in issuing any final order in any action brought pursuant to this paragraph, may award bid preparation costs, anticipated profits, and litigation costs, including reasonable attorney and expert witness*

*fees, to any prevailing or substantially prevailing party. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.*

*(3) This subsection shall cease to be effective on the expiration of a fiscal year during which no Federal operating assistance is provided to Amtrak.*

\* \* \* \* \*

(d) THROUGH ROUTES AND JOINT FARES.—(1) \* \* \*

\* \* \* \* \*

*(3) Congress encourages Amtrak and motor common carriers of passengers to use the authority conferred in sections 11322 and 14302 of this title for the purpose of providing improved service to the public and economy of operation.*

\* \* \* \* \*

**§ 24306. Mail, express, and auto-ferry transportation**

[(a) ACTIONS TO INCREASE REVENUES.—Amtrak shall take necessary action to increase its revenues from the transportation of mail and express. To increase its revenues, Amtrak may provide auto-ferry transportation as part of the basic passenger transportation authorized by this part. When requested by Amtrak, a department, agency, or instrumentality of the United States Government shall assist in carrying out this section.

[(b) AUTHORITY OF OTHERS TO PROVIDE AUTO-FERRY TRANSPORTATION.—(1) A person primarily providing auto-ferry transportation and any other person not a rail carrier may provide auto-ferry transportation over any route under a certificate issued by the Interstate Commerce Commission if the Commission finds that the auto-ferry transportation—

[(A) will not impair the ability of Amtrak to reduce its losses or increase its revenues; and

[(B) is required to meet the public demand.

[(2) A rail carrier that has not made a contract with Amtrak to provide rail passenger transportation may provide auto-ferry transportation over its own rail lines.

[(3) State and local laws and regulations that impair the provision of auto-ferry transportation do not apply to Amtrak or a rail carrier providing auto-ferry transportation. A rail carrier may not refuse to participate with Amtrak in providing auto-ferry transportation because a State or local law or regulation makes the transportation unlawful.]

**§ 24307. Special transportation**

(a) \* \* \*

[(b) ACTIONS TO ENSURE ACCESS.—Amtrak may act to ensure access to intercity transportation for elderly or handicapped individuals on passenger trains operated by or for Amtrak. That action may include—

[(1) acquiring special equipment;

[(2) conducting special training for employees;

[(3) designing and acquiring new equipment and facilities;

[(4) eliminating barriers in existing equipment and facilities to comply with the highest standards of design, construction, and alteration of property to accommodate elderly and handicapped individuals; and

[(5) providing special assistance to elderly and handicapped individuals when getting on and off trains and in terminal areas.]

[(c) (b) EMPLOYEE TRANSPORTATION.—(1) \* \* \*

\* \* \* \* \*

(3) This subsection does not prohibit the [Interstate Commerce Commission] *Surface Transportation Board* from ordering retroactive relief in a proceeding begun or reopened after October 1, 1981.

**§ 24308. Use of facilities and providing services to Amtrak**

(a) GENERAL AUTHORITY.—(1) Amtrak may make an agreement with a rail carrier or regional transportation authority to use facilities of, and have services provided by, the carrier or authority under terms on which the parties agree. The terms shall include a penalty for untimely performance.

(2)(A) If the parties cannot agree and if the [Interstate Commerce Commission] *Surface Transportation Board* finds it necessary to carry out this part, the [Commission] *Board* shall—

(i) order that the facilities be made available and the services provided to Amtrak; and

(ii) prescribe reasonable terms and compensation for using the facilities and providing the services.

(B) When prescribing reasonable compensation under subparagraph (A) of this paragraph, the [Commission] *Board* shall consider quality of service as a major factor when determining whether, and the extent to which, the amount of compensation shall be greater than the incremental costs of using the facilities and providing the services.

(C) The [Commission] *Board* shall decide the dispute not later than 90 days after Amtrak submits the dispute to the [Commission] *Board*.

\* \* \* \* \*

**[(§ 24310. Assistance for upgrading facilities**

[(a) TO CORRECT DANGEROUS CONDITIONS.—(1) Amtrak or the owner of a facility presenting a danger to the employees, passengers, or property of Amtrak may petition the Secretary of Transportation for assistance to the owner for relocation or other measures undertaken after December 31, 1977, to minimize or eliminate the danger.

[(2) The Secretary shall recommend to Congress that Congress authorize amounts for the relocation or other measures if the Secretary decides that—

[(A) the facility presents a danger of death or serious injury to an employee or passenger or of serious damage to that property; and

[(B) the owner should not be expected to bear the cost of that relocation or other measures.

[(b) TO CORRECT STATE AND LOCAL VIOLATIONS.—(1) Amtrak, by itself or jointly with an owner or operator of a rail station Amtrak uses to provide rail passenger transportation, may apply to the Secretary for amounts that may be appropriated under paragraph (2) of this subsection to pay or reimburse expenses incurred after October 1, 1987, related to the station complying with an official notice received before October 1, 1987, from a State or local authority stating that the station violates or allegedly violates the building, construction, fire, electric, sanitation, mechanical, or plumbing code.

[(2) Not more than \$1,000,000, may be appropriated to the Secretary to carry out paragraph (1) of this subsection. Amounts appropriated under this paragraph remain available until expended.]

**§ 24311. Acquiring interests in property by eminent domain**

(a) \* \* \*

\* \* \* \* \*

(c) AUTHORITY TO CONDEMN RAIL CARRIER PROPERTY INTERESTS.—(1) If Amtrak and a rail carrier cannot agree on a sale to Amtrak of an interest in property of a rail carrier necessary for intercity rail passenger transportation, Amtrak may apply to the [Interstate Commerce Commission] *Surface Transportation Board* for an order establishing the need of Amtrak for the interest and requiring the carrier to convey the interest on reasonable terms, including just compensation. The need of Amtrak is deemed to be established, and the [Commission] *Board*, after holding an expedited proceeding and not later than 120 days after receiving the application, shall order the interest conveyed unless the [Commission] *Board* decides that—

(A) conveyance would impair significantly the ability of the carrier to carry out its obligations as a common carrier; and

(B) the obligations of Amtrak to provide modern, efficient, and economical rail passenger transportation can be met adequately by acquiring an interest in other property, either by sale or by exercising its right of eminent domain under subsection (a) of this section.

(2) If the amount of compensation is not determined by the date of the [Commission's] *Board's* order, the order shall require, as part of the compensation, interest at 6 percent a year from the date prescribed for the conveyance until the compensation is paid.

(3) Amtrak subsequently may reconvey to a third party an interest conveyed to Amtrak under this subsection or prior comparable provision of law if the [Commission] *Board* decides that the reconveyance will carry out the purposes of this part, regardless of when the proceeding was brought (including a proceeding pending before a United States court on November 28, 1990).

**§ 24312. Labor standards**

(a) PREVAILING WAGES AND HEALTH AND SAFETY STANDARDS.—(1) Amtrak shall ensure that laborers and mechanics employed by contractors and subcontractors in construction work financed under an agreement made under section 24308(a)[, 24701(a), or 24704(b)(2)] of this title will be paid wages not less than those pre-

vailing on similar construction in the locality, as determined by the Secretary of Labor under the Act of March 3, 1931 (known as the Davis-Bacon Act) (40 U.S.C. 276a—276a-5). Amtrak may make such an agreement only after being assured that required labor standards will be maintained on the construction work. Health and safety standards prescribed by the Secretary under section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) apply to all construction work performed under such an agreement, except for construction work performed by a rail carrier.

(2) Wage rates in a collective bargaining agreement negotiated under the Railway Labor Act (45 U.S.C. 151 et seq.) are deemed to comply with the Act of March 3, 1931 (known as the Davis-Bacon Act) (40 U.S.C. 276a—276a-5).

[(b) CONTRACTING OUT.—(1) Amtrak may not contract out work normally performed by an employee in a bargaining unit covered by a contract between a labor organization and Amtrak or a rail carrier that provided intercity rail passenger transportation on October 30, 1970, if contracting out results in the layoff of an employee in the bargaining unit.

[(2) This subsection does not apply to food and beverage services provided on trains of Amtrak.]

(b) *CONTRACTING OUT.—(1) When Amtrak contracts out work normally performed by an employee in a bargaining unit covered by a contract between a labor organization and Amtrak, Amtrak is encouraged to use other rail carriers for performing such work.*

(2)(A) *Amtrak may not enter into a contract for the operation of trains with any entity other than a State or State authority.*

(B) *If Amtrak enters into a contract as described in subparagraph (A)—*

*(i) such contract shall not relieve Amtrak of any obligation in connection with the use of facilities of another entity for the operation covered by such contract; and*

*(ii) such operation shall be subject to any operating or safety restrictions and conditions required by the agreement providing for the use of such facilities.*

(C) *This paragraph shall not restrict Amtrak's authority to enter into contracts for access to or use of tracks or facilities for the operation of trains.*

### **【§ 24313. Rail safety system program**

【In consultation with rail labor organizations, Amtrak shall maintain a rail safety system program for employees working on property owned by Amtrak. The program shall be a model for other rail carriers to use in developing safety programs. The program shall include—

【(1) periodic analyses of accident information, including primary and secondary causes;

【(2) periodic evaluations of the activities of the program, particularly specific steps taken in response to an accident;

【(3) periodic reports on amounts spent for occupational health and safety activities of the program;

【(4) periodic reports on reduced costs and personal injuries because of accident prevention activities of the program;



[(5) periodic reports on direct accident costs, including claims related to accidents; and

[(6) reports and evaluations of other information Amtrak considers appropriate.

#### **§ 24314. Demonstration of new technology**

[(a) PLAN.—Amtrak shall develop a plan for demonstrating new technology in rail passenger equipment. The plan shall provide that new equipment that Amtrak procures that may increase train speed significantly over existing rail facilities shall be demonstrated, to the extent practicable, throughout the intercity rail passenger system.

