

Calendar No. 179

105TH CONGRESS }
1st Session

SENATE

{ REPORT
105-85

**AMTRAK REFORM AND ACCOUNTABILITY
ACT OF 1997**

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 738



SEPTEMBER 24, 1997.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FIFTH CONGRESS

FIRST SESSION

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AMTRAK REFORM AND ACCOUNTABILITY ACT OF 1997

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Mr. MCCAIN, from the Committee on Commerce, Science, and
Transportation, submitted the following

REPORT

[To accompany S. 738]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 738) “A Bill to reform the statutes relating to Amtrak, to authorize appropriations for Amtrak, and for other purposes”, having considered the same, reports favorably thereon with amendments and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The bill, as reported, would authorize appropriations for Amtrak’s general operating and capital expenditures for fiscal years (FY) 1998, 1999, 2000, 2001, and 2002. The bill directs Amtrak to operate within the funding levels authorized and to eliminate its need for federal operating support by the end of the five-year authorization period. In order to achieve operating self-sufficiency, the bill is designed to enable Amtrak to increase efficiencies, reduce costs, and operate as much like a private business as possible. Specifically, the bill provides for statutory reforms in the areas of Amtrak operations, procurement and labor, and permits changes to its liability.

The bill also would create an Amtrak Reform Council (the Council) responsible for evaluating Amtrak’s performance and for making recommendations to Amtrak for further cost containment, productivity improvements, and financial reforms. The Council would submit an annual report to Congress which includes an assessment of Amtrak’s progress on resolving productivity issues and recommendations for other improvements or any necessary legislative changes.

The bill further provides for a trigger mechanism to be carried forward if, starting two years after the date of enactment, the Council finds that Amtrak is not meeting its financial goals. The Council's assessment of Amtrak's failure at that point would trigger the development of two action plans. The Council would develop and submit to Congress one plan to provide for a restructured and rationalized national passenger rail system. Another plan would be developed by Amtrak to provide for its complete liquidation. If Congress does not take legislative action to provide for a restructured passenger rail system within 90 days from receiving the Council's recommendations, Amtrak is required by the bill to implement the liquidation plan.

BACKGROUND AND NEEDS

Amtrak was created in 1971 by the Rail Passenger Service Act of 1970. The law established Amtrak in order to relieve the freight railroad industry from the economic burden of providing ongoing passenger service and to ensure that modern, efficient intercity passenger rail service would continue to be a part of the national transportation system. The freight railroads had lost approximately one billion dollars in trying to provide rail passenger service. With capital acquired from participating railroads and the federal government providing \$40 million in direct grants and another \$100 million in loan guarantees, Amtrak was to become self-sustaining within 2 years.

Since 1971, however, Amtrak has received more than \$20 billion in Federal funding to help cover its operating and capital losses. Yet Amtrak has continued to struggle financially throughout its history despite these significant federal funding contributions. In fact, Amtrak's financial condition has now reached a crisis stage. Amtrak President Tom Downs testified this year before several House and Senate Committees that Amtrak could reach bankruptcy by the spring of 1998 if Amtrak is not provided the statutory reforms and funding requested. The General Accounting Office (GAO) and other experts warn bankruptcy could occur even sooner.

In an attempt to address its financial problems, Amtrak began implementing a Strategic Business Plan in 1995. This restructuring plan, approved by the Amtrak Board of Directors in December 1994, was designed to increase revenues, reduce costs, and eliminate the need for federal operating assistance within 5 years. The restructuring divided passenger service operations into three units: a Northeast Corridor Business Unit responsible for operations on the East Coast between Virginia and Vermont; a West Coast Business Unit, referred to as Amtrak West, responsible for operations in California, Oregon, and Washington; and an Intercity Business Unit responsible for the remainder of the nation's intercity rail passenger service, including most of the long-distance, cross-country trains. The 1995 plan also included service reductions and eliminations, reductions in management staff, fare increases and other changes. Aside from restructuring, the plan assumed the creation of a dedicated source of revenue for capital and legislative relief from various statutory operating restrictions. The plan is periodically amended as necessary by the Board.

According to the GAO, despite initial financial improvements in early 1995, the gap between Amtrak's operating deficits and operating subsidies began to grow again in 1996 and that gap continues to widen today. Further, Amtrak's debt level has grown significantly over recent years as it turned to private banks to finance equipment purchases and other investments not provided for by its federal grants. Amtrak is approximately \$1 billion in debt and its debt load is projected to double to over \$2 billion by 1999 to cover the money borrowed to finance high-speed train sets for the Northeast Corridor, their related maintenance facilities, and new locomotives. The GAO reports that Amtrak's debt levels could severely limit the use of federal operating support, shifting it from service operations to covering its private financial obligations.

The Committee is also concerned that Amtrak's federal capital grant has become increasingly constrained in recent years. For example, in FY 1997, only \$12 million of the \$223 million capital grant is expected to be available for general capital needs. The rest will be used for debt payments (\$75 million), equipment overhauls (\$110 million), and legally mandated work (\$26 million). Further, even if the funding levels authorized in this bill are appropriated, a substantial cash shortfall is still projected by Amtrak in the amounts of \$66 million (FY 1997); \$118 million (FY 1998); \$180 million (FY 1999); and \$51 million (FY 2000). These shortfall projections do not account for Amtrak's current billion dollar debt level.

The Committee is very concerned that Amtrak's financial projections and long-term viability continue to remain heavily dependent on federal operating and capital funds. In addition, the Committee is concerned that Amtrak is staking the future of the national system on the projected financial success of highspeed rail service in the Northeast Corridor. Amtrak's FY 1998 Legislative Report and Federal Grant Request estimates profits of \$150 million annually from the planned high-speed rail service on the Northeast Corridor scheduled to begin in 1999. Amtrak reports these profits and other financial improvements will help offset costs on other money-losing parts of the system. Such revenue estimates, however, may be premature. The GAO estimates Amtrak still needs several billion dollars to bring its Northeast Corridor infrastructure up to a basic "state of good repair" and enable high-speed rail service to be implemented. The Committee will follow closely Amtrak's success in meeting its financial targets and will be particularly interested in whether Amtrak is able to meet its service initiation time line and revenue goals set for its high-speed rail operations.

LEGISLATIVE HISTORY

Amtrak's previous authorization expired in fiscal year 1994. The Senate Commerce Committee held three hearings addressing Amtrak during the 104th Congress and reported out a comprehensive reform and reauthorization bill (S. 1318) on July 20, 1995. However, an agreement could not be reached to allow that legislation to be considered by the full Senate.

The Subcommittee on Surface Transportation and Merchant Marine held a hearing on Amtrak's financial situation on March 13, 1997. The Committee received testimony from Amtrak, the Federal

Railroad Administration, and the General Accounting Office about Amtrak's financial challenges, its restructuring activities to date, and its ability in meeting the Strategic and Business Plan which Amtrak began implementing in 1995. The Committee also heard about proposals from the Administration and Amtrak to secure Amtrak's future, including financial and statutory reforms, and Amtrak's desire for the establishment of a dedicated source of capital funding.

Based in part on the testimony provided during the March hearing, Senator Hutchison introduced S. 738 on May 14, 1997. The bill, cosponsored by Senators Snowe, Roth, Roberts, Hutchison, and Chafee, would reauthorize Amtrak for five years and provide the statutory reforms and funding levels requested by Amtrak to allow it to operate more like a business.

On June 26, 1997, the Commerce Committee in open executive session ordered S. 738 reported, by a rollcall vote of 14-4, with amendments.

SUMMARY OF MAJOR PROVISIONS

Specifically, the bill as reported includes the following major provisions:

1. *Operational Reforms.* Amtrak would be directed to strive to operate as a national rail passenger system which provides access to all areas of the country and ties together existing and emerging corridors. The prohibition against other companies from operating intercity passenger service over an Amtrak route unless Amtrak gives consent would be repealed. Amtrak's required notification period regarding any proposed discontinuances of a route would be extended from 90 days to 180 days in order to give states adequate time to share or assume the cost of retaining a route targeted for discontinuance. Amtrak would be allowed to contract for intercity bus service when passengers will move by rail immediately before or after bus travel. Amtrak and intercity bus operators would be encouraged to enter into intermodal arrangements that would increase operating efficiencies and travel convenience, allowing the coordination of schedules, routes, rates, and facilities.

2. *Contracting Out.* Amtrak is prohibited under current law from contracting out any work, other than for food and beverage services, if such action would result in the loss of even one job. As requested by Amtrak, this bill would repeal that prohibition effective 180 days after enactment and provide for an accelerated bargaining schedule to allow labor and management to resolve contracting out issues through a non-binding arbitration process prior to the ban's repeal.

The Committee strongly believes the repeal of the legal ban on contracting out is very necessary to help Amtrak operate more effectively and efficiently. Unnecessary statutory burdens must be lifted if Congress is serious about addressing Amtrak's financial crisis and preserving intercity passenger rail service in the United States. The Committee is unaware of any similar statutory prohibitions covering private or public entities. The Committee believes retaining the statutory impediments would doom Amtrak's efforts to achieve long-term viability and to reduce its reliance on Federal assistance. The Administration also noted this necessity in its Am-

trak reauthorization proposal submission of the 104th Congress which included provisions allowing Amtrak management and labor to negotiate agreements permitting greater flexibility in contracting out work.

3. *Labor Reforms.* Current law mandates employee protective arrangements which provide up to six years of severance pay to Amtrak rail workers affected by route discontinuances. The Committee bill repeals this statutory requirement as requested by Amtrak and supported by the Administration during the 104th Congress. The Committee bill replaces the mandatory six year severance pay with a requirement that Amtrak negotiate severance pay issues with its rail workers. The bill requires accelerated bargaining procedures within a 180- day time frame.

4. *Liability Reforms.* Amtrak has testified four times before the Senate Commerce Committee during the 104th and 105th Congress to report on its plans to improve its financial performance and achieve long-term viability. Amtrak's testimony has consistently discussed the need for statutorily imposed liability limits in order for Amtrak to achieve operating self- sufficiency. S. 738 would permit Amtrak to enter into "contracts" with its passengers through ticket purchases to limit claims related to rail passenger transportation to no less than the limits established by the Committee-passed product liability reform legislation (i.e., punitive damages, where permitted, equal to 2 times compensatory damages or \$250,000 whichever is greater).

Further, this bill clarifies that indemnification agreements related to the provision of rail passenger service entered into by Amtrak and other parties would be enforceable. The Committee has been requested by Amtrak to include this provision in order to aid Amtrak in achieving operating self-sufficiency. Amtrak and the freight railroads believe legislation is necessary to confirm enforceability of the indemnification agreements they have entered into regarding operation over each others' rail lines, notwithstanding allegations of gross negligence by a freight railroad or Amtrak. As long as there is the possibility that state laws governing indemnification contracts may make these contracts unenforceable, Amtrak and a freight railroad may find themselves litigating with each other. Amtrak believes that such litigation inevitably would not only adversely impact business relationships between Amtrak and the host freight railroads, but it would also lead to significantly higher outlays in settlements and judgments to plaintiffs.

5. *Independent Assessment.* While Amtrak's financial plan is currently reviewed annually by its Board, questions remain on the accuracy of Amtrak's accounting methodology. The bill would require an independent assessment of Amtrak's financial requirements through FY 2002, similar to the audit required in the Federal Aviation Reauthorization Act of 1996. The Inspector General of the Department of Transportation would be directed to oversee the independent assessment to be completed within 180 days after enactment of this bill. The Committee expects the audit to cover Amtrak's cost allocation process and procedures, expenses related to intercity service, commuter service and any other service provided by Amtrak; Amtrak's Strategic Business Plan, including projected

expenses, capital needs, ridership and revenue forecasts; and, Amtrak's debt obligations.

In addition, the Committee believes an independent analysis of Amtrak's investment in the Northeast Corridor is warranted. The Committee has heard numerous concerns raised over Amtrak's financial commitment to the Corridor and how that targeted investment has restricted funding for the rest of the system. Therefore, the Committee believes a comparison between Northeast Corridor investment to date, the investment projections assumed in Amtrak's Business Plan, and the rest of the system is necessary. Finally, given that some have advocated privatizing Amtrak, including the Working Group on Intercity Passenger Rail established by the House Committee on Transportation and Infrastructure, the Committee believes an independent review of financial and other asset-related data concerning the value of the Northeast Corridor is warranted.

6. *Amtrak Reform Council.* The bill would establish a 9-member Amtrak Reform Council to monitor Amtrak's progress in meeting its financial goals. The Council would be directed to evaluate Amtrak's performance and make recommendations to Amtrak for further cost containment, productivity improvements, and financial reforms. The Council would submit an annual report to Congress which includes an assessment of Amtrak's progress on resolving productivity issues and recommendations for other improvements or any necessary legislative changes. The Committee expects Amtrak to give the Council's recommendations careful consideration.

7. *Sunset Trigger.* The bill establishes a mechanism to be implemented if at any time following two years after the date of enactment, the Council finds that Amtrak is not meeting its financial goals. In the event such a finding is made by the Council, it would be directed to develop and submit within 90 days to Congress an action plan for a restructured and rationalized intercity rail passenger system. Within that same time period, Amtrak would be directed to prepare a plan for its complete liquidation. The liquidation plan would be reviewed by the GAO and the Inspector General of the Department of Transportation for accuracy and reasonableness in order to ensure to the greatest extent practicable that the government's significant investment in Amtrak is protected. If the Congress does not approve legislation to provide for a restructured passenger rail system within 90 days after receiving the Council's recommendations, Amtrak would be required to implement the liquidation plan, taking into account the comments of the GAO and the Inspector General.

The Committee wants to clarify that if the Council makes a determination that Amtrak is failing, the bill does not require the Council's proposed restructuring plan to be approved without the opportunity to amend or change the plan. In fact, the Committee fully expects consideration of alternative approaches for addressing the future of the nation's passenger rail system. Further, the Committee is aware that any plan providing for a restructured intercity rail passenger service would need to take into account the contractual relationships between the freight railroads and Amtrak. This bill has no direct effect on existing law as it pertains to access to the tracks of freight railroads by entities other than Amtrak.

Therefore, should restructuring legislation be implemented in the future, this issue would need to be fully addressed.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 22, 1997.

