

107th Congress }  
2d Session }

SENATE

{ REPORT  
{ 107-157

**NATIONAL DEFENSE RAIL ACT**

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R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND  
TRANSPORTATION

ON

S. 1991



MAY 29, 2002.—Ordered to be printed  
Filed, under authority of the order of the Senate of May 22, 2002

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

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

### REPORT

together with

### MINORITY VIEWS

[To accompany S. 1991]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1991) “A Bill to establish a national rail passenger transportation system, reauthorize Amtrak, improve security and service on Amtrak, and for other purposes”, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill (as amended) do pass.

#### PURPOSE OF THE BILL

The purposes of this bill are to authorize funds for development of rail passenger infrastructure; authorize funds for rail passenger security; authorize capital and operating funds for intercity rail passenger service expenses; mandate reforms to accounting, reporting, and business decision-making practices of the National Passenger Railroad Corporation (NPRC); repeal the requirement that Amtrak achieve operational self-sufficiency; expand the Railroad Rehabilitation and Improvement Financing (RRIF) program.

#### BACKGROUND AND NEEDS

Transportation needs in the United States have changed significantly in the 172 years since the first scheduled passenger train, the “Best Friend of Charleston”, carried 141 people six miles on its initial run in 1830. Since the advent of rail passenger service, de-

mand for rail passenger service has ebbed and flowed, as our nation has experienced industrial growth, economic depression, and war. During the past 30 years, problems with congestion, urban sprawl, and environmental issues have required focused attention on a balanced system of transportation in the United States, with priorities on security, mobility, safety, economic, and transportation effects. Considering these issues with respect to our future needs, high-speed rail passenger service is increasingly identified as an effective transportation solution in some of our Nation's most well-traveled intercity corridors. A September 1997 Report to Congress titled "High-Speed Ground Transportation for America" by the Federal Railroad Administration explains in detail this potential.

The Federal government has historically taken a leadership role in developing and implementing sound policies which respond to the changing transportation demands of the country. The Federal role in developing our national highway system began in 1938 with the Roosevelt Federal Aid Highway Act, which mandated the first studies for the construction of a limited access national highway network. In 1956, the Federal Aid Highway Act ("1956 Act") created the blueprint for the Interstate Highway System as we know it today. This landmark legislation built upon existing paved roads to establish a 44,000-mile interconnected highway network, and provided \$25 billion for construction for fiscal years 1957 to 1969. The Federal share of project costs was set at 90 percent. The 1956 Act permitted the use of Federal funds to advance acquisition of rights-of-way and prohibited apportionment of funds to States that permitted excessively large vehicles. This legislation also applied provisions of the Davis-Bacon Act to Interstate construction projects, which had been enacted in the 1930's to require that Federal construction projects pay no less than prevailing wage rates. Title II of the 1956 Act contained the 1956 Highway Revenue Act, which increased the Federal tax on gasoline from 2 to 3 cents per gallon and imposed a series of other highway user tax charges to help fund construction of the Interstate Highway System. User fee receipts were placed in a new Highway Trust Fund to be credited to the highway program. In FY 2000, the Federal government spent \$29.687 billion on highways from this Fund.

Similarly, the Federal government took a lead role in developing our commercial aviation system through a variety of actions, from subsidizing air carriers through postal rates, building, maintaining, and operating our air traffic control system, and funding airport development. From the early stages of the commercial aviation industry, the Federal government provided funding for airport infrastructure. Beginning in 1946, the Federal Airport Act established the Federal-aid airport program, the first peacetime program aimed exclusively at promoting development of United States civil airports. Subsequent airport grant programs, such as the Airport Development Aid Program and the Airport Improvement Program, significantly increased the level of funding provided for infrastructure via a dedicated source of funding, the Airport and Airway Trust Fund. This trust fund receives revenues from aviation user taxes on such items as airline fares, air freight, and aviation fuel. Funds are provided not only for airport planning, runway, and taxiway construction, but also for aircraft rescue and fire fighting equipment and security equipment required by regulation.

The present network of airports throughout the country would not have been possible without Federal aid. In fiscal year (FY) 2001, outlays totaling almost \$10 billion were made from the Airport and Airway Trust Fund for programs benefiting commercial aviation. Not only do airports such as Los Angeles International, Atlanta-Hartsfield and Chicago-O'Hare receive funds to continue improvements, but many small general aviation airports owe their existence to these grant programs. Without Federal funds, many airports could not afford today's high cost of construction and equipment. In addition, the Federal government is responsible for providing all air traffic control services—including equipment and personnel. The Federal Aviation Administration's (FAA's) Air Traffic Services organization provides a key safety and efficiency role in managing our air traffic control system 24 hours a day. The President's Budget proposal for FY 2003 requests over \$6 billion to provide this vital service. Authorizations for air traffic control are included in the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (Public Law 106-181), which authorized \$40 billion for aviation programs over FYs 2001-2003. Finally, in the aftermath of the September 11th attacks, the United States took over primary responsibility for security in the nation's airports. On November 19, 2001, the Aviation Security Act (Public Law 107-71) was signed into law creating a new security administration within the United States Department of Transportation (DOT) with an estimated 70,000 new Federal employees at a cost of \$6.8 billion in FY 2002 alone, including 50,000 airport security personnel.

The Federal government has also provided significant subsidies to support public transit, including local bus, commuter rail, light rail, and trolley bus transportation. Since 1970, the Federal Transit Administration (FTA) has received \$106 billion in Federal funding. Transit ridership has risen dramatically in recent years, rising to 9.5 billion commuter trips in calendar year 2001. A recent report by the United States General Accounting Office (GAO) stated that "Although the level of New Starts funding is higher than it has ever been, the demand for these resources is also extremely high. TEA-21 identified over 190 projects nationwide as eligible to compete for New Starts funding." (Report #GAO-02-0603)

In effect, Federal transportation policies have promoted the development of highways, aviation, and transit systems, while significantly less attention has been paid to the development of our rail passenger system. Since 1971, the Federal government has spent over \$400 billion of taxpayer funds on the highway system, over \$170 billion on our aviation system, \$106 billion on transit, yet, in spite of its critical importance to our nation's transportation, only \$25 billion on rail passenger service. Notably, however, congestion, security, and environmental quality issues and the current imbalance in our national transportation system have given rise to a reevaluation of Federal transportation spending policies. Congestion-related economic losses continue to cause loss of productivity. The costs of highway congestion include delay, increased travel time, increased fuel consumption, increased vehicle emissions and reduced air quality, increased cost of goods transported resulting in increased costs to the consumer, and increased aggravation to drivers. The Federal Highway Administration reported on May 21,

2002, that increased traffic congestion is a growing threat to the nation's economy and to the quality of life of all Americans: "Congestion and bottlenecks damage air quality, slow commerce, increase energy consumption and threaten our quality of life. They waste significant time and money, and they reduce productivity." States like the Commonwealth of Virginia have congestion problems "growing by the hour, particularly in the major corridors within and between our urban centers," as was noted by Whittington W. Clement, Secretary of Transportation, Commonwealth of Virginia, in written testimony submitted for the Record for the United States Committee on Commerce, Science, and Transportation hearing on S. 1991, the National Defense Rail Act, held on March 14, 2002 (Clement). A report by the Texas Transportation Institute states that in 1991, the total cost of congestion for 50 urban areas studied was approximately \$42.3 billion, with delay accounting for approximately 89 percent of this amount, and excess fuel consumption for the remainder. The President's FY 2003 budget proposal points out that the nationwide cost of wasted time and extra fuel consumption in 1999 was estimated to be \$78 billion.

While strong Federal leadership and funding were essential to the development of the interstate highway system, our nation's aviation system, and public transit, intercity rail passenger service has lacked this same level of Federal initiative. By 1971, the railroad industry had lost billions of dollars providing passenger service as part of their common carrier obligation. To relieve the private rail system of the financial burdens of providing passenger service, Congress created the National Railroad Passenger Corporation (NRPC), or Amtrak, in 1971. The fact is, however, the investment of \$25 billion since 1971 has not been sufficient to build an effective national rail passenger system; in fact, with the exception of high-speed service in the Northeast and a small number of corridor services developed in conjunction with the States, the system today is virtually the same as it was 30 years ago. Since the inception of Amtrak, the Federal government has not taken an active approach to growing our national rail passenger system. In the end, in order to obtain the potential benefits associated with rail passenger service, substantial Federal involvement in the development of rail passenger infrastructure is imperative, similar to Federal investment policy in the other modes of transportation.

#### SECURITY FUNDING

The events of September 11, 2001, require a fundamental re-evaluation of the vulnerabilities inherent in our transportation system, consistent with the heightened sense of risk. On October 11, 2001, the Senate approved S. 1447, the Aviation Security Act (Public Law 107-71) which addressed airline and airport security. On December 20, 2001, the Senate unanimously approved S. 1214, which addressed seaport security. The legislation is currently awaiting House action. On October 17, 2001, the Commerce Committee reported, without amendment, S. 1550, the Rail Security Act of 2001. The legislation was the result of bipartisan negotiations with input from Amtrak and the Administration addressing the immediate safety and security needs of Amtrak. Title I of S. 1991 substantially incorporates the text of S. 1550 with additional provisions to specifically authorize funding for security expenditures, on

a line item basis. It also includes additional provisions, including a pilot program requiring random screening of passengers and baggage at some of Amtrak's largest stations, an assessment by the Secretary of Transportation of the safety and security of stations served by Amtrak, a DOT study of the safety and security of blocked grade crossings, and a GAO study of rail passenger security measures in other countries.

#### HIGH-SPEED PASSENGER RAIL SERVICE

High-speed rail passenger service has proven effective in other developed countries, including Japan, France, and Germany. Historically, these countries developed their highly-efficient rail passenger systems as national systems. High-speed train service in each of these countries supplements conventional rail passenger service, and for the most part, connects major cities in corridor-style service. Maximum train speeds range from 155 miles per hour (mph) on Germany's Intercity Express (ICE) train to 186 mph for the Shinkansen line in Japan and the trains à grande vitesse (TGV) in France.

In the United States, the Northeast Corridor (NEC) is the only developed high-speed rail corridor; high-speed trains provide service at speeds of up to 150 mph between Washington, DC, and Boston, MA, carrying 36,400 passengers daily. The NEC is unique for several reasons. First, most of the approximately 440 route miles are owned by Amtrak, allowing it to operate a vertically-integrated railroad along this corridor. Second, the corridor connects seven major eastern United States cities with a combined population of 23.9 million along a mostly linear route. Third, this corridor was developed through strong federal leadership, and showcases the types of benefits which can be realized through development of high-speed rail. Currently, more travelers take the train on the NEC segment between New York City, NY, and Washington, DC, than those who travel by air.

Other corridors throughout the country seek to attain the benefits of high-speed rail passenger service, including areas such as the Midwest, California, and Florida, but many of these corridors lack the funding to see these infrastructure projects to completion. These high-speed corridor projects are now being planned and developed by the States, both individually and in partnership with one another. The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) directed FRA to designate 5 rail corridors where train speeds will reach at least 90 miles per hour for the purposes of eliminating grade crossings along the routes. In 1997, the Transportation Equity Act for the 21st Century (TEA-21) directed FRA to designate 3 additional corridors and also statutorily designated a Gulf Coast route, a Keystone route, and an Empire State route.

At the State level, highways and airports have enjoyed decades of public support, which proponents of high-speed rail are now pursuing. Although still atypical, State investment in rail passenger service is increasing as State and regional transportation officials look for solutions to regional transportation problems. In fact, over the past 5 years, States have spent over \$1.2 billion on improving intercity passenger rail. Many of these improvements are incremental in nature and may lead to eventual high-speed service. In addition, many States, including California, Oregon, Washington,

North Carolina, New York, Michigan, Illinois, and Virginia, are now working with Amtrak to provide operating support for increased levels of service on corridors that primarily benefit travelers within their respective States. Amtrak's Cascades service in the Pacific Northwest, which is operated under contract by Amtrak for the States of Washington and Oregon, has been so successful that the States are planning to add six additional train sets to increase the frequency of service. California spent an estimated \$63 million in FY 2001 on increased service on three trains operated through contracts with Amtrak: the Capitol Corridor, the Pacific Surfliner and the San Joaquins. According to the FRA, the State of California has spent \$866.8 million over the last five years, excluding matching funds from Amtrak, the Federal government and freight railroads, for capital improvements for improved rail passenger service.

The California High-Speed Rail Authority recently completed a screening report for implementation of a statewide high-speed train system which will determine the scope of a formal environmental impact statement. On January 10, 2002, California Governor Gray Davis proposed \$8.46 million for the 2002-3 FY for the Authority, which, if approved by the legislature, would make it possible for the Authority to prepare a draft program environmental impact statement by June 30, 2003.

The Midwest Regional Rail Initiative proposes high-speed rail passenger service linking major and medium-sized cities in the States of Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Nebraska, Ohio, and Wisconsin, using Chicago, IL, as a central hub. According to studies performed for the Midwest Regional Rail Initiative, this service would be financially viable, affordable, convenient, comfortable, and more environmentally friendly than car or plane travel. It proposes using new passenger equipment on upgraded existing track at speeds of up to 110 mph to effectively cut train travel times between the major Midwestern cities to make travel between downtown business centers both time- and cost-competitive with air travel on a door-to-door basis. Furthermore, estimated travel time on high-speed rail in the Midwest professes to be competitive with all current modes of available transportation.

On November 7, 2000, the Florida voters approved a new amendment to the Florida Constitution directing the State Legislature, Governor and Cabinet to proceed with the development of a high-speed ground transportation system in Florida. This system is required to use effective and efficient technologies capable of operating at speeds in excess of 120 miles per hour and must consist of dedicated rails or guideways separated from motor vehicular traffic. This amendment also dictates that the system must ultimately link the five largest urban areas of the State and that construction must begin by November 1, 2003.

The Florida Legislature, at the 2001 regular legislative session, enacted the Florida High Speed Rail Authority Act, which created a nine-member High Speed Rail Authority charged with planning, administering and managing the preliminary engineering and environmental assessment of the intrastate high-speed rail system. It also required that the first segment of the system be developed and operated between St. Petersburg, Tampa and Orlando with future

service to Miami. The legislation provided an appropriation of \$4.5 million to the Authority for the purpose of performing its duties under the Act. On June 1, 2001, Florida Governor Jeb Bush signed this legislation into law.

The Florida High Speed Rail Authority is currently evaluating several options for high-speed rail passenger service, not all of which would involve Amtrak as a carrier. This approach allows the State to let the "market" decide what technologies and service concepts best suit its own needs. The Authority will receive proposals from different consortia which may offer different solutions: one might be maglev, another might be new high-speed rail on completely separated right-of-way with no Amtrak involvement, and a third might be operated by Amtrak over existing freight railroad right-of-way. It is important to note that although service offered through Amtrak on the existing freight right-of-way might be cheaper, the return on investment might be lower. This result would be brought about because the patronage (particularly from Miami to Orlando) would be lower since the expected trip times would not be competitive with air travel. The initial studies for this project appeared to indicate that 150 mph diesel-electric technology might have the best return on investment. At this speed, electrification expenses would be avoided, but trip times would be almost as good as 180 mph top speed, which could be achieved through electrification. However, at 150 mph, operation over the same tracks as freight trains is problematic. Thus, under this scenario, the advantage of gaining access to the freight right-of-way through Amtrak's statutory right of access may be of some value, but would not be dispositive.

In general, high-speed rail passenger service promises many potential benefits, including mobility, safety, security, convenience, environmental, and economic benefits. According to the DOT, the development of high-speed rail passenger service would mean reduced congestion for other modes of transportation, leading to a more balanced system of transportation. For example, high-speed rail passenger service is expected to reduce reliance on highway and air travel, relieving congestion on these important modes of transportation and allowing them to function more efficiently. The development of intercity rail passenger service would not only benefit corridors linking major cities by reducing highway and air traffic, but it could also potentially benefit those larger cities linked by corridors through the reduction of commuter traffic. According to submitted written testimony (Clement), as part of the Virginia Transportation Act of 2000, the Virginia General Assembly authorized \$65 million for improvements to the rail infrastructure between Richmond, VA, and Washington, DC; the development of an extended NEC through Richmond, VA, could alleviate heavy volumes of commuter traffic from destinations along the I-95 corridor in Northern Virginia (Clement).

High-speed rail passenger service could mean increased mobility for a large number of travelers. Passenger rail also provides a viable alternative to other modes, making them more competitive and creating choices for passengers. In short-distance corridors, high-speed trains have the potential to deliver passengers downtown-to-downtown almost as fast as airplanes at a fraction of the ticket price, and can do so in virtually all weather. For example, the Mid-

west Rapid Rail Initiative has forecast maximum revenues when fares are set at approximately  $\frac{2}{3}$  the price of airline fares for equivalent routes. Ultimately, the use of high-speed rail service may result in the added benefit of relieving congestion at crowded airports, thereby freeing up slots for longer distance flights. High-speed trains are reliable, and on-time performance, though affected by freight railroad operations when operating on mixed-use track, is generally good. This year, Amtrak trains on the NEC have been on-time 88.3 percent of the time.

High-speed passenger trains world-wide have excellent safety records. Many foreign countries operating high-speed rail systems realize safety benefits associated with operations on dedicated passenger right-of-way and advanced train control systems. In the United States, positive train control, which uses advanced train control technology, has been on the National Transportation Safety Board's "Most Wanted" Safety Improvements List in one form or another since 1990. According to Railway Safety, a British rail safety group, British and European Union transport safety statistics show that rail travel in the United Kingdom (both conventional and high-speed) is 9 times safer than car travel, and 2.5 times safer than air travel. In the United States, high-speed trains have an excellent safety record. On the NEC, the only corridor in the country where sustained train speeds reach 90 mph or above, Acela trains have not had any accidents, passenger injuries, or passenger fatalities, since the inception of service in December 2000. Metroliner train service on the NEC has resulted in only two passenger fatalities since Amtrak's inception in 1970.

The national security of the United States can benefit in at least two ways from an effective rail passenger system. First, the tragic events of September 11, 2001, highlighted the need for a more balanced system of transportation, one which provides options to travelers and makes efficient use of infrastructure. Second, not only could a sound rail passenger system provide travelers a viable alternative to highway and air travel, but rail passenger system development could have the added benefits of fostering a more fuel-efficient transportation system, thereby potentially reducing our nation's dependence on foreign oil. The United States Department of Energy states in its report "Annual Energy Outlook 2002" that in 2000 the transportation sector accounted for fully  $\frac{2}{3}$  of total United States petroleum demand, compared to about 50 percent before 1973. In addition, projected future increases in total consumption are due mostly to increases in demand in the transportation sector. According to initial analyses by the Midwest Regional Rail Initiative, high-speed rail would reduce energy consumption along the Chicago-St. Louis corridor by 8 percent per year, the equivalent of 6.5 million gallons of diesel fuel annually. In the Northeast, most of the NEC is electrified, meaning no diesel fuel is consumed for train travel through those electrified areas.

High-speed passenger trains can also provide more convenience and comfort to passengers than other modes of transportation, making rail travel a productive alternative to travel by car or airplane. For example, Acela trains operating on the NEC have coach-class seats wider than most airplanes, electrical outlets for laptop computers, and food service. On the same route from Washington, DC, to New York, NY, an airline passenger may be subjected to

more stringent security measures, including remaining in his or her seat throughout the entire flight. In an automobile, the traveler would now likely be operating the vehicle, unable to utilize the approximately four hours spent on the road for sleep, rest or work activities.

Cities facing environmental and air quality problems are increasingly recognizing the environmental benefits associated with rail passenger service. Federal law defines a "nonattainment area" as a locality where air pollution levels persistently exceed National Ambient Air Quality Standards (see Clean Air Act and Amendments of 1990). Designating an area as a nonattainment area requires a formal rulemaking process, and EPA normally take this action only after air quality standards have been exceeded for several consecutive years. Currently, Los Angeles, CA, Phoenix, AZ, Chicago, IL, Atlanta, GA, and 166 other areas in the country (in 260 counties) are designated as nonattainment areas. Under revised EPA standards not yet implemented, 329 counties would be designated as nonattainment areas. Once cities or counties are classified as "nonattainment" areas, States in which they are located are restricted in their ability to use Federal highway funds for additional road construction projects. In this case, the State must show how the proposed highway projects would result in decreased congestion or improved air quality. As such, these States are being forced to look for other solutions to satisfy increased demand for transportation infrastructure. According to the Environmental Law and Policy Center, a single railroad track can carry as many passengers as a ten-lane highway at a fraction of the cost. Recognizing this potential, many areas of the United States are now considering rail passenger options to satisfy environmental restrictions on further highway building.

Many potential economic benefits are associated with development of rail passenger service. For instance, this development will most certainly create new jobs for the construction and operation of new passenger train service. It will also revive the ailing \$25 billion, 150,000-employee domestic rail supply industry. This development can also have secondary effects, such as spurring economic growth. Many cities throughout the nation are increasingly looking to revitalize their urban centers. Train stations with increased passenger traffic provide incentive for commercial redevelopment and promote substantial new development in surrounding areas similar to Union Station in Washington, DC, making railroad properties attractive sites. Furthermore, new or increased rail passenger service may reduce the need for the expansion of or construction of new outlying highways and airports, which often exacerbate sprawl.

The costs associated with development of high-speed rail service may vary, but can be competitive with construction costs for highways. The FRA noted in its September 1997 report, "High Speed Ground Transportation for America," that the development costs for high-speed rail vary with the type of technology implemented and the physical location of the corridor. The report notes that while high-speed corridors providing passenger service at 90 mph could be developed for costs as little as \$1 million per route-mile, technology using magnetic levitation technology, or "maglev," can cost between \$20 million and \$50 million per route-mile. The report further notes that the cost of developing advanced steel-

wheel-on-rail high-speed rail passenger service on completely new rights-of-way could be as low as \$10 million per route mile, which can be competitive with highway construction costs.

Developing high-speed rail corridors is a long-term initiative that will require significant financial commitments. GAO has noted that the ultimate cost of developing the high-speed rail corridors is unknown, but certainly in the many tens of billions of dollars (Report #GAO-01-480T). The total costs to develop a national passenger railroad system incorporating high-speed service cannot be readily determined without making critical decisions on technology, routing, and intended service levels at individual corridors.

Currently, corridor projects around the country are in different stages of planning and development. California has announced plans for a 20-year, \$10 billion program. The Midwest Regional Rail Initiative has completed detailed project studies and estimates the cost of infrastructure and equipment for the midwest high-speed corridor at approximately \$4 billion. Florida is considering several different high-speed technologies, with an estimated cost of between \$5.5 for conventional high-speed service and \$24 billion for maglev. Virginia and North Carolina have identified a \$1.2 billion program that would reduce travel time between Washington, Richmond, Raleigh, and Charlotte. The high-speed rail initiative in the Pacific Northwest Corridor is estimated to cost \$2 billion. And Amtrak has estimated that a total of about \$20 billion is needed over the next 20 years to meet capital needs on the Northeast Corridor.