[(b) REPORT.—Not later than September 30, 1993, Amtrak shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report summarizing the plan developed under subsection (a) of this section, including its goals, locations for technology demonstration, and a schedule for carrying out the plan.

[(c) COOPERATION.—To make efforts to increase train speed throughout the intercity rail passenger system easier, Amtrak shall consult and cooperate, to the extent feasible, on request of eligible applicants proposing a technology demonstration authorized and financed under a law of the United States, with those applicants.】

#### **§ 24315. Reports and audits**

[(a) AMTRAK ANNUAL OPERATIONS REPORT.—Not later than February 15 of each year, Amtrak shall submit to Congress a report that—

[(1) for each route on which Amtrak provided intercity rail passenger transportation during the prior fiscal year, includes information on—

[(A) ridership;

[(B) passenger-miles;

[(C) the short-term avoidable profit or loss for each passenger-mile;

[(D) the revenue-to-cost ratio;

[(E) revenues;

[(F) the United States Government subsidy;

[(G) the subsidy not provided by the United States Government; and

[(H) on-time performance;

[(2) provides relevant information about a decision to pay an officer of Amtrak more than the rate for level I of the Executive Schedule under section 5312 of title 5; and

[(3) specifies—

[(A) significant operational problems Amtrak identifies;

and

[(B) proposals by Amtrak to solve those problems.】

[(b) (a) AMTRAK GENERAL AND LEGISLATIVE ANNUAL REPORT.—(1) Not later than February 15 of each year, Amtrak shall submit to the President and Congress a complete report of its operations, activities, and accomplishments, including a statement of revenues and expenditures for the prior fiscal year. The report—

(A) shall include a discussion and accounting of Amtrak's success in meeting the goal of section 24902(b) of this title; and  
 (B) may include recommendations for legislation, including the amount of financial assistance needed for operations and capital improvements, the method of computing the assistance, and the sources of the assistance.

(2) Amtrak may submit reports to the President and Congress at other times Amtrak considers desirable.

[(c) SECRETARY'S REPORT ON EFFECTIVENESS OF THIS PART.—The Secretary of Transportation shall prepare a report on the effectiveness of this part in meeting the requirements for a balanced transportation system in the United States. The report may include recommendations for legislation. The Secretary shall include this report as part of the annual report the Secretary submits under section 308(a) of this title.]

[(d)] (b) INDEPENDENT AUDITS.—An independent certified public accountant shall audit the financial statements of Amtrak each year. The audit shall be carried out at the place at which the financial statements normally are kept and under generally accepted auditing standards. A report of the audit shall be included in the report required by subsection (a) of this section.

[(e)] (c) COMPTROLLER GENERAL AUDITS.—The Comptroller General may conduct *financial or* performance audits of the activities and transactions of Amtrak. Each audit shall be conducted at the place at which the Comptroller General decides and under generally accepted management principles. The Comptroller General may prescribe regulations governing the audit.

[(f)] (d) AVAILABILITY OF RECORDS AND PROPERTY OF AMTRAK AND RAIL CARRIERS.—Amtrak and, if required by the Comptroller General, a rail carrier with which Amtrak has made a contract for intercity rail passenger transportation shall make available for an audit under subsection [(d) or (e)] (b) or (c) of this section all records and property of, or used by, Amtrak or the carrier that are necessary for the audit. Amtrak and the carrier shall provide facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians. Amtrak and the carrier may keep all reports and property.

[(g)] (e) COMPTROLLER GENERAL'S REPORT TO CONGRESS.—The Comptroller General shall submit to Congress a report on each audit, giving comments and information necessary to inform Congress on the financial operations and condition of Amtrak and recommendations related to those operations and conditions. The report also shall specify any financial transaction or undertaking the Comptroller General considers is carried out without authority of law. When the Comptroller General submits a report to Congress, the Comptroller General shall submit a copy of it to the President, the Secretary, and Amtrak at the same time.

(f) ACCESS TO RECORDS AND ACCOUNTS.—A State shall have access to Amtrak's records, accounts, and other necessary documents used to determine the amount of any payment to Amtrak required of the State.

**[CHAPTER 245—AMTRAK COMMUTER**

- [Sec.  
 [24501. Status and applicable laws.  
 [24502. Board of directors.  
 [24503. Officers.  
 [24504. General authority.  
 [24505. Commuter rail passenger transportation.  
 [24506. Certain duties and powers unaffected.

**[§ 24501. Status and applicable laws**

**[(a) STATUS.—Amtrak Commuter—**

**[(1) is a wholly-owned subsidiary of Amtrak;**

**[(2) provides by contract commuter rail passenger transportation for a commuter authority with which Amtrak Commuter makes a contract to provide the transportation under this chapter;**

**[(3) has no common carrier obligations to provide rail passenger or rail freight transportation; and**

**[(4) is not a department, agency, or instrumentality of the United States Government.**

**[(b) APPLICATION OF SAFETY AND EMPLOYEE RELATIONS LAWS AND REGULATIONS.—Chapter 105 of this title does not apply to Amtrak Commuter. However, laws and regulations governing safety, employee representation for collective bargaining purposes, the handling of disputes between carriers and employees, employee retirement, annuity, and unemployment systems, and other dealings with employees that apply to a rail carrier providing transportation subject to part A of subtitle IV apply to Amtrak Commuter.**

**[(c) APPLICATION OF CERTAIN ADDITIONAL LAWS.—This part and, to the extent consistent with this part, the District of Columbia Business Corporation Act (D.C. Code § 29–301 et seq.) apply to Amtrak Commuter.**

**[(d) NONAPPLICATION OF RATE, ROUTE, AND SERVICE LAWS.—A State or other law related to rates, routes, or service in connection with rail passenger transportation does not apply to Amtrak Commuter.**

**[(e) PREEMPTION RELATED TO EMPLOYEE WORK REQUIREMENTS.—A State may not adopt or continue in force a law, rule, regulation, order, or standard requiring Amtrak Commuter to employ a specified number of individuals to perform a particular task, function, or operation.**

**[(f) EXEMPTION FROM ADDITIONAL TAXES.—(1) In this subsection—**

**[(A) “additional tax” means a tax or fee—**

**[(i) on the acquisition, improvement, ownership, or operation of personal property by Amtrak Commuter; and**

**[(ii) on real property, except a tax or fee on the acquisition of real property or on the value of real property not attributable to improvements made, or the operation of those improvements, by Amtrak Commuter.**

**[(B) “Amtrak Commuter” includes a rail carrier subsidiary of Amtrak Commuter and a lessor or lessee of Amtrak Commuter or one of its rail carrier subsidiaries.**

**[(2) Amtrak Commuter is not required to pay an additional tax because of an expenditure to acquire or improve real property,**

equipment, a facility, or right-of-way material or structures used to provide rail passenger transportation, even if that use is indirect.

[(g) TAX EXEMPTION FOR CERTAIN COMMUTER AUTHORITIES.—A commuter authority with which Amtrak Commuter could have made a contract to provide commuter rail passenger transportation under this chapter but which decided to provide its own rail passenger transportation beginning on January 1, 1983, is exempt, effective October 1, 1981, from paying a tax or fee to the same extent Amtrak is exempt.

[(h) NONAPPLICATION OF AGREEMENTS FOR FINANCIAL SUPPORT AND TRACKAGE RIGHTS.—An agreement under which financial support was provided on January 2, 1974, to a commuter authority to continue rail passenger transportation does not apply to Amtrak Commuter. However, Amtrak and the Consolidated Rail Corporation retain appropriate trackage rights over rail property owned or leased by the authority. Compensation for the rights shall be reasonable.

### **[(§ 24502. Board of directors**

[(a) COMPOSITION.—The board of directors of Amtrak Commuter is composed of the following directors:

[(1) the President of Amtrak Commuter.

[(2) one individual from the board of directors of Amtrak selected as a representative of commuter authorities that make contracts with Amtrak Commuter for the operation of commuter rail passenger transportation.

[(3) 2 individuals selected by the board of directors of Amtrak.

[(4) 2 individuals selected by commuter authorities for which Amtrak Commuter provides commuter rail transportation under this chapter. However, only one individual shall be selected under this clause if Amtrak Commuter provides the transportation for only one authority.

[(b) TERMS.—Except as otherwise provided in this section, individuals shall serve for 2 years.

[(c) CHAIRMAN.—The board shall select annually one of its members to serve as Chairman.

[(d) PAY AND EXPENSES.—Each director not employed by the United States Government is entitled to \$300 a day when performing board duties and powers. Each director is entitled to reimbursement for necessary travel, reasonable secretarial and professional staff support, and subsistence expenses incurred in attending board meetings.

[(e) VACANCIES.—A vacancy on the board is filled in the same way as the original selection.

[(f) BYLAWS.—The board may adopt and amend bylaws governing the operation of Amtrak Commuter. The bylaws shall be consistent with this part and the articles of incorporation.

### **[(§ 24503. Officers**

[(a) APPOINTMENT AND TERMS.—Amtrak Commuter has a President and other officers that are named and appointed by the board of directors of Amtrak Commuter. An officer of Amtrak Commuter

must be a citizen of the United States. Officers of Amtrak Commuter serve at the pleasure of the board.

[(b) PAY.—The board may fix the pay of the officers of Amtrak Commuter. An officer may be paid not more than the general level of pay for officers of rail carriers with comparable responsibility.

[(c) CONFLICTS OF INTEREST.—When employed by Amtrak Commuter, an officer may not have a financial or employment relationship with a rail carrier, except that holding securities issued by a rail carrier is not deemed to be a violation of this subsection if the officer holding the securities makes a complete public disclosure of the holdings and does not participate in any decision directly affecting the rail carrier.