Hon. JOHN MCCAIN,
Chairman, Committee on Commerce, Science and Transportation,
Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 738, the Amtrak Reform and Accountability Act of 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), Karen McVey (for the state and local impact), and Jean Wooster (for the private-sector impact).

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

S. 738—Amtrak Reform and Accountability Act of 1997

Summary: S. 738 would authorize appropriations totaling \$5.2 billion for Amtrak over the 1998–2002 period. The legislation also would establish budgetary goals for Amtrak, create the Amtrak Reform Council, and provide for operational, procurement, employee protection, and liability reforms.

Enacting S. 738 would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply to the bill. S. 738 contains two intergovernmental mandates as defined in the Unfunded Mandates Reform Act of 1995 (UMRA). CBO estimates that the costs imposed by these mandates would total less than \$5 million over the next five years—well below the annual threshold established in UMRA. The bill would impose four new private-sector mandates on Amtrak, but CBO estimates that the direct costs of those mandates would be negligible.

Estimated cost to the Federal Government: For purposes of this estimate, CBO assumes that the entire amounts authorized in the bill would be appropriated before the start of each fiscal year. Based on information from the Federal Railroad Administration (FRA), CBO estimates that expenses associated with the Amtrak Reform Council would be less than \$500,000 a year. The expenses of the council would be subject to the availability of appropriated funds. CBO expects that other provisions of the bill would not have any significant budgetary effects. The estimated budgetary impact of S. 738 is shown in the following table.

[By fiscal year, in millions of dollars]

	1997	1998	1999	2000	2001	2002
SPENDING SUBJECT TO APPROPRIATION						
Amtrak spending under current law:						
Budget authority ¹	843	0	0	0	0	0
Estimated outlays	886	364	117	25	0	0
Proposed changes:						
Authorization level	0	1,138	1,058	1,023	989	955
Estimated outlays	0	687	1,049	1,014	979	945
Amtrak spending under S. 738:						
Authorization level ¹	843	1,138	1,058	1,023	989	955
Estimated outlays	886	1,051	1,166	1,039	979	945

¹ The 1997 level is the amount appropriated for that year.

The costs of this legislation fall within budget function 400 (transportation).

Basis of estimate: This estimate is based on the yearly authorization levels specified by the bill. For purposes of this estimate, CBO assumes that the authorized funds would be divided between two different appropriated accounts: Amtrak capital expenses and Amtrak operating expenses (which include mandatory payments for retirement costs). Based on estimated funding requirements provided by FRA, CBO assumes that between 65 percent and 85 percent of the authorized annual amounts would be allocated to capital expenses, with the remainder going to operating expenses. (The percentage going to operating expenses would decline gradually over the five-year period, though the mandatory retirement payments would remain constant at about \$140 million a year.) According to Amtrak, some of the amounts allocated for capital expenses would be used for the Northeast Corridor program.

Outlay estimates are based on historical spending rates for Amtrak. If the allocation of funding between capital and operating accounts is different from the above assumptions, the outlay estimates would change accordingly. CBO estimates that outlays for operating expenses would equal obligations for each year, while capital expenditures would occur at a rate of 40 percent in the year of obligation and 60 percent in the following year.

Pay-as-you-go considerations: None.

Estimated impact on State, local, and tribal governments: Mandates—S. 738 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. Based on information from Amtrak and other tax and transportation experts, CBO estimates that the costs imposed by these mandates would total less than \$5 million over the next five years.

Amtrak currently pays approximately \$1 million per year in local property taxes on a maintenance facility located in Beech Grove, Indiana. The bill would phase in an exemption from this tax over the next three years. CBO estimates that the total cost to Beech Grove in lost tax revenue over the next five years would be less than \$5 million.

The bill would also exempt passengers and other customers of Amtrak and its subsidiaries from most state and local taxes, fees, or charges. Current law exempts only Amtrak and its subsidiaries. The bill would allow sales taxes on intrastate travel in effect on the date of the bill's enactment to remain in place. The provision would also prohibit new state or local taxes of any kind on Amtrak services. While a 1995 Supreme Court ruling could be used 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 do so. Nonetheless, 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.

Other Impacts—S. 738 contains a number of other provisions that, while not mandates, could affect the budgets of state and local governments. CBO estimates that, on the whole, these provisions would benefit state and local governments.

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. In addition, the bill would direct Amtrak to engage in efforts with local schools to educate students as to the benefits and importance of rail travel and rail safety.

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. As a further benefit to states, the bill would add intercity passenger rail to the lists of projects eligible for federal surface transportation, congestion mitigation and air quality, and National Highway System funds.

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 as to 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: S. 738 would impose four new private-sector mandates on Amtrak. CBO estimates that the direct costs of those mandates would be negligible and thus would not exceed the statutory threshold specified in UMRA.

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 considered a federal entity, although the U.S. Department of Transportation holds almost all of its stock.

Section 101 would increase from 90 days to 180 days the notice that Amtrak must provide when it plans to discontinue service. This change would provide a state, regional or local authority, or another person additional time to consider assuming or sharing the cost of the discontinued service. Under current law and practice, Amtrak can stop service under a provision that does not require a 90-day notice but requires only a notice "as soon as possible." According to Amtrak officials, Amtrak has used that provision in all but one case over the last decade. Amtrak currently provides the state, regional, and local authorities with as much time as possible, sometimes exceeding 90 days, before discontinuing service. Amtrak intends to continue using that practice. Thus, it is unlikely that Amtrak would incur any additional costs from the mandate to extend the period of notification to 180 days.

Section 204 would require that Amtrak develop an action plan for its complete liquidation and would specify certain conditions under which Amtrak would have to carry out that plan. Amtrak would have to submit a plan within 90 days after the Amtrak Reform Council finds that Amtrak would either be unable to meet its financial goals due to its business performance or would require a grant for operating costs five years after the enactment date of S. 738. According to Amtrak, the costs to develop a liquidation plan would be negligible.

Section 412 would require that Amtrak notify the Senate Committee on Commerce, Science, and Transportation and the House Committee on Transportation and Infrastructure whenever it enters into a consulting or lobbying contract or arrangement. Amtrak would have to provide the name of the individual or firm, the purpose, and the amount and nature of Amtrak's financial obligations under the contract. CBO estimates that the costs of such notifications would be negligible.

Section 414 would require that Amtrak participate in educational efforts with elementary and secondary schools to inform students on the advantages of rail travel and the need for rail safety. This section does not include any specific goals or requirements. Amtrak currently participates in a school program that promotes grade crossing safety. Amtrak estimates that any further participation in educational programs would result in minimal additional costs.

Estimate prepared by: Federal costs: Clare Doherty; Impact on State, local, and tribal governments: Karen McVey; Impact on the private sector: Jean Wooster.

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

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation:

NUMBER OF PERSONS COVERED

The bill as reported would authorize appropriations for Amtrak operating expenses and capital expenditures for fiscal years 1998 through 2002. As this legislation is intended to enable Amtrak to continue to operate as a national rail passenger system serving all areas of the country, the number of persons covered should be consistent with current levels.

Section 121 of the bill as reported would remove the statutory prohibition against Amtrak contracting out for certain work now done by Amtrak employees. Amtrak and its employees would negotiate rules stating under what conditions, if any, Amtrak may contract out for such work. In any event, the number of persons required to provide Amtrak services, whether directly employed or under contract, is likely to be similar.

ECONOMIC IMPACT

Title III of the bill as reported authorizes overall appropriations at levels over the total funding previously authorized for Amtrak. This increased funding level is provided for investments in the system's capital infrastructure. The bill provides for reduced levels of operating assistance annually and assumes no federal operating assistance at the end of the authorization period.

PRIVACY

The bill as reported would have no adverse impact on the personal privacy of individuals affected.

PAPERWORK

Paperwork requirements associated with the bill as reported are minimal. The most notable new requirement is created by Title II, which directs the Amtrak Reform Council to no less than annually assess and report to Congress on progress made by Amtrak in meeting its financial goals. In addition, Title IV includes a provision directing the Inspector General of the Department of Transportation to prepare, to the extent practicable, financial assessments on Amtrak's fiscal needs in each year Amtrak requests federal assistance. The first report would not be required until one year after enactment as the independent assessment authorized in this bill is expected to provide the Congress with the first assessment as a base-line.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title; table of sections

This section states the short title of the bill, the Amtrak Reform and Accountability Act of 1997, and contains a table of sections for the bill.

Section 2. Findings

This section includes 11 findings relating to the role of intercity rail passenger service in the overall national transportation system; the urgent need for immediate action to improve Amtrak's financial condition and eliminate its dependency on federal operating assistance; the necessity of all of Amtrak's stakeholders to participate in efforts to reduce Amtrak's costs and increase its revenues; the importance of improving Amtrak's service quality and the sound investment of federal and state resources; the importance of implementing new operating strategies without compromising transportation safety; the need for Amtrak and its employees to modify collective bargaining agreements to make more efficient use of manpower; the need for Amtrak to work cooperatively with intercity bus service providers to produce efficient transportation service; and the recommendation that a dedicated source of capital funding be established for Amtrak to ensure that Amtrak will be able to fulfill the goals of maintaining a national rail passenger system without Federal operating assistance.

TITLE I—REFORMS

SUBTITLE A—OPERATIONAL REFORMS

Section 101. Basic system

Subsection (a) adds statutory language directing Amtrak to strive to operate as a national rail passenger system which provides access to all areas of the country and ties together existing and emerging corridors. Repeals the prohibition on other entities from operating intercity passenger service over an Amtrak route unless Amtrak gives consent.

Subsection (b) repeals obsolete provisions.

Subsection (c) extends from 90 days to 180 days the notification period required of Amtrak regarding any proposed discontinuances of a route in order to give states adequate time to share or assume the cost of retaining the route.

Subsection (d) repeals obsolete rate evaluation criteria.

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

Subsection (f) makes a conforming technical amendment.

Section 102. Mail, express, and auto ferry transportation

This section repeals Amtrak's monopoly over auto-plus-passenger service.

Section 103. Route and service criteria

This section repeals the mandate that Congress approve changes in the criteria that Amtrak uses to evaluate routes and services.

Section 104. Additional qualifying routes

This section repeals obsolete mandates on proposed route changes dating back to 1978.

Section 105. Transportation requested by States, authorities, and other persons

This section provides technical clarification that assistance provided under state-supported matching programs may be provided for separately, or in combination, with private assistance.

Section 106. Amtrak Commuter

This section repeals a never-used chapter authorizing an “Amtrak Commuter” subsidiary.

Section 107. Through service in conjunction with intercity bus operations

This section encourages Amtrak and intercity bus operators to enter into arrangements to increase operating efficiencies and travel convenience by allowing Amtrak and intercity bus operations to coordinate schedules, routes, rates, and facilities.

Section 108. Rail and motor carrier passenger service

This section encourages Amtrak and intercity bus operators to enter into intermodal arrangements that will increase operating efficiencies and travel convenience.

Section 109. Passenger choice

This section allows employees of the Federal Government to travel on Amtrak for official business as long as the travel costs are competitive on a trip or time basis.

Section 110. Application of certain laws

This section removes Amtrak from Freedom of Information Act (FOIA) requirements when it no longer receives federal assistance. It further provides Amtrak protection from FOIA disclosure in relation to contract procurement proposals submitted to Amtrak. Amtrak has informed the Committee these requests typically come from firms competing against each other for Amtrak-related procurement contracts. The information which Amtrak must provide under FOIA can give parties a competitive edge over other entities vying for the same contract award. Legislation enacted during the 104th Congress protects Federal agencies from FOIA concerning procurement-related disclosure requirements.

SUBTITLE B—PROCUREMENT

Section 121. Contracting out

This section repeals the ban on contracting out 180 days after enactment. Section 121 would have no impact on contracting out food services or contracting out work that does not result in layoffs because both types of outside contracting are already permitted under law. Section 121 establishes a framework that requires Amtrak and its labor organizations to begin negotiations on contracting out work. The negotiations would be conducted under National Medi-

ation Board procedures and within specific time frames. In the event the negotiations and National Mediation Board efforts fail to resolve contracting out issues, the section allows both labor and management to employ options provided for under the Railway Labor Act (strikes and/or lockouts). This provision would have no precedent for freight railroads.

SUBTITLE C—EMPLOYEE PROTECTION REFORMS

Section 141. Railway Labor Act procedures

This section repeals the statutory employee protection arrangements and severance benefits which are applicable to employees of Amtrak who are affected by route discontinuances or service reductions. In lieu of the statutory protections, this section establishes an accelerated collective bargaining procedure to determine future severance benefits. The negotiations would be conducted under National Mediation Board procedures and within specific time periods to ensure that outstanding employee protective arrangements and severance benefits are resolved.

Section 142. Service discontinuance

This section rescinds contracts entered into before the date of the enactment of this bill between Amtrak and labor organizations representing Amtrak employees relating to employee protective arrangements and severance benefits applicable to Amtrak employees. This section also repeals Appendix C-2 to the National Railroad Passenger Corporation Agreement that was signed in 1973. The 1973 agreement requires Amtrak to pay up to six years of pay for any employee laid off because of a service discontinuance. This section would take effect 180 days after the date of enactment.

SUBTITLE D—USE OF RAILROAD FACILITIES

Section 161. Liability limitation

Subsection (a) of section 161 permits Amtrak to limit its exposure to punitive damages, where permitted, if passengers are provided adequate notice of such contractual limitations. The section authorizes Amtrak to establish contracts with its passengers to limit claims relating to rail passenger transportation to no less than the limits established in product liability reform legislation reported by the Committee earlier this session (i.e. punitive damages, where permitted, equal to 2 times compensatory damages or \$250,000, whichever is greater). Subsection (a) has no impact on economic damage claims, which include lost wages, medical expenses and other out-of-pocket costs. Subsection (a) also has no impact on non-economic compensatory damage claims.

Subsection (b) of section 161 clarifies that rail passenger service indemnification agreements entered into by Amtrak and other parties are enforceable. Amtrak and the freight railroads believe legislation is necessary to confirm the enforceability of indemnification agreements. The indemnification agreements allocate the cost of liability among the agreement parties. As long as there is the possibility that state laws can nullify the indemnification contracts, Amtrak and a freight railroad could find themselves litigating against each other or concerning their obligations to injured third parties.

Amtrak believes that such litigation inevitably would not only adversely impact its business relationship with its host freight railroads, but it would also lead to significantly higher outlays in settlements and judgments to litigants.