In sum, the technology is now available to incrementally address regional transportation needs through rail passenger development and to capture some of the numerous benefits of high-speed rail service in the United States. While a number of States have, on their own initiative, already undertaken planning for high-speed rail projects and are ready to begin construction, others are looking to the Federal government to provide leadership in developing the infrastructure. Today, States are constrained in their decision-making regarding rail service due to what some members of the Committee believe is a bias in current Federal transportation policy, which provides a proportionally large share of Federal funding for highway, transit, and aviation projects, but does not provide a similar incentive for States pursuing the development of rail passenger infrastructure. The Federal government must reevaluate its current priorities and establish new policy with respect to transportation infrastructure development for this believed bias against rail passenger service to be eliminated.

#### AMTRAK

Amtrak was created in 1970 to ensure the continuation of intercity rail passenger service as a component of the national transportation system. In addition, as a result of railroad bankruptcies and consolidation in the 1970's, Amtrak was given title to and responsibility for the NEC, which has since been significantly improved. In exchange for relieving the railroads of their obligation to carry passengers, Amtrak inherited some passenger cars and equipment and was granted statutory access to the freight railroads' tracks on an incremental cost basis and with operating priority. Amtrak now owns 730 route miles of track (mostly on the NEC), which is about 3 percent of its nationwide network. The other 22,000 route miles

of track over which Amtrak conducts operations are owned by the major freight rail carriers.

In FY 2001, Amtrak employed almost 25,000 people and served 23.5 million passengers at over 500 stations in 46 States. The States not served by Amtrak are Alaska, Hawaii, South Dakota and Wyoming, although Wyoming is served by Amtrak Thruway Motorcoaches. In addition, Amtrak is the nation's largest provider of contract-commuter service for State and regional authorities and serves an additional 61.1 million commuter passengers.

Amtrak's operations are split into 5 business units: (1) Northeast Corridor service; (2) Amtrak West Business Unit; (3) Intercity Business Unit; (4) Mail and Express Unit; and (5) Corporate and Service Center Business Unit. The Northeast Corridor group manages operations in the NEC as well as the NEC infrastructure. Amtrak offers high-speed service on its Acela trains, which can operate at speeds of up to 150 mph. These trains currently operate from Washington, D.C., to New York City, NY, in as little as 2 hours, 43 minutes. The Amtrak West Business Unit handles long-distance and short-distance routes primarily in the western United States. The Intercity Business Unit manages the remainder of Amtrak's operations, including both long and short distance train service. Mail and express is a new strategic business unit created last year to focus on its ongoing mail and express freight operations. Amtrak Corporate is the non-operations business unit, which accounts for much of the railroad's overhead and management functions. Amtrak operates approximately 260 trains per day.

No national rail passenger system in the world operates without some form of subsidy, either operating or capital funding, or both. Amtrak is no exception. Although Congress has appropriated an average of \$833 million per year, many would argue that the railroad has been seriously undercapitalized from its inception. Moreover, Amtrak's funding has actually been provided in a very erratic fashion making it very difficult to plan effectively and implement the most beneficial major capital expenditures on a system-wide basis. For instance, since 1998, Amtrak has been appropriated only \$2.8 billion of the \$5.3 billion it has been authorized to receive through the annual appropriations process, however an additional \$2.2 billion was provided for capital projects through the Taxpayer Relief Act in 1997. Further, Amtrak's subsidies have never been sufficient to allow it to operate "in the black." The impact of the undercapitalization continues today, and even Amtrak's most popular routes historically have not covered Amtrak's costs. The DOT Office of Inspector General found in its January 2002 report that under-funding of infrastructure and capital expenses has resulted in deferred maintenance on many projects, leading to increased delays in service and safety and security concerns. A national rail passenger system, in any form, must have sufficient funding to support capital investment.

Amtrak's major categories of expenses consist of: capital expenses, operating costs, mandatory excess Railroad Retirement Trust Account (RRTA) payments (approximately \$160 million in 2003, which cover the retirement costs of former railroad employees beyond the benefits received by Amtrak retirees), principal and interest payments on debt, one-time security and life-safety improvements, and compliance with other regulations such as those

promulgated under the Americans with Disabilities Act (ADA) and environmental regulations.

Calls for reform of Amtrak focus prominently upon Amtrak's expenses and its lack of transparent accounting. The DOT Inspector General found that since December, 1997, for every additional dollar earned in revenue, cash expenses increased by \$1.05. Amtrak suffered its largest operating loss in its history last year, losing over \$1.1 billion and its long-term debt and capital lease obligations have tripled to over \$3.6 billion, approximately one-fourth of which is defeased. Due to the increase in debt, Amtrak's interest expense will rise from \$85 million in FY 2001 to \$225 million in FY 2005, primarily attributable to interest expense associated with external financing of the Acela train sets, according to the DOT Inspector General. Last summer, short on cash, Amtrak mortgaged a portion of New York's Penn Station to raise \$300 million to cover operating expenses. Proper funding of Amtrak's capital needs would help to reduce Amtrak's operating expenses, obviating the need for short-term borrowing to cover operating expenses.

The hiring of independent auditors has been viewed as one way to address the concerns raised about the methods and reporting of Amtrak financial information. For example, since it was created in 1971, Amtrak has used certified public accounting firms for its annual financial audit which is prepared in a manner similar to other large public corporations. In addition, increased oversight by the DOT Inspector General has also been utilized as a tool to try to improve financial accountability and reporting to Congress. For example, the Amtrak Reform and Accountability Act of 1997 (ARAA) (Public Law 105-134) required a one-time independent financial assessment of the financial requirements of Amtrak through FY 2002, overseen by the DOT Inspector General. It also directed the DOT Inspector General to conduct annual reviews of Amtrak's operations and conduct an assessment of the financial requirements of Amtrak during any year Amtrak requests Federal assistance.

In the past, Federal funding for Amtrak has been authorized in lump sums for capital expenditures and operating expenses. An alternative to this funding approach which would provide greater detail and more accountability and transparency would be legislation which specifically authorizes on a line-item basis funding for Amtrak's various functions. Historically and currently, all money Congress appropriates for specific capital improvements for Amtrak flows through grant agreements administered by the DOT. Under these grant agreements, the DOT reimburses Amtrak's obligations (as opposed to expenditures) for project activities covered by the agreement. Such reimbursable agreements are the norm for government financing and have been used successfully between Amtrak and DOT for such undertakings as the Northeast Corridor Improvement Project, the Westside Connector, and painting of the Hell Gate Bridge. Funds for general capital grants are not covered by such agreements.

#### AMTRAK REFORM AND ACCOUNTABILITY ACT OF 1997

On December 2, 1997, the Amtrak Reform and Accountability Act of 1997 (ARAA) was signed into law. The legislation authorized funding for Amtrak through 2002 and triggered the release of a \$2.2 billion tax refund provided to Amtrak in the Taxpayer Relief

Act of 1997. Passage of the legislation was achieved in large part due to the fact that Amtrak, the GAO, and others, estimated that Amtrak would be bankrupt within a year. The legislation included statutory operational, procurement, labor and liability reforms, so Amtrak could operate more like a private business. This funding provided Amtrak with badly needed capital to improve their equipment, tracks, and to provide for general modernization which helps to reduce its operating expenditures.

One of the main features of the ARAA requires that Amtrak operate without Federal operating grant funds five years after the date of enactment of the Act (December 2, 2002). Furthermore, in addition to replacing the previous Board of Directors with a new Amtrak Reform Board, the Act also established a politically-appointed 11-member Amtrak Reform Council (ARC) charged with developing recommendations for improving Amtrak, as well as monitoring Amtrak's progress in achieving the goals of the ARAA. Finally, the Act required the DOT Inspector General to conduct annual reviews of Amtrak's operations and conduct an assessment of the financial requirements of Amtrak during any year Amtrak requests Federal assistance. That an independent assessment of Amtrak's finances be conducted annually by the DOT's Inspector General (DOT IG).

The ARAA provided that, if the ARC found at anytime after two years after the date of enactment that Amtrak would not meet its mandate for operational self-sufficiency, it must develop and submit to Congress an action plan for a restructured intercity passenger system within 90 days. The ARC made such a finding on November 9, 2001, and on February 7, 2002, submitted its restructuring plan to Congress. Within the same time period, the law directed Amtrak to prepare a plan for its complete liquidation; however this requirement was repealed in January, 2002, by an amendment contained in Section 1102 of the Department of Defense and Emergency Supplemental Appropriations for Recovery from and Response to Terrorist Attacks on the United States Act, 2002 (P.L. 107-117) that prohibits the use of Federal funds or funds generated by Amtrak to be used to prepare a liquidation plan until Congress passes an Amtrak reauthorization Act.

In February, 2002, the ARC released a report detailing its final recommendations. The report concludes that Amtrak's business structure should be fundamentally changed. The ARC recommendations would:

1. Restructure the National Railroad Passenger Corporation as the Federal Program Management Agency. The National Railroad Passenger Corporation would survive as a small government corporation responsible for overseeing franchising of train operations, seeking Federal funding for infrastructure, and planning future service.

2. Create a separate corporation to conduct train operations: Amtrak's operations would be placed into a separate, train-operating government corporation, with business units such as: corridor and intercity train service, mail and express service, equipment maintenance, ownership and leasing of equipment, and commuter service. After a transition period of 2 to 5 years, the ARC plan would permit each of these business units to be

franchised through a competitive bidding process. This train operating company could ultimately be privatized.

3. Create a regionally-directed company to operate, maintain, and improve the Northeast Corridor infrastructure: Ownership of the Northeast Corridor infrastructure would be held by a separate government corporation. This corporation would be responsible for maintaining, acquiring, and transferring assets, as needed. This corporation would be overseen by and Federally-funded through the NRPC. Management of the Northeast Corridor infrastructure could be contracted out to a private contractor after a transition period of 2 to 5 years.

The ARC report also identified a number of options as potential principal means for financing capital for infrastructure and equipment, including (1) Federal appropriations, (2) a dedicated rail passenger transportation fund, perhaps funded by a penny a gallon excise tax at both the Federal and State level (estimated at raising \$3.2 billion annually), and (3) through the sale of tax-exempt bonds.

The ARAA further required an annual assessment by the DOT Inspector General of Amtrak's annual financial performance and needs. On January 24, 2002, the DOT IG published its 2001 Assessment of Amtrak's Financial Performance and Requirements (Report Number CR-2002-075). While the DOT IG found that Amtrak will not meet its 2002 goal of operating self-sufficiency without drastic unadvisable measures, it also found that Amtrak's focus on self-sufficiency has detracted it from making badly-needed infrastructure improvements.

The following are excerpts from the DOT IG's 2001 Annual Report:

- Amtrak does not have sufficient time to achieve self-sufficiency through meaningful and sustainable improvements.
- Remaining options for achieving self-sufficiency by 2003 are not advisable.
- Amtrak will likely need additional funds in 2002 to meet cash liabilities.
- Amtrak's needs exceed available capital funding.
- Amtrak's focus on self-sufficiency has detracted from basic system reinvestment.
- Amtrak's long-term funding requirements will need to be determined.
- Amtrak's infrastructure needs are \$1 billion to \$1.5 billion annually over the next 20 years.

#### IMMEDIATE FINANCIAL CONCERNS FACING AMTRAK

Amtrak announced on February 1, 2002, that if it does not receive its funding request of \$1.2 billion for FY 2003, it will be forced to make system-wide cuts in service. It also announced on that day that it would be forced to reduce by 10 percent the number of management positions and 3 percent of its labor workforce, resulting in an overall cut of about 1000 positions in order to sustain itself.

The President's FY 2003 Budget Request agrees with former Amtrak President George Warrington's assessment that "Amtrak could not continue indefinitely under current circumstances." However, the President included only \$521 million for Amtrak in the FY

2003 Budget, the same level of funding as last year noting that the request “serves as a placeholder pending the development of a new paradigm for intercity passenger rail service.” This amount is significantly below Amtrak’s \$955 million authorization for FY 2002. Although the Administration has recognized that Amtrak’s current authorization expires this year and has only provided a placeholder in its budget request, the Administration has failed to submit a proposal to Congress as it debates the re-authorization of Amtrak.

On March 19, 2002, 51 Senators wrote Chairman Conrad and Ranking Member Domenici of the Senate Budget Committee to request that \$1.2 billion for Amtrak be included in the transportation 400 function of the FY 2003 budget, recognizing that no comparable national rail passenger system in the world has succeeded without operating subsidies; and certainly no system has ever succeeded without substantial public capital investment. They point out in the letter points out that funding for America’s passenger railroad has barely been enough to keep the system operating on a year-to-year basis, but it has been insufficient to meet its longer-term public service mission much less its capital needs. The letter concluded that if Amtrak continues to be underfunded, it will ultimately result in even greater costs to this country as the rail passenger network deteriorates due to short-term budget constraints.

The FY 2003 budget resolution (S. Con. Res. 100) reported by the Senate Budget Committee on March 21, 2002, provides \$1.2 billion for Amtrak for FY 2003.

#### RAILROAD REHABILITATION AND IMPROVEMENT FINANCING

Another major issue facing railroad development in the United States is the maintenance and repair of existing track for both passenger and freight railroad needs. The RRIF program authorizes loans for the improvement of rail infrastructure. Under the program, the Secretary may provide direct loans and loan guarantees for terms up to 25 years to State and local governments, government sponsored authorities and corporations, railroads, and joint ventures that include at least one railroad. These funds may be used: to acquire, improve, or rehabilitate intermodal or rail equipment or facilities, including track, components of track, bridges, yards, buildings, and shops; to refinance existing debt incurred for the previous purposes; and to develop and establish new intermodal or railroad facilities. Since enactment of TEA-21, there is a statutory cap of \$3.5 billion for outstanding unpaid principal at any point in time. Of this, \$1 billion is reserved for projects primarily benefiting short line and regional railroads. The interest rate charged is that for Treasury securities of comparable maturities.

The RRIF program was created in 1998 pursuant to TEA-21 as a modification to the existing railroad infrastructure financing program contained in title V of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 821 et seq.) to bring it in line with the Credit Reform Act of 1990. Since the RRIF program’s amendment in 1998, 23 applicants have sought RRIF funds for 30 projects totaling \$569.33 million, but to date, only two loans have been approved totalling \$110 million. Neither of these approvals has resulted in an executed loan agreement; therefore, no funds or guarantees have been disbursed under the program. Critics of the current program argue that unwieldy program requirements insti-

tuted by the Administration have created insurmountable program impediments and made the program unworkable. For instance, under the existing requirements for the RRIF program, short lines are required to fully collateralize the loan, causing the railroads who tend to be smaller business entities not to have adequate collateral to go to the bank to get a loan to cover the credit risk premium. The credit risk premium is a cash payment provided to DOT by a non-Federal "infrastructure partner" to cover the estimated long-term cost to the Federal government of a loan or loan guarantee, taking into consideration estimated defaults, delinquencies, penalties, and prepayments. It must be paid, pursuant to the Credit Reform Act of 1990, in advance of funds being disbursed. The amount of the credit risk premium required is determined by the specifics of the proposed transaction and the risks of the undertaking. The pledging of collateral lowers the required risk premium since the greater the value of the collateral, the higher recovery rate in the event of a default. In many instances, railroads cannot afford the credit risk premium, and important infrastructure improvements, many of which have public benefits, are not accomplished. While some of the requirements of the program reduce the risk to the Federal government, they may be hindering the execution of the program and its purpose to promote growth of railroad infrastructure and to help smaller railroads access capital. Reforms to the existing program may achieve both of these goals.

Many infrastructure upgrades are needed specifically for improved passenger service. Currently, Amtrak has identified \$4.17 billion in infrastructure needs outside of the Northeast Corridor to improve passenger service (including infrastructure upgrades along high-speed corridors) in the following States: Alabama, California, Florida, Illinois, Louisiana, Michigan, Minnesota, Mississippi, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Texas, Virginia, Washington, and Wisconsin. Financing through the RRIF program could provide much-needed capital, as Amtrak, the States and freight railroads work together to increase capacity or track speeds, as needed, for these projects.

RRIF funds could also be used to address freight rail capacity concerns, including relieving congestion in port and urban areas. An example of one such project is the Alameda Corridor project in California which was financed through a Federal, State, and private partnership, including the use of Federal loans provided through the DOT. This multi-year, \$2.4 billion project involved infrastructure upgrades on rail right-of-way from downtown Los Angeles to its port areas. Ninety miles of railroad lines were consolidated to increase freight capacity, eliminate over 200 railroad grade crossings, and improve the movement of freight from the ports of Los Angeles and Long Beach. The DOT Inspector General has cited this project as one of several large projects that stand as examples of good project management.

As the rail freight industry moves toward the use of rail cars loaded to 286,000 pounds, many miles of track need to be improved to handle the heavier loads, including track owned by short lines and regional railroads. The short line industry has approximately \$7 billion in existing needs to bring their 50,000 miles of track up to "286K standards." As identified in a study by the consulting firm Zeta Tech in testimony before the Senate Commerce, Science, and

Transportation Committee last year, there is strong public policy justification to keep this 50,000 miles of track from being disconnected from the national rail network and enable all United States shippers to take advantage of the efficiencies of heavier rail.

#### SUMMARY OF MAJOR PROVISIONS

S. 1991 provides a comprehensive approach to developing and maintaining rail passenger service in the United States. The bill's focus is on developing high-speed rail corridors, but at the same time also provides funding to preserve long-distance routes and ensures that we will continue to have a national system connecting with high-speed corridors. Continuation of a national system will provide service for those communities that do not have the population densities to support air service and the bill's funding will also help preserve Amtrak's valuable assets, including the Northeast Corridor. Finally, S. 1991 addresses reform and control over Amtrak's financial accounting and service-related management decisions.

Title I of S. 1991 authorizes \$1.4 billion in emergency spending for Amtrak's security and tunnel life safety needs. Similar language was included in the Rail Security Act, S. 1550, which was favorably reported by the Committee on October 17, 2001. In that legislation, funds were authorized for immediate rail security needs, such as hiring more police officers across the entire Amtrak system and modernizing the safety infrastructure of tunnels in New York, Baltimore, and Washington. Title I of S. 1991 adjusts the funding amounts provided by S. 1550 to reflect \$105 million provided in the Department of Defense and Emergency Supplemental Appropriations for Recovery from and Response to Terrorist Attacks on the United States Act, 2002 (P.L. 107-117), incorporates certain additional measures, and requires that 50 percent of the funds be spent outside of the NEC, and specifically authorizes how such funds shall be expended where.

Title II of S. 1991 authorizes \$1.55 billion annually for high-speed rail corridor planning and development and builds on the Swift Rail Development Act of 1994 to implement high-speed rail service. The Swift Rail Development Act of 1994 provided funds for planning, but it did not authorize funds for actual development of high-speed rail infrastructure. These funds are needed for infrastructure acquisition, highway-rail grade crossing improvement/elimination, acquisition of rolling stock, and track and signal improvements. The bill would permit, but not require, any State contribution in order to receive Federal funds, and preference would be given to projects having right-of-way dedicated to rail passenger service, involving high-speed passenger service of 125 mph (although operations of 90 mph speeds or more would be eligible for funding), and projects connecting to other modes of passenger transportation, including airports and bus terminals. The DOT would be directed to conduct a rulemaking to provide for competitive bidding on high-speed rail projects and the use of full funding grant agreements for such projects.

Title III of S. 1991 fully funds Amtrak's current operational and capital needs, including the capital backlog on the Northeast Corridor, estimated by the DOT IG to be \$5 billion. This bill authorizes funds to enable Amtrak to eliminate its capital backlog of projects,

maintain ongoing projects to capital infrastructure, and improve capacity to accommodate projected growth in ridership. This title also repeals the operating self-sufficiency requirements of the Amtrak Reform and Accountability Act of 1997. It authorizes funding for compliance with environmental standards and the ADA. This title makes several changes to require Amtrak to operate more efficiently, including: requiring Amtrak to develop a new, more detailed financial accounting system; requiring Amtrak to develop a new methodology to be used when preparing its route profitability report; requiring Amtrak to prepare annually a five-year financial plan, to be reviewed by the DOT Inspector General, and submitted to Congress; and requiring Amtrak to develop (through the use of an independent auditor) and adhere to objective criteria to be used when making decisions affecting levels of service.

Title IV of S. 1991 increases the aggregate unpaid principle amount of obligations under the RRIF program from \$3.5 billion to \$35 billion. This money will dramatically expand the current Railroad Rehabilitation and Infrastructure Financing loan and loan guarantee program. Since being revised in 1998 as part of TEA-21 bill, the program has processed only a few loans because of rigid program requirements and constraints. S. 1991 revises the qualification procedures in place for the current program; these revisions are designed to make it easier for applicants to actually obtain the funds authorized for the program, and to stimulate the construction and rehabilitation of our railroad network.

#### LEGISLATIVE HISTORY

Senator Hollings introduced S. 1991 on March 6, 2002. The legislation was referred to the Committee. The bill was originally cosponsored by Senators Biden, Breaux, Carper, Cleland, Clinton, Corzine, Durbin, Hutchison, Jeffords, Kennedy, Kerry, Leahy, Mikulski, Rockefeller, Schumer, Stevens, Torricelli, Reid, and Feinstein. Senators Baucus, Snowe, Sarbanes, Boxer, Inouye, Specter, Dorgan, Burns, Lieberman, Collins, Ben Nelson, Dodd, Chafee, and Cochran, were subsequently added as co-sponsors.

On March 14, 2001, the Committee held a full Committee hearing on S. 1991. Testimony was provided by Senators Joseph R. Biden, Jr. (D-DE) and Thomas R. Carper (D-DE); Amtrak President George D. Warrington; Deputy Secretary of Transportation Michael P. Jackson; DOT Inspector General Kenneth Mead; North Carolina Deputy Secretary of Transportation David D. King; Charles Money Penny, Transport Workers Union of America; Gilbert Carmichael, Chairman, Amtrak Reform Council; William J. Rennie, Vice President, Mercer Management Consulting; Edward Hamberger, President, Association of American Railroads; and Marc Morial, Mayor of New Orleans, Louisiana, and President of the United States Conference of Mayors. Virginia Secretary of Transportation Whittington W. Clement and others provided written statements for the record for this hearing.

On April 18, 2002, the Committee ordered S. 1991 to be reported favorably with an amendment in the nature of a substitute, and eighteen amendments thereto. The substitute amendment was offered by the Chairman and contained the following changes: (i) it amended title I to reflect total security needs of \$515 million, 50 percent of which will be dedicated to security requirements outside

of the Northeast Corridor; (ii) it amended title II to require a greater amount of coordination at the State/regional level and ensure that the high-speed rail project receiving Federal funds is recognized in state- and region-wide transportation plans; (iii) it amended title II to apply current Amtrak Buy America requirements (49 U.S.C. 24305(f)) to any entity receiving funds for high-speed rail operation, and to provide that persons conducting high-speed rail operations funded under the Act are deemed rail carriers and subject to the Railway Labor Act, the Railroad Retirement Act, and other applicable railroad laws; (iv) it amended title II to ensure that this legislation will not affect the level of any labor protections currently in place throughout the industry; (v) it amended title III to require that Amtrak apply any net revenues from non-passenger operations into maintaining sufficient working capital; (vi) it amended title III to require a greater amount of fiscal accountability by Amtrak, providing for new financial accounting methods to be developed and implemented, and requiring Amtrak to develop a 5-year financial plan annually, to be reviewed by the DOT Inspector General and reported to Congress; and (vii) it amended title III to require that Amtrak be operated as a national system, and that, aside from mandatory contributions to the Railroad Retirement Trust Account and expenditures for Northeast Corridor tunnel life safety needs, amounts appropriated to Amtrak under title III (if less than the full amount authorized) must be spent in the same proportions as authorized.