#### **[(§ 24504. General authority**

[(a) GENERAL.—Amtrak Commuter may—

[(1) acquire, operate, maintain, and make contracts for the operation of equipment and facilities necessary for commuter rail passenger transportation;

[(2) conduct research and development related to the mission of Amtrak Commuter; and

[(3) issue common stock to Amtrak.

[(b) OPERATION AND CONTROL.—To the extent consistent with this part and with an agreement with a commuter authority, Amtrak Commuter shall operate and control all aspects of the commuter rail passenger transportation it provides.

[(c) AGREEMENT TO AVOID DUPLICATING EMPLOYEE FUNCTIONS.—To the maximum extent practicable, Amtrak Commuter and Amtrak shall make an agreement that avoids duplicating employee functions and voluntarily establishes a consolidated work force.

#### **[(§ 24505. Commuter rail passenger transportation**

[(a) GENERAL AUTHORITY.—Amtrak Commuter—

[(1) shall provide commuter rail passenger transportation that the Consolidated Rail Corporation was obligated to provide on August 13, 1981, under section 303(b)(2) or 304(e) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 743(b)(2), 744(e)); and

[(2) may provide other commuter rail passenger transportation if the commuter authority for which the transportation will be provided offers to provide a commuter rail passenger transportation payment equal to the—

[(A) avoidable costs of providing the transportation (including the avoidable cost of necessary capital improvements) and a reasonable return on the value; less

[(B) revenue attributable to the transportation.

[(b) OFFER REQUIREMENTS.—(1) A commuter authority making an offer under subsection (a)(2) of this section shall—

[(A) show that it has obtained access to all rail property necessary to provide the additional commuter rail passenger transportation; and

[(B) make the offer according to regulations the Rail Services Planning Office prescribes under section 10362(b) (5)(A) and (6) of this title.

[(2) The Office may revise and update the regulations when necessary to carry out this section.

[(c) ADDITIONAL EMPLOYEE REQUIREMENTS.—Additional employee requirements shall be met through existing seniority arrangements agreed to in the implementing agreement negotiated under section 508 of the Rail Passenger Service Act.

[(d) WHEN OBLIGATION DOES NOT APPLY.—Amtrak Commuter is not obligated to provide commuter rail passenger transportation if a commuter authority provides the transportation or makes a contract under which a person, except Amtrak Commuter, will provide the transportation. When appropriate, Amtrak Commuter shall give the authority or person access to the rail property needed to provide the transportation.

[(e) DISCONTINUANCE OF COMMUTER RAIL PASSENGER TRANSPORTATION.—(1) Amtrak Commuter may discontinue commuter rail passenger transportation provided under this section on 60 days' notice if—

[(A) a commuter authority does not offer a commuter rail passenger transportation payment under subsection (a)(2) of this section; or

[(B) a payment is not paid when due.

[(2) The Office shall prescribe regulations on the necessary contents of the notice required under this subsection.

[(f) COMPENSATION FOR RIGHT-OF-WAY RELATED COSTS.—Compensation by a commuter authority to Amtrak or Amtrak Commuter for right-of-way related costs for transportation over property Amtrak owns shall be determined under a method the Interstate Commerce Commission establishes under section 1163 of the Omnibus Budget Reconciliation Act of 1981 (45 U.S.C. 1111) or to which the parties agree.

[(g) APPLICATION OF OTHER LAWS.—All laws related to commuter rail passenger transportation apply to a commuter authority providing commuter rail passenger transportation under this section.

### **【§ 24506. Certain duties and powers unaffected**

【This chapter does not affect a duty or power of the Consolidated Rail Corporation or its successor and any bi-state commuter authority under an agreement, lease, or contract under which property was conveyed to the Corporation under the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.).】

## **CHAPTER 247—AMTRAK ROUTE SYSTEM**

Sec.

- 【24701. Operation of basic system.
- 【24702. Improving rail passenger transportation.
- 【24703. Route and service criteria.
- 【24704. Transportation requested by States, authorities, and other persons.
- 【24705. Additional qualifying routes.】
- 24706. Discontinuance.
- 【24707. Cost and performance review.
- 【24708. Special commuter transportation.】

\* \* \* \* \*

**【§ 24701. Operation of basic system**

【(a) BY AMTRAK.—Amtrak shall provide intercity rail passenger transportation within the basic system unless the transportation is provided by—

【(1) a rail carrier with which Amtrak did not make a contract under section 401(a) of the Rail Passenger Service Act; or

【(2) a regional transportation authority under contract with Amtrak.

【(b) BY OTHERS WITH CONSENT OF AMTRAK.—Except as provided in section 24306 of this title, a person may provide intercity rail passenger transportation over a route over which Amtrak provides scheduled intercity rail passenger transportation under a contract under section 401(a) of the Act only with the consent of Amtrak.

**【§ 24702. Improving rail passenger transportation**

【(a) PLAN TO IMPROVE TRANSPORTATION.—Amtrak shall continue to carry out its plan, submitted under section 305(f) of the Rail Passenger Service Act, to improve intercity rail passenger transportation provided in the basic system. The plan shall include—

【(1) a zero-based assessment of all operating practices;

【(2) changes to achieve the minimum use of employees consistent with safe operations and adequate transportation;

【(3) a systematic program for achieving the greatest ratio of train size to passenger demand;

【(4) a systematic program to reduce trip time in the basic system;

【(5) establishing training programs to achieve on-time departures;

【(6) establishing priorities for passenger trains over freight trains;

【(7) adjusting the buying and pricing of food and beverages so that food and beverage services ultimately will be profitable;

【(8) cooperative marketing opportunities between Amtrak and governmental authorities that have intercity rail passenger transportation; and

【(9) cooperative marketing campaigns sponsored by Amtrak and the Secretary of Energy, the Administrator of the Federal Highway Administration, and the Administrator of the Environmental Protection Agency.

【(b) STATE AND LOCAL SPEED RESTRICTIONS.—Amtrak shall—

【(1) identify any speed restriction a State or local government imposes on a train of Amtrak that Amtrak decides impedes Amtrak from achieving high-speed intercity rail passenger transportation; and

【(2) consult with that State or local government—

【(A) to evaluate alternatives to the speed restriction, considering the local safety hazard that is the basis for the restriction; and

【(B) to consider modifying or eliminating the restriction to allow safe operation at higher speeds.

【(c) HIGH-SPEED RAIL TRANSPORTATION DEVELOPMENT.—On reasonable request by a State, political subdivision of a State, regional partnership, private sector representative, or other qualified person, Amtrak shall consult and cooperate to the extent feasible with

that person to assist the efforts of that person to achieve high-speed rail transportation through equipment upgrades, grade-crossing safety improvements, and incremental infrastructure improvements on existing rail facilities that Amtrak uses (except the Northeast Corridor facilities). Not later than September 30, 1993, Amtrak shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on its efforts under this subsection.

[(d) ROUTES CONNECTING CORRIDORS.—Amtrak shall begin or improve appropriate rail passenger transportation on a route between corridors that Amtrak decides is justified because it will increase ridership on trains of Amtrak on the route and in the connecting corridors.

**[(§ 24703. Route and service criteria**

[(a) ROUTE DISCONTINUANCES AND ADDITIONS.—Except as provided in this part, route discontinuances and route additions shall comply with the route and service criteria.

[(b) CONGRESSIONAL REVIEW OF CRITERIA AMENDMENTS.—(1) Amtrak shall submit to Congress a draft of an amendment to the route and service criteria when Amtrak decides an amendment is appropriate. The amendment is effective at the end of the first period of 120 calendar days of continuous session of Congress after it is submitted unless there is enacted into law during the period a joint resolution stating Congress does not approve the amendment.

[(2) In this subsection—

[(A) a continuous session of Congress is broken only by an adjournment sine die; and

[(B) the 120-day period does not include days on which either House is not in session because of adjournment of more than 3 days to a day certain.

[(c) NONAPPLICATION.—The route and service criteria do not apply to—

[(1) increasing or, because of construction schedules or other temporary disruptive facts or seasonal fluctuations in ridership, decreasing the number of trains on an existing route or a part of an existing route or on a route on which additional trains are being tested;

[(2) carrying out the recommendations developed under section 4 of the Amtrak Improvement Act of 1978;

[(3) rerouting transportation between major population centers on an existing route; or

[(4)(A) modifying transportation operations under section 24707(a) of this title; and

[(B) modifying the route system or discontinuing transportation under section 24707(b) of this title.

**[(§ 24704. Transportation requested by States, authorities, and other persons**

[(a) APPLICATIONS TO BEGIN OR KEEP TRANSPORTATION.—(1) A State, a regional or local authority, or another person may apply to Amtrak and request Amtrak to provide rail passenger transpor-



tation or keep any part of a train, route, or service that Amtrak intends to discontinue under section 24706 (a) or (b) or 24707 (a) or (b) of this title. An application shall—

[(A) assure Amtrak that the State, authority, or person has sufficient resources to meet its share of the cost of the transportation for the time the transportation will be provided;

[(B) contain a market analysis acceptable to Amtrak to ensure that there is adequate demand for the transportation; and

[(C) commit the State, authority, or person to provide at least 45 percent of the short term avoidable loss of providing the transportation the first year the transportation is provided and at least 65 percent of the short term avoidable loss each of the following years, and, except as provided in section 24104(a) of this title, at least 50 percent of associated capital costs each year the transportation is provided.

[(2) An application submitted by more than one State shall be considered in the same way as an application submitted by one State, without it being necessary for each State to comply with paragraph (1) of this subsection.

[(b) ACTIONS ON APPLICATIONS.—(1) Amtrak shall review each application submitted under subsection (a) of this section to decide whether—

[(A) the application complies with subsection (a); and

[(B) there is a reasonable probability that Amtrak can provide the transportation from available resources.

[(2) Amtrak may make an agreement with an applicant under this section to begin or keep the transportation if Amtrak decides that the transportation can be provided with resources available to Amtrak. An agreement may be renewed for additional periods of not more than 2 years each.