Section 162. Retention of facilities

This section updates an existing provision that prevents railroads from disposing of facilities of use to Amtrak without the prior agreement of the Secretary of Transportation.

TITLE II—FISCAL ACCOUNTABILITY

Section 201. Amtrak financial goals

This section directs Amtrak to prepare a financial plan to operate within the funding levels authorized, setting budgetary goals for fiscal years 1998 through 2002. After FY2002, Amtrak will no longer receive federal operating assistance.

Section 202. Independent assessment

This section instructs the Secretary of Transportation to contract with an entity, independent of Amtrak and the Department, to conduct a complete independent assessment of Amtrak's financial requirements through fiscal year 2002. The Inspector General of the Department of Transportation would be directed to approve the contract award to an accounting firm knowledgeable in rail accounting requirements. The Inspector General would oversee the contract and the entity's statement of work. Within 180 days after the contract is awarded, the audit results are to be submitted to the Secretary, the Senate Committee on Commerce, Science, and Transportation and the House Committee on Transportation and Infrastructure.

The Committee directs the independent auditors to consider all relevant factors, including Amtrak's cost allocation process and procedures; Amtrak's expenses related to intercity service, commuter service and any other service; Amtrak's Strategic Business Plan, including projected expenses, capital needs, ridership, and revenue forecasts; and Amtrak's assets and liabilities. The Committee expects the audit to compare the capital costs to date associated with the Northeast Corridor, and projections for future capital investment needs, to those projected for the rest of the system in Amtrak's long-range business plan.

Section 203. Amtrak Reform Council

This section creates a 9-member Council to be appointed within 30 days after enactment. The President would appoint three members, including the Secretary of Transportation, a representative of a rail labor union, and a representative of rail management. Two members would be appointed by the Senate Majority Leader; one member would be appointed by Senate Minority Leader; two members would be appointed by the House Speaker; and one member would be appointed by the House Minority Leader.

This section also precludes individuals appointed by the House and Senate from being employees of the United States or Amtrak, or representatives of rail labor or rail management. This section

also requires the Council collectively to have members with technical qualifications, professional standing, and demonstrated expertise in the fields of corporate management, finance, rail or other transportation operations, labor, economic, and legal issues, and other relevant areas.

Members shall serve 5-year terms on the Council. The Council would elect a Chairman and all actions are to be by majority rule. Meetings would be open to the public, except when discussing proprietary information. Any administrative support needed for the Council is to be provided by the Department of Transportation.

This section directs the Council to evaluate Amtrak's performance and make recommendations to Amtrak for cost containment, productivity improvements, and financial reforms. The Council is to consider Amtrak's operation as a national system, appropriate methods for adoption of uniform cost and accounting procedures throughout the Amtrak system, and management efficiencies and revenue enhancements. The Council is further directed to submit an annual report to Congress which includes an assessment of Amtrak's progress on resolving productivity issues and makes recommendations for improvements or necessary legislative changes.

Section 204. Sunset trigger

The bill establishes a mechanism to be implemented if at any time following two years after the date of enactment, the Council finds that Amtrak is not meeting its financial goals or finds that Amtrak will require federal operating assistance after the fifth anniversary of enactment of this Act, the Council is to immediately notify the President, the Senate Committee on Commerce, Science, and Transportation and the House Transportation and Infrastructure Committee. In making such a determination, the Committee intends the Council to take into account Amtrak's performance, the findings of the independent audit performed pursuant to Sec. 202, Acts of God, national emergencies, and other events beyond the reasonable control of Amtrak.

Within 90 days after such a determination is made, the Council is directed to develop and submit to Congress an action plan for a restructured and rationalized intercity rail passenger system. Within that same time period, Amtrak is directed to prepare a plan for its complete liquidation.

The Committee expects the Congress would consider legislation to address the fact that Amtrak is unable to operate in a financially viable manner and the bill provides a 90-day period for Congress to provide for a restructured passenger rail system. If the Congress does not take such action, Amtrak is required to begin implementing Amtrak's liquidation plan. Should this occur, the Committee believes that the liquidation plan must be carried out in a manner to protect the taxpayers' investment to the greatest extent possible and fully expects the comments of the DOT-Inspector General and the GAO to be followed closely during the liquidation process.

Section 205. Access to records and accounts

This section permits each State to have access to Amtrak records and accounts to verify payments owed to Amtrak by the State.

Section 206. Officers' pay

This section clarifies that statutory guidelines on pay of Amtrak officers only apply as long as Amtrak receives federal assistance.

Section 207. Exemption from taxes

The section prohibits states from imposing sales taxes on Amtrak tickets or passengers, except where States now impose such taxes on intrastate travel. Further, this section phases out over 3 years a provision in effect since 1981 allowing Beech Grove, Indiana, to tax Amtrak property.

TITLE III—AUTHORIZATION OF APPROPRIATIONS

Section 301. Authorization of appropriations

This section authorizes Amtrak funding for five years as follows: \$1,138,000,000 for FY 1998, \$1,058,000,000 for FY 1999, \$1,023,000,000 for FY 2000, \$989,000,000 for FY 2001, and \$955,000,000 for FY 2002. These levels assume the equivalent of ½ cent per gallon of motor fuels taxes for capital expenditures, as well as funds for operating and excess railroad retirement payments. These levels are the funding levels requested by Amtrak in its FY1998 Legislative Report and Federal Grant Request.

TITLE IV—MISCELLANEOUS

Section 401. Status and applicable laws

This section provides technical corrections only.

Section 402. Waste disposal

This section postpones the deadline for Amtrak waste disposal retrofitting requirements from 1996 to 2001.

Section 403. Assistance for upgrading facilities

This section repeals an obsolete provision.

Section 404. Demonstration of new technology

This section repeals a demonstration requirement that was completed in 1993.

Section 405. Program master plan for Boston-New York main line

This section repeals specific planning requirements that were to have been completed in 1993.

Section 406. Americans with Disabilities Act of 1990 (ADA)

This section extends the deadline for ADA compliance with respect to existing equipment and facilities until January 1, 1998.

Section 407. Definitions

This section makes technical and conforming changes in definitions and also repeals definitions which are no longer required.

Section 408. Northeast Corridor cost dispute

This section repeals an obsolete provision. The repeal of this provision is not intended to affect the process currently employed, or

the basis currently used by Amtrak and local commuter rail agencies, in negotiating cost sharing agreements for the operation of service on the Northeast Corridor.

Section 409. Inspector General Act of 1978 amendment

This section provides that Amtrak will not be considered a federal entity for purposes of the Inspector General Act of 1978 when it no longer receives federal assistance. It also directs the DOT Inspector General to review Amtrak's operations and conduct an assessment similar to that provided under Sec. 202(a) during any year Amtrak requests federal assistance.

Section 410. Interstate rail compacts

The section permits states to enter into interstate rail compacts to promote rail passenger service, including activities related to the financing of such service. It also allows states, if they choose, to spend a portion of their highway funding allocation on intercity rail as well as intermodal facilities such as bus terminals, including those owned by private entities.

Section 411. Composition of Amtrak board of directors

This section alters the composition of the Amtrak Board of Directors to reflect other changes in the bill. Specifically, this section would add a representative of a municipality, such as a Mayor, to the Amtrak Board. This section also permits the existing labor representative Board slot to be selected from any rail labor organization. This section would reduce the level of representation from commuter rail authorities from two to one. It also repeals appointments made by the preferred stock holder, which is the Secretary of Transportation. Those two membership positions would be replaced by Presidential appointments of a representative of the general public and an individual with financial and accounting expertise.

Section 412. Educational participation

This section directs Amtrak to make efforts to teach the Nation's school children about the advantages of careers in transportation and the advantages of rail transportation.

Section 413. Report to Congress on Amtrak bankruptcy

The Committee is extremely concerned about the long-range implications of a potential Amtrak bankruptcy and believes a comprehensive analysis on this topic is necessary to assist the Congress and the Administration in fully understanding the far-reaching effects of an Amtrak bankruptcy. The bill directs the Comptroller General to immediately conduct an analysis on this potential situation and submit a report to the Senate Committee on Commerce, Science, and Transportation and the House Committee on Transportation and Infrastructure. The Committee is interested in receiving an overview of the financial issues and implications associated with an Amtrak liquidation, including an analysis of the implications of such a liquidation on the federal government, Amtrak's creditors, and the railroad retirement system.

Section 414. Amtrak to notify Congress of lobbying relationships

The Committee is aware Amtrak has paid millions of dollars over the years to hire outside contractors and consultants for various services. For example, in FY 1994, consulting and contract expenses (including legal services, engineering analysis, and ridership analysis) totaled \$29.3 million, more than 25 percent of Amtrak's general and administrative budget. In FY 1995, that figure grew to \$37.4 million.

The Committee believes contracting for certain services is a fiscally responsible action by Amtrak. However, the Committee is concerned that some outside services funded by federal dollars may be inappropriate, such as the use of taxpayer funds to pay registered lobbyists to advise Amtrak on how to lobby Congress or to pay for others to lobby before state legislatures on Amtrak's behalf. In fact, federal agencies are prohibited from using taxpayer dollars to lobby Congress. Because the extent to which Amtrak has entered into such agreements is somewhat unclear, this section directs Amtrak to notify the Senate Committee on Commerce Science, and Transportation and the House Transportation and Infrastructure Committee whenever it enters into a contract for consulting or lobbying, with a lobbying firm, or an individual affiliated with a lobbying firm, as defined in the Lobbying Disclosure Act of 1995. Amtrak would identify the costs associated with these services and a listing of the entities or persons hired by Amtrak as long as federal assistance is provided to Amtrak.

ROLLCALL VOTES IN COMMITTEE

In accordance with paragraph 7(c) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following description of the record votes during its consideration of S. 738:

Senator Hutchison offered an amendment to make minor and technical corrections in the introduced bill. By rollcall vote of 14 yeas and 4 nays as follows, the amendment was adopted:

YEAS—14—	NAYS—4
Mr. Burns—	Mr. Hollings—
Mr. Lott—	Mr. Kerry ¹
Mrs. Hutchison	Mr. Bryan ¹
Ms. Snowe—	Mr. Dorgan
Mr. Ashcroft ¹	
Mr. Frist ¹	
Mr. Abraham	
Mr. Brownback	
Mr. Inouye	
Mr. Ford	
Mr. Rockefeller	
Mr. Breaux	
Mr. Wyden	
Mr. McCain	

¹ By proxy

Senator Ford offered an amendment to strike section 161(b) relating to indemnification obligations. By rollcall vote of 9 yeas and

9 nays as follows, with Mr. McCain voting present, the amendment was defeated:

YEAS—9—	NAYS—9
Mr. Hollings	Mr. Burns ¹
Mr. Inouye ¹ —	Mr. Gorton ¹
Mr. Ford—	Mr. Lott ¹
Mr. Rockefeller ¹ —	Mrs. Hutchison
Mr. Kerry—	Ms. Snowe
Mr. Breaux ¹ —	Mr. Ashcroft
Mr. Bryan ¹ —	Mr. Frist ¹
Mr. Dorgan ¹ —	Mr. Abraham
Mr. Wyden ¹ —	Mr. Brownback

¹ By proxy

Senator Ford offered an amendment to strike section 161(a) relating to liability and punitive damages. By rollcall vote of 9 yeas and 10 nays as follows, the amendment was defeated:

YEAS—9—	NAYS—10
Mr. Hollings	Mr. Burns
Mr. Inouye—	Mr. Gorton ¹
Mr. Ford—	Mr. Lott ¹
Mr. Rockefeller ¹ —	Mrs. Hutchison
Mr. Kerry—	Ms. Snowe ¹
Mr. Breaux ¹ —	Mr. Ashcroft
Mr. Bryan ¹ —	Mr. Frist ¹
Mr. Dorgan ¹ —	Mr. Abraham
Mr. Wyden—	Mr. Brownback—
	Mr. McCain

¹ By proxy

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, 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 material is printed in italic, existing law in which no change is proposed is shown in roman): ¹

TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES

—APPENDIX

INSPECTOR GENERAL ACT OF 1978

§8G. Requirements for Federal entities and designated Federal entities

(a) Notwithstanding section 11 of this Act, as used in this section—

(1) the term “Federal entity” means any Government corporation (within the meaning of section 103(1) of title 5, United States Code), any Government controlled corporation (within the meaning of section 103(2) of such title), or any other entity

¹ Changes in existing law are shown as that law is reflected in the United States Code, whether or not the title of the Code in which the law is reflected has been enacted into positive law.

in the Executive branch of the Government, or any independent regulatory agency, but does not include—

(A) an establishment (as defined under section 11(2) of this Act) or part of an establishment;

(B) a designated Federal entity (as defined under paragraph (2) of this subsection) or part of a designated Federal entity;

(C) the Executive Office of the President;

(D) the Central Intelligence Agency;

(E) the General Accounting Office; or

(F) any entity in the judicial or legislative branches of the Government, including the Administrative Office of the United States Courts and the Architect of the Capitol and any activities under the direction of the Architect of the Capitol;

(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 Interstate Commerce 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 International Trade Commission, and the United States Postal Service;

* * * * *

TITLE 23—HIGHWAYS

CHAPTER 1. FEDERAL-AID HIGHWAYS

§ 103. Federal-aid systems

(a) IN GENERAL.—For purposes of this title, the Federal-aid systems are the Interstate System and the National Highway System.

(b) NATIONAL HIGHWAY SYSTEM.—

(1) PURPOSE.—The purpose of the National Highway System is to provide an interconnected system of principal arterial routes which will serve major population centers, international border crossings, ports, airports, public transportation facilities, and other intermodal transportation facilities and other major travel destinations; meet national defense requirements; and serve interstate and interregional travel.

(2) COMPONENTS.—The National Highway System shall consist of the following:

(A) Highways designated as part of the Interstate System under subsection (e) and section 139 of this title.

(B) Other urban and rural principal arterials and highways (including toll facilities) which provide motor vehicle access between such an arterial and a major port, airport, public transportation facility, or other intermodal transportation facility. The States, in cooperation with local and regional officials, shall propose to the Secretary arterials and highways for designation to the National Highway System under this paragraph. In urbanized areas, the local officials shall act through the metropolitan planning organizations designated for such areas under section 134 of this title. The routes on the National Highway System, as shown on the map submitted by the Secretary to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate in 1991, illustrating the National Highway System, shall serve as the basis for the States in proposing arterials and highways for designation to such system. The Secretary may modify or revise such proposals and submit such modified or revised proposals to Congress for approval in accordance with paragraph (3).