Nine amendments by Senator John McCain were adopted en bloc by voice vote. These modifications include technical corrections; require that high-speed rail projects be covered by full funding grant agreements; give the Secretary of Transportation the flexibility to be represented on the Board by his or her designee; require that a new methodology be developed for the preparation of Amtrak's route profitability report; require that Amtrak remain subject to the D.C. Corporations Act; and further refine the bill's provisions aimed at making Amtrak's financial accounting more transparent.

Two amendments offered at the executive session by Senator McCain were defeated. The first would have required the creation of an Amtrak Control Board to monitor and control financial and management decisions made by Amtrak. The second would have required Amtrak to obtain permission from the Secretary of Transportation before assuming any additional debt.

Two additional amendments offered by Senator McCain were adopted, with modifications. The first amendment requires that all high-speed rail services be competitively bid. Based on discussions at the executive session, the amendment has been modified to clarify that rail operators would be subject to the Railway Labor Act and other applicable railroad laws and that a State or group of States, as a condition of receiving funding, has provided for competitive bidding for the project in accordance with the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. The second amendment would have lowered the maximum Federal share for high-speed rail projects from 100 percent of project costs to 80 percent of project costs. Based on discussions at the executive session, the amendment has been modified to clarify that States may voluntarily con-

tribute, although they would not be required to contribute, to the cost of these projects.

The Committee adopted three amendments by Senator Gordon Smith: one requiring Amtrak to evaluate security needs at stations it serves but does not own (incorporated in section 105), another clarifying that nothing in this legislation will affect Amtrak's ability to pursue additional long-distance service (incorporated in section 301), and a third which adds Portland, OR, as a priority location for receipt of high-speed corridor planning and implementation assistance in sections 202 and 203.

Senators Byron L. Dorgan and John D. Rockefeller, IV offered an amendment which permits entities other than railroads to be eligible for funds under the Railroad Rehabilitation and Improvement Financing loan program, incorporated in section 401. The amendment was approved by the committee by voice vote.

Senator Ron Wyden offered two amendments: one which applies Federal conflict of interest standards to Amtrak Board members and officers (section 309), and one which requires Amtrak, through the use of an independent auditor selected by the DOT Inspector General, to develop objective criteria for use in decisions affecting levels of service (section 314). These amendments were approved by the committee by voice vote.

An amendment offered by Senator Bill Nelson adds Orlando, FL, as a priority location for receipt of high-speed corridor planning and implementation assistance in sections 202 and 203. The amendment was approved by the committee by voice vote.

#### ESTIMATED COSTS

In compliance with subsection (a)(3) of paragraph 11 of rule XXVI of the Standing Rules of the Senate, the Committee states that, in its opinion, it is necessary to dispense with the requirements of paragraphs (1) and (2) of that subsection in order to expedite the business of the Senate.

#### 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, as reported:

S. 1991 authorizes funding to be administered by the DOT. Although this funding will not result in any additional regulatory or reporting requirements for businesses or individuals, efforts will be required to ensure that this funding is being used in accordance with Federal requirements. The legislation will have no further effect on the number or types of individuals and businesses regulated, the economic impact of such regulation, the personal privacy of affected individuals, or the paperwork required from such individuals and businesses.

#### NUMBER OF PERSONS COVERED

S. 1991 is intended to develop and maintain rail passenger service in the United States. The number of persons covered should be, in addition to current levels of individuals affected, those affected by development of new high-speed rail corridors, including rail construction and rail operations industries.

## ECONOMIC IMPACT

S. 1991 is intended to develop new rail passenger infrastructure and services, as well as maintain existing levels of long-distance passenger train and corridor service. It should have a beneficial impact on the economy of the United States.

## PRIVACY

S. 1991 will not have an adverse effect on the personal privacy of any individuals that will be impacted by this legislation.

## PAPERWORK

S. 1991 does not create any new reporting requirements, and any impact on paperwork will be consistent with current levels. While the legislation does require the production of some reports, the total impact on paperwork should not be significant.

## SECTION-BY-SECTION ANALYSIS

*Sec. 1. Short Title.*

This Act may be cited as the “National Defense Rail Act.”

*Sec. 2. Findings.*

This section cites findings by Congress concerning rail passenger service in the United States.

## TITLE I—RAIL TRANSPORTATION SECURITY

*Sec. 101. Amtrak security assistance.*

This section would authorize approximately \$515 million for Amtrak security. Slightly over 50 percent of these funds must be spent outside of the Northeast Corridor. These funds are to be used as follows:

- \$417 million for infrastructure security, including the protection of tunnels, bridges, interlockings, towers on the Northeast Corridor, electric traction facilities on the Northeast Corridor, equipment, yard, and terminal facilities, mail and express facilities, and stations. These funds would be used for surveillance cameras, lighting, fencing, vehicle barriers, incident tracking systems, passenger information retrieval systems, incident command systems, train location and tracking systems, incident notification systems, mail and express tracking and tender software development, bomb-resistant trash containers, and employee identification systems.

- \$37 million for equipment security, including crew communications devices, mobile emergency command and communications units, radioactive material detectors, bomb detectors, express package screeners, secure locking devices on mail and express cars, video surveillance systems on head-end units, upgrades of radio repeaters, high-rail vehicle rescue equipment, and remote-based emergency shut-off units for locomotives.

- \$61 million for system-wide security operations, including hiring and training additional security and patrol officers, intelligence-gathering specialists, canine-assisted bomb-detection teams, leased vehicles, expansion of Amtrak’s aviation unit, application investigation expenses, rapid response team equipment, and infrastructure security inspectors.

The amounts appropriated shall remain available until expended. This section would also forbid employers from using security cameras for employee discipline or monitoring purposes unrelated to security.

*Sec. 102. Study of foreign rail transport security programs.*

This section requires the Comptroller General to conduct a survey of rail security programs in several foreign countries. The survey would identify effective measures and then assess the feasibility of implementing those measures in the United States.

*Sec. 103. Passenger, baggage, and cargo screening.*

This section would require the Secretary of Transportation to conduct a study and report on the cost and feasibility of requiring security screening for all passengers, baggage, and mail, express and other cargo on Amtrak trains. It would also require the Secretary to conduct a pilot program of random passenger security screening at 5 of Amtrak's 10 busiest stations and at up to 5 additional stations selected by the Secretary.

*Sec. 104. Rail security.*

This section would clarify that the Secretary of Transportation has the authority to issue regulations and orders governing railroad "security" in addition to safety.

The section would permit railroad officers, under regulations issued by the Secretary, to enforce laws on the property of other railroads. Current law only allows railroad police to enforce laws protecting their own employer's operations.

This section would also require within 180 days of enactment, the Secretary, in consultation with the Federal Railroad Administration's Rail Safety Advisory Committee, and the Transportation Research Board of the National Academy of Sciences, to review existing rail regulations of the DOT and identify potential revisions to improve rail safety and security.

*Sec. 105. Rail transportation security risk assessment.*

This section would direct the Secretary of Transportation to assess the security risks associated with rail transportation by developing prioritized recommendations for: (1) improving the security of rail tunnels, rail bridges, rail switching areas, stations serviced but not owned by Amtrak, and other areas identified by the Secretary as posing significant rail-related risks to public safety and the movement of interstate commerce; (2) deploying chemical and biological weapon detection equipment; (3) dealing with the immediate and long-term economic impact of measures that may be required to address those risks; and (4) training employees in terrorism response activities. The assessment must take into account any actions already taken to address security issues by both public and private entities, and it must include an analysis of the risks to public safety and security that are associated with long delays in the movement of trains stopped at highway-rail grade crossings.

While preparing the assessment, the Secretary would be directed to consult with rail management, rail labor, public safety officials, the Federal Railroad Administration's Railroad Safety Advisory Committee, and the Transportation Research Board of the National Academy of Sciences. This section would require a final report on the assessment to be submitted to the Committee and the House

Committee on Transportation and Infrastructure within 180 days after the bill's enactment. The Secretary would be able to submit the report in both classified and redacted formats.

The section would require that the report include prioritized recommendations and proposals for providing Federal financial, technological, or research and development assistance to railroads to improve security and reduce the likelihood of crime or terrorist attacks. The Secretary would also be required to conduct a study of the security and safety improvements that may be needed at stations served but not owned by Amtrak. Within 180 days after the date of enactment, the Secretary would be required to submit a report to the Congress on the number of stations served but not owned by Amtrak, the estimated costs of security and station enhancements, and any additional recommendations the Secretary deems appropriate. This section would authorize \$5 million for carrying out these assessments.

*Sec. 106. Offset for emergency supplemental appropriations.*

This section would require that any amounts authorized by this title be reduced by the amounts appropriated under the Department of Defense and Emergency Supplemental Appropriations for Recovery from and Response to Terrorist Attacks on the United States Act, 2002 (P.L. 107-117), once they are used by Amtrak. These amounts are included in title I of this Act because it is not clear where they will be spent.

## TITLE II—INTERSTATE RAILROAD PASSENGER HIGH-SPEED TRANSPORTATION SYSTEM

*Sec. 201. Interstate railroad passenger high-speed transportation policy.*

This section would require completion of a national high-speed ground transportation policy, as required by 49 U.S.C. 309(e)(1). The amended completion date would be December 31, 2002.

*Sec. 202. High-speed rail corridor planning.*

This section would provide further authority to the Secretary of Transportation to provide planning assistance in the form of direct assistance, or financial assistance to entities promoting the development of designated high-speed rail corridors. It would further allow for up to a 100 percent Federal subsidy of those planning costs (no State match required), and give preference to projects undertaken in Chicago, IL, Atlanta, GA, Dallas, TX, Orlando, FL, and Portland, OR.

This section also would add to the criteria used by the Secretary to allocate planning funds. In addition to current criteria, the bill directs the Secretary to consider the extent to which the planning involves a project with dedicated rail passenger service rights-of-way and designed to reach sustained speeds of 125 miles per hour or greater. However, any project involving rail passenger systems capable of reaching sustained speeds of 90 miles per hour or more would be eligible for funding under this chapter. Finally, this section would allow for financial assistance to take the form of loans and loan guarantees, in addition to other funding mechanisms.

Finally, this section would also specify that persons conducting rail operations funded under the Act will be deemed rail carriers and be subject to the Railway Labor Act and other applicable railroad laws.

*Sec. 203. Implementation assistance.*

This section would create a separate scheme for providing assistance, either direct technical assistance or financial assistance, to aid implementation of high-speed corridor plans. The Secretary of Transportation would create procedures for on-the-record approval of applicants receiving assistance for these projects. The section would further allow for up to 100 percent Federal funding of those implementation costs (no State match required). Projects undertaken in Chicago, IL, Atlanta, GA, Dallas, TX, Tampa-Orlando, FL, and Portland, OR, would receive preference under this section.

This section requires the Secretary of Transportation to set aside an appropriate amount of funds to provide assistance to any State which does not have physical access to the general system of railroad transportation in the continental United States, Alaska, and Hawaii, or to any State which has unique geographical characteristics or on the basis of other relevant considerations as determined by the Secretary.

This section would allow use of these funds for security planning, operating expenses, infrastructure acquisition, highway-rail grade-crossing improvements and eliminations, and acquisition of right-of-way, locomotives, rolling stock, track, and signal equipment. In selecting recipients of assistance, the Secretary is to encourage the use of positive train control technologies, give preference to projects that have particularly high levels of safety, encourage intermodal passenger connectivity transportation, and ensure there will exist a regional balance in the provision of assistance so as to avoid the concentration of disproportionate assistance in one single project or region of the country. The Secretary is also to ensure that the project is compatible with State and regional transportation plans developed under title 23, United States Code.

The section would specify that any persons conducting rail operations funded under the Act will be deemed rail carriers and be subject to the Railway Labor Act and other applicable railroad laws.

This section would require a recipient of funds under this section to comply with domestic buying preference, or "Buy America," standards. These standards require that, for any purchase over \$1,000,000, unmanufactured articles be purchased in the United States, and manufactured articles be purchased only if substantially made from articles, material, and supplies mined, produced, or manufactured in the United States. Exceptions would exist for instances where the Secretary finds that costs would be unreasonable, the articles are not reasonably available, or it would be inconsistent with the public interest.

This section would require the Secretary to initiate a rule-making within 90 days after enactment to create an application and qualification process on providing funding assistance. This process would provide guidance as to when and whether a project is eligible for implementation assistance under this section, rather than planning assistance.

This section would also require the Secretary to initiate a rule-making to create procedures for the awarding of implementation assistance under this section. These procedures must include steps for application and qualification, competitive bidding requirements,

and the use of a full-funding grant agreement between the government and the applicant.

*Sec. 204. Designated high-speed rail corridors.*

This section would identify in statute law existing designated high-speed rail corridors, add a new Southwest Corridor from Los Angeles, CA, to Las Vegas, NV, and extend the currently designated Southeast Corridor to Charleston, SC, Savannah, GA, and other points.

*Sec. 205. Labor Standards.*

This section would clarify that nothing in this Act will affect the level of employee protection provided to freight rail, Amtrak, or mass transit employees as existed on the day before the date of enactment of this Act. This section would also require that any project financed in whole or in part by funds authorized by this title be conducted in a manner that provides for fair labor standards, including the payment of prevailing wages (per 40 U.S.C. 276a et. seq., the Davis-Bacon Act) and the allowance of collective bargaining over wage rates. The section would also require that employees affected by high-speed rail projects be entitled to labor protection at least as protective as arrangements reached under section 141 of the ARAA (49 U.S.C. 24706 nt).

*Sec. 206. Railway-highway crossings in high-speed rail corridors.*

This section would reserve a minimum of \$150 million of the corridor implementation funds for the improvement or elimination of highway-rail grade crossings in high-speed corridors. This funding would be available under conditions similar to current grade crossing elimination/improvement programs identified in section 130 of title 23, United States Code, and would be coordinated with such current programs. This section also directs the Secretary to give priority to eliminating, rather than upgrading, grade crossings along high-speed rail routes.

*Sec. 207. Authorization of appropriations.*

This section would authorize annual funding through FY 2007 for high-speed rail corridors as follows:

- \$25 million for corridor planning purposes.
- \$1.5 billion for implementation purposes.
- \$25 million for research and development purposes.

These funds would remain available until expended, and could not be used for projects on the Northeast Corridor, so long as the NEC receives separate Federal funds for capital and operating expenses.

### TITLE III—NATIONAL RAILROAD PASSENGER CORPORATION

*Sec. 301. National railroad passenger transportation system defined.*

This section would statutorily designate the national rail passenger transportation system. The system would consist of the Northeast Corridor, high-speed rail corridors designated by the Secretary of Transportation (after they have been improved to permit operation of high-speed service), long-distance routes of 750 miles or more currently operated by Amtrak, and short distance routes currently operated by Amtrak.

This section would also allow Amtrak to enter into contracts with State or local entities to provide service in routes not currently in-

cluded in the national system. Such service could be discontinued upon the termination or expiration, or cessation of funding, of Amtrak's contract to operate such services.

This section would further clarify that nothing in this Act is intended to preclude Amtrak from restoring, improving, or developing non-high-speed intercity rail passenger service.

*Sec. 302. Amtrak authorizations.*

This section would repeal the operating self-sufficiency requirements imposed by the Amtrak Reform and Accountability Act of 1997 (ARAA). Second, it would eliminate the ARAA requirement for Amtrak to redeem all common stock for fair market value by October 1, 2002. Third, this section would authorize Amtrak to obtain lease arrangement services from the Administrator of General Services. Fourth, this section would help clarify Amtrak's right to bring claims under the False Claims Act.

*Sec. 303. Additional Amtrak authorizations.*

This section contains several 5-year funding authorizations. First, this section would authorize appropriations as needed by Amtrak for the amount it must pay in excess mandatory contributions to the Railroad Retirement Trust Account (RRTA) under section 3221 of the Internal Revenue Code of 1986. Second, this section would authorize payments on debt service, including both principal and interest, totaling \$1.334 billion over the five year period. Third, this section would authorize \$30 million annually for compliance with environmental requirements, one third of which must be spent on the Northeast Corridor. Fourth, this section would authorize \$43 million annually for facilities improvements in order to comply with the ADA, of which \$10 million would have to be spent on the NEC and \$33 million outside of the NEC. Under this section, Amtrak would further be given a postponement to the compliance date of the ADA if the Secretary of Transportation finds that Amtrak has made substantial progress towards meeting the ADA's requirements despite insufficient appropriations of funds. If the Secretary makes such a finding, Amtrak would be provided a reasonable time to complete construction of improvements after sufficient funds have been appropriated to enable Amtrak to comply with ADA requirements. Finally, this section would require Amtrak to apply net revenues from non-passenger operations to the railroad's working capital to satisfy current liabilities. Once Amtrak's working capital has improved to the point that Amtrak's liquid assets are sufficient to satisfy short-term liabilities, excess net non-passenger revenues are to be invested in high priority capital projects.

*Sec. 304. Northeast Corridor authorizations.*

This section would authorize an average of \$1.3 billion annually plus a one-time authorization of \$895 million for tunnel life-safety projects for FYs 2003 through 2007 for infrastructure improvements on the Northeast Corridor:

- \$370 million to address the capital backlog and bring the infrastructure up to a state-of-good-repair, including renewal of South End electric traction system and improvements on bridges, tunnels, and interlockings.
- \$60 million for the capital backlogs on fleet infrastructure.

- \$40 million for the capital backlog on stations and facilities, including improvements to Penn Station and maintenance of way facilities.
- \$350 million for ongoing capital infrastructure improvements, including replacement of assets on a life-cycle basis to ensure a state-of-good repair is maintained and current service requirements can be met.
- \$40 million for ongoing capital fleet investment to sustain regularly scheduled maintenance.
- \$30 million for ongoing capital improvements to stations and facilities.
- \$20 million for ongoing technology upgrades of reservation, distribution, financial, and operating systems.
- \$895 million to complete New York tunnel life-safety projects and to rehabilitate tunnels in Washington, D.C. and Baltimore, Maryland.
- \$3 million for the preliminary design of options for a new tunnel on a different alignment to augment the capacity of the existing Baltimore tunnels, such sums to remain available until expended.
- \$200 million for corridor growth investments in FY 2003.
- \$300 million for corridor growth investments in FY 2004.
- \$400 million for corridor growth investments in FY 2005.
- \$500 million for corridor growth investments in FY 2006.
- \$600 million for corridor growth investments in FY 2007.

This section would authorize the Secretary to obtain financial contributions (on projects involving life-safety improvements), from other rail carriers who use the Northeast Corridor. All funds authorized under this section would remain available until fully expended.

Under this section, Amtrak would be required to invest net revenues from core passenger operations in the Northeast Corridor into capital needs in the Northeast Corridor until such time as the backlog of capital needs is eliminated.

*Sec. 305. Long distance trains.*

This section would authorize \$580 million annually for each of FYs 2003 through 2007 for Amtrak's long-distance passenger train service, as follows:

- \$360 million for operating costs associated with long-distance train service.
- \$70 million for capital backlog improvements, to bring the existing fleet into a state of good repair to meet current service commitments.
- \$80 million for ongoing capital infrastructure improvements to replace assets on a life-cycle basis, ensure a good state of repair for equipment, meet current service commitments, and allow certain funds to be used for investment in non-Amtrak-Owned right-of-way, and other railroad-owned infrastructure, and to permit continued Amtrak operations.
- \$50 million for ongoing capital fleet needs to meet a regularly scheduled maintenance, including preventative maintenance.
- \$10 million for ongoing capital improvements to stations and facilities to provide regular upgrades to meet current serv-

ice needs, and regular improvements to maintenance-of-way equipment and facilities.

- \$10 million for ongoing technology upgrades to reservation, distribution, financial, and operating systems.

*Sec. 306. Short-distance trains; State-supported routes.*

This section would authorize \$270 million annually in each of FYs 2003 through 2007 for Amtrak's short-distance (less than 750-mile) corridor routes outside of the Northeast Corridor, as follows:

- \$20 million for needed capital improvements on infrastructure such as improvements on bridges, tunnels, interlockings and signal systems.
- \$10 million for the capital backlog on fleet capital improvements.
- \$170 million for ongoing capital infrastructure improvements to replace assets on a life-cycle basis, ensure a good state of repair for equipment, meet current service commitments, and allow certain funds to be used for investment in non-Amtrak-Owned right-of-way, and other railroad-owned infrastructure, and to permit continued Amtrak operations.
- \$40 million for ongoing capital fleet needs to meet a regularly scheduled maintenance, including preventative maintenance.
- \$10 million for ongoing capital improvements to stations and facilities to provide regular upgrades to meet current service needs, and regular improvements to maintenance-of-way equipment and facilities.
- \$20 million for ongoing technology upgrades to reservation, distribution, financial, and operating systems.

*Sec. 307. Re-establishment of Northeast Corridor Safety Committee.*

This section would reauthorize the Northeast Corridor Safety Committee, which is administered by the DOT and consists of users of the Northeast Corridor.

*Sec. 308. On-time performance.*

This section would allow Amtrak to request that the Surface Transportation Board (STB) investigate recurring delay problems when on-time performance on any of its trains falls below 80 percent over a consecutive 3-month period. The STB would investigate whether and to what extent the delays are due to causes that could be addressed by freight carriers using the track or commuter authorities. The STB then would be able to make recommendations regarding reasonable measures which could be taken to improve the on-time performance of such train.

*Sec. 309. Amtrak board of directors.*

This section would authorize the appointment of a new Board of Directors for Amtrak. The Board would be made up of the President of Amtrak, the Secretary of Transportation (who may be represented at Board meetings by the Secretary's designee), and 7 presidential appointees with experience in the railroad, travel, or hospitality industry. Each appointment would be for a term of 5 years. No more than 4 appointees may be from the same political party. This section would further provide for the compensation of such board members at a rate of not more than \$300 per day when

performing board duties and reimburse board members for necessary travel, subsistence, and staff support reimbursements.

This section would require vacancies on the board to be filled within 120 days in the same way as original appointments, except that in such case, the appointee may only serve until the end of the original term. This section would further allow for the board to adopt bylaws and make the effective date of all of these changes October 1, 2003.

This section would apply Federal executive branch employee conflict of interest standards to Amtrak officers and members of the Amtrak Board of Directors while in office.

*Sec. 310. Establishment of financial accounting system for Amtrak operations by independent auditor.*

This section would require Amtrak to employ an independent financial consultant to assess its financial accounting and reporting system and practices. Based on the results of that assessment, the consultant would design and implement a modern financial accounting and reporting system capable of producing accurate and timely financial information in sufficient detail to enable Amtrak to appropriately assign revenues and expenses to each of Amtrak's lines of business activity (cost centers). At a minimum, the system should be able to segregate the expenses and revenues related to infrastructure from those attributable to train operations. It should also be able to identify expenses and revenues associated with the major functions within each business group, including train operations, equipment maintenance, ticketing, and reservations. The Inspector General would review the system and report to Congress. This section further would authorize \$2.5 million for FY 2003 for this one-time initiative.

