

We should be clear that the nearly \$200 billion this President has requested for the war in Iraq, on top of the hundreds of billions he has already spent, is not even the whole story. When this administration tells us about the financial costs of this disastrous war, they don't tell us about the interest payments we will have to pay. The Congressional Budget Office tells us that interest on the war will total \$415 billion by 2017, and then there will be more interest on the additional \$200 billion the President wants us to borrow and spend. The final interest costs of this war could approach \$1 trillion, passed on to our children and grandchildren.

President Bush, I think most Americans would argue with you. I think most Americans would argue that \$22 billion to keep our families healthy is a pretty sound investment in our country's future, and trillions of dollars in spending and hundreds of billions of dollars in interest for a war you won't take action to end, that is what is irresponsible and excessive.

The President's threatened veto of this appropriations bill is just another illustration of his extraordinarily misplaced priorities. The \$67 million increase this bill calls for to fund the National Heart, Lung, and Blood Institute is a few hours of the cost of the war in Iraq—not even a full day, not even half a day, a few hours. In fact, the entire NIH budget in this bill is only \$1 billion above the President's request. One billion dollars sounds like a lot of money, of course, but it is, in fact, only a few days of the war in Iraq—not a month, not a week, only a few days.

President Bush would rather prolong the war in Iraq than fund additional research at the National Institutes of Health into pediatric cancer, into hemophilia, and into other diseases such as diabetes, heart disease, arthritis, multiple sclerosis, autism, Parkinson's, and Alzheimer's. He would rather fund a continuous war than provide hope for millions of families around this country.

Well, I hope President Bush will listen to Rich Pezzillo's story. I hope he will listen to Ben Haight's parents. I hope he will listen to the thousands of Rhode Islanders who have reached out to me to demand a new direction, not only in Iraq but here at home in America. I hope he will listen to Americans across this country who think that people such as Rich and Ben should be our first priorities.

I am proud this bill puts people such as Rich and Ben ahead of the extreme rightwing ideologies and reckless wars this President pursues, and I hope we in Congress will stand our ground when, of all people, this President charges that putting Rich and Ben first is irresponsible and excessive.

Madam President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. TESTER). Without objection, it is so ordered.

#### PASSENGER RAIL INVESTMENT AND IMPROVEMENT ACT OF 2007

Mr. REID. Mr. President, we are going to move to the Amtrak bill. There is an understanding that I have with Senator LOTT that a number of Members on the Republican side want to be able to have a little extra time to do some amendments dealing with this bill. There are no games being played with this legislation. This is something which is long overdue, and we want to complete this.

I ask unanimous consent that the Senate now proceed to consideration of Calendar No. 158, S. 294, the Amtrak authorization measure.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, let me say this. We have a lot to do here. For people who are concerned with why we haven't been doing things this afternoon, it takes time getting things done, and I appreciate that. This is a bipartisan effort to move forward on this legislation. It is something I think we can do. There is no effort to do anything other than get a bill passed.

I have had a conversation with Senator LOTT and with two other Republican Senators, and we have agreements with what we have talked about with them. It is a gentleman's agreement, but we will live up to it on our side.

Mr. President, there will be no more votes today. We hope there will be a good debate on this important issue today and hope there will be some amendments offered tomorrow and Friday.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 294) to reauthorize Amtrak, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Commerce, Science and Transportation, with amendments, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italic.)

S. 294

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Passenger Rail Investment and Improvement Act of 2007".

#### SEC. 2. AMENDMENT OF TITLE 49, UNITED STATES CODE.

Except as otherwise specifically provided, whenever in this Act an amendment is expressed in terms of an amendment to a section or other provision of law, the reference

shall be considered to be made to a section or other provision of title 49, United States Code.

#### SEC. 3. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

Sec. 1. Short title.

Sec. 2. Amendment of title 49, United States Code.

Sec. 3. Table of contents.

#### TITLE I—AUTHORIZATIONS

Sec. 101. Authorization for Amtrak capital and operating expenses and State capital grants.

Sec. 102. Authorization for the Federal Railroad Administration.

Sec. 103. Repayment of long-term debt and capital leases.

Sec. 104. Excess railroad retirement.

Sec. 105. Other authorizations.

#### TITLE II—AMTRAK REFORM AND OPERATIONAL IMPROVEMENTS

Sec. 201. National railroad passenger transportation system defined.