(C) A strategic highway network which is a network of highways which are important to the United States strategic defense policy and which provide defense access, continuity, and emergency capabilities for the movement of personnel, materials, and equipment in both peace time and war time. Such highways may include highways on and off the Interstate System and shall be designated by the Secretary in consultation with appropriate Federal agencies and the States and be subject to approval by Congress in accordance with paragraph (3).

(D) Major strategic highway network connectors which are highways that provide motor vehicle access between major military installations and highways which are part of the strategic highway network. Such highways shall be designated by the Secretary in consultation with appropriate Federal agencies and the States and subject to approval by Congress in accordance with paragraph (3).

(3) APPROVAL OF DESIGNATIONS.—

(A) PROPOSED DESIGNATIONS.— Not later than 2 years after the date of the enactment of this section, the Secretary shall submit for approval to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives a proposed National Highway System with a list and description of highways proposed to be designated to the National Highway System under this subsection and a map showing such proposed designations. In preparing the proposed system, the Secretary shall consult appropriate local officials and shall use the functional reclassification of roads and streets carried out under sub-

section (c) of section 1006 of the Intermodal Surface Transportation Efficiency Act of 1991.

(B) APPROVAL OF CONGRESS REQUIRED.—After September 30, 1995, no funds made available for carrying out this title may be apportioned for the National Highway System or the Interstate maintenance program under this title unless a law has been approved designating the National Highway System.

(C) MAXIMUM MILEAGE.—The mileage of highways on the National Highway System shall not exceed 155,000 miles; except that the Secretary may increase or decrease such maximum mileage by not to exceed 15 percent.

(D) EQUITABLE ALLOCATIONS OF HIGHWAY MILEAGE.—The Secretary shall provide for equitable allocation of highway mileage on the National Highway System among the States.

(4) INTERIM SYSTEM.—For fiscal years 1992, 1993, 1994, and 1995, highways classified as principal arterials by the States shall be treated as being on the National Highway System for purposes of this title.

(5) DESIGNATION OF NHS.—The National Highway System as submitted by the Secretary of Transportation on the map entitled “Official Submission, National Highway System, Federal Highway Administration”, and dated November 13, 1995, is hereby designated within the United States, including the District of Columbia and the Commonwealth of Puerto Rico.

(6) MODIFICATIONS TO NHS.—

(A) IN GENERAL.—Subject to paragraph (7), the Secretary may make modifications to the National Highway System that are proposed by a State or that are proposed by the State and revised by the Secretary if the Secretary determines that each of the modifications—

(i) meets the criteria established for the National Highway System under this title; and

(ii) enhances the national transportation characteristics of the National Highway System.

(B) COOPERATION.—In proposing modifications under this paragraph, a State shall cooperate with local and regional officials. In urbanized areas, the local officials shall act through the metropolitan planning organizations designated for such areas under section 134.

(7) TRANSITIONAL RULES FOR INTERMODAL CONNECTORS.—

(A) REQUIRED SUBMISSION.—Not later than 180 days after the date of the enactment of the National Highway System Designation Act of 1995, the Secretary shall submit for approval to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives modifications to the National Highway System that are proposed by a State or that are proposed by the State and revised by the Secretary and that consist of connectors to major ports, airports, international border crossings, public transportation and transit facilities, interstate bus terminals, and rail and other intermodal transportation fa-

cilities. (B) COOPERATION.—Paragraph (6)(B) shall apply to modifications proposed by a State under this paragraph.

(C) ELIGIBILITY.—

(i) INITIAL APPROVAL BY LAW.—Modifications proposed under subparagraph (A) may take effect only if a law has been enacted approving such modifications.

(ii) INTERIM ELIGIBILITY.—Notwithstanding clause (i), a project to construct a connector to an intermodal transportation facility described in subparagraph (A) shall be eligible for funds apportioned under section 104(b)(1) for the National Highway System if the Secretary finds that the project is consistent with criteria developed by the Secretary for construction of such connectors.

(iii) PERIOD OF ELIGIBILITY.—A project which is eligible under clause (ii) for funds apportioned under section 104(b)(1) shall remain eligible for such funds pursuant to clause (ii) only until the date of the enactment of a law described in clause (i).

(D) MODIFICATIONS AFTER INITIAL APPROVAL.—After the date of the enactment of a law described in subparagraph (C)(i), a modification consisting of a connector to an intermodal transportation facility described in subparagraph (A) may be made in accordance with paragraph (6).

(8) CONGRESSIONAL HIGH PRIORITY CORRIDORS.—Upon the completion of feasibility studies, the Secretary shall add to the National Highway System any congressional high priority corridor or any segment thereof established by section 1105 of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 2031–2037) which was not identified on the National Highway System designated by paragraph (5).

(c), (d) [Repealed]

(e) INTERSTATE SYSTEM.—

(1) DESIGNATION; MILEAGE LIMITATION.—The Interstate System shall be designated within the United States, including the District of Columbia, and, except as provided in paragraphs (2) and (3) of this subsection, it shall not exceed forty-one thousand miles in total extent. It shall be so located as to connect by routes, as direct as practicable, the principal metropolitan areas, cities, and industrial centers, to serve the national defense and, to the greatest extent possible, to connect at suitable border points with routes of continental importance in the Dominion of Canada and the Republic of Mexico. The routes of this system, to the greatest extent possible, shall be selected by joint action of the State highway departments of each State and the adjoining States, subject to the approval by the Secretary as provided in subsection (f) of this section. All highways or routes included in the Interstate System as finally approved, if not already coincident with the primary system, shall be added to said system without regard to the mileage limitation set forth in subsection (b) of this section. This system may be located both in rural and urban areas.

(2) MODIFICATIONS.—In addition to the mileage authorized by the first sentence of paragraph (1) of this subsection, there

is hereby authorized additional mileage for the Interstate System of five hundred miles, to be used in making modifications or revisions in the Interstate System as provided in this paragraph. Upon the request of a State highway department the Secretary may withdraw his approval of any route or portion thereof on the Interstate System within that State selected and approved in accordance with this title, if he determines that such route or portion thereof is not essential to completion of a unified and connected Interstate System (including urban routes necessary for metropolitan transportation) and will not be constructed as a part of the Interstate System, and if he receives assurances that the State does not intend to construct a toll road in the traffic corridor which would be served by such route or portion thereof. After the Secretary has withdrawn his approval of any such route or portion thereof the mileage of such route or portion thereof and the additional mileage authorized by the first sentence of this paragraph shall be available for the designation of interstate routes or portions thereof as provided in this subsection. The provisions of this title applicable to the Interstate System shall apply to all mileage designated under the third sentence of this paragraph. The Secretary shall not designate any Interstate route or portion thereof under authority of this paragraph after the date of enactment of the Federal Aid Highway Act of 1978.

(3) ADDITIONAL MILEAGE FOR IMPROVED EFFICIENCY.—In addition to the mileage authorized by paragraphs (1) and (2) of this subsection, there is hereby authorized additional mileage of not to exceed 1,500 miles for the designation of routes in the same manner as set forth in paragraph (1), in order to improve the efficiency and service of the Interstate System to better accomplish the purposes of that System.

(4) INTERSTATE SUBSTITUTE PROGRAM.—

(A) WITHDRAWAL OF APPROVAL.—Upon the joint request of a State Governor and the local governments concerned, the Secretary may withdraw approval of any route or portion thereof on the Interstate System which was selected and approved in accordance with this title, if the Secretary determines that such route or portion thereof is not essential to completion of a unified and connected Interstate System and if the Secretary receives assurances that the State does not intend to construct a toll road in the traffic corridor which would be served by the route or portion thereof.

(B) SUBSTITUTE PROJECTS.—When the Secretary withdraws approval under this paragraph, a sum equal to the Federal share of the cost to complete the withdrawn route or portion thereof, as that cost is included in the latest Interstate System cost estimate approved by Congress, or up to and including the 1983 interstate cost estimate, whichever is earlier, subject to increase or decrease, as determined by the Secretary based on changes in construction costs of the withdrawn route or portion thereof as of the date of approval of each substitute project under this paragraph, or the date of approval of the 1983 interstate

cost estimate, whichever is earlier, shall be available to the Secretary to incur obligations for the Federal share of either public mass transit projects involving the construction of fixed rail facilities or the purchase of passenger equipment including rolling stock, for any mode of mass transit, or both, or highway construction projects on any public road, or both, which will serve the area or areas from which the interstate route or portion thereof was withdrawn, which are selected by the responsible local officials of the area or areas to be served, and which are selected by the Governor or the Governors of the State or the States in which the withdrawn route was located if the withdrawn route was not within an urbanized area or did not pass through and connect urbanized areas, and which are submitted by the Governors of the States in which the withdrawn route was located. Each project constructed under this paragraph on a Federal-aid system shall be subject to the provisions of this title applicable to such system. Each project constructed under this paragraph not on a Federal-aid system shall be subject to the provisions of this title applicable to projects on the Federal-aid secondary system.

(C) DEADLINE FOR WITHDRAWAL.—The Secretary shall not approve any withdrawal of a route under this paragraph after September 30, 1983—

(i) except that with respect to any route which on November 6, 1978, is under judicial injunction prohibiting its construction the Secretary may approve withdrawals until September 30, 1986, and (ii) except that with respect to any route which on May 12, 1982, is under judicial injunction prohibiting its construction, the Secretary may approve withdrawals on such route until September 30, 1985.

(D) PROJECT APPROVAL; FEDERAL SHARE.—Approval by the Secretary of the plans, specifications, and estimates for a substitute project shall be deemed to be a contractual obligation of the Federal Government. The Federal share of each substitute project shall not exceed 85 percent of the cost thereof.

(E) AVAILABILITY OF FUNDS FOR SUBSTITUTE PROJECTS.—

(i) TIME PERIOD.—The sums apportioned and the sums allocated under this paragraph for public mass transit projects and for highway construction projects in a State shall remain available for obligation in such State for the fiscal year for which apportioned or allocated, as the case may be, and for the succeeding fiscal year. In the case of funds authorized to be appropriated for substitute transit projects under this paragraph for fiscal year 1993 and for substitute highway projects under this paragraph for fiscal year 1995, such funds shall remain available until expended.

(ii) REAPPORTIONMENT OR REALLOCATION.—Any sums which are apportioned or allocated to a State and are unobligated (other than an amount which, by

itself, is insufficient to pay the Federal share of the cost of a substitute project which has been submitted by the State to the Secretary for approval) at the end of the period of availability established by clause (i) shall be apportioned or allocated, as the case may be, among those States which have obligated all sums (other than such an amount) apportioned or allocated, as the case may be, to them. Such reapportionments shall be in accordance with the latest approved or adjusted estimate of the cost of completing substitute projects, and such reallocations shall be at the discretion of the Secretary.

(F) ADMINISTRATION OF TRANSIT FUNDS.—The sums obligated for mass transit projects under this paragraph shall become part of, and be administered through, the Urban Mass Transportation Fund.

(G) AUTHORIZATION OF APPROPRIATIONS FOR HIGHWAY PROJECTS.—For the fiscal year ending September 30, 1983, \$257,000,000 shall be available out of the Highway Trust Fund for expenditure at the discretion of the Secretary for projects under highway assistance programs. There shall be available, out of the Highway Trust Fund (other than the Mass Transit Account), to the Secretary for expenditure under this paragraph for projects under highway assistance programs \$700,000,000 per fiscal year for each of fiscal years 1984 and 1985, \$693,825,000 for fiscal year 1986, \$740,000,000 per fiscal year for each of fiscal years 1987, 1988, 1989, 1990, and 1991, \$240,000,000 per fiscal year for each of fiscal years 1992, 1993, 1994, and 1995. Such sums may be obligated for transit substitute projects under this paragraph.

(H) DISTRIBUTION OF SUBSTITUTE HIGHWAY FUNDS.—

(i) BETWEEN DISCRETIONARY AND APPORTIONED PROGRAMS.—Subject to section 149(d) of the Federal-Aid Highway Act of 1987, 25 percent of the funds made available by subparagraph (G) for each of fiscal years 1984, 1985, 1986, 1987, 1988, 1989, 1990, and 1991 for substitute highway projects under this paragraph shall be distributed at the discretion of the Secretary. The remaining 75 percent of such funds shall be apportioned in accordance with cost estimates approved by Congress or adjusted by the Secretary. For each of fiscal years 1992, 1993, 1994, and 1995, all funds made available by subparagraph (G) shall be apportioned in accordance with cost estimates adjusted by the Secretary.

(ii) FISCAL YEARS 1985, 1986, AND 1987 APPORTIONMENTS.—The Secretary shall make a revised estimate of the cost of completing substitute highway projects under this paragraph and transmit the same to the Senate and the House of Representatives within 10 days subsequent to January 2, 1984, and upon approval by Congress, the Secretary shall use the Federal share of such approved estimate in making appor-

tionments for substitute highway projects for fiscal years 1985, 1986, and 1987.

(iii) FISCAL YEARS 1988-1995 APPORTIONMENTS.—The Secretary shall make a revised estimate of the cost of completing substitute highway projects under this paragraph and transmit the same to the Senate and the House of Representatives as soon as practicable after the date of the enactment of the Federal-Aid Highway Act of 1987. Upon approval by Congress, the Secretary shall use the Federal share of such approved estimate in making apportionments for substitute highway projects for fiscal year 1988. If such estimate is not approved by Congress by September 30, 1987, the Secretary shall adjust such estimate in accordance with this clause and use the Federal share of the adjusted estimate in making apportionments for fiscal year 1988. The Secretary shall adjust such estimate annually thereafter in accordance with this clause and shall use the Federal share of such adjusted estimate in making apportionments for substitute highway projects for fiscal years 1989, 1990, 1991, 1992, 1993, 1994, and 1995. The adjustments required by this clause shall reflect previous withdrawals of interstate segments, changes in State estimates in the division of funds between substitute highway and transit projects, amounts made available in prior fiscal years, and the availability and reapportionment of funds under subparagraph (E).

(I) AUTHORIZATION OF APPROPRIATIONS FOR TRANSIT PROJECTS.—There are authorized to be appropriated for liquidation of obligations incurred for substitute transit projects under this paragraph the sums provided in section 4(g) of the Urban Mass Transportation Act of 1964.