*Sec. 311. Development of a 5-year financial plan and budget for Amtrak operations by independent auditor.*

This section would require Amtrak to develop a 5-year financial plan that includes a detailed budget for the first year and financial plans for the subsequent four years. The 5-year plan would contain:

- All projected revenues and expenditures for Amtrak, including governmental funding sources.
- Projected ridership levels for all Amtrak passenger operations.
- Revenue and expenditure forecasts for non-passenger operations.
- Capital funding requirements and expenditures necessary to maintain passenger service which will accommodate predicted ridership levels and predicted sources of capital funding.
- Operations funding needs, if any, to maintain current and projected levels of passenger service, including State-supported routes and predicted funding sources.
- An assessment of the continuing financial stability of Amtrak, as indicated by factors such as: the ability of the Federal government to adequately meet capital and operating requirements, Amtrak's access to long-term and short-term capital markets, Amtrak's ability to efficiently manage its workforce, and Amtrak's ability to effectively provide passenger train service.
- Lump sum expenditures of \$10 million or more and sources of funding.

- Estimates of long-term and short-term debt (both outstanding and anticipated).
- Annual cash flow forecasts.
- A statement describing methods of estimation and significant assumptions.

This section would require Amtrak to apply sound budgetary practices, and, when available, use the categories specified in the financial accounting and reporting system developed under Section 310 in preparing its 5-year financial plan.

Under this section, Amtrak would be required to submit its 5-year financial plan to the Secretary of Transportation and the DOT Inspector General no later than the first day of each fiscal year, or within 60 days of enactment of an appropriation act for the fiscal year, if later. The IG would be required to assess the financial plans and report to the appropriate Congressional authorizing and appropriating committees.

*Sec. 312. Revised reporting methodology required.*

This section would require Amtrak, in consultation with the Amtrak Comptroller General, to develop a revised reporting methodology for use in preparing annual operations reports (more commonly known as the Route Profitability System report) required by 49 U.S.C. 24315(a), beginning with FY 2002. The new methodology will specifically exclude non-core profits in calculating the financial performance of Amtrak trains.

*Sec. 313. Appropriated amounts to be spent proportionately.*

This section would require that, if Amtrak is appropriated a sum less than the total amount authorized in this Act, then, after first allocating the full amount for mandatory excess Railroad Retirement Trust Account contributions, the remainder, excluding amounts authorized for Northeast Corridor tunnel life safety needs and Northeast Corridor growth in sections 304(b) and (d) of this Act, shall be spent in direct proportion to the remaining authorizations in this Act.

*Sec. 314. Independent auditor to establish criteria for Amtrak route and service planning decisions.*

This section would require the DOT Inspector General (IG) to contract with an independent auditor to establish objective criteria for determining appropriate changes in Amtrak service, including establishing new routes, eliminating existing routes, and contracting or expanding existing services. The IG would review the criteria developed and, if approved, transmit them to the Amtrak Board of Directors. The Amtrak Board of Directors would be required to incorporate the criteria in its route and service planning and decision-making process, as well as its financial plans and budgets. If Amtrak makes a decision regarding a change in service which does not comport with the established decision-making criteria, the Amtrak Board of Directors would be required to notify the appropriate Congressional authorizing committees at least 30 days in advance of such change.

#### TITLE IV—MISCELLANEOUS

*Sec. 401. Rehabilitation, improvement, and security financing.*

This section would increase the aggregate unpaid principle amount of obligations allowed under the RRIF program from \$3.5

billion to \$35 billion in the form of loans or loan guarantee coverage for infrastructure rehabilitation, improvement and security enhancements. A minimum of \$7 billion would be set aside for projects benefiting short line and regional railroads. This section would require the Secretary to provide guidance on conditions of assistance, procedures for requesting and approving assistance, and substantive approval criteria for receipt of assistance. An estimated 10 percent of the credit risk premium is estimated at \$350 million annually to cover the Federal costs to issue loan guarantees. The Secretary would be prohibited from limiting the amount of available loans or loan guarantees that may be dedicated to a single project. The section would also specify that a cohort may include a loan or loan guarantee. The Secretary would also be prohibited from requiring any applicants to provide collateral, and could not require that the applicant have previously sought and been denied financial assistance from another source. The Secretary would be required to approve or disapprove applications for RRIF funding within 180 days after an application is filed. Within 30 days after enactment, the Secretary would be required to publish the criteria and standards to be used in determining whether to approve an application. The section would also provide that persons conducting rail operations funded with RRIF loans or loan guarantees would be deemed rail carriers and subject to all applicable railroad laws. Entities other than railroad companies would be eligible to receive assistance under this section.

*Sec. 402. Rail passenger cooperative research program.*

This section would require the Secretary of Transportation to establish a cooperative research program which conducts research on rail passenger issues. It would further require the Secretary to establish an advisory board made up of the rail passenger community and other interested parties which makes recommendations concerning rail passenger research issues. Finally, this section would authorize funding of \$5 million for grants to the National Academy of Sciences to carry out research in conjunction with the cooperative research program.

*Sec. 403. Conforming amendments to title 49 reflecting ICC Termination Act.*

This section makes technical amendments in title 49, United States Code, acknowledging the supplanting of duties of the Interstate Commerce Commission by the Surface Transportation Board.

*Sec. 404. Applicability of reversion to Alaska Railroad right-of-way property.*

This section would serve as a technical amendment to allow the Alaska Railroad to swap property with landowners along its existing right-of-way. This would result in allowing Alaska Railroad to pursue the straightening of its route, which will remedy safety concerns and allow for the safer and more efficient movement of passengers and freight. Nothing in this Act is intended to supersede section 608(a) of the Alaska Railroad Transfer Act of 1982 (45 U.S.C. 1207(a)).

#### 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. 1991:

Senator McCain offered an amendment to provide for the establishment of an Amtrak Control Board, and for other purposes, to the amendment (in the nature of a substitute) offered by Senator Hollings. By rollcall vote of 5 yeas and 18 nays as follows, the amendment was defeated:

YEAS—5	NAYS—18
Mr. McCain	Mr. Hollings
Mr. Brownback	Mr. Inouye <sup>1</sup>
Mr. Fitzgerald	Mr. Rockefeller
Mr. Ensign	Mr. Kerry <sup>1</sup>
Mr. Allen	Mr. Breaux
	Mr. Dorgan
	Mr. Wyden
	Mr. Cleland <sup>1</sup>
	Mrs. Boxer
	Mr. Edwards <sup>1</sup>
	Mrs. Carnahan <sup>1</sup>
	Mr. Nelson
	Mr. Stevens <sup>1</sup>
	Mr. Burns
	Mr. Lott
	Mrs. Hutchison
	Ms. Snowe
	Mr. Smith

<sup>1</sup>By proxy

Senator McCain offered an amendment to require the approval of the Secretary of Transportation in order for Amtrak to assume additional debt to the amendment (in the nature of a substitute) offered by Senator Hollings. By rollcall vote of 10 yeas and 13 nays as follows, the amendment was defeated:

YEAS—10	NAYS—13
Mr. McCain	Mr. Hollings
Mr. Stevens <sup>1</sup>	Mr. Inouye <sup>1</sup>
Mr. Burns	Mr. Rockefeller
Mr. Lott	Mr. Kerry <sup>1</sup>
Mrs. Hutchison	Mr. Breaux
Mr. Brownback	Mr. Dorgan
Mr. Smith	Mr. Wyden
Mr. Fitzgerald	Mr. Cleland <sup>1</sup>
Mr. Ensign <sup>1</sup>	Mrs. Boxer
Mr. Allen	Mr. Edwards <sup>1</sup>
	Mrs. Carnahan <sup>1</sup>
	Mr. Nelson
	Ms. Snowe

<sup>1</sup>By proxy

By rollcall vote of 20 yeas and 3 nays as follows, the bill was ordered reported with an amendment in the nature of a substitute:

YEAS—20	NAYS—3
Mr. Hollings	Mr. McCain
Mr. Inouye <sup>1</sup>	Mr. Brownback
Mr. Rockefeller	Mr. Ensign
Mr. Kerry <sup>1</sup>	

Mr. Breaux  
 Mr. Dorgan  
 Mr. Wyden  
 Mr. Cleland<sup>1</sup>  
 Mrs. Boxer<sup>1</sup>  
 Mr. Edwards<sup>1</sup>  
 Mrs. Carnahan<sup>1</sup>  
 Mr. Nelson  
 Mr. Stevens<sup>1</sup>  
 Mr. Burns  
 Mr. Lott  
 Mrs. Hutchison  
 Ms. Snowe<sup>1</sup>  
 Mr. Smith  
 Mr. Fitzgerald  
 Mr. Allen<sup>1</sup>

<sup>1</sup>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):

#### AMTRAK REFORM AND ACCOUNTABILITY ACT OF 1997

##### **[SEC. 204. SUNSET TRIGGER.**

[49 U.S.C. 24101 NT]

[(a) IN GENERAL.—If at any time more than 2 years after the date of enactment of this Act and implementation of the financial plan referred to in section 24104(d) of title 49, United States Code, as amended by section 201 of this Act, the Amtrak Reform Council finds that—

[(1) Amtrak's business performance will prevent it from meeting the financial goals set forth in section 24104(d) of title 49, United States Code, as amended by section 201 of this Act; or

[(2) Amtrak will require operating grant funds after the fifth anniversary of the date of enactment of this Act, then the Council shall immediately notify the President, the Committee on Commerce, Science, and Transportation of the United States Senate, and the Committee on Transportation and Infrastructure of the United States House of Representatives.

[(b) FACTORS CONSIDERED.—In making a finding under subsection (a), the Council shall take into account—

[(1) Amtrak's performance;

[(2) the findings of the independent assessment conducted under section 202;

[(3) the level of Federal funds made available for carrying out the financial plan referred to in section 24104(d) of title 49, United States Code, as amended by section 201 of this Act; and

[(4) Acts of God, national emergencies, and other events beyond the reasonable control of Amtrak.

[(c) ACTION PLAN.—Within 90 days after the Council makes a finding under subsection (a)—

[(1) it shall develop and submit to the Congress an action plan for a restructured and rationalized national intercity rail passenger system; and

[(2) Amtrak shall develop and submit to the Congress an action plan for the complete liquidation of Amtrak, after having the plan reviewed by the Inspector General of the Department of Transportation and the General Accounting Office for accuracy and reasonableness.

**[SEC. 205. SENATE PROCEDURE FOR CONSIDERATION OF RESTRUCTURING AND LIQUIDATION PLANS.**

[(a) IN GENERAL.—If, within 90 days (not counting any day on which either House is not in session) after a restructuring plan is submitted to the House of Representatives and the Senate by the Amtrak Reform Council under section 204 of this Act, an implementing Act with respect to a restructuring plan (without regard to whether it is the plan submitted) has not been passed by the Congress, then a liquidation disapproval resolution shall be introduced in the Senate by the Majority Leader of the Senate, for himself and the Minority Leader of the Senate, or by Members of the Senate designated by the Majority Leader and Minority Leader of the Senate. The liquidation disapproval resolution shall be held at the desk at the request of the Presiding Officer.

[(b) CONSIDERATION IN THE SENATE.—

[(1) REFERRAL AND REPORTING.—A liquidation disapproval resolution introduced in the Senate shall be placed directly and immediately on the Calendar.

[(2) IMPLEMENTING RESOLUTION FROM HOUSE.—When the Senate receives from the House of Representatives a liquidation disapproval resolution, the resolution shall not be referred to committee and shall be placed on the Calendar.

[(3) CONSIDERATION OF SINGLE LIQUIDATION DISAPPROVAL RESOLUTION.—After the Senate has proceeded to the consideration of a liquidation disapproval resolution under this subsection, then no other liquidation disapproval resolution originating in that same House shall be subject to the procedures set forth in this section.

[(4) AMENDMENTS.—No amendment to the resolution is in order except an amendment that is relevant to liquidation of Amtrak. Consideration of the resolution for amendment shall not exceed one hour excluding time for recorded votes and quorum calls. No amendment shall be subject to further amendment, except for perfecting amendments.

[(5) MOTION NONDEBATABLE.—A motion to proceed to consideration of a liquidation disapproval resolution under this subsection shall not be debatable. It shall not be in order to move to reconsider the vote by which the motion to proceed was adopted or rejected, although subsequent motions to proceed may be made under this paragraph.

[(6) LIMIT ON CONSIDERATION.—

[(A) After no more than 20 hours of consideration of a liquidation disapproval resolution, the Senate shall proceed, without intervening action or debate (except as permitted under paragraph (9)), to vote on the final disposi-

tion thereof to the exclusion of all amendments not then pending and to the exclusion of all motions, except a motion to reconsider or table.

[(B) The time for debate on the liquidation disapproval resolution shall be equally divided between the Majority Leader and the Minority Leader or their designees.

[(7) DEBATE OF AMENDMENTS.—Debate on any amendment to a liquidation disapproval resolution shall be limited to one hour, equally divided and controlled by the Senator proposing the amendment and the majority manager, unless the majority manager is in favor of the amendment, in which case the minority manager shall be in control of the time in opposition.

[(8) NO MOTION TO RECOMMIT.—A motion to recommit a liquidation disapproval resolution shall not be in order.

[(9) DISPOSITION OF SENATE RESOLUTION.—If the Senate has read for the third time a liquidation disapproval resolution that originated in the Senate, then it shall be in order at any time thereafter to move to proceed to the consideration of a liquidation disapproval resolution for the same special message received from the House of Representatives and placed on the Calendar pursuant to paragraph (2), strike all after the enacting clause, substitute the text of the Senate liquidation disapproval resolution, agree to the Senate amendment, and vote on final disposition of the House liquidation disapproval resolution, all without any intervening action or debate.

[(10) CONSIDERATION OF HOUSE MESSAGE.—Consideration in the Senate of all motions, amendments, or appeals necessary to dispose of a message from the House of Representatives on a liquidation disapproval resolution shall be limited to not more than 4 hours. Debate on each motion or amendment shall be limited to 30 minutes. Debate on any appeal or point of order that is submitted in connection with the disposition of the House message shall be limited to 20 minutes. Any time for debate shall be equally divided and controlled by the proponent and the majority manager, unless the majority manager is a proponent of the motion, amendment, appeal, or point of order, in which case the minority manager shall be in control of the time in opposition.

[(c) CONSIDERATION IN CONFERENCE.—

[(1) CONVENING OF CONFERENCE.—In the case of disagreement between the two Houses of Congress with respect to a liquidation disapproval resolution passed by both Houses, conferees should be promptly appointed and a conference promptly convened, if necessary.

[(2) SENATE CONSIDERATION.—Consideration in the Senate of the conference report and any amendments in disagreement on a liquidation disapproval resolution shall be limited to not more than 4 hours equally divided and controlled by the Majority Leader and the Minority Leader or their designees. A motion to recommit the conference report is not in order.

[(d) DEFINITIONS.—For purposes of this section—

[(1) LIQUIDATION DISAPPROVAL RESOLUTION.—The term 'liquidation disapproval resolution' means only a resolution of either House of Congress which is introduced as provided in subsection (a) with respect to the liquidation of Amtrak.

[(2) RESTRUCTURING PLAN.—The term 'restructuring plan' means a plan to provide for a restructured and rationalized national intercity rail passenger transportation system.]

[(e) RULES OF SENATE.—This section is enacted by the Congress—

[(1) as an exercise of the rulemaking power of the Senate, and as such they are deemed a part of the rules of the Senate, but applicable only with respect to the procedure to be followed in the Senate in the case of a liquidation disapproval resolution; and they supersede other rules only to the extent that they are inconsistent therewith; and

[(2) with full recognition of the constitutional right of the Senate to change the rules (so far as relating to the procedure of the Senate) at any time, in the same manner and to the same extent as in the case of any other rule of the Senate.]]

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#### SEC. 415. FINANCIAL POWERS.

[49 U.S.C. 24304 NT]

(a) CAPITALIZATION.—(1) Section 24304 is amended to read as follows:

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

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

“(2) The item relating to section 24304 in the table of sections of chapter 243 is amended to read as follows:

“24304. Employee stock ownership plans.”.

[(b) REDEMPTION OF COMMON STOCK.—Amtrak shall, before October 1, 2002, redeem all common stock previously issued, for the fair market value of such stock.]]

(c) ELIMINATION OF LIQUIDATION PREFERENCE AND VOTING RIGHTS OF PREFERRED STOCK.—

(1)(A) Preferred stock of Amtrak held by the Secretary of Transportation shall confer no liquidation preference.

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

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

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

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

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

(3) *This section does not affect the applicability of section 3729 of title 31, United States Code, to claims made against Amtrak.*

\* \* \* \* \*

## RAILROAD REVITALIZATION AND REGULATORY REFORM ACT OF 1976

## SEC. 102. DEFINITIONS.

[45 U.S.C. 802]

As used in this Act, unless the context otherwise indicates, the term—

- (1) “Association” means the United States Railway Association;
- (2) “Commission” means the Interstate Commerce Commission;
- (3) “Corporation” means the Consolidated Rail Corporation;
- (4) “final system plan” means the final system plan and any additions thereto adopted by the Association pursuant to the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.);
- (5) “includes” and variants thereof should be read as if the phrase “but is not limited to” were also set forth;
- (6) “Office” means the Rail Services Planning Office of the Commission;
- [(7) “railroad” means a rail carrier subject to part A of subtitle IV of title 49, United States Code, and includes the National Railroad Passenger Corporation; and]
- (7) “railroad” has the meaning given that term in section 20102 of title 49, United States Code; and
- (8) “Secretary” means the Secretary of Transportation or his designated representative.

## SEC. 502. DIRECT LOANS AND LOAN GUARANTEES.

[45 U.S.C. 822]

(a) GENERAL AUTHORITY.—The **[Secretary may provide direct loans and loan guarantees to State and local governments,]** *Secretary shall provide direct loans and loan guarantees to State and local governments, interstate compacts entered into under section 410 of the Amtrak Reform and Accountability Act of 1997 (49 U.S.C. 24101 nt), government sponsored authorities and corporations, railroads, and joint ventures that include at least 1 railroad.*

(b) ELIGIBLE PURPOSES.—

(1) IN GENERAL.—Direct loans and loan guarantees under this section shall be used to—

(A) acquire, improve, or rehabilitate intermodal or rail equipment or facilities, including track, components of track, bridges, yards, buildings, and shops;

(B) refinance outstanding debt incurred for the purposes described in subparagraph (A); **[or]**

*(C) to acquire, improve, or rehabilitate rail safety and security equipment and facilities; or*

**[(C)] (D)** develop or establish new intermodal or railroad facilities.

(2) OPERATING EXPENSES NOT ELIGIBLE.—Direct loans and loan guarantees under this section shall not be used for railroad operating expenses.

(c) PRIORITY PROJECTS.—In granting applications for direct loans or guaranteed loans under this section, the Secretary shall give priority to projects that—

- (1) enhance public safety;
- (2) enhance the environment;
- (3) promote economic development;
- (4) enable United States companies to be more competitive in international markets;
- (5) are endorsed by the plans prepared under section 135 of title 23, United States Code, by the State or States in which they are located; or
- (6) preserve or enhance rail or intermodal service to small communities or rural areas.

(d) EXTENT OF AUTHORITY.—The aggregate unpaid principal amounts of obligations under direct loans and loan guarantees made under this section shall not exceed **[\$3,500,000,000]** ~~\$35,000,000,000~~ at any one time. Of this amount, not less than **[\$1,000,000,000]** ~~\$7,000,000,000~~ shall be available solely for projects primarily benefiting freight railroads other than Class I carriers. *The Secretary shall not establish any limit on the proportion of the unused amount authorized under this subsection that may be used for 1 loan or loan guarantee.*

(e) RATES OF INTEREST.—

(1) DIRECT LOANS.—The Secretary shall require interest to be paid on a direct loan made under this section at a rate not less than that necessary to recover the cost of making the loan.

(2) LOAN GUARANTEES.—The Secretary shall not make a loan guarantee under this section if the interest rate for the loan exceeds that which the Secretary determines to be reasonable, taking into consideration the prevailing interest rates and customary fees incurred under similar obligations in the private capital market.

(f) INFRASTRUCTURE PARTNERS.—

(1) AUTHORITY OF SECRETARY.—In lieu of or in combination with appropriations of budget authority to cover the costs of direct loans and loan guarantees as required under section 504(b)(1) of the Federal Credit Reform Act of 1990, the Secretary may accept on behalf of an applicant for assistance under this section a commitment from a non-Federal source to fund in whole or in part credit risk premiums with respect to the loan that is the subject of the application. In no event shall the aggregate of appropriations of budget authority and credit risk premiums described in this paragraph with respect to a direct loan or loan guarantee be less than the cost of that direct loan or loan guarantee.

(2) CREDIT RISK PREMIUM AMOUNT.—The Secretary shall determine the amount required for credit risk premiums under this subsection on the basis of—

- (A) the circumstances of the applicant, including the amount of collateral **[offered;]** *offered, if any;*
  - (B) the proposed schedule of loan disbursements;
  - (C) historical data on the repayment history of similar borrowers;
  - (D) consultation with the Congressional Budget Office;
- [and]**

(E) *the size and characteristics of the cohort of which the loan or loan guarantee is a member; and*

[(E)] (F) any other factors the Secretary considers relevant.

(3) PAYMENT OF PREMIUMS.—Credit risk premiums under this subsection shall be paid to the Secretary before the disbursement of loan amounts.

(4) COHORTS OF LOANS.—In order to maintain sufficient balances of credit risk premiums to adequately protect the Federal Government from risk of default, while minimizing the length of time the Government retains possession of those balances, the Secretary shall establish cohorts of loans. When all obligations attached to a cohort of loans have been satisfied, credit risk premiums paid for the cohort, and interest accrued thereon, which were not used to mitigate losses shall be returned to the original source on a pro rata basis. *A cohort may include loans and loan guarantees. The Secretary shall not establish any limit on the proportion of a cohort that may be used for 1 loan or loan guarantee.*

(g) PREREQUISITES FOR ASSISTANCE.—The Secretary shall not make a direct loan or loan guarantee under this section unless the Secretary has made a finding in writing that—

(1) repayment of the obligation is required to be made within a term of not more than 25 years from the date of its execution;

(2) the direct loan or loan guarantee is justified by the present and probable future demand for rail services or intermodal facilities;

(3) the applicant has given reasonable assurances that the facilities or equipment to be acquired, rehabilitated, improved, developed, or established with the proceeds of the obligation will be economically and efficiently utilized;

(4) the obligation can reasonably be repaid, using an appropriate combination of credit risk premiums and collateral offered by the applicant to protect the Federal Government; and

(5) the purposes of the direct loan or loan guarantee are consistent with subsection (b).

(h) CONDITIONS OF ASSISTANCE.—(1) The Secretary shall, before granting assistance under this section, require the applicant to agree to such terms and conditions as are sufficient, in the judgment of the Secretary, to ensure that, as long as any principal or interest is due and payable on such obligation, the applicant, and any railroad or railroad partner for whose benefit the assistance is intended—

[(1)] (A) will not use any funds or assets from railroad or intermodal operations for purposes not related to such operations, if such use would impair the ability of the applicant, railroad, or railroad partner to provide rail or intermodal services in an efficient and economic manner, or would adversely affect the ability of the applicant, railroad, or railroad partner to perform any obligation entered into by the applicant under this section;

[(2)] (B) will, consistent with its capital resources, maintain its capital program, equipment, facilities, and operations on a continuing basis; and

[(3)] (C) will not make any discretionary dividend payments that unreasonably conflict with the purposes stated.