[(c) SELECTING AMONG COMPETING APPLICATIONS.—If more than one application is made for transportation consistent with the requirements of subsection (a) of this section, but all the transportation applied for cannot be provided with the available resources of Amtrak, the board of directors of Amtrak shall select the transportation that best serves the public interest and can be provided with the available resources of Amtrak.

[(d) FARE INCREASES.—(1) Before increasing a fare applicable to transportation provided under subsection (b)(2) of this section by more than 5 percent during a 6-month period, Amtrak shall consult with officials of each State affected by the increase and explain why the increase is necessary.

[(2) Except as provided in paragraph (3) of this subsection, a fare increase described in paragraph (1) of this subsection takes effect 90 days after Amtrak first consults with the affected States. However, not later than 30 days after the first consultation, a State may submit proposals to Amtrak for reducing costs and increasing revenues of the transportation. Amtrak shall consider the proposals in deciding how much of the proposed increase shall go into effect.

[(3)(A) Amtrak may increase a fare without regard to the restrictions of this subsection during—

[(i) the first month of a fiscal year if the authorization of appropriations and the appropriations for Amtrak are not en-

acted at least 90 days before the beginning of the fiscal year;  
or

[(ii) the 30 days following enactment of an appropriation for Amtrak or a rescission of an appropriation.

[(B) Amtrak shall notify each affected State of an increase under subparagraph (A) of this paragraph as soon as possible after Amtrak decides to increase a fare.

[(e) DETERMINING LOSS, COSTS, AND REVENUES.—After consulting with officials of each State contributing to providing transportation under subsection (b)(2) of this section, the board shall establish the basis for determining short term avoidable loss and associated capital costs of, and revenues from, the transportation. Amtrak shall give State officials the basis for determining the loss, cost, and revenue for each route on which transportation is provided under subsection (b)(2).

[(f) AVAILABILITY OF AMOUNTS.—Amounts provided by Amtrak under an agreement with an applicant under subsection (b)(2) of this section that are allocated for associated capital costs remain available until expended.

[(g) ADVERTISING AND PROMOTION.—At least 2 percent but not more than 5 percent of the revenue generated by transportation provided under subsection (b)(2) of this section shall be used for advertising and promotion at the local level.

#### **§ 24705. Additional qualifying routes**

[(a) ROUTES RECOMMENDED FOR DISCONTINUANCE.—(1) To maintain a national intercity rail passenger system in the United States and if a reduction in operating expenses can be achieved, Amtrak shall provide rail passenger transportation over each route the Secretary of Transportation recommended be discontinued under section 4 of the Amtrak Improvement Act of 1978 and may restructure a route to serve a major population center as an ending place or principal intermediate place. Transportation over a long distance route shall be maintained if the Amtrak estimate for the fiscal year ending September 30, 1980, was that the short term avoidable loss for each passenger mile on the route was not more than 7 cents. Transportation over a short distance route shall be maintained if the Amtrak estimate for the fiscal year ending September 30, 1980, was that the short term avoidable loss for each passenger mile on the route was not more than 9 cents.

[(2) For all routes, Amtrak shall calculate short term avoidable loss for each passenger-mile based on consistently defined factors. Calculations shall be based on the most recent available statistics for a 90-day period, except that Amtrak may use historical information adjusted to reflect the most recent available statistics.

[(b) DEFERRAL OF SECRETARY'S RECOMMENDATIONS.—(1) To provide equivalent or improved transportation consistent with the goals of section 4(a) of the Act, Amtrak may defer carrying out a recommendation of the Secretary under section 4 of the Act that requires providing transportation over a rail line not used in intercity rail passenger transportation on May 24, 1979, requires using a new facility, or requires making a new labor agreement, until any necessary capital improvements are made in the line or facility or the agreement is made.

[(2) Notwithstanding another law and the route and service criteria, during the period a decision of the Secretary under section 4 of the Act is deferred, Amtrak shall provide substitute transportation over existing routes recommended for restructuring and over other existing feasible routes. Except for transportation concentrating on commuter ridership over a short haul route, transportation provided under this paragraph may be provided only if the route complies with subsection (a) of this section, adjusted to reflect constant 1979 dollars.

[(c) SHORT HAUL DEMONSTRATION ROUTES.—Notwithstanding this part, Amtrak may provide short haul trains on additional routes totaling not more than 200 miles that link at least 2 major metropolitan areas—

[(1) on a demonstration basis to establish the feasibility and benefits of the transportation; and

[(2) to the extent available resources allow.]

#### § 24706. Discontinuance

(a) [NOTICE OF DISCONTINUANCE.—(1) Except as provided in subsection (b) of this section, at least 90] *TIME OF NOTICE.—At least 180 days before* [a discontinuance under section 24704 or 24707 (a) or (b) of this title] *discontinuing service over a route*, Amtrak shall give notice of the discontinuance in the way Amtrak decides will give a State, a regional or local authority, or another person the opportunity to agree to share or assume the cost of any part of the train, route, or service to be discontinued.

[(2) Notice] (b) *PLACE OF NOTICE.—Notice of the discontinuance under* [section 24704 or 24707 (a) or (b) of this title] *subsection (a)* shall be posted in all stations served by the train to be discontinued at least 14 days before the discontinuance.

[(b) DISCONTINUANCE FOR LACK OF APPROPRIATIONS.—(1) Amtrak may discontinue service under section 24704 or 24707 (a) or (b) of this title during—

[(A) the first month of a fiscal year if the authorization of appropriations and the appropriations for Amtrak are not enacted at least 90 days before the beginning of the fiscal year; and

[(B) the 30 days following enactment of an appropriation for Amtrak or a rescission of an appropriation.

[(2) Amtrak shall notify each affected State or regional or local transportation authority of a discontinuance under this subsection as soon as possible after Amtrak decides to discontinue the service.

[(c) EMPLOYEE PROTECTIVE ARRANGEMENTS.—(1) Amtrak or a rail carrier (including a terminal company) shall provide fair and equitable arrangements to protect the interests of employees of Amtrak or a rail carrier, as the case may be, affected by a discontinuance of intercity rail passenger service, including a discontinuance of service provided by a rail carrier under a facility or service agreement under section 24308(a) of this title under a modification or ending of the agreement or because Amtrak begins providing that service. Arrangements shall include provisions that may be necessary for—

[(A) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise;

[(B) the continuation of collective bargaining rights;

[(C) the protection of individual employees against a worsening of their positions related to employment;

[(D) assurances of priority of reemployment of employees whose employment is ended or who are laid off; and

[(E) paid training and retraining programs.

[(2) With respect to Amtrak's obligations under this subsection and in an agreement to carry out this subsection involving only Amtrak and its employees, a discontinuance of intercity rail passenger service does not include an adjustment in frequency, or seasonal suspension of intercity rail passenger trains that causes a temporary suspension of service, unless the adjustment or suspension reduces passenger train operations on a particular route to fewer than 3 round trips a week at any time during a calendar year.

[(3) Arrangements under this subsection shall provide benefits at least equal to benefits established under section 11347 of this title.

[(4) A contract under this chapter or section 24308(a) of this title shall specify the terms of protective arrangements.

[(5) This subsection does not impose on Amtrak an obligation of a rail carrier related to a right, privilege, or benefit earned by an employee because of previous service performed for the carrier.

[(6) This subsection does not apply to Amtrak Commuter.

### **[\S 24707. Cost and performance review**

[(a) ROUTE REVIEWS.—Amtrak shall review annually each route in the basic system to decide if the route meets the long distance or short distance route criterion, as appropriate, under section 24705(a)(1) of this title, adjusted to reflect constant 1979 dollars. The review shall include an evaluation of the potential market demand for, and the cost of providing transportation on, a part of the route and an alternative route. Amtrak shall submit the results of the review to the House of Representatives, the Senate, and the Secretary of Transportation. If Amtrak decides that a route will not meet the criterion under section 24705(a)(1), as adjusted, Amtrak shall modify or discontinue rail passenger transportation operations on the route so that it will meet the criterion.

[(b) FINANCIAL REQUIREMENTS AND PERFORMANCE STANDARDS.—Not later than 30 days after the beginning of each fiscal year, Amtrak shall evaluate the financial requirements for operating the basic system and the progress in achieving the system-wide performance standards prescribed under this part during the fiscal year. If Amtrak decides amounts available for the fiscal year are not enough to meet estimated operating costs, or if Amtrak estimates it cannot meet the performance standards, Amtrak shall act to reduce costs and improve performance. Action under this subsection shall be designed to continue the maximum level of transportation practicable, including—

[(1) changing the frequency of transportation;

[(2) increasing fares;

- [(3) reducing the cost of sleeper car and dining car service on certain routes;
- [(4) increasing the passenger capacity of cars used on certain routes; and
- [(5) modifying the route system or discontinuing transportation over routes, considering short term avoidable loss and the number of passengers served on those routes.

[(c) COST LIMITATIONS AND REVENUE GOALS.—Annual costs of Amtrak may not be more than amounts, including grants made under section 24104 of this title, contributions of States, regional and local authorities, and other persons, and revenues, available to Amtrak in the fiscal year. Amtrak annually shall set a goal of recovering an amount so that its revenues, including contributions, is at least 61 percent of its costs, except capital costs.

[(d) CONDUCTOR REPORTS.—To assess the operational performance of trains, the President of Amtrak may direct the conductor on any train of Amtrak to report to Amtrak any inadequacy of train operation. The report shall be signed by the conductor, contain sufficient information to locate equipment or personnel failures, and be submitted promptly to Amtrak.