(J) DISTRIBUTION OF SUBSTITUTE TRANSIT FUNDS.—

(i) BETWEEN DISCRETIONARY AND APPORTIONED PROGRAMS.—Fifty percent of the funds appropriated for each fiscal year beginning after September 30, 1983, and ending before October 1, 1991 for carrying out substitute transit projects under this paragraph shall be distributed at the discretion of the Secretary. The remaining 50 percent of such funds shall be apportioned in accordance with cost estimates approved by Congress or adjusted by the Secretary. 100 percent of funds appropriated for each of fiscal years 1992 and 1993 shall be apportioned in accordance with cost estimates adjusted by the Secretary.

(ii) FISCAL YEARS 1985, 1986, AND 1987 APPORTIONMENTS.—The Secretary shall make a revised estimate of the cost of completing substitute transit projects under this paragraph and transmit the same to the Senate and the House of Representatives within 10 days subsequent to January 2, 1984, and upon approval by Congress, the Secretary shall use the Federal share of such approved estimate in making appor-

tionments for substitute transit projects for fiscal years 1985, 1986, and 1987.

(iii) FISCAL YEARS 1988-1993 APPORTIONMENTS.—The Secretary shall make a revised estimate of the cost of completing substitute transit projects under this paragraph and transmit the same to the Senate and the House of Representatives as soon as practicable after the date of the enactment of the Federal-Aid Highway Act of 1987. Upon approval by Congress, the Secretary shall use the Federal share of such approved estimate in making apportionments for substitute transit projects for fiscal year 1988. If such estimate is not approved by Congress by September 30, 1987, the Secretary shall adjust such estimate in accordance with this clause and use the Federal share of the adjusted estimate in making apportionments for fiscal year 1988. The Secretary shall adjust such estimate annually thereafter in accordance with this clause and shall use the Federal share of such adjusted estimate in making apportionments for substitute transit projects for fiscal years 1989, 1990, 1991, 1992, and 1993. The adjustments required by this clause shall reflect previous withdrawals of Interstate segments, changes in State estimates in the division of funds between substitute highway and transit projects, amounts made available in prior fiscal years, and the availability and reapportionment of funds under subparagraph (E).

(K) REDUCTION OF INTERSTATE APPORTIONMENT.—

(i) IN GENERAL.—Unobligated apportionments for the Interstate System in any State where a withdrawal is approved under this paragraph shall, on the date of such approval, be reduced in the proportion that the Federal share of the cost of the withdrawn route or portion thereof bears to the Federal share of the total cost of all interstate routes in that State as reflected in the latest cost estimate approved by the Congress.

(ii) EXCEPTION.—In any State where the withdrawal of an interstate route or portion thereof has been approved under this section prior to the date of the enactment of the Federal-Aid Highway Act of 1976, the unobligated apportionments for the Interstate System in that State on such date of enactment shall be reduced in the proportion that the Federal share of the cost to complete such route or portion thereof, as shown in the latest cost estimate approved by Congress prior to such approval of withdrawal, bears to the Federal share of the cost of all interstate routes in that State, as shown in such cost estimate; except that the amount of such proportional reduction shall be credited with the amount of any reduction in such State's Interstate apportionment which was attributable to the Federal share of any substitute project

approved under this paragraph before such date of enactment.

(L) APPLICABILITY OF CHAPTER 53 OF TITLE 49.—

(i) SUPPLEMENTARY FUNDS.—Funds available for expenditure to carry out the purposes of this paragraph shall be supplementary to and not in substitution for funds authorized and available for obligation pursuant to chapter 53 of title 49.

(ii) LABOR PROTECTION.—The provisions of section 5323(a)(1)(D) of title 49 shall apply in carrying out this paragraph.

(M) LIMITATION ON INTERSTATE DESIGNATIONS.—After the date of the enactment of the Federal-Aid Highway Act of 1978, the Secretary may not designate any mileage as part of the Interstate System pursuant to this paragraph or under any other provision of law. The preceding sentence shall not apply to a designation made under section 139 of this title.

(N) OPEN TO TRAFFIC REQUIREMENT.—After September 30, 1979, the Secretary shall not withdraw his approval under this paragraph of any route or portion thereof on the Interstate System open to traffic before the date of the proposed withdrawal. Any withdrawal of approval of any such route or portion thereof before September 30, 1979, is hereby determined to be authorized by this paragraph.

(O) LIMITATION ON SUBSTITUTION FOR STATUTORILY DESIGNATED ROUTES.—Any route or segment which was statutorily designated after March 7, 1978, to be on the Interstate System shall not be eligible for withdrawal or substitution under this subsection.

(P) RIGHT-OF-WAY PAYBACK.—

(i) ENFORCEMENT.—Of sums apportioned or allocated under this paragraph to a State, the Secretary shall not obligate for projects in such State an amount equal to the amount of Federal funds expended to purchase the right-of-way for any withdrawn route or portion thereof if the right-of-way is not first disposed of (or applied to a project in accordance with paragraph (5)(B), (6)(B), or (7)) by the State.

(ii) LIMITATION ON APPLICABILITY.—Clause (i) shall not apply to sums apportioned or allocated under this paragraph to a State for a fiscal year if the projected total amount of funds to be apportioned and allocated under this paragraph to such State in succeeding fiscal years exceeds the amount of Federal funds expended to purchase the right-of-way.

(iii) RELEASE OF FUNDS.—The Secretary may obligate for projects in a State under this paragraph any funds withheld from obligation in such State if the State repays an equivalent amount in accordance with paragraph (5)(B), (6)(B), or (7), as the case may be, or if the Secretary determines that such repayment is not required under such paragraph.

(5) LIMITATION ON REFUNDS FOR WITHDRAWALS BEFORE NOVEMBER 6, 1978.—Notwithstanding any other provision of law, in the case of any withdrawal of approval before November 6, 1978—

(A) upon the withdrawal of approval of any route or portion thereof on the Interstate System under this section, a State, subject to the approval of the Secretary, shall not be required to refund to the Highway Trust Fund any sums paid to the State for intangible costs;

(B) refund will not be required for the costs of construction items, materials, or rights-of-way of the withdrawn route or portion of the Interstate System which will be or have been applied (i) to a transportation project permissible under this title, (ii) to a public conservation or public recreation purpose, or (iii) to such other public purpose as may be determined by the Secretary to be in the public interest on condition that the State shall make assurances satisfactory to the Secretary that such construction items or materials or rights-of-way have been or will be so applied by the State of any political subdivision thereof to a project under clause (i), (ii), or (iii) within 10 years from the date of the withdrawal of approval.

(6) LIMITATION ON REFUNDS FOR WITHDRAWALS ON AND AFTER NOVEMBER 6, 1978.—Notwithstanding any other provision of law—

(A) in the case of any withdrawal of approval on or after November 6, 1978, of a route or portion thereof on the Interstate System, a State, subject to the approval of the Secretary, shall not be required to refund to the Highway Trust Fund any sums paid to the State for intangible costs;

(B) in the case of any withdrawal of approval on or after November 6, 1978, of any route or portion thereof on the Interstate System under this section, a State shall not be required to refund to the Highway Trust Fund the costs of construction items, materials, or rights-of-way of the withdrawn route or portion thereof if such items, materials, and rights-of-way were acquired before November 6, 1978, if by the date of withdrawal of approval the Secretary has not approved the environmental impact statement required by the National Environmental Policy Act of 1969, and if such construction items, materials, or rights-of-way will be or have been applied (i) to a transportation project permissible under this title, (ii) to a public conservation or public recreation purpose, or (iii) to any other public purpose determined by the Secretary to be in the public interest on condition that the State gives assurances satisfactory to the Secretary that such construction items, materials, or rights-of-way have been or will be so applied by the State, or any political subdivision thereof, to a project under clause (i), (ii), or (iii) within ten years from the date of withdrawal of approval.

(7) ADDITIONAL LIMITATION ON REFUNDS.—In any case where a withdrawal of approval of a route or portion thereof on the

Interstate System on or after November 6, 1978, does not come within the provisions of paragraph (6)(B) of this subsection, the State shall refund to the Highway Trust Fund the costs of construction items, materials, and rights-of-way of the withdrawn route or portion thereof, except that if the State gives assurances satisfactory to the Secretary that such items, materials, and rights-of-way have been or will be applied to a transportation project permissible under this title within ten years from the date of withdrawal of approval, the amount of such repayment shall be the difference between the amount received for such items, materials, and rights-of-way and the amount which would be received in accordance with the current Federal share applicable to the transportation project to which such items, materials, and rights-of-way were or are to be applied.

(8) PROTECTION OF PROPERTY RIGHTS.—Nothing in this subsection shall in any way alter rights under State law of persons owning property within the right-of-way immediately prior to such property being obtained by the State. The Federal share of the cost of property sold or otherwise transferred to previous owners under State law shall be refunded and credited to the unobligated balance of the State's apportionment for interstate highways.

(9) LIMITATION ON FUNDING OF MODIFIED MILEAGE PROJECTS.—Interstate mileage authorized for any State and withdrawn and transferred under the provisions of paragraph (2) of this subsection after the date of enactment of the Federal-Aid Highway Act of 1976, must be constructed by the State receiving such mileage as part of its Interstate System. Any State receiving such transfer of mileage may not, with respect to that transfer, avail itself of the optional use of Interstate funds under the second sentence of paragraph (4) of this subsection.

(f) The Secretary shall have authority to approve in whole or in part the Interstate System, as and when such systems or portions thereof are designated, or to require modifications or revisions thereof.

(g) The Secretary, on July 1, 1974, shall remove from designation as a part of the Interstate System each segment of such system for which a State has not notified the Secretary that such State intends to construct such segment, and which the Secretary finds is not essential to completion of a unified and connected Interstate System. Any segment of the Interstate System, with respect to which a State has not submitted by July 1, 1975, a schedule for the expenditure of funds for completion of construction of such segment or alternative segment within the period of availability of funds authorized to be appropriated for completion of the Interstate System, and with respect to which the State has not provided the Secretary with assurances satisfactory to him that such schedule will be met, shall be removed from designation as a part of the Interstate System. No segment of the Interstate System removed under the authority of the preceding sentence shall thereafter be designated as a part of the Interstate System except as the Secretary finds necessary in the interest of national defense or for

other reasons of national interest. This subsection shall not be applicable to any segment of the Interstate System referred to in section 23(a) of the Federal-Aid Highway Act of 1968.

(h) Notwithstanding subsections (e)(2) and (g) of this section, in any case where a segment of the Interstate System was a designated part of such System on June 1, 1973, and is entirely within the boundaries of an incorporated city and such city enters into an agreement with the Secretary to pay all non-Federal costs of construction of such segment, such segment shall be constructed.

(i) ELIGIBLE PROJECTS FOR NHS.—Subject to project approval by the Secretary, funds apportioned to a State under section 104(b)(1) for the National Highway System may be obligated for any of the following:

(1) Construction, reconstruction, resurfacing, restoration, and rehabilitation of segments of such system.

(2) Operational improvements for segments of such system.

(3) Construction of, and operational improvements for, a Federal-aid highway not on the National Highway System and construction of a transit project eligible for assistance under chapter 53 of title 49—

(A) if such highway or transit project is in the same corridor as, and in proximity to, a fully access controlled highway designated to the National Highway System;

(B) if the construction or improvements will improve the level of service on the fully access controlled highway and improve regional travel; and

(C) if the construction or improvements are more cost effective than an improvement to the fully access controlled highway that has benefits comparable to the benefits which will be achieved by the construction of, or improvements to, the highway not on the National Highway System.

(4) Highway safety improvements for segments of the National Highway System.

(5) Transportation planning in accordance with sections 134 and 135.

(6) Highway research and planning in accordance with section 307.

(7) Highway-related technology transfer activities.

(8) Capital and operating costs for traffic monitoring, management, and control facilities and programs.

(9) Fringe and corridor parking facilities.

(10) Carpool and vanpool projects.

(11) Bicycle transportation and pedestrian walkways in accordance with section 217.

(12) Development and establishment of management systems under section 303.

(13) In accordance with all applicable Federal law and regulations, participation in wetlands mitigation efforts related to projects funded under this title, which may include participation in wetlands mitigation banks; contributions to statewide and regional efforts to conserve, restore, enhance and create wetlands; and development of statewide and regional wetlands conservation and mitigation plans, including any such banks,

efforts, and plans authorized pursuant to the Water Resources Development Act of 1990 (including crediting provisions). Contributions to such mitigation efforts may take place concurrent with or in advance of project construction. Contributions toward these efforts may occur in advance of project construction only if such efforts are consistent with all applicable requirements of Federal law and regulations and State transportation planning processes.

(14) Construction, reconstruction, and rehabilitation of, and operational improvements for, intercity rail passenger facilities (including facilities owned by the National Railroad Passenger Corporation), operation of intercity rail passenger trains, and acquisition or reconstruction of rolling stock for intercity rail passenger service, except that not more than 50 percent of the amount received by a State for a fiscal year under this paragraph may be obligated for operation.

§ 133. Surface transportation program

(a) ESTABLISHMENT.—The Secretary shall establish a surface transportation program in accordance with this section.

(b) ELIGIBLE PROJECTS.—A State may obligate funds apportioned to it under section 104(b)(3) for the surface transportation program only for the following:

(1) Construction, reconstruction, rehabilitation, resurfacing, restoration, and operational improvements for highways (including Interstate highways) and bridges (including bridges on public roads of all functional classifications), including any such construction or reconstruction necessary to accommodate other transportation modes, and including the seismic retrofit and painting of and application of calcium magnesium acetate on bridges and approaches thereto and other elevated structures, mitigation of damage to wildlife, habitat, and ecosystems caused by a transportation project funded under this title.

(2) Capital costs for transit projects eligible for assistance under the chapter 53 of title 49 [and publicly owned intracity or intercity bus terminals and facilities.] *facilities, including vehicles and facilities, publicly or privately owned, that are used to provide intercity passenger service by bus or rail, or a combination of both.*

(3) Carpool projects, fringe and corridor parking facilities and programs, and bicycle transportation and pedestrian walkways in accordance with section 217.

(4) Highway and transit safety improvements and programs, hazard eliminations, projects to mitigate hazards caused by wildlife, and railway-highway grade crossings.