Sec. 202. Amtrak Board of Directors.

Sec. 203. Establishment of improved financial accounting system.

Sec. 204. Development of 5-year financial plan.

Sec. 205. Establishment of grant process.

Sec. 206. State-supported routes.

Sec. 207. Independent auditor to establish methodologies for Amtrak route and service planning decisions.

Sec. 208. Metrics and standards.

Sec. 209. Passenger train performance.

Sec. 210. Long distance routes.

Sec. 211. Alternate passenger rail service program.

Sec. 212. Employee transition assistance.

Sec. 213. Northeast Corridor state-of-good-repair plan.

Sec. 214. Northeast Corridor infrastructure and operations improvements.

Sec. 215. Restructuring long-term debt and capital leases.

Sec. 216. Study of compliance requirements at existing intercity rail stations.

Sec. 217. Incentive pay.

Sec. 218. Access to Amtrak equipment and services.

Sec. 219. General Amtrak provisions.

Sec. 220. Private sector funding of passenger trains.

Sec. 221. On-board service improvements.

Sec. 222. Management accountability.

Sec. 223. Locomotive biodiesel fuel use study.

#### TITLE III—INTERCITY PASSENGER RAIL POLICY

Sec. 301. Capital assistance for intercity passenger rail service.

Sec. 302. State rail plans.

Sec. 303. Next generation corridor train equipment pool.

Sec. 304. Federal rail policy.

Sec. 305. Rail cooperative research program.

#### TITLE IV—PASSENGER RAIL SECURITY AND SAFETY

Sec. 400. Short title.

Sec. 401. Rail transportation security risk assessment.

Sec. 402. Systemwide Amtrak security upgrades.

Sec. 403. Fire and life-safety improvements.

Sec. 404. Freight and passenger rail security upgrades.

Sec. 405. Rail security research and development.

Sec. 406. Oversight and grant procedures.

Sec. 407. Amtrak plan to assist families of passengers involved in rail passenger accidents.

Sec. 408. Northern border rail passenger report.

Sec. 409. Rail worker security training program.  
 Sec. 410. Whistleblower protection program.  
 Sec. 411. High hazard material security threat mitigation plans.  
 Sec. 412. Memorandum of agreement.  
 Sec. 413. Rail security enhancements.  
 Sec. 414. Public awareness.  
 Sec. 415. Railroad high hazard material tracking.  
 Sec. 416. Authorization of appropriations.]

**TITLE IV—IMPROVED RAIL SECURITY**

Sec. 401. Definitions.  
 Sec. 402. Rail transportation security risk assessment.  
 Sec. 403. Systemwide Amtrak security upgrades.  
 Sec. 404. Fire and life-safety improvements.  
 Sec. 405. Freight and passenger rail security upgrades.  
 Sec. 406. Rail security research and development.  
 Sec. 407. Oversight and grant procedures.  
 Sec. 408. Amtrak plan to assist families of passengers involved in rail passenger accidents.  
 Sec. 409. Northern border rail passenger report.  
 Sec. 410. Rail worker security training program.  
 Sec. 411. Whistleblower protection program.  
 Sec. 412. High hazard material security risk mitigation plans.  
 Sec. 413. Enforcement authority.  
 Sec. 414. Rail security enhancements.  
 Sec. 415. Public awareness.  
 Sec. 416. Railroad high hazard material tracking.  
 Sec. 417. Certain reports submitted to Senate Committee on Homeland Security and Governmental Affairs.  
 Sec. 418. Authorization of appropriations.

**TITLE I—AUTHORIZATIONS****SEC. 101. AUTHORIZATION FOR AMTRAK CAPITAL AND OPERATING EXPENSES AND STATE CAPITAL GRANTS.**

(a) OPERATING GRANTS.—There are authorized to be appropriated to the Secretary of Transportation for the use of Amtrak for operating costs the following amounts:

- (1) For fiscal year 2007, \$580,000,000.
- (2) For fiscal year 2008, \$590,000,000.
- (3) For fiscal year 2009, \$600,000,000.
- (4) For fiscal year 2010, \$575,000,000.
- (5) For fiscal year 2011, \$535,000,000.
- (6) For fiscal year 2012, \$455,000,000.