**[(§ 24708. Special commuter transportation**

[(a) TRANSPORTATION TO BE CONTINUED IF CRITERION MET.—Amtrak shall continue to provide rail passenger transportation provided under section 403(d) of the Rail Passenger Service Act before October 1, 1981, if, after considering estimated fare increases and State and local contributions to the transportation, the transportation meets the short distance route criterion under section 24705(a)(1) of this title, as adjusted. Transportation continued under this section shall be financed consistent with the method of financing in effect on September 30, 1981. If the transportation is not estimated to meet the criterion, as adjusted, Amtrak may modify or discontinue the transportation so that the criterion is met.

[(b) TRANSPORTATION WITH SHORT-TERM AVOIDABLE LOSS.—Notwithstanding subsection (a) of this section, if after September 30, 1993, and before October 1, 1995, transportation provided under subsection (a) on a route during the prior 6 months has a short-term avoidable loss (excluding the cost of providing passenger equipment needed to provide the transportation), Amtrak may choose to consider modifying or discontinuing the transportation. If Amtrak does make such a choice, Amtrak shall solicit public comment for at least 30 days on alternatives to the modification or discontinuance. Not later than 60 days after the comment period ends, Amtrak may modify or discontinue the transportation so that there is no short-term avoidable loss under this section for providing the transportation on the route.]

**CHAPTER 249—NORTHEAST CORRIDOR IMPROVEMENT PROGRAM**

- Sec.
- 24901. Definitions.
- 24902. Goals and requirements.
- [(24903. Program master plan for Boston-New York main line.)
- \* \* \* \* \*

【24907. Note and mortgage.】  
24908. Transfer taxes and levies and recording charges.  
【24909. Authorization of appropriations.】

\* \* \* \* \*

**§ 24902. Goals and requirements**

(a) NORTHEAST CORRIDOR IMPROVEMENT PLAN.—To the extent of amounts appropriated under section 24909 of this title, Amtrak shall carry out a Northeast Corridor improvement program to achieve the following goals:

(1) establish not later than September 30, 1985, regularly scheduled and dependable intercity rail passenger transportation between—

(A) Boston, Massachusetts, and New York, New York, in not more than 3 hours 【and 40 minutes】, including intermediate stops; and

\* \* \* \* \*

(f) COMPATIBILITY WITH FUTURE IMPROVEMENTS AND PRODUCTION OF MAXIMUM LABOR BENEFITS.—(1) Improvements under this section shall be compatible with future improvements in transportation and shall produce the maximum labor benefit from hiring individuals presently unemployed.

(2) *Amtrak shall design and construct the electrification system between Boston, Massachusetts, and New Haven, Connecticut, to accommodate the installation of a third mainline track between Davisville and Central Falls, Rhode Island, to be used for double-stack freight service to and from the Port of Davisville. Amtrak shall also make clearance improvements on the existing main line tracks to permit double stack service on this line, if funds to defray the costs of clearance improvements beyond Amtrak's own requirements for electrified passenger service are provided by public or private entities other than Amtrak. Wherever practicable, Amtrak shall use portal structures and realign existing tracks on undergrade and overgrade bridges to minimize the width of the right-of-way required to add the third track. Amtrak shall take such other steps as may be required to coordinate and facilitate design and construction work. The Secretary of Transportation may provide appropriate support to Amtrak for carrying out this paragraph.*

\* \* \* \* \*

(j) AGREEMENTS FOR OFF-CORRIDOR ROUTING OF RAIL FREIGHT TRANSPORTATION.—(1) Amtrak may make an agreement with a rail freight carrier or a regional transportation authority under which the carrier will carry out an alternate off-corridor routing of rail freight transportation over rail lines in the Northeast Corridor between the District of Columbia and New York metropolitan areas, including intermediate points. The agreement shall be for at least 5 years.

(2) Amtrak shall apply to the 【Interstate Commerce Commission】 *Surface Transportation Board* for approval of the agreement and all related agreements accompanying the application as soon as the agreement is made. If the 【Commission】 *Board* finds that approval is necessary to carry out this chapter, the 【Commission】

*Board* shall approve the application and related agreements not later than 90 days after receiving the application.

(3) If an agreement is not made under paragraph (1) of this subsection, Amtrak, with the consent of the other parties, may apply to the **【Interstate Commerce Commission】** *Surface Transportation Board*. Not later than 90 days after the application, the **【Commission】** *Board* shall decide on the terms of an agreement if it decides that doing so is necessary to carry out this chapter. The decision of the **【Commission】** *Board* is binding on the other parties.

**【§ 24903. Program master plan for Boston-New York main line**

**【(a) CONTENTS.—**Not later than October 27, 1993, in consultation with Amtrak and the commuter and freight rail carriers operating over the Northeast Corridor main line between Boston, Massachusetts, and New York, New York, the Secretary of Transportation shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a program master plan for a coordinated program of improvements to that main line that will allow the establishment of regularly scheduled, safe, and dependable rail passenger transportation between Boston, Massachusetts, and New York, New York, in not more than 3 hours, including intermediate stops. The plan shall include—

**【(1)** a description of the implications of the improvements for the regional transportation system, including the probable effects on general travel trends and on travel volumes in other transportation modes and the implications for State and local governments in achieving compliance with the Clean Air Act (42 U.S.C. 7401 et seq.);

**【(2)** an identification of the coordinated program of improvements and the specific projects of that program, including the estimated costs, schedules, timing, and relationship of those projects with other projects;

**【(3)** an identification of the financial responsibility for the specific projects of that program and the sources of the amounts for the projects;

**【(4)** an operating plan for the construction period of the improvements that shows a coordinated approach to scheduling intercity and commuter trains;

**【(5)** an operating plan for the coordinated scheduling of intercity and commuter trains for the period after the program is completed, including priority scheduling, dispatching, and occupancy of tracks for appropriately frequent, regularly scheduled intercity rail passenger transportation between Boston, Massachusetts, and New York, New York, in not more than 3 hours, including intermediate stops;

**【(6)** a comprehensive plan to control future congestion in the Northeast Corridor attributable to increases in intercity and commuter rail passenger transportation;

**【(7)** an assessment of long-term operational safety needs and a list of specific projects designed to maximize operational safety; and

[(8) comments that Amtrak submits to the Secretary on the plan.]

[(b) SUBMITTING MODIFICATIONS OF PLAN TO CONGRESS.—The Secretary shall submit to Congress any modification made to the program master plan and comments that Amtrak submits on the modification.]

**§ 24904. General authority**

(a) \* \* \*

[(b) COMPENSATORY AGREEMENTS.—Rail freight and commuter rail passenger transportation provided under subsection (a)(3) of this section shall be provided under compensatory agreements with the responsible carriers.]

[(c)] (b) COMPENSATION FOR [TRANSPORTATION OVER CERTAIN RIGHTS OF WAY AND FACILITIES] *FREIGHT TRANSPORTATION*.—(1) An agreement under subsection (a)(6) of this section *relating to rail freight transportation* shall provide for reasonable reimbursement of costs but may not cross-subsidize intercity rail passenger, commuter rail passenger, and rail freight transportation.

(2) If the parties *to an agreement described in paragraph (1)* do not agree, the [Interstate Commerce Commission] *Surface Transportation Board* shall order that the transportation continue over facilities acquired under the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.) and the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 801 et seq.) and shall determine compensation (without allowing cross-subsidization between intercity rail passenger and rail freight transportation) for the transportation not later than 120 days after the dispute is submitted. The [Commission] *Board* shall assign to a rail freight carrier obtaining transportation under this subsection the costs Amtrak incurs only for the benefit of the carrier, plus a proportionate share of all other costs of providing transportation under this paragraph incurred for the common benefit of Amtrak and the carrier. The proportionate share shall be based on relative measures of volume of car operations, tonnage, or other factors that reasonably reflect the relative use of rail property covered by this subsection.

(3) This subsection does not prevent the parties from making an agreement under subsection (a)(6) of this section after the [Commission] *Board* makes a decision under this subsection.

(c) *BINDING ARBITRATION FOR COMMUTER DISPUTES*.—(1) *If the parties to an agreement described in subsection (a)(6) relating to commuter rail passenger transportation cannot agree to the terms of such agreement, such parties shall submit the issues in dispute to binding arbitration.*

(2) *The parties to a dispute described in paragraph (1) may agree to use the Surface Transportation Board to arbitrate such dispute, and if requested the Surface Transportation Board shall perform such function.*

\* \* \* \* \*

**[§ 24907. Note and mortgage**

[(a) GENERAL AUTHORITY.—To secure amounts expended by the United States Government to acquire and improve rail property



designated under section 206(c)(1)(C) and (D) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 716(c)(1)(C) and (D)), the Secretary of Transportation may obtain a note of indebtedness from, and make a mortgage agreement with, Amtrak to establish a mortgage lien on the property for the Government. The note and mortgage may not supersede section 24904 of this title.

[(b) EXEMPTIONS FROM LAWS AND REGULATIONS.—The note and agreement under subsection (a) of this section, and a transaction related to the note or agreement, are exempt from any United States, State, or local law or regulation that regulates securities or the issuance of securities. The note, agreement, or transaction under this section has the same immunities from other laws that section 601 of the Act (45 U.S.C. 791) gives to transactions that comply with or carry out the final system plan. The transfer of rail property because of the note, agreement, or transaction has the same exemptions, privileges, and immunities that the Act (45 U.S.C. 701 et seq.) gives to a transfer ordered or approved by the special court under section 303(b) of the Act (45 U.S.C. 743(b)).

[(c) IMMUNITY FROM LIABILITY AND INDEMNIFICATION.—Amtrak, its board of directors, and its individual directors are not liable because Amtrak has given or issued the note or agreement to the Government under subsection (a) of this section. Immunity granted under this subsection also applies to a transaction related to the note or agreement. The Government shall indemnify Amtrak, its board, and individual directors against costs and expenses actually and reasonably incurred in defending a civil action testing the validity of the note, agreement, or transaction.]