(5) Highway and transit research and development and technology transfer programs.

(6) Capital and operating costs for traffic monitoring, management, and control facilities and programs.

(7) Surface transportation planning programs.

(8) Transportation enhancement activities.

(9) Transportation control measures listed in section 108(f)(1)(A) (other than clauses (xii) and (xvi)) of the Clean Air Act.

(10) Development and establishment of management systems under section 303.

(11) In accordance with all applicable Federal law and regulations, participation in wetlands mitigation efforts related to projects funded under this title, which may include participation in wetlands mitigation banks; contributions to statewide and regional efforts to conserve, restore, enhance and create wetlands; and development of statewide and regional wetlands conservation and mitigation plans, including any such banks, efforts, and plans authorized pursuant to the Water Resources Development Act of 1990 (including crediting provisions). Contributions to such mitigation efforts may take place concurrent with or in advance of project construction. Contributions toward these efforts may occur in advance of project construction only if such efforts are consistent with all applicable requirements of Federal law and regulations and State transportation planning processes.

(c) LOCATION OF PROJECTS.—Except as provided in subsection (b)(1), surface transportation program projects (other than those described in subsections (b) (3) and (4)) may not be undertaken on roads functionally classified as local or rural minor collectors, unless such roads are on a Federal-aid highway system on January 1, 1991, and except as approved by the Secretary.

(d) ALLOCATIONS OF APPORTIONED FUNDS.—

(1) FOR SAFETY PROGRAMS.—10 percent of the funds apportioned to a State under section 104(b)(3) for the surface transportation program for a fiscal year shall only be available for carrying out sections 130 and 152 of this title. Of the funds set aside under the preceding sentence, the State shall reserve in such fiscal year an amount of such funds for carrying out each such section which is not less than the amount of funds apportioned to the State in fiscal year 1991 under such section.

(2) FOR TRANSPORTATION ENHANCEMENT ACTIVITIES.—10 percent of the funds apportioned to a State under section 104(b)(3) for a fiscal year shall only be available for transportation enhancement activities.

(3) DIVISION BETWEEN URBANIZED AREAS OF OVER 200,000 POPULATION AND OTHER AREAS.—

(A) GENERAL RULE.—Except as provided in subparagraphs (C) and (D), 62.5 percent of the remaining 80 percent of the funds apportioned to a State under section 104(b)(3) for a fiscal year shall be obligated under this section—

(i) in urbanized areas of the State with an urbanized area population of over 200,000, and

(ii) in other areas of the State,

in proportion to their relative share of the State's population. The remaining 37.5 percent may be obligated in any area of the State. Funds attributed to an urbanized area under clause (i) may be obligated in the metropolitan area established under section 134 which encompasses the urbanized area.

(B) SPECIAL RULE FOR AREAS OF LESS THAN 5,000 POPULATION.—Of the amounts required to be obligated under

subparagraph (A)(ii), the State shall obligate in areas of the State (other than urban areas with a population greater than 5,000) an amount which is not less than 110 percent of the amount of funds apportioned to the State for the Federal-aid secondary system for fiscal year 1991.

(C) SPECIAL RULE FOR CERTAIN STATES.—In the case of a State in which—

(i) greater than 80 percent of the population of the State is located in 1 or more metropolitan statistical areas, and

(ii) greater than 80 percent of the land area of such State is owned by the United States, the 62.5 percentage specified in the first sentence of subparagraph (A) shall be 35 percent and the percentage specified in the second sentence of subparagraph (A) shall be 65 percent.

(D) NONCONTIGUOUS STATES EXEMPTION.—Subparagraph (A) shall not apply to any State which is noncontiguous with the continental United States.

(E) DISTRIBUTION BETWEEN URBANIZED AREAS OF OVER 200,000 POPULATION.—The amount of funds which a State is required to obligate under subparagraph (A)(i) shall be obligated in urbanized areas described in subparagraph (A)(i) based on the relative population of such areas; except that the State may obligate such funds based on other factors if the State and the relevant metropolitan planning organizations jointly apply to the Secretary for the permission to do so and the Secretary grants the request.

(4) APPLICABILITY OF PLANNING REQUIREMENTS.—Programming and expenditure of funds for projects under this section shall be consistent with the requirements of sections 134 and 135 of this title.

(5) APPLICABILITY OF CERTAIN REQUIREMENTS TO THIRD PARTY SELLERS.—

(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), in the case of a transportation enhancement activity funded from the allocation required under paragraph (2), if real property or an interest in real property is to be acquired from a qualified organization exclusively for conservation purposes (as determined under section 170(h) of the Internal Revenue Code of 1986, the organization shall be considered to be the owner of the property for the purpose of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.).

(B) FEDERAL APPROVAL PRIOR TO INVOLVEMENT OF QUALIFIED ORGANIZATION.—If Federal approval of the acquisition of the real property or interest predates the involvement of a qualified organization described in subparagraph (A) in the acquisition of the property, the organization shall be considered to be an acquiring agency or person as described in section 24.101(a)(2) of title 49, Code of Federal Regulations, for the purpose of the Uniform Relo-

cation Assistance and Real Property Acquisition Policies Act of 1970.

(C) ACQUISITIONS ON BEHALF OF RECIPIENTS OF FEDERAL FUNDS.—If a qualified organization described in subparagraph (A) has contracted with a State highway department or other recipient of Federal funds to acquire the real property or interest on behalf of the recipient, the organization shall be considered to be an agent of the recipient for the purpose of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

(e) ADMINISTRATION.—

(1) NONCOMPLIANCE.—If the Secretary determines that a State or local government has failed to comply substantially with any provision of this section, the Secretary shall notify the State that, if the State fails to take corrective action within 60 days from the date of receipt of the notification, the Secretary will withhold future apportionments under section 104(b)(3) until the Secretary is satisfied that appropriate corrective action has been taken.

(2) CERTIFICATION.—The Governor of each State shall certify before the beginning of each quarter of a fiscal year that the State will meet all the requirements of this section and shall notify the Secretary of the amount of obligations expected to be incurred for surface transportation program projects during such quarter. A State may request adjustment to the obligation amounts later in each of such quarters. Acceptance of the notification and certification shall be deemed a contractual obligation of the United States for the payment of the surface transportation program funds expected to be obligated by the State in such quarter for projects not subject to review by the Secretary under this chapter.

(3) PAYMENTS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Secretary shall make payments to a State of costs incurred by the State for the surface transportation program in accordance with procedures to be established by the Secretary. Payments shall not exceed the Federal share of costs incurred as of the date the State requests payments.

(B) ADVANCE PAYMENT OPTION FOR TRANSPORTATION ENHANCEMENT ACTIVITIES.—

(i) IN GENERAL.—The Secretary may advance funds to the State for transportation enhancement activities funded from the allocation required by subsection (d)(2) for a fiscal year if the Secretary certifies for the fiscal year that the State has authorized and uses a process for the selection of transportation enhancement projects that involves representatives of affected public entities, and private citizens, with expertise related to transportation enhancement activities.

(ii) LIMITATION ON AMOUNTS.—Amounts advanced under this subparagraph shall be limited to such amounts as are necessary to make prompt payments for project costs.

(iii) EFFECT ON OTHER REQUIREMENTS.—This subparagraph shall not exempt a State from other requirements of this title relating to the surface transportation program.

(4) POPULATION DETERMINATIONS.—The Secretary shall use estimates prepared by the Secretary of Commerce when determining population figures for purposes of this section.

(5) TRANSPORTATION ENHANCEMENT ACTIVITIES.—

(A) CATEGORICAL EXCLUSIONS.—To the extent appropriate, the Secretary shall develop categorical exclusions from the requirement that an environmental assessment or an environmental impact statement under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) be prepared for transportation enhancement activities funded from the allocation required by subsection (d)(2).

(B) NATIONWIDE PROGRAMMATIC AGREEMENT.—The Secretary, in consultation with the National Conference of State Historic Preservation Officers and the Advisory Council on Historic Preservation established under title II of the National Historic Preservation Act (16 U.S.C. 470i et seq.), shall develop a nationwide programmatic agreement governing the review of transportation enhancement activities funded from the allocation required by subsection (d)(2), in accordance with—

(i) section 106 of such Act (16 U.S.C. 470f); and

(ii) the regulations of the Advisory Council on Historic Preservation.

(f) ALLOCATION OF OBLIGATION AUTHORITY.—A State which is required to obligate in an urbanized area with an urbanized area population of over 200,000 under subsection (d) funds apportioned to it under section 104(b)(3) shall allocate during the 6-fiscal year period 1992 through 1997 an amount of obligation authority distributed to the State for Federal-aid highways and highway safety construction for use in such area determined by multiplying—

(1) the aggregate amount of funds which the State is required to obligate in such area under subsection (d) during such period; by

(2) the ratio of the aggregate amount of obligation authority distributed to the State for Federal-aid highways and highway safety construction during such period to the total sums apportioned to the State for Federal-aid highways and highway safety construction (excluding sums not subject to an obligation limitation) during such period.

§ 149. Congestion mitigation and air quality improvement program

(a) ESTABLISHMENT.—The Secretary shall establish a congestion mitigation and air quality improvement program in accordance with this section.

(b) ELIGIBLE PROJECTS.—Except as provided in subsection (c), a State may obligate funds apportioned to it under section 104(b)(2) for the congestion mitigation and air quality improvement program only for a transportation project or program if the project or pro-

gram is for an area in the State that was designated as a non-attainment area under section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)) during any part of fiscal year 1994 and—

(1) (A) if the Secretary, after consultation with the Administrator of the Environmental Protection Agency, determines, on the basis of information published by the Environmental Protection Agency pursuant to section 108(f)(1)(A) of the Clean Air Act (other than clauses (xii) and (xvi) of such section), that the project or program is likely to contribute to—

(i) the attainment of a national ambient air quality standard; or

(ii) the maintenance of a national ambient air quality standard in an area that was designated as a nonattainment area but that was later redesignated by the Administrator of the Environmental Protection Agency as an attainment area under section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)); or

(B) in any case in which such information is not available, if the Secretary, after such consultation, determines that the project or program is part of a program, method, or strategy described in such section;

(2) if the project or program is included in a State implementation plan that has been approved pursuant to the Clean Air Act and the project will have air quality benefits;

(3) the Secretary, after consultation with the Administrator of the Environmental Protection Agency, determines that the project or program is likely to contribute to the attainment of a national ambient air quality standard, whether through reductions in vehicle miles traveled, fuel consumption, or through other factors; **[or]**

(4) to establish or operate a traffic monitoring, management, and control facility or program if the Secretary, after consultation with the Administrator of the Environmental Protection Agency, determines that the facility or program is likely to contribute to the attainment of a national ambient air quality **[standard.]** standard; or

(5) if the project or program will have air quality benefits through construction of and operational improvements for intercity passenger rail facilities, operation of intercity passenger rail trains, and acquisition of rolling stock for intercity passenger rail service, except that not more than 50 percent of the amount received by a State for a fiscal year under this paragraph may be obligated for operating support.

No funds may be provided under this section for a project which will result in the construction of new capacity available to single occupant vehicles unless the project consists of a high occupancy vehicle facility available to single occupant vehicles only at other than peak travel times. In areas of a State which are nonattainment for ozone or carbon monoxide, or both, and for PM-10 resulting from transportation activities, the State may obligate such funds for any project or program under paragraph (1) or (2) without regard to any limitation of the Department of Transportation relating to the type of ambient air quality standard such project or program addresses.

(c) STATES WITHOUT A NONATTAINMENT AREA.—If a State does not have a nonattainment area for ozone or carbon monoxide under the Clean Air Act located within its borders, the State may use funds apportioned to it under section 104(b)(2) for any project eligible for assistance under the surface transportation program.

(d) APPLICABILITY OF PLANNING REQUIREMENTS.—Programming and expenditure of funds for projects under this section shall be consistent with the requirements of sections 134 and 135 of this title.

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TITLE 45—RAILROADS

§ 1111. Northeast Corridor cost dispute

[(a) DETERMINATION OF COSTING METHODOLOGY.—

[(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 205(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 402(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) EFFECTIVE DATE OF DETERMINATION OR AGREEMENT.—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) AGREEMENT SUBSEQUENT TO DETERMINATION.—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) FINALITY OF DETERMINATION.—Any determination by the Commission under this section shall be final and shall not be reviewable in any court.]

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TITLE 49—TRANSPORTATION

§ 24101. Findings, purpose, and goals

(a) FINDINGS.—

(1) Public convenience and necessity require that Amtrak, to the extent its budget allows, provide modern, cost-efficient, and energy-efficient intercity rail passenger transportation between crowded urban areas and in other areas of the United States.

(2) Rail passenger transportation can help alleviate overcrowding of airways and airports and on highways.

(3) A traveler in the United States should have the greatest possible choice of transportation most convenient to the needs of the traveler.

(4) A greater degree of cooperation is necessary among Amtrak, other rail carriers, State, regional, and local governments, the private sector, labor organizations, and suppliers of services and equipment to Amtrak to achieve a performance level sufficient to justify expending public money.

(5) Modern and efficient commuter rail passenger transportation is important to the viability and well-being of major urban areas and to the energy conservation and self-sufficiency goals of the United States.

(6) As a rail passenger transportation entity, Amtrak should be available to operate commuter rail passenger transportation through its subsidiary, Amtrak Commuter, under contract with commuter authorities that do not provide the transportation themselves as part of the governmental function of the State.

(7) The Northeast Corridor is a valuable resource of the United States used by intercity and commuter rail passenger transportation and freight transportation.

(8) Greater coordination between intercity and commuter rail passenger transportation is required.

(b) PURPOSE.—By using innovative operating and marketing concepts, Amtrak shall provide intercity and commuter rail passenger transportation that completely develops the potential of modern rail transportation to meet the intercity and commuter passenger transportation needs of the United States.