(2) *The Secretary shall not require an applicant for a direct loan or loan guarantee under this section to provide collateral.*

(3) *The Secretary shall not require that an applicant for a direct loan or loan guarantee under this section have previously sought the financial assistance requested from another source.*

(4) *The Secretary shall require recipients of direct loans or loan guarantees under this section to apply the standards of section 22301(b) and (c) of title 49, United States Code, to their projects.*

(i) *TIME LIMIT FOR APPROVAL OR DISAPPROVAL.—Not later than 180 days after receiving a complete application for a direct loan or loan guarantee under this section, the Secretary shall approve or disapprove the application.*

(j) *OPERATORS DEEMED RAIL CARRIERS.—A person that conducts rail operations funded or otherwise receiving assistance under this section is deemed to be a rail carrier for purposes of part A of subtitle IV of title 49, United States Code, when so operating or performing such services.*

(k) *LOAN AND LOAN GUARANTEES FOR NON-RAILROAD ENTITIES.—Notwithstanding any other provision of law, entities other than rail companies shall be eligible for loans and loan guarantees under this section.*

**SEC. 503. ADMINISTRATION OF DIRECT LOANS AND LOAN GUARANTEES.**

[45 U.S.C. 823]

(a) **APPLICATIONS.**—The Secretary shall prescribe the form and contents required of applications for assistance under section 502, to enable the Secretary to determine the eligibility of the applicant's proposal, and shall establish terms and conditions for direct loans and loan guarantees made under that section.

(b) **FULL FAITH AND CREDIT.**—All guarantees entered into by the Secretary under section 502 shall constitute general obligations of the United States of America backed by the full faith and credit of the United States of America.

(c) **ASSIGNMENT OF LOAN GUARANTEES.**—The holder of a loan guarantee made under section 502 may assign the loan guarantee in whole or in part, subject to such requirements as the Secretary may prescribe.

(d) **MODIFICATIONS.**—The Secretary may approve the modification of any term or condition of a direct loan, loan guarantee, direct loan obligation, or loan guarantee commitment, including the rate of interest, time of payment of interest or principal, or security requirements, if the Secretary finds in writing that—

(1) the modification is equitable and is in the overall best interests of the United States; and

(2) consent has been obtained from the applicant and, in the case of a loan guarantee or loan guarantee commitment, the holder of the obligation.

(e) **COMPLIANCE.**—The Secretary shall assure compliance, by an applicant, any other party to the loan, and any railroad or railroad partner for whose benefit assistance is intended, with the provisions of this title, regulations issued hereunder, and the terms and

conditions of the direct loan or loan guarantee, including through regular periodic inspections.

(f) **COMMERCIAL VALIDITY.**—For purposes of claims by any party other than the Secretary, a loan guarantee or loan guarantee commitment shall be conclusive evidence that the underlying obligation is in compliance with the provisions of this title, and that such obligation has been approved and is legal as to principal, interest, and other terms. Such a guarantee or commitment shall be valid and incontestable in the hands of a holder thereof, including the original lender or any other holder, as of the date when the Secretary granted the application therefor, except as to fraud or material misrepresentation by such holder.

(g) **DEFAULT.**—The Secretary shall prescribe regulations setting forth procedures in the event of default on a loan made or guaranteed under section 502. The Secretary shall ensure that each loan guarantee made under that section contains terms and conditions that provide that—

(1) if a payment of principal or interest under the loan is in default for more than 30 days, the Secretary shall pay to the holder of the obligation, or the holder's agent, the amount of unpaid guaranteed interest;

(2) if the default has continued for more than 90 days, the Secretary shall pay to the holder of the obligation, or the holder's agent, 90 percent of the unpaid guaranteed principal;

(3) after final resolution of the default, through liquidation or otherwise, the Secretary shall pay to the holder of the obligation, or the holder's agent, any remaining amounts guaranteed but which were not recovered through the default's resolution;

(4) the Secretary shall not be required to make any payment under paragraphs (1) through (3) if the Secretary finds, before the expiration of the periods described in such paragraphs, that the default has been remedied; and

(5) the holder of the obligation shall not receive payment or be entitled to retain payment in a total amount which, together with all other recoveries (including any recovery based upon a security interest in equipment or facilities) exceeds the actual loss of such holder.

(h) **RIGHTS OF THE SECRETARY.**—

(1) **SUBROGATION.**—If the Secretary makes payment to a holder, or a holder's agent, under subsection (g) in connection with a loan guarantee made under section 502, the Secretary shall be subrogated to all of the rights of the holder with respect to the obligor under the loan.

(2) **DISPOSITION OF PROPERTY.**—The Secretary may complete, recondition, reconstruct, renovate, repair, maintain, operate, charter, rent, sell, or otherwise dispose of any property or other interests obtained pursuant to this section. The Secretary shall not be subject to any Federal or State regulatory requirements when carrying out this paragraph.

(i) **ACTION AGAINST OBLIGOR.**—The Secretary may bring a civil action in an appropriate Federal court in the name of the United States in the event of a default on a direct loan made under section 502, or in the name of the United States or of the holder of the obligation in the event of a default on a loan guaranteed under sec-

tion 502. The holder of a guarantee shall make available to the Secretary all records and evidence necessary to prosecute the civil action. The Secretary may accept property in full or partial satisfaction of any sums owed as a result of a default. If the Secretary receives, through the sale or other disposition of such property, an amount greater than the aggregate of—

(1) the amount paid to the holder of a guarantee under subsection (g) of this section; and

(2) any other cost to the United States of remedying the default, the Secretary shall pay such excess to the obligor.

(j) BREACH OF CONDITIONS.—The Attorney General shall commence a civil action in an appropriate Federal court to enjoin any activity which the Secretary finds is in violation of this title, regulations issued hereunder, or any conditions which were duly agreed to, and to secure any other appropriate relief.

(k) ATTACHMENT.—No attachment or execution may be issued against the Secretary, or any property in the control of the Secretary, prior to the entry of final judgment to such effect in any State, Federal, or other court. *Funds received by the Secretary under the preceding sentence shall be credited to the appropriation from which the expenses of making such appraisals, determinations, and findings were incurred.*

(l) INVESTIGATION CHARGE.—The Secretary may charge and collect from each applicant a reasonable charge for appraisal of the value of the equipment or facilities for which the direct loan or loan guarantee is sought, and for making necessary determinations and findings. Such charge shall not aggregate more than one-half of 1 percent of the principal amount of the obligation. in subsection (b).

(m) FEES AND CHARGES.—*Except as provided in this title, the Secretary may not assess any fees, including user fees, or charges in connection with a direct loan or loan guarantee provided under section 502.*

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#### ALASKA RAILROAD TRANSFER ACT OF 1982

##### SEC. 610. REVERSION.

[45 U.S.C. 1209]

(a) REVERSION OF PAYMENT TO FEDERAL GOVERNMENT FOR CONVERSION TO USE PREVENTING STATE-OWNED RAILROAD FROM CONTINUING TO OPERATE.—If, within ten years after the date of transfer to the State authorized by section 604 of this title, the Secretary finds that all or part of the real property transferred to the State under this title, except that portion of real property which lies within the boundaries of the Denali National Park and Preserve, is converted to a use that would prevent the State-owned railroad from continuing to operate, that real property (including permanent improvements to the property) shall revert to the United States Government, or (at the option of the State) the State shall pay to the United States Government an amount determined to be the fair market value of that property at the time its conversion prevents continued operation of the railroad.

(b) REVERSION UPON DISCONTINUANCE BY STATE OF USE OF ANY LAND WITHIN RIGHT-OF-WAY; CRITERIA FOR DISCONTINUANCE.—(1) If, after the date of transfer pursuant to section 604 of this title, the State discontinues use of any land within the right-of-way, the State's interest in such land shall revert to the United States. The State shall be considered to have discontinued use within the meaning of this subsection and subsection (d) of this section when:

【(1)】 (A) the Governor of the State of Alaska delivers to the Secretary of the Interior a notice of such discontinuance, including a legal description of the property subject to the notice, and a quitclaim deed thereto; or

【(2)】 (B) the State has made no use of the land for a continuous period of eighteen years for transportation, communication, or transmission purposes. Notice of such discontinuance shall promptly be published in the Federal Register by the Secretary, the Secretary of the Interior, or the Secretary of Agriculture, and reversion shall be effected one year after such notice, unless within such one-year period the State brings an appropriate action in the United States District Court for the District of Alaska to establish that the use has been continuing without an eighteen-year lapse. Any such action shall have the effect of staying reversion until exhaustion of appellate review from the final judgment in that action or termination of the right to seek such review, whichever first occurs.

(2)(A) *The State-owned railroad may convey all right, title, and interest of the State in any land within the right-of-way to a third party in exchange for other land that, in substitution for the land conveyed, is to be utilized as part of the right-of-way if the continuity of the right-of-way corridor for transportation, communications, and transmission purposes is provided by such use of the substituted land.*

(B) *The provisions of this section that require reversion shall apply to the substituted land, as of the effective date of the exchange of that land in a transaction authorized by subparagraph (A), as fully as if the substituted land had been rail properties of the Alaska Railroad as of January 13, 1983.*

(C) *Upon the conveyance of land in a transaction authorized by subparagraph (A), any reversionary interest in the land under this section shall terminate.*

(c) CONVEYANCES BY UNITED STATES SUBSEQUENT TO REVERSION.—Upon such reversion pursuant to subsection (b) of this section, the Secretary of the Interior shall immediately convey by patent to abutting landowners all right, title and interest of the United States. Where land abutting the reverted right-of-way is owned by different persons or entities, the conveyance made pursuant to this subsection shall extend the property of each abutting owner to the centerline of the right-of-way.

(d) DISCONTINUANCE BY STATE OF USE OF NATIONAL PARK OR FOREST LANDS; JURISDICTION UPON REVERSION.—If use is discontinued (as that term is used in subsection (b) of this section) of all or part of those properties of the Alaska Railroad transferred to the State pursuant to this title which lie within the boundaries of the Denali National Park and Preserve or the Chugach National Forest, such properties or part thereof (including permanent improvements to the property) shall revert to the United States and shall not be

subject to subsection (c) of this section. Upon such reversion, jurisdiction over that property shall be transferred to the Secretary of the Interior or the Secretary of Agriculture, as appropriate, for administration as part of the Denali National Park and Preserve or the Chugach National Forest.

(e) PAYMENT INTO TREASURY OF UNITED STATES OF EXCESS PROCEEDS FROM SALE OR TRANSFER OF ALL OR SUBSTANTIALLY ALL OF STATE-OWNED RAILROAD; LIMITATION.—Except as provided in subsections (a) through (d) of this section, if, within five years after the date of transfer to the State pursuant to section 604 of this title, the State sells or transfers all or substantially all of the State-owned railroad to an entity other than an instrumentality of the State, the proceeds from the sale or transfer that exceed the cost of any rehabilitation and improvement made by the State for the State-owned railroad and any net liabilities incurred by the State for the State-owned railroad shall be paid into the general fund of the Treasury of the United States.

(f) ENFORCEMENT BY ATTORNEY GENERAL.—The Attorney General, upon the request of the Secretary, the Secretary of the Interior, or the Secretary of Agriculture, shall institute appropriate proceedings to enforce this section in the United States District Court for the District of Alaska.

#### TITLE 49. TRANSPORTATION

##### SUBTITLE I. DEPARTMENT OF TRANSPORTATION

##### CHAPTER 3. GENERAL DUTIES AND POWERS

##### SUBCHAPTER I. DUTIES OF THE SECRETARY OF TRANSPORTATION

#### **§ 307. Safety information and intervention in [Interstate Commerce Commission] Surface Transportation Board proceedings**

(a) The Secretary of Transportation shall inspect promptly the safety compliance record in the Department of Transportation of each person applying to the [Interstate Commerce Commission] *Surface Transportation Board* for authority to provide transportation or freight forwarder service. The Secretary shall report the findings of the inspection to the [Commission.] *Board*.

(b) When the Secretary is not satisfied with the safety record of a person applying for permanent authority to provide transportation or freight forwarder service, or for approval of a proposed transfer of permanent authority, the Secretary shall intervene and present evidence of the fitness of the person to the [Commission] *Board* in its proceedings.

(c) When requested by the [Commission,] *Board*, the Secretary shall—

(1) provide the [Commission] *Board* with a complete report on the safety compliance of a carrier providing transportation or freight forwarder service subject to its jurisdiction;

(2) provide promptly a statement of the safety record of a person applying to the [Commission] *Board* for temporary authority to provide transportation;

(3) intervene and present evidence in a proceeding in which a finding of fitness is required; and

(4) make additional safety compliance surveys and inspections the [Commission] *Board* decides are desirable to allow it to act on an application or to make a finding on the fitness of a carrier.

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### **§ 309. High-speed ground transportation**

(a) The Secretary of Transportation, in consultation with the Secretaries of Commerce, Energy, and Defense, the Administrator of the Environmental Protection Agency, the Assistant Secretary of the Army for Public Works, and the heads of other interested agencies, shall lead and coordinate Federal efforts in the research and development of high-speed ground transportation technologies in order to foster the implementation of magnetic levitation and high-speed steel wheel on rail transportation systems as alternatives to existing transportation systems.

(b)(1) The Secretary may award contracts and grants for demonstrations to determine the contributions that high-speed ground transportation could make to more efficient, safe, and economical intercity transportation systems. Such demonstrations shall be designed to measure and evaluate such factors as the public response to new equipment, higher speeds, variations in fares, improved comfort and convenience, and more frequent service. In connection with grants and contracts for demonstrations under this section, the Secretary shall provide for financial participation by private industry to the maximum extent practicable.

(2)(A) In connection with the authority provided under paragraph (1), there is established a national high-speed ground transportation technology demonstration program, which shall be separate from the national magnetic levitation prototype development program established under section 1036(b) of the Intermodal Surface Transportation Efficiency Act of 1991 and shall be managed by the Secretary of Transportation.

(B)(i) Any eligible applicant may submit to the Secretary a proposal for demonstration of any advancement in a high-speed ground transportation technology or technologies to be incorporated as a component, subsystem, or system in any revenue service high-speed ground transportation project or system under construction or in operation at the time the application is made.

(ii) Grants or contracts shall be awarded only to eligible applicants showing demonstrable benefit to the research and development, design, construction, or ultimate operation of any maglev technology or high-speed steel wheel on rail technology. Criteria to be considered in evaluating the suitability of a proposal under this paragraph shall include—

- (I) feasibility of guideway or track design and construction;
- (II) safety and reliability;
- (III) impact on the environment in comparison to other high-speed ground transportation technologies;
- (IV) minimization of land use;
- (V) effect on human factors related to high-speed ground transportation;
- (VI) energy and power consumption and cost;

- (VII) integration of high-speed ground transportation systems with other modes of transportation;
- (VIII) actual and projected ridership; and
- (IX) design of signaling, communications, and control systems.

(C) For the purposes of this paragraph, the term “eligible applicant” means any United States private business, State government, local government, organization of State or local government, or any combination thereof. The term does not include any business owned in whole or in part by the Federal Government.

(D) The amount and distribution of grants or contracts made under this paragraph shall be determined by the Secretary. No grant or contract may be awarded under this paragraph to demonstrate a technology to be incorporated into a project or system located in a State that prohibits under State law the expenditure of non-Federal public funds or revenues on the construction or operation of such project or system.

(E) Recipients of grants or contracts made pursuant to this paragraph shall agree to submit a report to the Secretary detailing the results and benefits of the technology demonstration proposed, as required by the Secretary.

(c)(1) In carrying out the responsibilities of the Secretary under this section, the Secretary is authorized to enter into 1 or more cooperative research and development agreements (as defined by section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a)), and 1 or more funding agreements (as defined by section 201(b) of title 35, United States Code), with United States companies for the purpose of—

(A) conducting research to overcome technical and other barriers to the development and construction of practicable high-speed ground transportation systems and to help advance the basic generic technologies needed for these systems; and

(B) transferring the research and basic generic technologies described in subparagraph (A) to industry in order to help create a viable commercial high-speed ground transportation industry within the United States.

(2) In a cooperative agreement or funding agreement under paragraph (1), the Secretary may agree to provide not more than 80 percent of the cost of any project under the agreement. Not less than 5 percent of the non-Federal entity’s share of the cost of any such project shall be paid in cash.

(3) The research, development, or utilization of any technology pursuant to a cooperative agreement under paragraph (1), including the terms under which such technology may be licensed and the resulting royalties may be distributed, shall be subject to the provisions of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.).

(4) The research, development, or utilization of any technology pursuant to a funding agreement under paragraph (1), including the determination of all licensing and ownership rights, shall be subject to the provisions of chapter 18 of title 35, United States Code.

(5) At the conclusion of fiscal year 1993 and again at the conclusion of fiscal year 1996, the Secretary shall submit reports to Con-

gress regarding research and technology transfer activities conducted pursuant to the authorization contained in paragraph (1).

(d)(1) Not later than June 1, 1995, the Secretary shall complete and submit to Congress a study of the commercial feasibility of constructing 1 or more high-speed ground transportation systems in the United States. Such study shall consist of—

(A) an economic and financial analysis;

(B) a technical assessment; and

(C) recommendations for model legislation for State and local governments to facilitate construction of high-speed ground transportation systems.

(2) The economic and financial analysis referred to in paragraph

(1)(A) shall include—

(A) an examination of the potential market for a nationwide high-speed ground transportation network, including a national magnetic levitation ground transportation system;

(B) an examination of the potential markets for short-haul high-speed ground transportation systems and for intercity and long-haul high-speed ground transportation systems, including an assessment of—

(i) the current transportation practices and trends in each market; and

(ii) the extent to which high-speed ground transportation systems would relieve the current or anticipated congestion on other modes of transportation;

(C) projections of the costs of designing, constructing, and operating high-speed ground transportation systems, the extent to which such systems can recover their costs (including capital costs), and the alternative methods available for private and public financing;

(D) the availability of rights-of-way to serve each market, including the extent to which average and maximum speeds would be limited by the curvature of existing rights-of-way and the prospect of increasing speeds through the acquisition of additional rights-of-way without significant relocation of residential, commercial, or industrial facilities;

(E) a comparison of the projected costs of the various competing high-speed ground transportation technologies;

(F) recommendations for funding mechanisms, tax incentives, liability provisions, and changes in statutes and regulations necessary to facilitate the development of individual high-speed ground transportation systems and the completion of a nationwide high-speed ground transportation network;

(G) an examination of the effect of the construction and operation of high-speed ground transportation systems on regional employment and economic growth;

(H) recommendations for the roles appropriate for local, regional, and State governments to facilitate construction of high-speed ground transportation systems, including the roles of regional economic development authorities;

(I) an assessment of the potential for a high-speed ground transportation technology export market;

(J) recommendations regarding the coordination and centralization of Federal efforts relating to high-speed ground transportation;

(K) an examination of the role of the National Railroad Passenger Corporation in the development and operation of high-speed ground transportation systems; and

(L) any other economic or financial analyses the Secretary considers important for carrying out this section.

(3) The technical assessment referred to in paragraph (1)(B) shall include—

(A) an examination of the various technologies developed for use in the transportation of passengers by high-speed ground transportation, including a comparison of the safety (including dangers associated with grade crossings), energy efficiency, operational efficiencies, and environmental impacts of each system;

(B) an examination of the potential role of a United States designed maglev system, developed as a prototype under section 1036(b) of the Intermodal Surface Transportation Efficiency Act of 1991, in relation to the implementation of other high-speed ground transportation technologies and the national transportation system;

(C) an examination of the work being done to establish safety standards for high-speed ground transportation as a result of the enactment of section 7 of the Rail Safety Improvement Act of 1988;

(D) an examination of the need to establish appropriate technological, quality, and environmental standards for high-speed ground transportation systems;

(E) an examination of the significant unresolved technical issues surrounding the design, engineering, construction, and operation of high-speed ground transportation systems, including the potential for the use of existing rights-of-way;

(F) an examination of the effects on air quality, energy consumption, noise, land use, health, and safety as a result of the decreases in traffic volume on other modes of transportation that are expected to result from the full-scale development of high-speed ground transportation systems; and

(G) any other technical assessments the Secretary considers important for carrying out this section.

(e)(1) **【**Within 12 months after the submission of the study required by subsection (d), **】** *No later than December 31, 2002*, the Secretary shall establish the national high-speed ground transportation policy (hereinafter in this section referred to as the “Policy”).

(2) The Policy shall include—

(A) provisions to promote the design, construction, and operation of high-speed ground transportation systems in the United States;

(B) a determination whether the various competing high-speed ground transportation technologies can be effectively integrated into a national network and, if not, whether 1 or more such technologies should receive preferential encouragement from the Federal Government to enable the development of such a national network;

(C) a strategy for prioritizing the markets and corridors in which the construction of high-speed ground transportation systems should be encouraged; and

(D) provisions designed to promote American competitiveness in the market for high-speed ground transportation technologies.

(3) The Secretary shall solicit comments from the public in the development of the Policy and may consult with other Federal agencies as appropriate in drafting the Policy.

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#### SUBCHAPTER II. ADMINISTRATIVE

### **§ 333. Responsibility for rail transportation unification and coordination projects**

(a) The Secretary of Transportation may develop and make available to interested persons any plans, proposals, and recommendations for mergers, consolidations, reorganizations, and other unification or coordination projects for rail transportation (including arrangements for joint use of tracks and other facilities and acquisition or sale of assets) that the Secretary believes will result in a rail system that is more efficient and consistent with the public interest.

(b) To achieve a more efficient, economical, and viable rail system in the private sector, the Secretary, when requested by a rail carrier and under this section, may assist in planning, negotiating, and carrying out a unification or coordination of operations and facilities of at least 2 rail carriers.

(c)(1) The Secretary may conduct studies to determine the potential cost savings and possible improvements in the quality of rail transportation that are likely to result from unification or coordination of at least 2 rail carriers, through—

(A) elimination of duplicating or overlapping operations and facilities;

(B) reducing switching operations;

(C) using the shortest or more efficient and economical routes;

(D) exchanging trackage rights;

(E) combining trackage and terminal or other facilities;

(F) upgrading tracks and other facilities used by at least 2 rail carriers;

(G) reducing administrative and other expenses; and

(H) other measures likely to reduce costs and improve rail transportation.

(2) When the Secretary requests information for a study under this section, a rail carrier shall provide the information requested. In carrying out this section, the Secretary may designate an officer or employee to get from a rail carrier information on the kind, quality, origin, destination, consignor, consignee, and routing of property. This information may be obtained without the consent of the consignor or consignee notwithstanding section 11904 of this title. When appropriate, the designated officer or employee has the powers described in section 203(c) of the Regional Rail Reorganization Act of 1973 to carry out this section, but a subpoena must be issued under the signature of the Secretary.