\* \* \* \* \*

### **【§ 24909. Authorization of appropriations**

[(a) GENERAL.—(1) Not more than \$2,313,000,000 may be appropriated to the Secretary of Transportation to achieve the goals of section 24902(a)(1) of this title. From this amount, the following amounts shall be expended by Amtrak:

[(A) at least \$27,000,000 for equipment modification and replacement that a State or a local or regional transportation authority must bear because of the electrification conversion system of the Northeast Corridor under this chapter.

[(B) \$30,000,000—

[(i) to improve the main line track between the Northeast Corridor main line and Atlantic City, New Jersey, to ensure that the track, consistent with a plan New Jersey developed in consultation with Amtrak to provide rail passenger transportation between the Northeast Corridor main line and Atlantic City, New Jersey, would be of sufficient quality to allow safe rail passenger transportation at a minimum of 79 miles an hour not later than September 30, 1985; and

[(ii) to promote rail passenger use of the track.

[(C) necessary amounts to—

[(i) develop Union Station in the District of Columbia;

【(ii) install 189 track-miles, and renew 133 track-miles, of concrete ties with continuously welded rail between the District of Columbia and New York, New York;

【(iii) install reverse signaling between Philadelphia, Pennsylvania, and Morrisville, Pennsylvania, on numbers 2 and 3 track;

【(iv) restore ditch drainage in concrete tie locations between the District of Columbia and New York, New York;

【(v) undercut 83 track-miles between the District of Columbia and New York, New York;

【(vi) rehabilitate bridges between the District of Columbia and New York, New York (including Hi line);

【(vii) develop a maintenance of way equipment repair facility between the District of Columbia and New York, New York, and build maintenance of way bases at Philadelphia, Pennsylvania, Sunnyside, New York, and Cedar Hill, Connecticut;

【(viii) stabilize the roadbed between the District of Columbia and New York, New York;

【(ix) automate the Bush River Drawbridge at milepost 72.14;

【(x) improve the New York Service Facility to develop rolling stock repair capability;

【(xi) install a rail car washer facility at Philadelphia, Pennsylvania;

【(xii) restore storage tracks and buildings at the Washington Service Facility;

【(xiii) install centralized traffic control from Landlith, Delaware, to Philadelphia, Pennsylvania;

【(xiv) improve track, including high speed surfacing, ballast cleaning, and associated equipment repair and material distribution;

【(xv) rehabilitate interlockings between the District of Columbia and New York, New York;

【(xvi) paint the Connecticut River, Groton, and Pelham Bay bridges;

【(xvii) provide additional catenary renewal and power supply upgrading between the District of Columbia and New York, New York;

【(xviii) rehabilitate structural, electrical, and mechanical systems at the 30th Street Station in Philadelphia, Pennsylvania;

【(xix) install evacuation and fire protection facilities in tunnels in New York, New York;

【(xx) improve the communication and signal systems between Wilmington, Delaware, and Boston, Massachusetts, on the Northeast Corridor main line, and between Philadelphia, Pennsylvania, and Harrisburg, Pennsylvania, on the Harrisburg Line;

【(xxi) improve the electric traction systems between Wilmington, Delaware, and Newark, New Jersey;

【(xxii) install baggage rack restraints, seat back guards, and seat lock devices on 348 passenger cars operating in the Northeast Corridor;

[(xxiii) install 44 event recorders and 10 electronic warning devices on locomotives operating within the Northeast Corridor; and

[(xxiv) acquire cab signal test boxes and install 9 way-side loop code transmitters for use within the Northeast Corridor.

[(2) The following additional amounts may be appropriated to the Secretary for expenditure by Amtrak:

[(A) not more than \$150,000,000 to achieve the goal of section 24902(a)(3) of this title.

[(B) not more than \$120,000,000 to acquire interests in property in the Northeast Corridor.

[(C) not more than \$650,000 to develop and use mobile radio frequencies for passenger radio mobile telephone service on high-speed rail passenger transportation.

[(D) not more than \$20,000,000 to acquire and improve interests in rail property designated under section 206(c)(1)(D) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 716(c)(1)(D)).

[(E) not more than \$37,000,000 to carry out section 24902(a)(7) and (j) of this title.

[(b) EMERGENCY MAINTENANCE.—Not more than \$25,000,000 of the amount appropriated under the Act of February 28, 1975 (Public Law 94–6, 89 Stat. 11), may be used by Amtrak for emergency maintenance on rail property designated under section 206(c)(1)(C) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 716(c)(1)(C)).

[(c) PRIORITY IN USING CERTAIN AMOUNTS.—Amounts appropriated under subsection (a)(2) (B) and (D) of this section shall be used first to repay, with interest, obligations guaranteed under section 602 of the Rail Passenger Service Act, if the proceeds of those obligations were used to pay the expenses of acquiring interests in property referred to in subsection (a)(2) (B) and (D).

[(d) PROHIBITION ON SUBSIDIZING COMMUTER AND FREIGHT OPERATING LOSSES.—Amounts appropriated under this section may not be used to subsidize operating losses of commuter rail or rail freight transportation.

[(e) SUBSTITUTING AND DEFERRING CERTAIN IMPROVEMENTS.—(1) A project for which amounts are authorized under subsection (a)(1)(C) of this section is a part of the Northeast Corridor improvement program and is not a substitute for improvements specified in the document “Corridor Master Plan II, NECIP Restructured Program” of January, 1982. However, Amtrak may defer the project to carry out the improvement and rehabilitation for which amounts are authorized under subsection (a)(1)(B) of this section. The total cost of the project that Amtrak defers may not be substantially more than the amount Amtrak is required to expend or reserve under subsection (a)(1)(B).

[(2) Section 24902 of this title is deemed not to be fulfilled until the projects under subsection (a)(1)(C) of this section are completed.

[(f) AVAILABILITY OF AMOUNTS.—Amounts appropriated under subsection (a)(1) and (2) (A) and (C)–(E) of this section remain available until expended.

[(g) AUTHORIZATIONS INCREASED BY PRIOR YEAR DEFICIENCIES.—  
An amount greater than that authorized for a fiscal year may be  
appropriated to the extent that the amount appropriated for any  
prior fiscal year is less than the amount authorized for that year.]

\* \* \* \* \*

## PART E—MISCELLANEOUS

### CHAPTER 281—LAW ENFORCEMENT

Sec.

28101. Rail police officers.

28102. Limit on certain accident or incident liability.

28103. *Limitations on rail passenger transportation liability.*

\* \* \* \* \*

#### **§28103. *Limitations on rail passenger transportation liability***

(a) *LIMITATIONS.—(1) Notwithstanding any other statutory or common law or public policy, or the nature of the conduct giving rise to damages or liability, in a claim for personal injury, death, or damage to property arising from or in connection with the provision of rail passenger transportation, or from or in connection with any rail passenger transportation operations over or rail passenger transportation use of right-of-way or facilities owned, leased, or maintained by any high-speed railroad authority or operator, any commuter authority or operator, any rail carrier, or any State—*

(A) *punitive damages shall not exceed the greater of—*

(i) *\$250,000; or*

(ii) *three times the amount of economic loss; and*

(B) *noneconomic damages awarded to any claimant for each accident or incident shall not exceed the claimant's economic loss, if any, by more than \$250,000.*

(2) *If, in any case wherein death was caused, the law of the place where the act or omission complained of occurred provides, or has been construed to provide, for damages only punitive in nature, the claimant may recover in a claim limited by this subsection for economic and noneconomic damages and punitive damages, subject to paragraph (1)(A) and (B).*

(3) *For purposes of this subsection—*

(A) *the term “actual damages” means damages awarded to pay for economic loss;*

(B) *the term “claim” means a claim made, directly or indirectly—*

(i) *against Amtrak, any high-speed railroad authority or operator, any commuter authority or operator, any rail carrier, or any State; or*

(ii) *against an officer, employee, affiliate engaged in railroad operations, or agent, of Amtrak, any high-speed railroad authority or operator, any commuter authority or operator, any rail carrier, or any State;*

(C) *the term “economic loss” means any pecuniary loss resulting from harm, including the loss of earnings, medical expense loss, replacement services loss, loss due to death, burial costs,*

*loss of business or employment opportunities, and any other form of pecuniary loss allowed under applicable State law or under paragraph (2) of this subsection;*

*(D) the term “noneconomic damages” means damages other than punitive damages or actual damages; and*

*(E) the term “punitive damages” means damages awarded against any person or entity to punish or deter such person or entity, or others, from engaging in similar behavior in the future.*

*(b) INDEMNIFICATION OBLIGATIONS.—Obligations of any party, however arising, including obligations arising under leases or contracts or pursuant to orders of an administrative agency, to indemnify against damages or liability for personal injury, death, or damage to property described in subsection (a), incurred after the date of the enactment of the Amtrak Reform and Privatization Act of 1997, shall be enforceable, notwithstanding any other statutory or common law or public policy, or the nature of the conduct giving rise to the damages or liability.*

*(c) EFFECT ON OTHER LAWS.—This section shall not affect the damages that may be recovered under the Act of April 27, 1908 (45 U.S.C. 51 et seq.; popularly known as the “Federal Employers’ Liability Act”) or under any workers compensation Act.*

*(d) DEFINITION.—For purposes of this section, the term “rail carrier” includes a person providing excursion, scenic, or museum train service, and an owner or operator of a privately owned rail passenger car.*

\* \* \* \* \*

**NORTHEAST RAIL SERVICE ACT OF 1981**

SEC. 1131. This subtitle may be cited as the “Northeast Rail Service Act of 1981”.