(c) GOALS.—Amtrak shall—

(1) use its best business judgment in acting to minimize United States Government subsidies, including—

(A) increasing fares;

(B) increasing revenue from the transportation of mail and express;

(C) reducing losses on food service;

(D) improving its contracts with operating rail carriers;

(E) reducing management costs; and

(F) increasing employee productivity;

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

(3) carry out strategies to achieve immediately maximum productivity and efficiency consistent with safe and efficient transportation;

(4) operate Amtrak trains, to the maximum extent feasible, to all station stops within 15 minutes of the time established in public timetables;

(5) develop transportation on rail corridors subsidized by States and private parties;

(6) implement schedules based on a systemwide average speed of at least 60 miles an hour that can be achieved with a degree of reliability and passenger comfort;

(7) encourage rail carriers to assist in improving intercity rail passenger transportation;

(8) improve generally the performance of Amtrak through comprehensive and systematic operational programs and employee incentives;

(9) carry out policies that ensure equitable access to the Northeast Corridor by intercity and commuter rail passenger transportation;

(12) coordinate the uses of the Northeast Corridor, particularly intercity and commuter rail passenger transportation; and

(13) maximize the use of its resources, including the most cost-effective use of employees, facilities, and real property.

(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. *Amtrak shall prepare a financial plan to operate within the funding levels authorized by section 24104 of this chapter, including budgetary goals for fiscal years 1998 through 2002. Commencing no later than the fiscal year following the fifth anniversary of the Amtrak Reform and Accountability Act of 1997, Amtrak shall operate without Federal operating grant funds appropriated for its benefit.*

§ 24102. Definitions

In this part—

(1) “auto-ferry transportation” means intercity rail passenger transportation—

(A) of automobiles or recreational vehicles and their occupants; and

(B) when space is available, of used unoccupied vehicles.

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

[(5) (4) “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】 (5) “intercity rail passenger transportation” means rail passenger transportation, except commuter rail passenger transportation.

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

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

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

【(10)】 (9) “regional transportation authority” means an entity established 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, high-

way 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.]

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

- (1) \$1,138,000,000 for fiscal year 1998;
- (2) \$1,058,000,000 for fiscal year 1999;
- (3) \$1,023,000,000 for fiscal year 2000;
- (4) \$989,000,000 for fiscal year 2001; and
- (5) \$955,000,000 for fiscal year 2002,

for the benefit of Amtrak for capital expenditures under chapters 243 and 247 of this title, operating expenses, and payments described in subsection (c)(1)(A) through (C). In fiscal years following the fifth anniversary of the enactment of the Amtrak Reform and Accountability Act of 1997 no funds authorized for Amtrak shall be used for operating expenses other than those prescribed for tax liabilities under section 3221 of the Internal Revenue Code of 1986 that are more than the amount needed for benefits of individuals who retire from Amtrak and for their beneficiaries.

(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 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.

(e) AVAILABILITY OF AMOUNTS AND EARLY APPROPRIATIONS.—

(1) Amounts appropriated under this section remain available until expended.

(2) Amounts for capital acquisitions and improvements may be appropriated in a fiscal year before the fiscal year in which the amounts will be obligated.

(f) LIMITATIONS ON USE.—Amounts appropriated under this section may not be used to subsidize operating losses of commuter rail passenger or rail freight transportation.

§ 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.

(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 when deciding

original jurisdiction of the district courts of the United States in a civil action.

[(c) APPLICATION OF SUBTITLE IV.—

[(1) 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) sections 10721–10724 of this title apply to Amtrak; and

[(B) on application of an adversely affected motor carrier, the Interstate Commerce Commission under any provision of subtitle IV of this title applicable to a carrier subject to subchapter I of chapter 105 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, 11502(a) and (d), 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.*

(d) APPLICATION OF SAFETY AND EMPLOYEE RELATIONS LAWS AND REGULATIONS.—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 common carrier subject to subchapter I of chapter 105 of this title apply to Amtrak.

(e) APPLICATION OF CERTAIN ADDITIONAL LAWS.—Section 552 of title 5, 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. *Section 552 of title 5, United States Code, applies to Amtrak for any fiscal year in which Amtrak receives a Federal subsidy.*

[(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.*

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

(h) NONAPPLICATION OF PAY PERIOD LAWS.—A State or local law related to pay periods or days for payment of employees does not apply to Amtrak. Except when otherwise provided under a collective bargaining agreement, an employee of Amtrak shall be paid at least as frequently as the employee was paid on October 1, 1979.

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

(j) NONAPPLICATION OF LAWS ON JOINT USE OR OPERATION OF FACILITIES AND EQUIPMENT.—Prohibitions of law applicable to an agreement for the joint use or operation of facilities and equipment necessary to provide quick and efficient rail passenger transportation do not apply to a person making an agreement with Amtrak to the extent necessary to allow the person to make and carry out obligations under the agreement.

(k) 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; 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.

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

(2) Amtrak 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 in providing rail passenger transportation, even if that use is indirect.

(l) EXEMPTION FROM TAXES LEVIED AFTER SEPTEMBER 30, 1981.—**[(1) Amtrak or a rail carrier subsidiary of Amtrak is]**

(1) IN GENERAL.—Amtrak, a rail carrier subsidiary of Amtrak, and any passenger or other customer of Amtrak or such subsidiary, are 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] tax, fee, head charge, or other charge, imposed or levied by a State, political subdivision, or local taxing authority, directly or indirectly on Amtrak, a rail carrier subsidiary of Amtrak, or on persons traveling in intercity rail passenger transportation or on mail or express transportation provided by Amtrak or such a subsidiary, 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.]

(2) *PHASE-IN OF EXEMPTION FOR CERTAIN EXISTING TAXES AND FEES.*—

(A) *YEARS BEFORE 2000.*—Notwithstanding paragraph (1), Amtrak is exempt from a tax or fee referred to in paragraph (1) that Amtrak was required to pay as of September 10, 1982, during calendar years 1997 through 1999, only to the extent specified in the following table:

PHASE-IN OF EXEMPTION

<i>Year of assessment</i>	<i>Percentage of exemption</i>
1997	40
1998	60
1999	80
2000 and later years	100

(B) *TAXES ASSESSED AFTER MARCH, 1999.*—Amtrak shall be exempt from any tax or fee referred to in subparagraph (A) that is assessed on or after April 1, 1999.

[(2) The] (3) *JURISDICTION OF UNITED STATES DISTRICT COURTS.*—The district courts of the United States have original jurisdiction over a civil action Amtrak brings to enforce this subsection and may grant equitable or declaratory relief requested by Amtrak.

(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 servicing facility. Subject to appropriations—

(A) the retrofit program shall be completed not later than October 15, [1996] 2001; and

(B) a car that does not provide for the discharge of human waste only at a servicing facility shall be removed from service after that date.

(2) Section 361 of the Public Health Service Act (42 U.S.C. 264) and other laws of the United States, States, and local governments do not apply to waste disposal from rail carrier vehicles operated in intercity rail passenger transportation. The district courts of the United States have original jurisdiction over a civil action Amtrak brings to enforce this paragraph and may grant equitable or declaratory relief requested by Amtrak.

(n) *RAIL TRANSPORTATION TREATED EQUALLY.*—When authorizing transportation in the continental United States for an officer, employee, or member of the uniformed services of a department, agency, or instrumentality of the government, the head of that department, agency, or instrumentality shall consider rail transportation (including transportation by extra-fare trains) the same as transportation by another authorized mode. The Administrator of General services shall include Amtrak in the contract air program of the Administrator in markets in which transportation provided by

Amtrak is competitive with other carriers on fares and total trip times.

§ 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]** 4 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.]

(i) one individual selected as a representative of rail labor in consultation with affected labor organizations.

(ii) one chief executive officer of a State, and one chief executive officer of a municipality, selected from among the chief executive officers of State and municipalities with an interest in rail transportation, each of whom 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.]

(D) 3 individuals appointed by the President of the United States, as follows:

(i) *one individual selected as a representative of a commuter authority, (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, in consultation with affected commuter authorities.*

(ii) *one individual with technical expertise in finance and accounting principles.*

(iii) *one individual selected as a representative of the general public.*

(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.]

(6) The Secretary may be represented at a meeting of the Board by his designate.

(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.

§ 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 not apply for any fiscal year for which no Federal assistance is provided to Amtrak.*

(c) CONFLICTS OF INTEREST.—When employed by Amtrak, an officer may not have financial or employment relationship with another 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.

§ 24305. General authority

(a) ACQUISITION AND OPERATION OF EQUIPMENT AND FACILITIES.—

(1) Amtrak may acquire, operate, maintain, and make contracts for the operation and maintenance of equipment and facilities necessary for intercity and commuter rail passenger transportation, the transportation of mail and express, and auto-ferry transportation.

(2) Amtrak shall operate and control directly, to the extent practicable, all aspects of the rail passenger transportation it provides.

(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 system wide 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.

(c) MISCELLANEOUS AUTHORITY.—Amtrak may—

(1) make and carry out appropriate agreements;

(2) transport mail and express and shall use all feasible methods to obtain the bulk mail business of the United States Postal Service;

(3) improve its reservation system and advertising;

(4) provide food and beverage services on its trains only if revenues from the services each year at least equal the cost of providing the services;

(5) conduct research, development, and demonstration programs related to the mission of Amtrak; and

(6) buy or lease rail rolling stock and develop and demonstrate improved rolling stock.

(d) THROUGH ROUTES AND JOINT FARES.—

(1) Establishing through routes and joint fares between Amtrak and other intercity rail passenger carriers and motor carriers of passengers is consistent with the public interest and the transportation policy of the United States. Congress encourages establishing those routes and fares.

(2) Amtrak may establish through routes and joint fares with any domestic or international motor carrier, air carrier, or water carrier.

(3) *Congress encourages Amtrak and motor common carriers of passengers to use the authority conferred in section 11342(a) of this title for the purpose of providing improved service to the public and economy of operation.*

(e) RAIL POLICE.—Amtrak may employ rail police to provide security for rail passengers and property of Amtrak. Rail police employed by Amtrak who have complied with a State law establishing requirements applicable to rail police or individuals employed in a similar position may be employed without regard to the law of another State containing those requirements.

(f) DOMESTIC BUYING PREFERENCES.—

(1) In this subsection, “United States” means the States, territories, and possessions of the United States and the District of Columbia.

(2) Amtrak shall buy only—

(A) unmanufactured articles, material, and supplies mined or produced in the United States; or

(B) manufactured articles, material, and supplies manufactured in the United States substantially from articles, material, and supplies mined, produced, or manufactured in the United States.

(3) Paragraph (2) of this subsection applies only when the cost of those articles, material, or supplies bought is at least \$1,000,000.

(4) On application of Amtrak, the Secretary of Transportation may exempt Amtrak from this subsection if the Secretary decides that—

- (A) for particular articles, material, or supplies—
 - (i) the requirements of paragraph (2) of this subsection are inconsistent with the public interest;
 - (ii) the cost of imposing those requirements is unreasonable; or
 - (iii) the articles, material, or supplies, or the articles, material, or supplies from which they are manufactured, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and are not of a satisfactory quality; or
- (B) rolling stock or power train equipment cannot be bought and delivered in the United States within a reasonable time.

§ 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.]

(b) AUTHORITY OF OTHERS TO PROVIDE AUTO-FERRY TRANSPORTATION.—*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 transpor-*

tation because a State or local law or regulation makes the transportation unlawful.

§ 24307. Special transportation

(a) REDUCED FARE PROGRAM.—Amtrak shall maintain a reduced fare program for the following:

- (1) individuals at least 65 years of age.
- (2) individuals (except alcoholics and drug abusers) who—
 - (A) have a physical or mental impairment that substantially limits a major life activity of the individual;
 - (B) have a record of an impairment; or
 - (C) are regarded as having an impairment.

[(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 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) In this subsection, “rail carrier employee” means—

- (A) an active full-time employee of a rail carrier or terminal company and includes an employee on furlough or leave of absence;
- (B) a retired employee of a rail carrier or terminal company; and
- (C) a dependent of an employee referred to in clause (A) or (B) of this paragraph.

(2) Amtrak shall ensure that a rail carrier employee eligible for free or reduced-rate rail transportation on April 30, 1971, under an agreement in effect on that date is eligible, to the greatest extent practicable, for free or reduced-rate intercity rail passenger transportation provided by Amtrak under this part, if space is available, on terms similar to those available on that date under the agreement. However, Amtrak may apply to all rail carrier employees eligible to receive free or reduced-rate transportation under any agreement a single system wide schedule of terms that Amtrak decides applied to a majority of employees on that date under all those agreements. Unless Amtrak and a rail carrier make a different agreement, the carrier shall reimburse Amtrak at the rate of 25 percent of the system wide average monthly yield of each revenue passenger-mile. The reimbursement is in place of costs Amtrak incurs related to free or reduced-rate transportation, including liability related to travel of a rail carrier employee eligible for free or reduced-rate transportation.

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

§ 24309. Retaining and maintaining facilities

(a) DEFINITIONS.—In this section—

(1) “facility” means a rail line, right of way, fixed equipment, facility, or real property related to a rail line, right of way, fixed equipment, or facility, including a signal system, passenger station and repair tracks, a station building, a platform, and a related facility, including a water, fuel, steam, electric, and air line.

(2) downgrading a facility means reducing a track classification as specified in the Federal Railroad Administration track safety standards or altering a facility so that the time required for rail passenger transportation to be provided over the route on which a facility is located may be increased.

(b) APPROVAL REQUIRED FOR DOWNGRADING OR DISPOSAL.—A facility of a rail carrier or regional transportation authority that Amtrak used to provide rail passenger transportation on February 1, 1979, or on *January 1, 1997*, may be downgraded or disposed of only after approval by the Secretary of Transportation under this section.

(c) NOTIFICATION AND ANALYSIS.—

(1) A rail carrier intending to downgrade or dispose of a facility Amtrak currently is not using to provide transportation shall notify Amtrak of its intention. If, not later than 60 days after Amtrak receives the notice, Amtrak and the carrier do not agree to retain or maintain the facility or to convey an interest in the facility to Amtrak, the carrier may apply to the Secretary for approval to downgrade or dispose of the facility.

(2) After a rail carrier notifies Amtrak of its intention to downgrade or dispose of a facility, Amtrak shall survey population centers with rail passenger transportation facilities to assist in preparing a valid and timely analysis of the need for the facility and shall update the survey as appropriate. Amtrak also shall maintain a system for collecting information gathered in the survey. The system shall collect the information based on geographic regions and on whether the facility would be part of a short haul or long haul route. The survey should facilitate an analysis of—

(A) ridership potential by ascertaining existing and changing travel patterns that would provide maximum efficient rail passenger transportation;

(B) the quality of transportation of competitors or likely competitors;

(C) the likelihood of Amtrak offering transportation at a competitive fare;

(D) opportunities to target advertising and fares to potential classes of riders;

(E) economic characteristics of rail passenger transportation related to the facility and the extent to which the characteristics are consistent with sound economic principles of short haul or long haul rail transportation; and

(F) the feasibility of applying effective internal cost controls to the facility and route served by the facility to improve the ratio of passenger revenue to transportation expenses (excluding maintenance of tracks, structures, and equipment and depreciation).