(d)(1) When requested by a rail carrier, the Secretary may hold conferences on and mediate disputes resulting from a proposed uni-

fication or coordination project. The Secretary may invite to a conference—

- (A) officers and directors of an affected rail carrier;
- (B) representatives of rail carrier employees who may be affected;
- (C) representatives of the **【Interstate Commerce Commission;】** *Surface Transportation Board*;
- (D) State and local government officials, shippers, and consumer representatives; and
- (E) representatives of the Federal Trade Commission and the Attorney General.

(2) A person attending or represented at a conference on a proposed unification or coordination project is not liable under the antitrust laws of the United States for any discussion at the conference and for any agreements reached at the conference, that are entered into with the approval of the Secretary to achieve or determine a plan of action to carry out the unification or coordination project.

(e) When the approval of a proposal submitted by a rail carrier for a merger or other action is subject to the jurisdiction of the **【Interstate Commerce Commission】** *Surface Transportation Board* under section 11323(a) of this title, the Secretary may study the proposal to decide whether it satisfies section 11324(b) of this title. When the proposal is the subject of an application and proceeding before the **【Commission,】** *Board*, the Secretary may appear in any proceeding related to the application.

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#### SUBCHAPTER III. MISCELLANEOUS

### **§ 351. Judicial review of actions in carrying out certain transferred duties and powers**

(a) **JUDICIAL REVIEW.**—An action of the Secretary of Transportation in carrying out a duty or power transferred under the Department of Transportation Act (Public Law 89-670, 80 Stat. 931), or an action of the Administrator of the Federal Railroad Administration, the Federal Highway Administration, or the Federal Aviation Administration in carrying out a duty or power specifically assigned to the Administrator by that Act, may be reviewed judicially to the same extent and in the same way as if the action had been an action by the department, agency, or instrumentality of the United States Government carrying out the duty or power immediately before the transfer or assignment.

(b) **APPLICATION OF PROCEDURAL REQUIREMENTS.**—A statutory requirement related to notice, an opportunity for a hearing, action on the record, or administrative review that applied to a duty or power transferred by the Act applies to the Secretary or Administrator when carrying out the duty or power.

(c) **NONAPPLICATION.**—This section does not apply to a duty or power transferred from the **【Interstate Commerce Commission】** *Surface Transportation Board* to the Secretary under section 6(e)(1)-(4) and (6)(A) of the Act.

## SUBTITLE V. RAIL PROGRAMS

## PART A. SAFETY

## CHAPTER 201. GENERAL

## SUBCHAPTER I. GENERAL

**§ 20103. General authority**

(a) REGULATIONS AND ORDERS.—The Secretary of Transportation, as necessary, shall prescribe regulations and issue orders for every area of railroad **[safety]**, *safety, including the security of railroad operations*, supplementing laws and regulations in effect on October 16, 1970.

(b) REGULATIONS OF PRACTICE FOR PROCEEDINGS.—The Secretary shall prescribe regulations of practice applicable to each proceeding under this chapter. The regulations shall reflect the varying nature of the proceedings and include time limits for disposition of the proceedings. The time limit for disposition of a proceeding may not be more than 12 months after the date it begins.

(c) CONSIDERATION OF INFORMATION AND STANDARDS.—In prescribing regulations and issuing orders under this section, the Secretary shall consider existing relevant safety information and standards.

(d) WAIVERS.—The Secretary may waive compliance with any part of a regulation prescribed or order issued under this chapter if the waiver is in the public interest and consistent with railroad safety. The Secretary shall make public the reasons for granting the waiver.

(e) HEARINGS.—The Secretary shall conduct a hearing as provided by section 553 of title 5 when prescribing a regulation or issuing an order under this chapter, including a regulation or order establishing, amending, or waiving compliance with a railroad safety regulation prescribed or order issued under this chapter. An opportunity for an oral presentation shall be provided.

(f) TOURIST RAILROAD CARRIERS.—In prescribing regulations that pertain to railroad safety that affect tourist, historic, scenic, or excursion railroad carriers, the Secretary of Transportation shall take into consideration any financial, operational, or other factors that may be unique to such railroad carriers. The Secretary shall submit a report to Congress not later than September 30, 1995, on actions taken under this subsection.

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## PART C. PASSENGER TRANSPORTATION

## CHAPTER 241. GENERAL

**§ 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) “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.]

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

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

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

(5) “national rail passenger transportation system” means—

(A) the segment of the Northeast Corridor between Boston, Massachusetts and Washington, D.C.;

(B) rail corridors that have been designated by the Secretary of Transportation as high-speed corridors, but only after they have been improved to permit operation of high-speed service;

(C) long-distance routes of more than 750 miles between endpoints operated by Amtrak as of the date of enactment of the National Defense Rail Act; and

(D) short-distance corridors or routes operated as of the date of enactment of the National Defense Rail Act, unless discontinued by Amtrak.

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

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

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

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

\* \* \* \* \*

#### CHAPTER 241. GENERAL

### § 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, 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;

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

(11) 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.]**

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#### CHAPTER 241. GENERAL

##### **§ 24104. Authorization of appropriations**

(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, 247, and 249 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 by Congress when the amounts are appropriated. A payment may not be made more frequently than once every 90 days, unless Amtrak, for good cause, requests more frequent payment before a 90-day period ends. In each fiscal year in which amounts are authorized to be appropriated under this section, amounts appropriated shall be paid to Amtrak as follows:

(1) 50 percent on October 1.

(2) 25 percent on January 1.

(3) 25 percent on April 1.

(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.

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## **[§ 24302. Board of Directors**

**[(a) REFORM BOARD.—**

[(1) ESTABLISHMENT AND DUTIES.—The Reform Board described in paragraph (2) shall assume the responsibilities of the Board of Directors of Amtrak by March 31, 1998, or as soon thereafter as at least 4 members have been appointed and qualified. The Board appointed under prior law shall be abolished when the Reform Board assumes such responsibilities.

[(2) MEMBERSHIP.—

[(A)(i) The Reform Board shall consist of 7 voting members appointed by the President, by and with the advice and consent of the Senate, for a term of 5 years.

[(ii) Notwithstanding clause (i), if the Secretary of Transportation is appointed to the Reform Board, such appointment shall not be subject to the advice and consent of the Senate. If appointed, the Secretary may be represented at Board meetings by his designee.

[(B) In selecting the individuals described in subparagraph (A) for nominations for appointments to the Reform Board, the President should consult with the Speaker of the House of Representatives, the Minority Leader of the House of Representatives, the Majority Leader of the Senate, and the Minority Leader of the Senate.

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

[(i) have technical qualifications, professional standing, and demonstrated expertise in the fields of transportation or corporate or financial management;

[(ii) are not representatives of rail labor or rail management; and

[(iii) in the case of 6 of the 7 individuals selected, are not employees of Amtrak or of the United States.

[(D) The President of Amtrak shall serve as an ex officio, nonvoting member of the Reform Board.

[(3) CONFIRMATION PROCEDURE IN SENATE.—

[(A) This paragraph is enacted by the Congress—

[(i) as an exercise of the rulemaking power of the Senate, and as such it is deemed a part of the rules of the Senate, but applicable only with respect to the procedure to be followed in the Senate in the case of a motion to discharge; and it supersedes other rules only to the extent that it is inconsistent therewith; and

[(ii) with full recognition of the constitutional right of the Senate to change the rules (so far as relating to the procedure of the Senate) at any time, in the same manner and to the same extent as in the case of any other rule of the Senate.

[(B) If, by the first day of June on which the Senate is in session after a nomination is submitted to the Senate under this section, the committee to which the nomination was referred has not reported the nomination, then it shall be discharged from further consideration of the nomination and the nomination shall be placed on the Executive Calendar.

[(C) It shall be in order at any time thereafter to move to proceed to the consideration of the nomination without any intervening action or debate.

[(D) After no more than 10 hours of debate on the nomination, which shall be evenly divided between, and controlled by, the Majority Leader and the Minority Leader, the Senate shall proceed without intervening action to vote on the nomination.

[(b) BOARD OF DIRECTORS.—Five years after the establishment of the Reform Board under subsection (a), a Board of Directors shall be selected—

[(1) if Amtrak has, during the then current fiscal year, received Federal assistance, in accordance with the procedures set forth in subsection (a)(2); or

[(2) if Amtrak has not, during the then current fiscal year, received Federal assistance, pursuant to bylaws adopted by the Reform Board (which shall provide for employee representation), and the Reform Board shall be dissolved.

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

#### **§ 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 President of Amtrak.*

(B) *The Secretary of Transportation.*

(C) *7 individuals appointed by the President of the United States, by and with the advice and consent of the Senate, with an interest, experience, and qualifications in or directly related to rail transportation, including representatives of the passenger rail transportation, travel, hospitality, cruise line, and passenger air transportation businesses, and consumers of passenger rail transportation.*

(2) *An individual appointed under paragraph (1)(C) of this subsection serves for 5 years or until the individual's successor is appointed and qualified. Not more than 4 individuals appointed under paragraph (1)(C) may be members of the same political party.*

(3) *The board shall elect a chairman and a vice chairman from among its membership. The vice chairman shall serve as chairman in the absence of the chairman.*

(4) *The Secretary may be represented at board meetings by the Secretary's designee.*

(b) 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.*

(c) *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.

(d) *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.

(e) *CONFLICTS OF INTEREST.*—Subparts D, E, and F of part 2635 of title 5, Code of Federal Regulations, shall apply to members of the board of directors during their term of office in the same manner as if they were employees of an executive agency (as defined in section 105 of title 5, United States Code).

### **§ 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 a 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.]

(c) *CONFLICTS OF INTEREST.*—Subparts D, E, and F of part 2635 of title 5, Code of Federal Regulations, shall apply to officers when employed by Amtrak in the same manner as if they were employees of an executive agency (as defined in section 105 of title 5, United States Code).

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### **§ 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) *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 par, 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 systemwide 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 systemwide 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] *Surface Transportation Board* from ordering retroactive relief in a proceeding begun or reopened after October 1, 1981.

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

(a) GENERAL AUTHORITY.—

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

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

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

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

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

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

(3) Amtrak's right to use the facilities or have the services provided is conditioned on payment of the compensation. If the

compensation is not paid promptly, the rail carrier or authority entitled to it may bring an action against Amtrak to recover the amount owed.

(4) Amtrak shall seek immediate and appropriate legal remedies to enforce its contract rights when track maintenance on a route over which Amtrak operates falls below the contractual standard.

(b) OPERATING DURING EMERGENCIESK.—TO FACILITATE OPERATION BY AMTRAK DURING AN EMERGENCY, THE **【COMMISSION,】** *Board*, on application by Amtrak, shall require a rail carrier to provide facilities immediately during the emergency. The **【Commission】** *Board* then shall promptly prescribe reasonable terms, including indemnification of the carrier by Amtrak against personal injury risk to which the carrier may be exposed. The rail carrier shall provide the facilities for the duration of the emergency.

(c) PREFERENCE OVER FREIGHT TRANSPORTATION.—Except in an emergency, intercity and commuter rail passenger transportation provided by or for Amtrak has preference over freight transportation in using a rail line, junction, or crossing unless the Secretary of Transportation orders otherwise under this subsection. A rail carrier affected by this subsection may apply to the Secretary for relief. If the Secretary, after an opportunity for a hearing under section 553 of title 5, decides that preference for intercity and commuter rail passenger transportation materially will lessen the quality of freight transportation provided to shippers, the Secretary shall establish the rights of the carrier and Amtrak on reasonable terms.

(d) ACCELERATED SPEEDS.—If a rail carrier refuses to allow accelerated speeds on trains operated by or for Amtrak, Amtrak may apply to the Secretary for an order requiring the carrier to allow the accelerated speeds. The Secretary shall decide whether accelerated speeds are unsafe or impracticable and which improvements would be required to make accelerated speeds safe and practicable. After an opportunity for a hearing, the Secretary shall establish the maximum allowable speeds of Amtrak trains on terms the Secretary decides are reasonable.

(e) ADDITIONAL TRAINS.—

(1) When a rail carrier does not agree to provide, or allow Amtrak to provide, for the operation of additional trains over a rail line of the carrier, Amtrak may apply to the Secretary for an order requiring the carrier to provide or allow for the operation of the requested trains. After a hearing on the record, the Secretary may order the carrier, within 60 days, to provide or allow for the operation of the requested trains on a schedule based on legally permissible operating times. However, if the Secretary decides not to hold a hearing, the Secretary, not later than 30 days after receiving the application, shall publish in the Federal Register the reasons for the decision not to hold the hearing.

(2) The Secretary shall consider—

(A) when conducting a hearing, whether an order would impair unreasonably freight transportation of the rail carrier, with the carrier having the burden of demonstrating that the additional trains will impair the freight transportation; and

(B) when establishing scheduled running times, the statutory goal of Amtrak to implement schedules that attain a system-wide average speed of at least 60 miles an hour that can be adhered to with a high degree of reliability and passenger comfort.

(3) Unless the parties have an agreement that establishes the compensation Amtrak will pay the carrier for additional trains provided under an order under this subsection, the **【Commission】 Board** shall decide the dispute under subsection (a) of this section.

*(f) ON-TIME PERFORMANCE.—If the on-time performance of any intercity passenger train averages less than 80 percent for any consecutive 3-month period, Amtrak may petition the Surface Transportation Board to investigate whether, and to what extent, delays are due to causes that could reasonably be addressed by a rail carrier over the tracks of which the intercity passenger train operates, or by a regional authority providing commuter service, if any. In carrying out such an investigation, the Surface Transportation Board shall obtain information from all parties involved and make recommendations regarding reasonable measures to improve the on-time performance of the train.*

\* \* \* \* \*

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

(a) GENERAL AUTHORITY.—

(1) To the extent financial resources are available, Amtrak may acquire by eminent domain under subsection (b) of this section interests in property—

(A) necessary for intercity rail passenger transportation, except property of a rail carrier, a State, a political subdivision of a State, or a governmental authority; or

(B) requested by the Secretary of Transportation in carrying out the Secretary's duty to design and build an intermodal transportation terminal at Union Station in the District of Columbia if the Secretary assures Amtrak that the Secretary will reimburse Amtrak.

(2) Amtrak may exercise the power of eminent domain only if it cannot—

(A) acquire the interest in the property by contract; or

(B) agree with the owner on the purchase price for the interest.

(b) CIVIL ACTIONS.—

(1) A civil action to acquire an interest in property by eminent domain under subsection (a) of this section must be brought in the district court of the United States for the judicial district in which the property is located or, if a single piece of property is located in more than one judicial district, in any judicial district in which any piece of the property is located. An interest is condemned and taken by Amtrak for its use when a declaration of taking is filed under this subsection and an amount of money estimated in the declaration to be just compensation for the interest is deposited in the court. The declaration may be filed with the complaint in the action or at

any time before judgment. The declaration must contain or be accompanied by—

- (A) a statement of the public use for which the interest is taken;
  - (B) a description of the property sufficient to identify it;
  - (C) a statement of the interest in the property taken;
  - (D) a plan showing the interest taken; and
  - (E) a statement of the amount of money Amtrak estimates is just compensation for the interest.
- (2) When the declaration is filed and the deposit is made under paragraph (1) of this subsection, title to the property vests in Amtrak in fee simple absolute or in the lesser interest shown in the declaration, and the right to the money vests in the person entitled to the money. When the declaration is filed, the court may decide—
- (A) the time by which, and the terms under which, possession of the property is given to Amtrak; and
  - (B) the disposition of outstanding charges related to the property.
- (3) After a hearing, the court shall make a finding on the amount that is just compensation for the interest in the property and enter judgment awarding that amount and interest on it. The rate of interest is 6 percent a year and is computed on the amount of the award less the amount deposited in the court from the date of taking to the date of payment.
- (4) On application of a party, the court may order immediate payment of any part of the amount deposited in the court for the compensation to be awarded. If the award is more than the amount received, the court shall enter judgment against Amtrak for the deficiency.

(c) AUTHORITY TO CONDEMN RAIL CARRIER PROPERTY INTERESTS.—

- (1) If Amtrak and a rail carrier cannot agree on a sale to Amtrak of an interest in property of a rail carrier necessary for intercity rail passenger transportation, Amtrak may apply to the **【Interstate Commerce Commission】** *Surface Transportation Board* for an order establishing the need of Amtrak for the interest and requiring the carrier to convey the interest on reasonable terms, including just compensation. The need of Amtrak is deemed to be established, and the **【Commission,】** *Board*, after holding an expedited proceeding and not later than 120 days after receiving the application, shall order the interest conveyed unless the **【Commission】** *Board* decides that—
- (A) conveyance would impair significantly the ability of the carrier to carry out its obligations as a common carrier; and
  - (B) the obligations of Amtrak to provide modern, efficient, and economical rail passenger transportation can be met adequately by acquiring an interest in other property, either by sale or by exercising its right of eminent domain under subsection (a) of this section.
- (2) If the amount of compensation is not determined by the date of the Commission's order, the order shall require, as part

of the compensation, interest at 6 percent a year from the date prescribed for the conveyance until the compensation is paid.

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

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#### CHAPTER 247. AMTRAK ROUTE SYSTEM

##### **§24702. Transportation requested by States, authorities, and other persons**

(a) *CONTRACTS FOR TRANSPORTATION.*—Amtrak and a State, a regional or local authority, or another person may enter into a contract for Amtrak to operate an intercity rail service or route not included in the national rail passenger transportation system upon such terms as the parties thereto may agree.

(b) *DISCONTINUANCE.*—Upon termination of a contract entered into under this section, or the cessation of financial support under such a contract, Amtrak may discontinue such service or route, notwithstanding any other provision of law.

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#### CHAPTER 249. NORTHEAST CORRIDOR IMPROVEMENT PROGRAM

##### **§24902. Goals and requirements**

(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.

(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.

(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.

(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.

(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).

(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.

(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] *Surface Transportation Board* for approval of the agreement and all related agreements accompanying the application as soon as the agreement is made. If the [Commission] *Board* finds that approval is necessary to carry out this chapter, the [Commission] *Board*, shall approve the application and related agreements not later than 90 days after receiving the application.

(3) If an agreement is not made under paragraph (1) of this subsection, Amtrak, with the consent of the other parties, may apply to the [Interstate Commerce Commission.] Not later than 90 days after the application, the [Commission] *Board* shall decide on the terms of an agreement if it decides that

doing so is necessary to carry out this chapter. The decision of the [Commission] Board is binding on the other parties.

(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.

(i) COMPLETION.—Amtrak shall give the highest priority to completing the program.

(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 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.

\* \* \* \* \*

**§ 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.); and

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

(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] *Surface Transportation Board* shall order that the transportation continue over facilities acquired under the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.) and the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 801 et seq.) and shall determine compensation (without allowing cross-subsidization between intercity rail passenger and rail freight transportation) for the transportation not later than 120 days after the dispute is submitted. The [Commission] *Board* shall assign to a rail freight carrier obtaining transportation under this subsection the costs Amtrak incurs only for the benefit of the carrier, plus a proportionate share of all other costs of providing transportation under this paragraph incurred for the common benefit of Amtrak and the carrier. The proportionate share shall be based on relative measures of volume of car operations, tonnage, or

other factors that reasonably reflect the relative use of rail property covered by this subsection.

(3) This subsection does not prevent the parties from making an agreement under subsection (a)(6) of this section after the **【Commission】** *Board* makes a decision under this subsection.

**§ 24905. Coordination board and safety committee**

(a) NORTHEAST CORRIDOR COORDINATION BOARD.—

(1) The Northeast Corridor Coordination Board is composed of the following members:

(A) one individual from each commuter authority (as defined in section 1135(a) of the Omnibus Budget Reconciliation Act of 1981 (45 U.S.C. 1104)) that provides or makes a contract to provide commuter rail passenger transportation over the main line of the Northeast Corridor.

(B) 2 individuals selected by Amtrak.

(C) one individual selected by the Consolidated Rail Corporation.

(2) The Board shall recommend to Amtrak—

(A) policies that ensure equitable access to the Northeast Corridor, considering the need for equitable access by commuter and intercity rail passenger transportation and the requirements of section 24308(c) of this title; and

(B) equitable policies for the Northeast Corridor related to—

(i) dispatching;

(ii) public information;

(iii) maintaining equipment and facilities;

(iv) major capital facility investments; and

(v) harmonizing equipment acquisitions, rates, and schedules.

(3) The Board may recommend to the board of directors and President of Amtrak action necessary to resolve differences on providing transportation, except for facilities and transportation matters under section 24308(a) or 24904(a)(5) and (c) of this title.

(b) NORTHEAST CORRIDOR SAFETY COMMITTEE.—

(1) The Northeast Corridor Safety Committee is composed of members appointed by the Secretary of Transportation. The members shall be representatives of—

(A) the Secretary;

(B) Amtrak;

(C) freight carriers operating more than 150,000 train miles a year on the main line of the Northeast Corridor;

(D) commuter agencies;

(E) rail passengers;

(F) rail labor; and

(G) other individuals and organizations the Secretary decides have a significant interest in rail safety.

(2) The Secretary shall consult with the Committee about safety improvements on the Northeast Corridor main line. The Committee shall meet at least once every 2 years to consider safety matters on the main line.

(3) At the beginning of the first session of each Congress, the Secretary shall submit a report to Congress on the status of ef-

forts to improve safety on the Northeast Corridor main line. The report shall include the safety recommendations of the Committee and the comments of the Secretary on those recommendations.

(4) The Committee shall cease to exist on [January 1, 1999,] *January 1, 2008*, or on another date the Secretary decides is appropriate. The Secretary shall notify Congress in writing of a decision to terminate the Committee on another date.

\* \* \* \* \*

**§ 24910. Passenger rail cooperative research program**

(a) *IN GENERAL.*—The Secretary shall establish and carry out a rail passenger cooperative research program. The program shall—

(1) *address, among other matters, intercity rail passenger services, including existing rail passenger technologies and speeds, incrementally enhanced rail systems and infrastructure, and new high-speed wheel-on-rail systems;*

(2) *give consideration to research on commuter rail, regional rail, freight rail, and other modes of rail transportation that may affect rail passenger transportation due to the interconnect- edness of the rail passenger network with other rail transpor- tation services; and*

(3) *give consideration to regional concerns regarding rail pas- senger transportation, including meeting research needs com- mon to designated high-speed corridors, long-distance rail serv- ices, and regional intercity rail corridors, projects, and entities.*

(b) *CONTENTS.*—The program to be carried out under this section shall include research designed—

(1) *to develop more accurate models for evaluating the indi- rect effects of rail passenger service, including the effects on highway and airport and airway congestion, environmental quality, and energy consumption;*

(2) *to develop a better understanding of modal choice as it af- fects rail passenger transportation, including development of better models to predict ridership;*

(3) *to recommend priorities for technology demonstration and development;*

(4) *to meet additional priorities as determined by the advisory board established under subsection (c), including any rec- ommendations made by the National Research Council;*

(5) *to explore improvements in management, financing, and institutional structures;*

(6) *to address rail capacity constraints that affect passenger rail service through a wide variety of options, ranging from op- erating improvements to dedicated new infrastructure, taking into account the impact of such options on freight and com- muter rail operations; and*

(7) *to improve maintenance, operations, customer service, or other aspects of existing intercity rail passenger service existing in 2002.*

(c) *ADVISORY BOARD.*—

(1) *ESTABLISHMENT.*—In consultation with the heads of ap- propriate Federal departments and agencies, the Secretary shall

*establish an advisory board to recommend research, technology, and technology transfer activities related to rail passenger transportation.*

(2) *MEMBERSHIP.—The advisory board shall include—*

(A) *representatives of State transportation agencies;*

(B) *transportation and environmental economists, scientists, and engineers; and*

(C) *representatives of Amtrak, the Alaska Railroad, transit operating agencies, intercity rail passenger agencies, railway labor organizations, and environmental organizations.*

(d) *NATIONAL ACADEMY OF SCIENCES.—The Secretary may make grants to, and enter into cooperative agreements with, the National Academy of Sciences to carry out such activities relating to the research, technology, and technology transfer activities described in subsection (b) as the Secretary deems appropriate.*

\* \* \* \* \*

#### PART D. HIGH-SPEED RAIL

##### CHAPTER 261. HIGH-SPEED RAIL ASSISTANCE

#### **§ 26100. Policy.**

(a) *IN GENERAL.—The Congress declares that it is the policy of the United States that designated high-speed railroad passenger transportation corridors are the building blocks of an interconnected interstate railroad passenger system that serves the entire Nation.*

(b) *SECRETARY REQUIRED TO ESTABLISH NATIONAL HIGH-SPEED GROUND TRANSPORTATION POLICY.—The Secretary of Transportation shall establish the national high-speed ground transportation policy required by section 309(e)(1) of this title no later than December 31, 2002.*

#### **§ 26101. Corridor planning**

[(a) **CORRIDOR PLANNING ASSISTANCE.—**

[(1) The Secretary may provide under this section financial assistance to a public agency or group of public agencies for corridor planning for up to 50 percent of the publicly financed costs associated with eligible activities.