\* \* \* \* \*

**PART 6—MISCELLANEOUS PROVISIONS**

\* \* \* \* \*

**[NORTHEAST CORRIDOR COST DISPUTE**

**[**SEC. 1163. (a)(1) Within 120 days after the effective date of this subtitle, the Commission shall determine an appropriate costing methodology for compensation to Amtrak for the right-of-way related costs for the operation of commuter rail passenger service over the Northeast Corridor and other properties owned by Amtrak, unless Conrail, Amtrak, and affected commuter authorities have otherwise agreed on such a methodology by that date. In making its determination, the Commission shall consider all relevant factors, including the standards of sections 204(d) and 304(c) of the Regional Rail Reorganization Act of 1973, section 701(a)(6) of the Railroad Revitalization and Regulatory Reform Act of 1976, and section 401(a) of the Rail Passenger Service Act.

**[**(2) The Commission, in making such a determination, shall consider all relevant factors, and shall not permit cross subsidization

between intercity rail passenger service and commuter rail passenger service.

[(b) Any determination by the Commission under this section shall be effective on the date of such determination, and any agreement of the parties under this section shall be effective on the date specified in such agreement. Any such determination or agreement shall not apply to any compensation paid to Amtrak prior to the date of such determination or the date so specified, as the case may be, for the right-of-way related costs described in subsection (a) of this section.]

[(c) Nothing in this section shall preclude parties from entering into an agreement, after the determination of the Commission or their initial agreement under this section, with respect to the right-of-way related costs described in subsection (a) of this section.]

[(d) Any determination by the Commission under this section shall be final and shall not be reviewable in any court.]

\* \* \* \* \*

INTERCITY PASSENGER SERVICE EMPLOYEES

SEC. 1165. (a)(1) After January 1, 1983, Conrail shall be relieved of the responsibility to provide crews for intercity passenger service on the Northeast Corridor. [Amtrak, Amtrak Commuter, and Conrail] *Amtrak and Conrail*, and the employees with seniority in both freight and passenger service shall commence negotiations not later than 120 days after the date of the enactment for the right of such employees to move from one service to the other once each six-month period. [Such agreement shall ensure that Conrail, Amtrak, and Amtrak Commuter have the right to furlough one employee in the same class or craft for each employee who returns through the exercise of seniority rights. If agreement is not reached within 360 days, such matter shall be submitted to binding arbitration.]

(2) *Notwithstanding any other provision of law, agreement, or arrangement, with respect to employees in any class or craft in train or engine service, Conrail shall have the right to furlough one such employee for each employee in train or engine service who moves from Amtrak to Conrail in excess of the cumulative number of such employees who move from Conrail to Amtrak. Conrail shall not be obligated to fill any position governed by an agreement concerning crew consist, attrition arrangements, reserve boards, or reserve engine service positions, where an increase in positions is the result of the return of an Amtrak employee pursuant to an agreement entered into under paragraph (1). Conrail's collective bargaining agreements with organizations representing its train and engine service employees shall be deemed to have been amended to conform to this paragraph. Any dispute or controversy with respect to the interpretation, application, or enforcement of this paragraph which has not been resolved within 90 days after the date of the enactment of this paragraph may be submitted by either party to an adjustment board for a final and binding decision under section 3 of the Railway Labor Act.*

\* \* \* \* \*

**SECTION 9101 OF TITLE 31, UNITED STATES CODE**

**§ 9101. Definitions**

In this chapter—

(1) \* \* \*

(2) “mixed-ownership Government corporation” means—

[(A) Amtrak.]

[(B)] (A) the Central Bank for Cooperatives.

[(C)] (B) the Federal Deposit Insurance Corporation.

[(D)] (C) the Federal Home Loan Banks.

[(E)] (D) the Federal Intermediate Credit Banks.

[(F)] (E) the Federal Land Banks.

[(G)] (F) the National Credit Union Administration  
Central Liquidity Facility.

[(H)] (G) the Regional Banks for Cooperatives.

[(I)] (H) the Rural Telephone Bank when the ownership,  
control, and operation of the Bank are converted under  
section 410(a) of the Rural Electrification Act of 1936 (7  
U.S.C. 950(a)).

[(J)] (I) the Financing Corporation.

[(K)] (J) the Resolution Trust Corporation.

[(L)] (K) the Resolution Funding Corporation.

\* \* \* \* \*

**SECTION 8G OF THE INSPECTOR GENERAL ACT OF 1978**

**REQUIREMENTS FOR FEDERAL ENTITIES AND DESIGNATED FEDERAL ENTITIES**

SEC. 8G. (a) Notwithstanding section 11 of this Act, as used in this section—

(1) \* \* \*

\* \* \* \* \*

(2) the term “designated Federal entity” means [Amtrak,] the Appalachian Regional Commission, the Board of Governors of the Federal Reserve System, the Board for International Broadcasting, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Corporation for Public Broadcasting, the Equal Employment Opportunity Commission, the Farm Credit Administration, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Election Commission, the Federal Housing Finance Board, the Federal Labor Relations Authority, the Federal Maritime Commission, the Federal Trade Commission, the Legal Services Corporation, the National Archives and Records Administration, the National Credit Union Administration, the National Endowment for the Arts, the National Endowment for the Humanities, the National Labor Relations Board, the National Science Foundation, the Panama Canal Commission, the Peace Corps, the Pension Benefit Guaranty Corporation, the Securities and Exchange Commission, the Smithsonian Institution, the Tennessee Valley Authority, the United States Inter-

national Trade Commission, and the United States Postal Service;

**CONRAIL PRIVATIZATION ACT**

**PART 1—GENERAL PROVISIONS**

**SEC. 4001. SHORT TITLE; TABLE OF CONTENTS OF SUBTITLE.**

(a) **SHORT TITLE.**—This subtitle may be cited as the “Conrail Privatization Act”.

PART 1—GENERAL PROVISIONS

Sec. 4001. Short title; table of contents of subtitle.  
 Sec. 4002. Findings.

\* \* \* \* \*

PART 2—CONRAIL

\* \* \* \* \*

SUBPART B—OTHER MATTERS RELATING TO THE SALE

\* \* \* \* \*  
**[Sec. 4023. Board of Directors.]**  
 \* \* \* \* \*

**PART 2—CONRAIL**

\* \* \* \* \*

**Subpart B—Other Matters Relating to the Sale**

\* \* \* \* \*

**[SEC. 4023. BOARD OF DIRECTORS.**

**[The Board of Directors of the Corporation shall be comprised as follows:**

**[(1) Except as provided in paragraph (3), with respect to the period ending June 30, 1987, the board shall remain as it exists on the date of the enactment of this Act, with any vacancies being filled by directors nominated and elected by the remainder of the members of the board.**

**[(2)(A) Except as provided in paragraph (3), with respect to the period beginning July 1, 1987, the board shall consist of—**

**[(i) 3 directors appointed by the Secretary of Transportation;**

**[(ii) the Chief Executive Officer and the Chief Operating Officer of the Corporation; and**

**[(iii) 8 directors appointed from among persons knowledgeable in business affairs by the special court trustees named under subparagraph (C), in consultation with the Secretary of Transportation and the Chairman of the Board of Directors of the Corporation, and recognizing the need for and importance of—**

**[(I) continuity in the direction of the Corporation’s business and affairs;**



【(II) preserving the value of the investment of the United States in the Corporation;

【(III) preserving essential rail service provided by the Corporation; and

【(IV) providing for the sale of the United States shares.

【(B) The Secretary of Transportation and the special court trustees may appoint directors under subparagraph (A) from among existing directors of the Corporation.

【(C)(i) If more than 50 percent of the interest of the United States in the Corporation has not been sold before June 1, 1987, the special court established under section 209 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 719) shall, on that date, name 3 trustees from among persons knowledgeable in business affairs to make the appointments required by subparagraph (A)(iii). The Corporation shall compensate the special court trustees in an amount to be specified by the special court, not to exceed the amount paid by the Corporation to its directors for comparable services.

【(ii) No person shall be eligible to be appointed as a special court trustee under this subparagraph who, at any time during the 30 months immediately preceding such appointment, was an officer, employee, or director of the United States Railway Association, the Corporation, or the Department of Transportation.

【(3)(A) After the sale date, one director shall be elected by the public shareholders of the Corporation for each increment of 12.5 percent of the interest of the United States in the Corporation that has been sold through public offering.

【(B) With respect to the period ending June 30, 1987—

【(i) the first director elected under this paragraph shall replace the member of the board who became a director most recently from among—

【(I) directors appointed by the United States Railway Association, or elected under paragraph (1) to replace such a director, and

【(II) directors appointed by the Secretary of Transportation, or elected under paragraph (1) to replace such a director;

【(ii) the second director elected under this paragraph shall replace the member of the Board who became a director most recently from among directors described in clause (i) (I) or (II), whichever group the first director replaced under this subparagraph was not a member of; and

【(iii) subsequent directors elected under this paragraph shall replace members alternately from the groups described in clause (i) (I) and (II).

【(C) With respect to the period beginning July 1, 1987, directors elected under this paragraph shall replace directors appointed by the special court trustees under paragraph (2)(A)(iii), in the order designated by the special court trustees in a list to be issued at the time of such original appointments.

【(D) With respect to the period beginning on the first date more than 50 percent of the interest of the United States in

the Corporation has been sold through public offering and ending when 100 percent of such interest has been sold—

[(i) all remaining members of the board referred to in paragraph (2)(A)(iii), and

[(ii) with respect to the period ending June 30, 1987, all remaining members of the board, except 3 members appointed by the Secretary of Transportation and the Chief Executive Officer and the Chief Operating Officer of the Corporation, shall be replaced by directors elected by the public shareholders of the Corporation.

[(E) After 100 percent of the interest of the United States in the Corporation has been sold, any remaining directors appointed by the Secretary of Transportation, the United States Railway Association, or the special court trustees referred to under paragraph (2)(A)(iii), shall be replaced by directors elected by the public shareholders of the Corporation.

[(F) Nothing in this paragraph shall be construed to prohibit any director referred to in this section from being elected as a director by the public shareholders of the Corporation.

[(4)(A) No director appointed or elected under this section shall be a special court trustee or an employee of the United States, except as elected by the public shareholders of the Corporation.