(d) APPROVAL OF APPLICATION AND PAYMENT OF AVOIDABLE COSTS.—

(1) If Amtrak does not object to an application not later than 30 days after it is submitted, the Secretary shall approve the application promptly.

(2) If Amtrak objects to an application, the Secretary shall decide by not later than 180 days after the objection those costs the rail carrier may avoid if it does not have to retain or maintain a facility in the condition Amtrak requests. If Amtrak does not agree by not later than 60 days after the decision to pay the carrier these avoidable costs, the Secretary shall approve the application. When deciding whether to pay a carrier the avoidable costs of retaining or maintaining a facility, Amtrak shall consider—

(A) the potential importance of restoring rail passenger transportation on the route on which the facility is located;

(B) the market potential of the route;

(C) the availability, adequacy, and energy efficiency of an alternate rail line or alternate mode of transportation to provide passenger transportation to or near the places that would be served by the route;

(D) the extent to which major population centers would be served by the route;

(E) the extent to which providing transportation over the route would encourage the expansion of an intercity rail passenger system in the United States; and

(F) the possibility of increased ridership on a rail line that connects with the route.

(e) COMPLIANCE WITH OTHER OBLIGATIONS.—Downgrading or disposing of a facility under this section does not relieve a rail carrier from complying with its other common carrier or legal obligations related to the facility.

§ 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.]

SUBTITLE V—RAIL PROGRAMS

PART C. PASSENGER TRANSPORTATION

CHAPTER 243. AMTRAK

§ 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 prevailing 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)] (b) 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.]

[§ 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 dem-

onstrated, 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 Energy and Commerce 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) 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) 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) COMPTROLLER GENERAL AUDITS.—The Comptroller General may conduct 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) 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) 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) 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.

(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.*

【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 subchapter I of chapter 105 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.—4 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, ef-

fective 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.).]

[§ 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.]

§ 24701. Operation of basic system

Amtrak shall provide intercity rail passenger transportation within the basic system. Amtrak shall strive to operate as a national rail passenger transportation system which provides access to all areas of the country and ties together existing and emergent regional rail passenger corridors and other intermodal passenger service.

§ 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 Energy and Commerce 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.]]

§ 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 avail-

able 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 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 as—

[(1) on a demonstration basis to establish the feasibility and benefits of the transportation; and

[(2) to the extent available resources allow.

[(d) ROUTES DISCONTINUED BY RAIL CARRIERS.—Amtrak may undertake to provide rail passenger transportation between places served by a rail carrier filing a notice of discontinuance under section 10908 or 10909 of this title.]

§ 24706. Discontinuance

(a) NOTICE OF DISCONTINUANCE.—

(1) Except as provided in subsection (b) of this section, at least [90 days] 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 of the discontinuance under section 24704 or [24707 (a) or (b) of this title] *paragraph (1)* 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] *paragraph (1)* 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 railcarrier 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.]

[§ 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

§ 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

[(B) New York, New York, and the District of Columbia, in not more than 2 hours and 40 minutes, including intermediate stops;

[(2) improve facilities, under route criteria approved by Congress, on routes to Harrisburg, Pennsylvania, Albany, New York, and Atlantic City, New Jersey, from the Northeast Corridor main line, and to Boston, Massachusetts, and New Haven, Connecticut, from Springfield, Massachusetts, to make those facilities more compatible with improved high-speed transportation provided on the Northeast Corridor main line;

[(3) improve nonoperational parts of stations, related facilities, and fencing used in intercity rail passenger transportation;

[(4) facilitate improvements in, and usage of, commuter rail passenger, rail rapid transit, and local public transportation, to the extent compatible with clauses (1)—(3) of this subsection and subsections (f) and (h) of this section;

[(5) maintain and improve rail freight transportation in or adjacent to the Northeast Corridor and through-freight transportation in the Northeast Corridor, to the extent compatible with clauses (1)-(4) of this subsection and subsections (f) and (h) of this section;

[(6) continue and improve passenger radio mobile telephone service on high-speed rail passenger transportation between Boston, Massachusetts, and the District of Columbia, to the extent compatible with clauses (1)—(3) of this subsection and subsections (f) and (h) of this section; and

[(7) eliminate to the maximum extent practicable congestion in rail freight and rail passenger transportation at the Baltimore and Potomac Tunnel in Baltimore, Maryland, by rehabilitating and improving the tunnel and the rail lines approaching the tunnel.]

[(b)] (a) **MANAGING COSTS AND REVENUES.**—Amtrak shall manage its operating costs, pricing policies, and other factors with the goal of having revenues derived each fiscal year from providing intercity rail passenger transportation over the Northeast Corridor route between the District of Columbia and Boston, Massachusetts, equal at least the operating costs of providing that transportation in that fiscal year.

[(c) **COST SHARING FOR NONOPERATIONAL FACILITIES.**—

[(1) Fifty percent of the cost of improvements under subsection (a)(3) of this section shall be paid by a State, local or regional transportation authority or other responsible party. However, Amtrak may finance entirely a safety-related improvement.

[(2) When a part of the cost of improvements under subsection (a)(3) of this section will be paid by a responsible party under paragraph (1) of this subsection, Amtrak may make an agreement with the party under which Amtrak—

[(A) shall carry out the improvements with amounts appropriated under section 24909 of this title and the party shall reimburse Amtrak; and

[(B) to the extent provided in an appropriation law, may incur obligations for contracts to carry out the improvements in anticipation of reimbursement.

[(3) Amounts reimbursed to Amtrak under paragraph (2) of this subsection shall be credited to the appropriation originally charged for the cost of the improvements and are available for further obligation.

[(d) **PASSENGER RADIO MOBILE TELEPHONE SERVICE.**—The President and departments, agencies, and instrumentalities of the United States Government shall assist Amtrak under subsection (a)(6) of this section, subject to the Communications act of 1934 (47 U.S.C. 151 et seq.) and radio services standards, when the Federal Communications Commission decides the assistance is in the public interest, convenience, and necessity.]

[(e)] (b) **PRIORITIES IN SELECTING AND SCHEDULING PROJECTS.**—When selecting and scheduling specific projects, Amtrak shall apply the following considerations, in the following order of priority:

(1) Safety-related items should be completed before other items because the safety of the passengers and users of the Northeast Corridor is paramount.

(2) Activities that benefit the greatest number of passengers should be completed before activities involving fewer passengers.

(3) Reliability of intercity rail passenger transportation must be emphasized.

(4) Trip-time requirements of this section must be achieved to the extent compatible with the priorities referred to in paragraphs (1)—(3) of this subsection.

(5) Improvements that will pay for the investment by achieving lower operating or maintenance costs should be carried out before other improvements.

(6) Construction operations should be scheduled so that the fewest possible passengers are inconvenienced, transportation is maintained, and the on-time performance of Northeast Corridor commuter rail passenger and rail freight transportation is optimized.

(7) Planning should focus on completing activities that will provide immediate benefits to users of the Northeast Corridor.

[(f)] (c) COMPATIBILITY WITH FUTURE IMPROVEMENTS AND PRODUCTION OF MAXIMUM LABOR BENEFITS.—Improvements under this section shall be compatible with future improvements in transportation and shall produce the maximum labor benefit from hiring individuals presently unemployed.

[(g)] (d) AUTOMATIC TRAIN CONTROL SYSTEMS.—A train operating on the Northeast Corridor main line or between the main line and Atlantic City shall be equipped with an automatic train control system designed to slow or stop the train in response to an external signal.

[(h)] (e) HIGH-SPEED TRANSPORTATION.—If practicable, Amtrak shall establish intercity rail passenger transportation in the Northeast Corridor that carries out section 703(1)(E) of the Railroad Revitalization and Regulatory Reform Act of 1976 (Public Law 94–210, 90 Stat. 121).

[(i)] (f) EQUIPMENT DEVELOPMENT.—Amtrak shall develop economical and reliable equipment compatible with track, operating, and marketing characteristics of the Northeast Corridor, including the capability to meet reliable trip times under section 703(1)(E) of the Railroad Revitalization and Regulatory Reform Act of 1976 (Public Law 94–210, 90 Stat. 121) in regularly scheduled revenue transportation in the Corridor, when the Northeast Corridor improvement program is completed. Amtrak must decide that equipment complies with this subsection before buying equipment with financial assistance of the Government. Amtrak shall submit a request for an authorization of appropriations for production of the equipment.

[(j)] (g) 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 for approval of the agreement and all related agreements accompanying the application as soon as the agreement is made. If the Commission finds that approval is necessary to carry out this chapter, the Commission 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. Not later than 90 days after the application, the Commission 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 is binding on the other parties.

[(k)] *(h)* COORDINATION.—

(1) The Secretary of Transportation shall coordinate—

(A) transportation programs related to the Northeast Corridor to ensure that the programs are integrated and consistent with the Northeast Corridor improvement program; and

(B) amounts from departments, agencies, and instrumentalities of the Government to achieve urban redevelopment and revitalization in the vicinity of urban rail stations in the Northeast Corridor served by intercity and commuter rail passenger transportation.

(2) If the Secretary finds significant noncompliance with this section, the Secretary may deny financing to a noncomplying program until the noncompliance is corrected.

[(l)] *(i)* COMPLETION.—Amtrak shall give the highest priority to completing the program.

[(m)] *(j)* APPLICABLE PROCEDURES.—No State or local building, zoning, subdivision, or similar or related law, nor any other State or local law from which a project would be exempt if undertaken by the Federal Government or an agency thereof within a Federal enclave wherein Federal jurisdiction is exclusive, including without limitation with respect to all such laws referenced herein above requirements for permits, actions, approvals or filings, shall apply in connection with the construction, ownership, use, operation, financing, leasing, conveying, mortgaging or enforcing a mortgage of (i) any improvement undertaken by or for the benefit of Amtrak as part of, or in furtherance of, the Northeast Corridor Improvement Project (including without limitation maintenance, service, inspection or similar facilities acquired, constructed or used for high speed trainsets) or chapter 241, 243, or 247 of this title, or (ii) any land (and right, title or interest created with respect thereto) on which such improvement is located and adjoining, surrounding or any related land. These exemptions shall remain in effect and be applicable with respect to such land and improvements for the benefit of any mortgagee before, upon and after coming into possession of such improvements or land, any third party purchasers thereof in foreclosure (or through a deed in lieu of foreclosure), and their respective successors and assigns, in each case to the extent the land or improvements are used, or held for use, for railroad purposes or purposes accessory thereto. This subsection (m) shall not apply to any improvement or related land unless Amtrak receives a Federal operating subsidy in the fiscal year in which Amtrak commits to or initiates such improvement.

[§ 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 Energy and Commerce 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.]

CHAPTER 249. NORTHEAST CORRIDOR IMPROVEMENT PROGRAM

§ 24904. General authority

(a) GENERAL.—To carry out this chapter and the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.), Amtrak may—

(1) acquire, maintain, and dispose of any interest in property used to provide improved high-speed rail transportation under section 24902 of this title;

(2) acquire, by condemnation or otherwise, any interest in real property that Amtrak considers necessary to carry out the goals of section 24902;

(3) provide for rail freight, intercity rail passenger, and commuter rail passenger transportation over property acquired under this section;

(4) improve rail rights of way between Boston, Massachusetts, and the District of Columbia (including the route through Springfield, Massachusetts, and routes to Harrisburg, Pennsylvania, and Albany, New York, from the Northeast Corridor main line) to achieve the goals of section 24902 of providing improved high-speed rail passenger transportation between Boston, Massachusetts, and the District of Columbia, and intermediate intercity markets;

(5) acquire, build, improve, and install passenger stations, communications and electric power facilities and equipment, public and private highway and pedestrian crossings, and other facilities and equipment necessary to provide improved high-speed rail passenger transportation over rights of way improved under clause (4) of this subsection;

(6) make agreements with other carriers and commuter authorities to grant, acquire, or make arrangements for rail freight or commuter rail passenger transportation over, rights of way and 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.);

(7) appoint a general manager of the Northeast Corridor improvement program; and

(8) make agreements with telecommunications common carriers, subject to the Communications Act of 1934 (47 U.S.C. 151 et seq.), to continue existing, and establish new and improved, passenger radio mobile telephone service in [the high-speed rail passenger transportation area specified in section 24902(a)(1) and (2)] *a high-speed rail passenger transportation area*.

(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) COMPENSATION FOR TRANSPORTATION OVER CERTAIN RIGHTS OF WAY AND FACILITIES.—

(1) An agreement under subsection (a)(6) of this section 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 do not agree, the Interstate Commerce Commission 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 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 makes a decision under this subsection.

CHAPTER 281—LAW ENFORCEMENT

§28103. Limitations on rail passenger transportation liability

(a) *IN GENERAL.*—Notwithstanding any other statutory or common law or public policy, or the nature of the conduct giving rise to damages or liability, a contract between Amtrak and its passengers, or private railroad car operators and their passengers regarding claims 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 operations over or use of right-of-way or facilities owned, leased, or maintained by Amtrak, 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, or any rail carrier shall be enforceable if—

(1) punitive or exemplary damages, where permitted, are not limited to less than 2 times compensatory damages awarded to any claimant by any State or Federal court or administrative agency, or in any arbitration proceeding, or in any other forum or \$250,000, whichever is greater;

(2) passengers are provided adequate notice of any such contractual limitation or waiver or choice of forum; and

(3) passengers are given an opportunity to purchase supplemental insurance coverage when a ticket is purchased or at point of departure.

(b) *CLAIM DEFINED.*—For purposes of this section, the term “claim” means a claim made directly or indirectly—

(1) against Amtrak, any high-speed railroad authority or operator, any commuter authority or operator, or any rail carrier or private rail car operators; or

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

(c) *SPECIAL RULE.*—Notwithstanding subsection (a)(1), if, in any case in which 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, a claimant may recover in a claim limited by this section for actual or compensatory damages measured by the pecuniary injuries, resulting from such death, to the persons for whose benefit the action was brought, subject to the provisions of subsection (a).