[(2) No less than 20 percent of the publicly financed costs associated with eligible activities shall come from State and local sources, which State and local sources may not include funds from any Federal program.]

(a) **PLANNING.—**

(1) *IN GENERAL.—The Secretary of Transportation shall provide planning assistance to States or group of States and other public agencies promoting the development of high-speed rail corridors designated by the Secretary under section 104(d) of title 23.*

(2) *SECRETARY MAY PROVIDE DIRECT OR FINANCIAL ASSISTANCE.—The Secretary may provide planning assistance under paragraph (1) directly or by providing financial assistance to a public agency or group of public agencies to undertake planning activities approved by the Secretary.*

(3) *100 PERCENT FEDERAL FUNDING.*—*The Secretary may permit, but may not require, a portion of the publicly financed costs associated with eligible activities to come from non-Federal sources.*

(4) *PRIORITIES TO CHICAGO, ATLANTA, DALLAS/FORT WORTH, PORTLAND, AND ORLANDO.*—*In determining projects to be undertaken pursuant to this paragraph, the Secretary shall give the highest priorities to undertaking planning in the vicinity of Union Station in Chicago, Illinois, in metropolitan Atlanta, Georgia, in the Dallas/Fort Worth, Texas, area, in the Portland, Oregon, area, and on the Orlando Corridor in Florida.*

(b) ELIGIBLE ACTIVITIES.—

(1) A corridor planning activity is eligible for financial assistance under subsection (a) if the Secretary determines that it is necessary to establish appropriate engineering, operational, financial, environmental, or socioeconomic projections for the establishment of high-speed rail service in the corridor and that it leads toward development of a prudent financial and institutional plan for implementation of specific high-speed rail improvements. Eligible corridor planning activities include—

(A) environmental assessments;

(B) feasibility studies emphasizing commercial technology improvements or applications;

(C) economic analyses, including ridership, revenue, and operating expense forecasting;

(D) assessing the impact on rail employment of developing high-speed rail corridors;

(E) assessing community economic impacts;

(F) coordination with State and metropolitan area transportation planning and corridor planning with other States;

(G) operational planning;

(H) route selection analyses and purchase of rights-of-way for proposed high-speed rail service;

(I) preliminary engineering and design;

(J) identification of specific improvements to a corridor, including electrification, line straightening and other right-of-way improvements, bridge rehabilitation and replacement, use of advanced locomotives and rolling stock, ticketing, coordination with other modes of transportation, parking and other means of passenger access, track, signal, station, and other capital work, and use of intermodal terminals;

(K) preparation of financing plans and prospectuses; and

(L) creation of public/private partnerships.

(2) No financial assistance shall be provided under this section for corridor planning with respect to the main line of the Northeast Corridor, between Washington, District of Columbia, and Boston, Massachusetts.

(c) Criteria for determining financial assistance. Selection by the Secretary of recipients of financial assistance under this section shall be based on such criteria as the Secretary considers appropriate, including—

(1) the relationship of the corridor to the Secretary's national high-speed ground transportation policy;

【(2) the extent to which the proposed planning focuses on systems which will achieve sustained speeds of 125 mph or greater;】

*(2) the extent to which the proposed planning focuses on high-speed rail systems, giving a priority to systems which will achieve sustained speeds of 125 miles per hour or greater and projects involving dedicated rail passenger rights-of-way;*

(3) the integration of the corridor into metropolitan area and statewide transportation planning;

(4) the potential interconnection of the corridor with other parts of the Nation's transportation system, including the interconnection with other countries;

(5) the anticipated effect of the corridor on the congestion of other modes of transportation;

(6) whether the work to be funded will aid the efforts of State and local governments to comply with the Clean Air Act (42 U.S.C. 7401 et seq.);

(7) the past and proposed financial commitments and other support of State and local governments and the private sector to the proposed high-speed rail program, including the acquisition of rolling stock;

(8) the estimated level of ridership;

(9) the estimated capital cost of corridor improvements, including the cost of closing, improving, or separating highway-rail grade crossings;

(10) rail transportation employment impacts;

(11) community economic impacts;

(12) the extent to which the projected revenues of the proposed high-speed rail service, along with any financial commitments of State or local governments and the private sector, are expected to cover capital costs and operating and maintenance expenses; *and*

(13) whether a specific route has been selected, specific improvements identified, and capacity studies 【completed; and】 *completed.*

【(14) whether the corridor has been designated as a high-speed rail corridor by the Secretary.】

*(d) OPERATORS DEEMED RAIL CARRIERS.—A person that conducts rail operations funded or otherwise receiving assistance under this section is deemed to be a rail carrier for purposes of part A of subtitle IV, when so operating or performing such services.*

### **§ 26101A. Implementation of corridor plans**

*(a) IMPLEMENTATION ASSISTANCE.—*

*(1) IN GENERAL.—The Secretary of Transportation shall provide implementation assistance to States or group of States and other public agencies promoting the development of high-speed rail corridors designated by the Secretary under section 104(d) of title 23. The Secretary shall establish an application and qualification process and, before providing assistance under this section, make a determination on the record that the applicant is qualified and eligible for assistance under this section.*

*(2) SECRETARY MAY PROVIDE DIRECT OR FINANCIAL ASSISTANCE.—The Secretary may provide implementation assistance under paragraph (1) directly or by providing financial assist-*

ance to a public agency or group of public agencies to undertake implementation activities approved by the Secretary.

(3) *100 PERCENT FEDERAL SHARE.*—The Secretary may permit, but may not require, a portion of the publicly financed costs associated with eligible activities to come from non-Federal sources.

(4) *CONTRIBUTION OF LAND.*—Notwithstanding paragraph (3), the Secretary may accept land contributed by a State for right-of-way, without regard to whether the State acquired the land directly or indirectly through the use of Federal funds, including transfers from the Highway Trust Fund under section 9503 of the Internal Revenue Code of 1986.

(5) *PRIORITIES TO CHICAGO, ATLANTA, DALLAS/FORT WORTH, PORTLAND, AND ORLANDO.*—In determining projects to be undertaken pursuant to this subsection, the Secretary shall give the highest priorities to undertaking implementation assistance in the vicinity of Union Station in Chicago, Illinois, in metropolitan Atlanta, Georgia, and in the Dallas/Fort Worth, Texas, area, in the Portland, Oregon, area, and on the Orlando Corridor in Florida.

(6) *SPECIAL TRANSPORTATION CIRCUMSTANCES.*—In carrying out this section, the Secretary shall allocate an appropriate portion of the amounts available for implementation assistance to providing appropriate related assistance in any State the rail transportation system of which—

(A) is not physically connected to rail systems in the continental United States; and

(B) may not otherwise qualify for high-speed rail implementation assistance due to the constraints imposed on the railway infrastructure in that State due to the unique characteristics of the geography of that State or other relevant considerations, as determined by the Secretary.

(b) *ELIGIBLE IMPLEMENTATION ACTIVITIES.*—The following activities are eligible for implementation assistance under subsection (a):

(1) Security planning and the acquisition of security and emergency response equipment.

(2) Operating expenses.

(3) Infrastructure acquisition and construction of track and facilities.

(4) Highway-rail grade crossing eliminations and improvements.

(5) Acquisition of rights-of-way, locomotives, rolling stock, track, and signal equipment.

(c) *CRITERIA FOR DETERMINING ASSISTANCE FOR IMPLEMENTATION ACTIVITIES.*—The Secretary, in selecting recipients of assistance under subsection (a), shall—

(1) encourage the use of positive train control technologies;

(2) require that any project meet any existing safety regulations, and give preference to any project determined by the Secretary to have particularly high levels of safety;

(3) encourage intermodal connectivity by locating train stations in or near airports, bus terminals, subway stations, ferry ports, and other modes of transportation;

(4) ensure a general regional balance in providing such assistance and avoid the concentration of a disproportionate dedi-

*cation of available financial assistance resources to a single project or region of the country; and*

*(5) ensure that any project is compatible with, and operated in conformance with, plans developed pursuant to the requirements of sections 134 and 135 of title 23, United States Code.*

*(d) OPERATORS DEEMED RAIL CARRIERS.—A person that conducts rail operations funded or otherwise receiving assistance under this section is deemed to be a rail carrier for purposes of part A of sub-title IV, when so operating or performing such services.*

*(e) DOMESTIC BUYING PREFERENCES.—*

*(1) IN GENERAL.—In carrying out a project assisted under this section, a recipient 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.*

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

*(3) EXEMPTIONS.—On application of a recipient, the Secretary of Transportation may exempt a recipient from the requirements of this subsection if the Secretary decides that, for particular articles, material, or supplies—*

*(A) the requirements of paragraph (1) of this subsection are inconsistent with the public interest;*

*(B) the cost of imposing those requirements is unreasonable; or*

*(C) 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.*

*(4) UNITED STATES DEFINED.—In this subsection, the term “the United States” means the States, territories, and possessions of the United States and the District of Columbia.*

\* \* \* \* \*

#### **【§ 26104. Authorization of appropriations**

**【(a) FISCAL YEAR 1995.—**There are authorized to be appropriated to the Secretary \$29,000,000 for fiscal year 1995, for carrying out sections 26101 and 26102 (including payment of administrative expenses related thereto).

**【(b) FISCAL YEAR 1996.—**

**【(1)** There are authorized to be appropriated to the Secretary \$40,000,000 for fiscal year 1996, for carrying out section 26101 (including payment of administrative expenses related thereto).

**【(2)** There are authorized to be appropriated to the Secretary \$30,000,000 for fiscal year 1996, for carrying out section 26102 (including payment of administrative expenses related thereto).

**【(c) FISCAL YEAR 1997.—**

[(1) There are authorized to be appropriated to the Secretary \$45,000,000 for fiscal year 1997, for carrying out section 26101 (including payment of administrative expenses related thereto).

[(2) There are authorized to be appropriated to the Secretary \$40,000,000 for fiscal year 1997, for carrying out section 26102 (including payment of administrative expenses related thereto).

[(d) FISCAL YEAR 1998.—

[(1) There are authorized to be appropriated to the Secretary \$10,000,000 for fiscal year 1998, for carrying out section 26101 (including payment of administrative expenses related thereto).

[(2) There are authorized to be appropriated to the Secretary \$25,000,000 for fiscal year 1998, for carrying out section 26102 (including payment of administrative expenses related thereto).

[(e) FISCAL YEAR 1999.—

[(1) There are authorized to be appropriated to the Secretary \$10,000,000 for fiscal year 1999, for carrying out section 26101 (including payment of administrative expenses related thereto).

[(2) There are authorized to be appropriated to the Secretary \$25,000,000 for fiscal year 1999, for carrying out section 26102 (including payment of administrative expenses related thereto).

[(f) FISCAL YEAR 2000.—

[(1) There are authorized to be appropriated to the Secretary \$10,000,000 for fiscal year 2000, for carrying out section 26101 (including payment of administrative expenses related thereto).

[(2) There are authorized to be appropriated to the Secretary \$25,000,000 for fiscal year 2000, for carrying out section 26102 (including payment of administrative expenses related thereto).

[(g) FISCAL YEAR 2001.—

[(1) There are authorized to be appropriated to the Secretary \$10,000,000 for fiscal year 2001, for carrying out section 26101 (including payment of administrative expenses related thereto).

[(2) There are authorized to be appropriated to the Secretary \$25,000,000 for fiscal year 2001, for carrying out section 26102 (including payment of administrative expenses related thereto).

[(h) FUNDS TO REMAIN AVAILABLE.—Funds made available under this section shall remain available until expended.]

#### **§ 26104. Authorization of appropriations**

(a) *FISCAL YEARS 2003 THROUGH 2007.*—There are authorized to be appropriated to the Secretary for each of fiscal years 2003 through 2007—

(1) \$25,000,000 for carrying out section 26101;

(2) \$1,500,000,000 for carrying out section 26101A; and

(3) \$25,000,000 for carrying out section 26102.

(b) *FUNDS TO REMAIN AVAILABLE.*—Funds made available under this section shall remain available until expended.

(c) *SPECIAL RULE.*—Except as specifically provided in section 26101, 26101A, or 26102, no amount authorized by subsection (a) may be used for obligation or expenditure on the Boston-to-Washington segment of the Northeast Corridor while that segment is receiving Federal funds for capital or operating expenses.

#### **§ 26105. Definitions For purposes of this chapter—**

(1) the term “financial assistance” includes grants, contracts, loans, loan guarantees, and cooperative agreements;

(2) the term “high-speed rail” means all forms of nonhighway ground transportation that run on rails or electromagnetic guideways providing transportation service which is—

(A) reasonably expected to reach sustained speeds of **[more than 125 miles per hour;]** *90 miles per hour or more*; and

(B) made available to members of the general public as passengers, but does not include rapid transit operations within an urban area that are not connected to the general rail system of transportation;

(3) the term “publicly financed costs” means the costs funded after April 29, 1993, by Federal, State, and local governments;

(4) the term “Secretary” means the Secretary of Transportation;

(5) the term “State” means any of the several States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States; and

(6) the term “United States private business” means a business entity organized under the laws of the United States, or of a State, and conducting substantial business operations in the United States.

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#### PART E. MISCELLANEOUS

##### CHAPTER 281. LAW ENFORCEMENT

#### **§ 28101. Rail police officers**

Under regulations prescribed by the Secretary of Transportation, a rail police officer who is employed by a rail carrier and certified or commissioned as a police officer under the laws of a State may enforce the laws of any jurisdiction in which **[the rail carrier]** *any rail carrier* owns property, to the extent of the authority of a police officer certified or commissioned under the laws of that jurisdiction, to protect—

(1) employees, passengers, or patrons of **[the rail carrier]** *any rail carrier*;

(2) property, equipment, and facilities owned, leased, operated, or maintained by **[the rail carrier]** *any rail carrier*;

(3) property moving in interstate or foreign commerce in the possession of **[the rail carrier]** *any rail carrier*; and

(4) personnel, equipment, and material moving by rail that are vital to the national defense.

#### MINORITY VIEWS OF SENATOR McCAIN

It appears that once again, the American taxpayers are going to be railroaded into providing billions of dollars in subsidies to Amtrak without fixing what ails it. I had hoped the Senate Commerce Committee would work to confront the fundamental reasons for Amtrak’s failures over the past 31 years because a reevaluation of Amtrak is clearly needed. In fiscal year (FY) 2001, Amtrak’s operating loss was \$1.1 billion, its highest ever. Amtrak’s debt, now \$3.6 billion, is also at an all-time high, having tripled since Amtrak

was last authorized in 1997. And despite having received over \$5 billion in Federal assistance and another \$1.2 billion from a number of states over the past five years, Amtrak is again on the verge of bankruptcy.

We have a responsibility to fix a program that has consistently fallen woefully short of the goals Congress has set for Amtrak and that Amtrak has set for itself. The solution is not to throw tens of billions of dollars at the problem. Money, alone, is not the answer. Yet that is largely the solution provided by S. 1991 which would increase authorization levels for the FY2003 through FY2007 period from \$5.163 billion to \$14.7 billion for Amtrak; from \$225 million to \$7.8 billion for high-speed rail; and from \$3.5 billion to \$35 billion for rail project loans and loan guarantees. In total, that is an increase in authorization levels from \$8.8 billion to an astounding \$57.5 billion.

To get rail passenger service on track, we need to address a number of tough questions. What is the future for intercity rail passenger transportation? Where does it attract passengers and where doesn't it? Does rail passenger service have to mean "Amtrak" or, after 30 years, is it finally time to find a new approach? Where might high-speed rail service actually attract enough passengers to be economically viable? How does rail passenger service fit into our national transportation system? And what is the most equitable way for the Federal government, states and municipalities, and other rail passenger stakeholders to share the related financial obligations?

Unfortunately, the legislation being reported by the Commerce Committee avoids addressing any of the tough issues. Perhaps worse, the Committee did not even attempt to address the many problems impeding Amtrak's financial and operational performance, including Amtrak's inability to control expenses. Rather than holding Amtrak accountable for its continuing poor performance and management problems as was expected under the Amtrak Reform and Accountability Act (ARAA) (P.L. 105-134), Amtrak's failure to achieve operational self-sufficiency as required by law is instead being rewarded with billions of dollars in new subsidies to maintain its existing network and expand into high-speed rail operations.

The bill also ducks the toughest questions of all - whether we can afford and how we will pay for S. 1991, given the many competing demands already being placed on the budget, particularly since the September 11, 2001, terrorist attacks. Clearly, Amtrak's customers will not be able to foot the bill. The cost of the Amtrak and high-speed rail provisions alone would add \$190 to the price of every ticket.

I think we need a reality check. If S. 1991 is enacted, authorizations for intercity passenger rail (both Amtrak and high-speed rail) will rise to approximately \$4.5 billion annually, or almost nine times the level appropriated for Amtrak in FY2002. Moreover, it is nearly two-thirds the level of the entire Federal transit program, yet if one considers ridership levels, transit ridership stands at 9.5 billion trips per year while Amtrak ridership is just 23.5 million.

High-speed rail development is a very high-cost proposition and one that no one can accurately predict today. Amtrak has estimated the cost to develop the 11 existing corridors designated for

high-speed rail development (before the additional segments designated by S. 1991) at between \$50 and \$70 billion. Further, the obligation will not stop with initial construction. Just like the Northeast Corridor, other high-speed corridors will have large annual capital requirements to maintain track and signals and to refurbish and replace equipment. I am concerned that the \$4.5 billion annual subsidy under S. 1991 will become a permanent Federal obligation. And the purpose of the subsidies will be to provide competition to other modes of transportation, including airlines, intercity buses and automobile, that are largely self-supporting through user charges.

An underlying theme of S. 1991 and this report is that intercity passenger rail has been shortchanged relative to Federal funding for highways and airports. But the reason hundreds of billions of dollars have been invested for those modes is that their users are funding these expenditures through fuel taxes, surcharges on airline tickets and other fees. This cannot be said of Amtrak. Amtrak appropriations are a subsidy, pure and simple, for a comparatively small group of customers -- less than 1 percent of the traveling public.

#### AMTRAK (TITLE III)

##### REPEAL OF AMTRAK SELF-SUFFICIENCY REQUIREMENTS

Five years ago, when Amtrak was last reauthorized, Congress, by an overwhelming majority, adopted the ARAA. The law provided liability, labor and procurement reforms Amtrak said it needed to operate more like a private business. With these changes, that Act required that Amtrak achieve "operational self-sufficiency" no later than the fifth anniversary of enactment, which is December 2, 2002. Operational self-sufficiency was a benchmark Amtrak emphatically and repeatedly said it could meet.

The 1997 Act clearly intended that Amtrak be substantially reformed or liquidated if Amtrak failed to meet its financial goals. The Act set up the Amtrak Reform Council (ARC) to oversee Amtrak's progress and charged the Council with submitting a plan for a "restructured and rationalized national intercity rail passenger system" if the Council determined Amtrak would not achieve self-sufficiency.

Until quite recently, Amtrak insisted that it was on a "glide-path" to self-sufficiency. What we now know is that Amtrak was only able to make such claims because it was selling equipment, borrowing to generate cash, and mortgaging its assets - including a portion of New York's Penn Station for \$300 million - just to keep operating. I am not alone in feeling deceived by Amtrak's purposely misleading statements.

Amtrak initially told Congress it would achieve operational self-sufficiency in FY2002. With the delay in the introduction of Acela and Amtrak's inability to control the growth of its expenses, Amtrak presented a more modest plan in FY2001, forecasting that it would achieve self-sufficiency by FY2003 (see figure 1). But Amtrak made no progress even under its more modest plan. Losses for purposes of the self-sufficiency test, which looks at Amtrak's cash loss excluding excess railroad retirement payments, were \$341 million in FY2001, a loss higher than that recorded in FY1997. In Novem-

ber 2001, the ARC found that Amtrak would not achieve self-sufficiency and in January 2002, the Department of Transportation (DOT) Inspector General concluded that “Amtrak’s cash losses have not decreased and Amtrak is no closer to operating self-sufficiency now than it was in 1997.”

Amtrak’s latest business plan for FY2002 and FY2003, issued in January 2002, makes no mention of operational self-sufficiency even though it is required to meet this financial goal. The forecasts for both years are lower than those in previous plans and, even if met, will produce estimated losses of \$179 million in FY2002 and \$199 million in FY2003 for purposes of the self-sufficiency test.

Amtrak’s failure to make any progress toward self-sufficiency does not mean the standard was unfair or unachievable. It means that more reform and better management decisions are needed. It means Amtrak officials need to be held accountable to implement the policies needed to meet its own business plan objectives. And it means getting “straight talk” when it comes to Amtrak’s financial and operating performance.

The ARC submitted its recommendations for restructuring Amtrak on February 7, 2002. In its report to Congress, the ARC recommended separating Amtrak’s Northeast Corridor infrastructure from its operations to free Amtrak of the large capital burden imposed by ownership of the Corridor. It also recommended that the Federal government take a more active role in overseeing Amtrak and assume responsibility for policy issues now largely left up to Amtrak. Most significant was the ARC’s proposal to permit franchising of Amtrak’s routes after a transition period during which Amtrak would “get its house in order.” Competition, the ARC reasoned, would force Amtrak to operate more efficiently.

S. 1991 fails to give any acknowledgment to any of the recommendations by this 11-member bipartisan Council. It simply repeals the self-sufficiency provisions enacted in 1997. S. 1991 would ensure that once again, Amtrak will not be held accountable for its financial or management decisions.