[(B) No director appointed or elected under this section shall be an employee of the Corporation, except as provided in paragraph (2)(A)(ii) or as elected by the public shareholders of the Corporation.]

**RAILROAD REVITALIZATION AND REGULATORY REFORM ACT OF 1976**

\* \* \* \* \*

**TITLE I—GENERAL PROVISIONS**

**DECLARATION OF POLICY**

**SEC. 101. (a) PURPOSE.—** \* \* \*

(1) \* \* \*

\* \* \* \* \*

[(4) transitional continuation of service on light-density rail lines that are necessary to continued employment and community well-being throughout the United States;]

*(4) Continuation of service on, or preservation of, light density lines that are necessary to continued employment and community well-being throughout the United States.*

\* \* \* \* \*

**TITLE V—RAILROAD REHABILITATION AND IMPROVEMENT FINANCING**

\* \* \* \* \*

GUARANTEE OF OBLIGATIONS

SEC. 511. (a) \* \* \*

\* \* \* \* \*

(f) RATE OF INTEREST.—The rate of interest (exclusive of premium charges for a guarantee and service fees) which shall be paid on the unpaid principal balance of each obligation guaranteed by the Secretary under this section, **【shall not exceed an annual percentage rate which the Secretary determines to be reasonable, taking into consideration the prevailing interest rates for similar obligations in the private market.】** *shall not exceed the annual percentage rate which is equivalent to the cost of money to the United States.*

(g) PREREQUISITES FOR GUARANTEES.—No obligation shall be guaranteed and no commitment shall be made to guarantee any obligation under this section, unless and until the Secretary makes a finding in writing that—

(1) \* \* \*

**【(2) payment of the obligation is required by its terms to be made within 25 years from the date of its execution;】**

*(2) payment of the obligation is required by its terms to be made not less than 15 years but not more than 25 years from the date of its execution, with no penalty imposed for prepayment after 5 years;*

\* \* \* \* \*

**【(5) the prospective earning power of the applicant, or the value or prospective earning power of any equipment or facilities to be acquired, rehabilitated, improved, developed, or established (or any combination of the foregoing), together with any other security offered by the applicant, is sufficient to provide the United States with reasonable security and protection, except that if the value or prospective earning power of such equipment or facilities is equal to or greater than the amount of the obligation to be guaranteed, the Secretary may not, on the basis of the lack of prospective earning power of the applicant, find that the United States will not be provided with the reasonable security and protection referred to in this paragraph;】**

*(5) either the loan can reasonably be repaid by the applicant or the loan is collateralized at no more than the current value of assets being financed under this section to provide protection to the United States;*

\* \* \* \* \*

(i) CONDITIONS OF GUARANTEES.—(1) \* \* \*

\* \* \* \* \*

*(4) The Secretary shall not require, as a condition for guarantee of an obligation under this section, that all preexisting secured obligations of an obligor be subordinated to the rights of the Secretary in the event of a default.*

## MINORITY VIEWS

The bill reported by the Committee generally does a good job of streamlining Amtrak's statutory mandate and freeing Amtrak to provide passenger service in a more businesslike fashion. In three instances, however, the bill makes unnecessary and unwarranted changes that would unfairly affect Amtrak, its employees, and its passengers.

First, the bill would eliminate entirely the wage protection for displaced or downgraded employees that has been provided to passenger rail employees since the 1930s. It is alleged that wage protection obligations impose an unwarranted cost on Amtrak that prevents it from being a financially solvent corporation. The data belie this assertion. According to Amtrak, it paid the following amounts in wage protection under Appendix C-2 to the National Railroad Passenger Corporation Agreement:

FY 1992: \$903,000  
FY 1993: 520,000  
FY 1994: 975,000  
FY 1995: 1,021,000  
FY 1996: 1,059,000.

These payments were made at a time when Amtrak laid off nearly 2,000 employees, or about 8 percent of its labor force. In other words, the cost per year of laying off 2,000 employees was only about \$1 million, or about \$500 per employee. For a corporation with over \$300 million in federal operating subsidies, we do not view this cost as a significant factor in Amtrak's ability to function as a business. Tom Downs, the President of Amtrak, agrees. He recently stated that "Amtrak does not experience significant costs in C2 [labor protection] expenses, so that the impact of the repeal of C2 would not save us any significant funds except in the ultimate bankruptcy of Amtrak.

We view this protection as a reasonable arrangement to protect employees, many of whom gave up their seniority on freight railroads to take jobs with the new passenger railroad created by the Congress. This protection would be particularly important if Amtrak were allowed to slip into bankruptcy and liquidation, leading to the elimination of over 20,000 jobs and of a critical element of the Nation's surface transportation system.

Moreover, the bill not only eliminates statutory wage protection, it also unilaterally abrogates language in collective bargaining agreements that provides additional wage protection. These provisions represent wage protection that employees bargained for and that they sacrificed other benefits to get. We are strongly opposed to legislation which steps into the affairs of a private corporation and takes away benefits that were agreed upon between management and labor in freely conducted collective bargaining.

In sum, Title III of the bill, which both eliminates statutory wage protection and abrogates wage protection provisions in existing collective bargaining agreements, is unfair and unnecessary. We believe it should be dropped from the bill.

Second, the bill eliminates the remaining protection that Amtrak employees have against having their jobs contracted out to outside vendors. The statute already gives Amtrak considerable flexibility in this regard. Amtrak is free to contract out food and beverage service (though it has not been able to find an outside contractor that can provide this service more economically or effectively than Amtrak's own employees). Amtrak is also free to contract out any other work to the extent that it does not require laying off Amtrak's own employees. Amtrak has used this flexibility both to contract work out and as a bargaining chip with its employees to attain changes in work rules.

Amtrak has already laid off nearly 10 percent of its workforce in the last two years; we do not believe that it needs to contract out work and lay off more employees to become financially healthy. We do not think that federal operating subsidies should be used to lay off employees. We therefore believe that the existing restrictions on contracting out are appropriate and provide Amtrak with all the flexibility it needs.

Third, the bill adversely affects Amtrak's passengers by limiting the damages that passengers can collect from freight railroads when a freight railroad causes an Amtrak accident. The bill also adversely affects Amtrak by legalizing agreements that force Amtrak to pay for the freight railroad's liability in an accident. The bill limits punitive damages to \$250,000 or three times the economic loss (whichever is greater); it limits noneconomic damages (like pain and suffering) to the sum of economic losses plus \$250,000; and it allows freight railroads to sign agreements with Amtrak to force Amtrak to pay for the freight railroad's liability in an accident, regardless of who grossly reckless or negligent the freight railroad was.

These provisions are neither fair nor sensible. Why should punitive damages, which are intended to punish the liable party for grossly negligent conduct, depend on economic losses? The economic losses have already been paid for by compensatory damages. Punitive damages should depend on the degree of recklessness of the conduct and the financial resources of the liable party, not on the economic damages suffered by the victim.

Why should noneconomic damages be dependent on economic damages? If a person is burned in an accident and suffers excruciating pain, is the pain any greater for a business executive who is also put out of work than for a 10-year-old child who has no economic losses?

What public policy objective is advanced by having freight railroads escape from their liability in causing accidents involving Amtrak? Why should freight railroads be liable for accidents when no other railroad is involved, but escape liability when Amtrak is involved, but did not cause the accident? The bill would exempt freight railroads from the consequences of their actions, regardless of how recklessly they behaved or how grossly they were negligent.

We believe that safety will be adversely affected if freight railroads are protected from the consequences of their actions.

The bill as written establishes an irrational double standard for liability resulting from accidents. If a freight railroad's grade-crossing signal malfunctions, and a motorist is consequently injured at a grade crossing and rendered a quadriplegic, the motorist is not limited in what damages he or she can collect if the car is hit by a freight train. If the car is hit by an Amtrak train operating on the freight railroad's right-of-way, however, the motorist can collect only part of his damages, even though the damages are the same and the freight railroad is equally at fault in both cases. Moreover, the freight railroad is exempted entirely if an Amtrak train is involved in the collision, even though it was the freight railroad that was responsible for maintaining the grade-crossing signal.

These three provisions of the bill make it impossible for us to support it. Moreover, these provisions were responsible for the failure of the Other Body to pass a similar bill in the 104th Congress, and for the opposition of the Administration to the current bill. If the three provisions continue to be included, the bill will not pass, and there will be no Amtrak reform. Conversely, if the three provisions are deleted, the bill should pass quickly. When this occurs, Amtrak will be able to collect the \$1.2 billion made available by the recent budget agreement, contingent upon the passage of reform legislation. The combination of funding for capital investment and reform is critical to Amtrak's survival. It is better to correct these problems now so that the worthwhile provisions of the Amtrak bill can be enacted.

BOB WISE.  
 WILLIAM O. LIPINSKI.  
 JERRY F. COSTELLO.  
 JERROLD NADLER.  
 CORRINE BROWN.  
 FRANK MASCARA.  
 ELLEN TAUSCHER.  
 TIM HOLDEN.  
 JAMES L. OBERSTAR.  
 NICK RAHALL.  
 PETER DEFazio.  
 BUD CRAMER.  
 JAMES E. CLYBURN.  
 BOB FILNER.  
 EARL BLUMENAUER.  
 JAY W. JOHNSON.  
 NICK LAMPSON.  
 JAMES A. TRAFICANT, Jr.  
 ROBERT MENENDEZ.  
 EDDIE BERNICE JOHNSON.  
 JUANITA MILLENDER-McDONALD.  
 ELIJAH E. CUMMINGS.  
 BILL PASCRELL, Jr.  
 LEONARD L. BOSWELL.  
 JIM MCGOVERN.  
 ROBERT A. BORSKI.  
 GLENN POSHARD.  
 BOB CLEMENT.  
 JIM BARCIA.  
 ELEANOR HOLMES NORTON.  
 PAT DANNER.