Prior to Committee action on S. 1991, I introduced legislation (S. 1958) to fundamentally alter intercity rail passenger service in our nation. This legislative proposal includes placing Amtrak under a Control Board, similar to the District of Columbia Control Board, to enforce financial and management discipline. It would also introduce competition for passenger rail services and, after a transition period, privatize Amtrak. As evidenced during and since the Commerce Committee’s hearing on March 14, 2002, there are a number of private interests willing and able to operate train services, maintain equipment, and perform other passenger-related services. Thirty-one years after the formation of Amtrak, it is no longer necessary for the Federal government to sponsor and own a national passenger rail company to compete with other privately supported modes. Under the right conditions, better services can be provided more effectively by the private sector. After all, we don’t have only one national bus carrier or one national air carrier.

#### AUTHORIZATIONS TO FUND PRINCIPAL AND INTEREST ON AMTRAK DEBT

Over the past five years, Amtrak has more than tripled its debt to \$3.6 billion, including a \$300 million mortgage on a portion of

New York's Penn Station. It is this additional debt that until recently permitted Amtrak to assert that it was on a glide-path to self sufficiency. To most of us, the idea of increasing debt obligations to claim we have achieved our financial objectives would seem counterintuitive to our intended purpose of an improved financial situation as statutorily required of Amtrak. Obviously, Amtrak management does not see it the way most of us do?

Interest on its debt is now one of Amtrak's fastest growing expenses. In FY2001, interest expense was \$85 million and, according to the DOT Inspector General, will increase to \$225 million in FY2005. Unable to fund either the interest or principal from operating revenues, Amtrak now seeks Federal assistance to cover these costs. As such, S. 1991 would authorize a total of \$1.3 billion through FY2007 for this purpose. I am concerned that while the bill relieves Amtrak of the responsibility to fund its self-incurred debt, it provides no safeguards or assurances to prevent Amtrak from borrowing yet more money and further increasing the cost to the taxpayers.

During the executive session on April 18, 2002, I offered an amendment to require that Amtrak obtain the approval of the Secretary of Transportation before assuming any additional debt obligations. Currently, Amtrak is free to borrow funds for capital projects -- including equipment acquisitions (or sales and lease-backs) and infrastructure improvements on property to which the Federal government does not hold title -- without Federal approval. The proponents of S. 1991 intend to retain the status quo in this regard. Moreover, under the provisions of S. 1991, Amtrak would also be authorized to borrow funds under the RRIF program to fund high-speed rail projects. And it is easy to predict based on history who will be expected to pay for these loans - the taxpayers.

Although my amendment was defeated on a nearly unanimous vote among party lines, I continue to believe that strict oversight of future borrowing is needed. The authorizations in S. 1991 for principal and interest payments are not even based on Amtrak's total debt. Even if Amtrak does not assume any additional obligations between now and the end of FY2007, the debt on its books will rise another \$400 million to reflect obligations already incurred that will begin coming due. Further, the payments that would be required to be made by taxpayers under S. 1991 will not come close to eliminating Amtrak's debt. Amtrak has indicated that at the end of FY2007, the principal balance on outstanding debt will still be \$2.8 billion. All the more reason, I believe, to ensure that Amtrak is prevented from digging an even deeper hole for itself and the American taxpayers without proper government oversight.

#### AMTRAK AUTHORIZATIONS

S. 1991 would authorize a total of \$14.7 billion over five years for Amtrak to maintain Amtrak's existing network -- about three times Amtrak's current authorization level. I have a number of concerns about these provisions.

First, the funding levels are inconsistent with Amtrak's own funding requests. In its annual grant request to Congress, dated February 15, 2002, Amtrak requested a total of \$1.2 billion for FY2003. While Amtrak stated that this amount is the minimum necessary to maintain its existing network and will not allow it to

address its capital backlog, S. 1991 provides no justification for almost doubling the amount requested by Amtrak to \$2.3 billion. Amtrak's grant request includes \$200 million to cover operating losses on its long-distance trains. Yet, S. 1991 authorizes \$360 million annually to offset these losses. Even Amtrak's long-term capital plan does not suggest that authorizations of the magnitude provided in S. 1991 are necessary to meet current or projected needs.

The only consistent trend with respect to Amtrak funding is that whatever Congress authorizes, it will not be enough. Over the past five years, Amtrak has received \$6.3 billion in subsidies, including \$5.1 billion from the Federal government and \$1.2 billion from a number of states. Even so, Amtrak's operating loss in FY2001 was \$1.1 billion, the highest loss in Amtrak's history.

The real issue is that the American taxpayers are getting so little value for their investment and are being forced to continue subsidizing trains that will never even come close to breaking even. Amtrak's losses are concentrated on, although not limited to, its long-distance routes, i.e., the 19 routes with an average rider trip of more than 300 miles.<sup>1</sup> In FY2001, these routes accounted for 75% of Amtrak's operating losses, excluding depreciation, but carried only 18% of Amtrak's passengers. For example, the Sunset Limited lost \$347 per passenger last year, roughly double the average fare paid by passengers who rode the train. The Texas Eagle, which is slated for expansion, lost \$258 per passenger, about \$100 more than the average fare.

Most of the trains on the long distant routes have break-even load factors well above 100%, meaning that they cannot break even on operating expenses (excluding depreciation) even if every seat were filled. The Cardinal, for example, which runs between Chicago, IL, and Washington, DC, had a break-even load factor of 182% in FY2001. This means that in order to cover its operating costs, every seat would have had to be occupied by almost two riders. But of course, it is these very trains that attract the fewest passengers.

In testimony before Congress on April 11, 2002, the U.S. General Accounting Office (GAO) reported that in 12 of the 46 states in which Amtrak operates, fewer than 100 passengers on average board Amtrak trains on a daily basis. In 34 states, fewer than 1,000 passengers on average board Amtrak trains daily (see figure 2). In my home state of Arizona, just 116 passengers board Amtrak trains daily, compared to 56,500 daily airplane boardings in the state.

My view is that the market should decide what train services are provided. This would likely mean an elimination of service along many long-distance routes, but could also mean the initiation of new short-distance corridor services that would be utilized by passengers. Corridor services are Amtrak's best financial performers today and are responsible for Amtrak's recent increases in ridership. Under this approach, if a route cannot be self-supporting, it would be discontinued unless a state or states agree to provide a subsidy to maintain service.

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<sup>1</sup>The Kentucky Cardinal is included in the list of long-distance trains since in FY2001 it provided sleeping accommodations for overnight riders.

This approach would also improve the equity among the states supporting Amtrak. Today, some states including California, Illinois, Michigan, Missouri, Washington, Oregon and North Carolina, make significant contributions to support Amtrak while others pay nothing. For example, the States of Oregon and Washington provided operating support of \$16.3 million in FY2001 for the Cascades service. California contributed \$63 million in operating support for the San Joaquins, the Capitols and the Pacific Surfliners. Yet states benefitting from the long- distance routes, the routes with the highest losses, contribute no direct assistance and simply get a free ride.

Requiring states to subsidize services has the added benefit of providing more state involvement and oversight of Amtrak. Where states presently play a more active role, Amtrak operates more efficiently and is more accountable. States contributing financial support pay attention to Amtrak to ensure they are getting what they are paying to receive. Particularly if Amtrak is permitted to retain its monopoly, as would certainly be the case under S. 1991, this kind of involvement by the states is critical to ensuring Amtrak delivers operating improvements, not to mention, even its standard level of service.

I strongly support Senator Wyden's amendment, adopted during the executive session, to require the establishment of objective criteria for Amtrak service changes, including the establishment of new routes, the elimination of existing routes, and the contraction or expansion of existing routes. Objective criteria are absolutely essential if we are to succeed in introducing a rational approach to evaluating Amtrak's network. I am concerned, however, that the amendment does not go far enough since there would be no consequences if Amtrak makes decisions inconsistent with the criteria. In order for route criteria to be an effective tool, a governmental body such as the DOT must enforce their application; routes that cannot meet threshold standards should be required to be discontinued or subsidized at the state level.

#### FINANCIAL ACCOUNTING PROVISIONS

Although S. 1991 would make modest changes to Amtrak's accounting and planning practices, the changes would hardly be enough to enforce financial discipline. For the last several years, we have had the DOT Inspector General, the GAO, the ARC, and several Congressional committees, reviewing Amtrak's finances and decision-making on a regular basis. But all of this oversight has taken the form of audits after the fact and, as a result, only assess past actions rather than influencing current and future decisions.

Amtrak has been unable to take necessary actions on its own to improve its financial and operating situation. More pro-active oversight is required to help Amtrak succeed. That is why I believe Amtrak would greatly benefit by the creation of a Control Board, modeled after the DC Financial Control Board that so successfully addressed the financial crisis of the government of the District of Columbia. A Control Board would be involved upfront, reviewing and approving Amtrak's business plan and ensuring that Amtrak sticks to its financial plans and business objectives throughout the year. The Control Board would oversee the allocation of Federal funds to Amtrak and would approve any additional borrowing by Amtrak.

It would also seek operating and managerial efficiencies for Amtrak and work with Amtrak on actions to close the gap between operating revenues and expenses.

I support the intent of the provisions of S. 1991 aimed at making Amtrak's accounting more transparent and requiring Amtrak to submit its business plan to Congress before the start of each fiscal year. Amtrak's current practice of submitting its business plan during the second quarter is simply unacceptable. A business plan is not useful in guiding the management of an organization if is not put into effect until the year is a quarter to half over. Nor can it be used effectively by Congress in setting funding priorities.

Section 312, added by one of my amendments adopted by the Commerce Committee, would require that Amtrak, in consultation with the DOT Inspector General, revise the methodology Amtrak uses to prepare its annual Route Profitability report to Congress. This report summarizes the financial performance of each of Amtrak's trains. In recent years, Amtrak has changed annually the manner in which the report is prepared, deliberately making it impossible to compare similar data on a year by year basis. For example, most recently, Amtrak began subtracting "non-core" profits from the reported losses on train operations to reduce the overall reported loss by about \$200 million. Even though most non-core profits are earned on the NEC, Amtrak applied the profits to routes in order of the losses on its routes, i.e. the routes with the largest losses received the largest allocation of non-core profits. My amendment would require that Amtrak discontinue this misleading practice.

#### HIGH-SPEED RAIL (TITLE II)

##### HIGH-SPEED RAIL PLANNING AND IMPLEMENTATION

S. 1991 embarks the Federal government on what could be an endless journey into a bottomless money pit for the development of high-speed rail. While a number of initiatives regarding high-speed passenger rail have been advanced in the past several years, most notable the Acela service on the NEC, this bill breaks new ground in creating a true pork barrel program.

Sections 202 and 203 would make the Federal share for high-speed rail projects 100% of project costs. I believe this level of funding, requiring no state or local match, would be unprecedented. Federal-aid highway projects require a 10% share on the Interstate system and a 20% match on other National Highway System routes. The new starts program for transit requires a 20% match, although more often, the Federal Transit Administration (FTA) negotiates a local share of 40% to 50%. Legislation recently approved by this Committee, S. 1220, to establish a new grant program for shortline railroads mandates a 20% railroad match. But S. 1991 would treat high-speed rail projects in a manner entirely different.

State participation, in addition to helping defray project costs, helps ensure that frivolous or inadvisable projects are not proposed. With a stake in the project, states have the incentive to propose only meritorious projects and to manage their own funds and Federal funds responsibly. It would be a serious mistake not to require a state match for high-speed rail projects. Yet again, S. 1991 imposes no state participation whatsoever.

S. 1991 is also the first piece of legislation to broach the issue of the need to provide operating subsidies for high-speed rail. Under Section 204, operating expenses would be made eligible for funding, presumably at a 100% Federal share. Proponents of high-speed rail projects, including the Midwest Regional Rail Initiative, assert that after an initial ramp-up period, the train services will show a profit at least on a cash basis. But this is the self-sufficiency argument all over again. Given the Amtrak experience, is it reasonable to assume that high-speed projects will be able to achieve what Amtrak could not - particularly if Amtrak will be the high-speed operator? The United States has little experience developing high-speed rail and I am concerned that we could be creating a large new Federal liability with this provision. Operating losses associated with high-speed service could well be a multiple of Amtrak's current losses. We simply have no way of knowing at this point what would be the level of exposure. I strongly urge my colleagues to support an amendment on the floor to strike this dangerous provision. Operating losses should be a responsibility of the state or states sponsoring the project, similar to state funding of conventional new service on Amtrak's corridors.

Another provision in Title II would reduce the threshold speed for what is defined as "high speed" passenger service from 125 miles per hour to 90 miles per hour, or just 11 miles per hour faster than Amtrak's current top speed. It is hard to imagine that the traveling public will change its travel patterns and behavior in any significant way with such a small increase in train speed. At a top speed of 90 miles per hour, average speed with station stops may only be 55 to 60 miles per hour, a far cry from the Shinkansen and the TGV.

The corridors themselves are also an issue. The 11 corridors currently designated for high-speed rail development were not selected based on an evaluation of where high-speed rail can be viable or add to the efficiency of the overall transportation system. The designations are a wish list of projects supported by the states and largely adopted through political support. The Christian Science Monitor recently published a report characterizing the Committee's approach to high-speed rail as the "field of dreams" -- "build it and they will come.". Perhaps even a more accurate statement would be "build it and maybe they will come."

High-speed projects will be selected for implementation funding from this pool of 11 candidate corridors (with the addition of several new high-speed segments statutorily designated by S. 1991). Yet, S. 1991 would require no cost-benefit or economic analysis. The only issues to be considered would be intermodal connectivity, positive train control technologies, a regional balance in funding allocation, the level of safety of the project, and whether the project is compatible with state and local transportation plans.

What a contrast to the existing Federal transit program. The FTA new starts program follows a structured analysis for project consideration from concept through preliminary engineering to final engineering and construction. Projects are not eligible for any significant funding until they reach the final design stage. Each project is reviewed by the FTA and receives a ranking of "highly recommended", "recommended", or "not recommended" based on a series of evaluations of the projects benefits. Every new start

project must also have a full funding grant agreement with FTA before construction can begin.

If S. 1991 is brought before the full Senate, I intend to offer an amendment that would require a thorough economic analysis with threshold performance requirements to be applied to any proposed high-speed rail project. I also favor applying transit's project development process to intercity high-speed passenger rail projects. A requirement that I advocated to ensure that projects have full funding grant agreements similar to those for transit new starts has already been adopted by the Committee.

Finally, I am compelled to oppose the designation of specific projects located in Chicago, Atlanta, Dallas/Fort Worth, Portland, and Orlando for priority funding of high-speed rail projects. These projects have obviously been singled out to generate additional support for S. 1991. All projects should be required to compete for funding on their merits and project sponsors should have enough confidence in the value of their project to be willing to forego special legislative treatment. Except for the fact that each of these cities happens to be represented by a member serving on the Senate Commerce Committee and who voted in support of passage of this bill, the Committee has received no independent or objective analysis to support the merits of these proposed projects.

#### INTRODUCING COMPETITION FOR HIGH-SPEED RAIL SERVICE

During executive session, the Committee adopted, with modifications, an amendment I offered to require that all high-speed rail services be subject to competitive bidding. The amendment offered provides for exclusive franchises given concerns about safety and capacity and the fact that the market is generally not large enough to support more than one operator. To ensure that there would be "effective competition" for the market, the amendment would grant competitors the right to access the rights-of-way of the freight railroads on the same terms as Amtrak, i.e. at incremental cost and with operating priority. As a result of discussions among the members, the Committee agreed to modify the amendment to specify that any entity operating high-speed rail service must be subject to the Railway Labor Act, the Railroad Retirement Act and other applicable railroad laws.

Subsequently, however, the majority refused to include in the reported bill the portion of the amendment that expands access to entities selected as the provider of high-speed operations other than Amtrak. I strongly object to the majority's view that it can unilaterally decide what will and will not be in a bill, regardless of the opinion clearly reflected in the transcript. This contravenes the legislative process and sets a bad precedent for how this Committee will handle controversial issues.

I will continue to press for full and fair competition for high-speed rail projects. Introducing competition will drive Amtrak and competitors to operate efficiently and provide better service to the traveling public. We see the benefits of competition in the market everyday. Where competition exists, prices are lower, companies are more responsive to their customers, and customers know they are getting real value for their dollars.

Today, there is no alternative to Amtrak. Amtrak's statutory monopoly may have been repealed in 1997, but Amtrak is still the

only railroad that can access the right-of-way of the freight railroads on an incremental cost basis. This puts all other operators at a significant competitive disadvantage and effectively prevents any carrier other than Amtrak from providing service. We should not extend Amtrak's monopoly to high-speed rail.

Competition for the passenger rail market is feasible and workable. At the Committee's hearing in March, we heard from Mercer Management Consulting, which has been involved in rail privatization initiatives around the world, that if a process were put in place to privatize Amtrak, there would be a number of private parties interested in participating in a privately-operated passenger rail network. In response to Chairman Holling's invitation to Mercer to "sell Amtrak", a draft blueprint for privatization was prepared by Mercer and circulated to potential interested parties. To date, Mercer has received expressions of interest from 16 companies, including Bombardier Transportation, Connex North America, Deutsche Bahn AG, and Kawasaki Rail Car. Additional companies have expressed interest in learning more about the process.

Franchising is not new in the rail industry. Countries around the world are using franchising to reform their passenger and freight rail systems. In fact, U.S. freight railroads invested in new rail entities that won freight franchises in Mexico.

Authorizing franchising does not mean that Amtrak will not continue to perform the service. But I believe the pressure of competition will have an immediate and positive effect on Amtrak's efficiency and quality of service. We have nothing to lose and everything to gain by introducing competition for the passenger rail market.

#### RAILROAD REHABILITATION IMPROVEMENT FINANCING (TITLE IV)

Several proposed changes to the Railroad Rehabilitation Improvement Financing (RRIF) program concern me. There is no immediate need to increase the amount of loans and loan guarantees available under the program from \$3.5 billion to \$35 billion. This program was last amended as part of the Transportation Equity Act for the 21st Century (TEA-21), in which the level was raised from \$1 billion to \$3.5 billion, and brought into compliance with the Credit Reform Act of 1990. Even if all of the loan applications pending today before the FRA should be approved, the total obligation will be \$569 million, far below the current cap. While there have been stumbling blocks with this program, it does not appear that demand for loans and loan guarantees comes anywhere close to exceeding amounts now available. We can consider increasing the program if and when demand exceeds \$3.5 billion.

Further, I am not in favor of making mandatory the Secretary's authority to issue loans and loan guarantees. The Secretary should be able to exercise good judgment to protect the interest of the taxpayers. I am aware of no other loan guarantee program for the transportation sector that mandates that the Secretary execute loans. For example, the Title XI loan guarantee program, the Transportation Infrastructure Finance and Innovation Act (TIFIA) loan program established by TEA-21, and the aviation loan program created by the Aviation Security Act last fall are all discretionary. The RRIF program should also remain discretionary. Finally, I oppose the provision that prohibits the Secretary from re-

quiring collateral. While the RRIF program is specifically intended to provide financial assistance to shortline and regional railroads, Class I carriers and (pursuant to an amendment offered by Senators Dorgan and Rockefeller and adopted by the Committee, railroad customers and other persons) are also eligible for RRIF loans. These entities are fully capable of providing collateral to safeguard the government's investment.

It is regrettable S. 1991 does not do more to effect positive change for our nation's intercity rail passenger system. S. 1991 requires virtually no reform or restructuring of Amtrak. In fact, Amtrak would be even less accountable to Congress and the American taxpayer because the legislation would repeal the directive that Amtrak achieve operational self-sufficiency. Amtrak as we know it today would not only be perpetuated but significantly expanded -- as would the Federal government's funding obligations. This is opposite the direction that we should be moving.

In spite of the \$25 billion in Federal assistance invested over the past 31 years, Amtrak only carries 2 million more passengers now than it did in 1979. It serves less than one percent of the traveling public. Some argue that Amtrak has been underfunded compared to highways and airports. But the infrastructure for those modes is funded through user fees. S. 1991 is silent on how the substantial increase in Federal obligations provided under this bill would be paid.

The answer to how best to secure a sound future for intercity passenger rail is not just passing a multi-billion authorizing bill. Amtrak must be reformed and it must be held accountable to fulfill its business plan goals. To accomplish this, we must reassess what value Amtrak adds to our national transportation system; the role of the Federal government, the states, the commuter authorities and others in providing financial support; and how and where the trains can be most efficiently operated to provide the best service. Until then, we are only maintaining the status quo and prolonging the inevitable tough decisions.

Figure 1

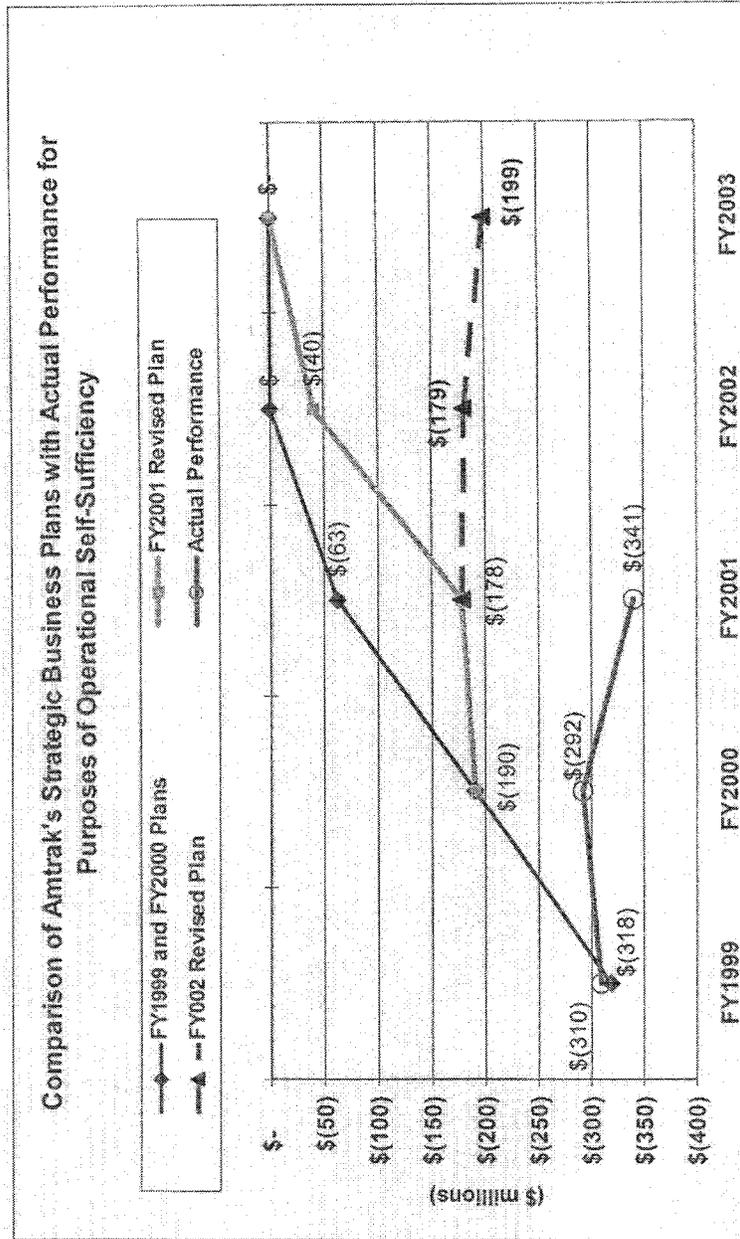


Figure 2