(b) CAPITAL GRANTS.—There are authorized to be appropriated to the Secretary of Transportation for the use of Amtrak for capital projects (as defined in subparagraphs (A) and (B) of section 24401(2) of title 49, United States Code) to bring the Northeast Corridor (as defined in section 24102(a)) to a state-of-good-repair, for capital expenses of the national railroad passenger transportation system, and for purposes of making capital grants under section 24402 of that title to States, the following amounts:

- (1) For fiscal year 2007, \$813,000,000.
- (2) For fiscal year 2008, \$910,000,000.
- (3) For fiscal year 2009, \$1,071,000,000.
- (4) For fiscal year 2010, \$1,096,000,000.
- (5) For fiscal year 2011, \$1,191,000,000.
- (6) For fiscal year 2012, \$1,231,000,000.

(c) AMOUNTS FOR STATE GRANTS.—Out of the amounts authorized under subsection (b), the following percentage shall be available each fiscal year for capital grants to States under section 24402 of title 49, United States Code, to be administered by the Secretary of Transportation:

- (1) 3 percent for fiscal year 2007.
- (2) 11 percent for fiscal year 2008.
- (3) 23 percent for fiscal year 2009.
- (4) 25 percent for fiscal year 2010.
- (5) 31 percent for fiscal year 2011.
- (6) 33 percent for fiscal year 2012.

(d) PROJECT MANAGEMENT OVERSIGHT.—The Secretary may withhold up to 1/2 of 1 percent of amounts appropriated pursuant to sub-

section (b) for the costs of project management oversight of capital projects carried out by Amtrak.

**SEC. 102. AUTHORIZATION FOR THE FEDERAL RAILROAD ADMINISTRATION.**

There are authorized to be appropriated to the Secretary of Transportation for the use of the Federal Railroad Administration such sums as necessary to implement the provisions required under this Act for fiscal years 2007 through 2012.

**SEC. 103. REPAYMENT OF LONG-TERM DEBT AND CAPITAL LEASES.**

(a) AMTRAK PRINCIPAL AND INTEREST PAYMENTS.—

(1) PRINCIPAL ON DEBT SERVICE.—There are authorized to be appropriated to the Secretary of Transportation for the use of Amtrak for retirement of principal on loans for capital equipment, or capital leases, not more than the following amounts:

- (A) For fiscal year 2007, \$153,900,000.
- (B) For fiscal year 2008, \$153,400,000.
- (C) For fiscal year 2009, \$180,600,000.
- (D) For fiscal year 2010, \$182,800,000.
- (E) For fiscal year 2011, \$189,400,000.
- (F) For fiscal year 2012, \$202,600,000.

(2) INTEREST ON DEBT.—There are authorized to be appropriated to the Secretary of Transportation for the use of Amtrak for the payment of interest on loans for capital equipment, or capital leases, the following amounts:

- (A) For fiscal year 2007, \$139,600,000.
- (B) For fiscal year 2008, \$131,300,000.
- (C) For fiscal year 2009, \$121,700,000.
- (D) For fiscal year 2010, \$111,900,000.
- (E) For fiscal year 2011, \$101,900,000.
- (F) For fiscal year 2012, \$90,200,000.

(3) EARLY BUYOUT OPTION.—There are authorized to be appropriated to the Secretary of Transportation such sums as may be necessary for the use of Amtrak for the payment of costs associated with early buyout options if the exercise of those options is determined to be advantageous to Amtrak.

(4) LEGAL EFFECT OF PAYMENTS UNDER THIS SECTION.—The payment of principal and interest on secured debt, with the proceeds of grants authorized by this section shall not—

(A) modify the extent or nature of any indebtedness of the National Railroad Passenger Corporation to the United States in existence of the date of enactment of this Act;

(B) change the private nature of Amtrak's or its successors' liabilities; or

(C) imply any Federal guarantee or commitment to amortize Amtrak's outstanding indebtedness.

**SEC. 104. EXCESS RAILROAD RETIREMENT.**

There are authorized to be appropriated to the Secretary of Transportation, beginning with fiscal year 2007, such sums as may be necessary to pay to the Railroad Retirement Account an amount equal to the amount Amtrak must pay under section 3221 of the Internal Revenue Code of 1986 in such fiscal years that is more than the amount needed for benefits for individuals who retire from Amtrak and for their beneficiaries. For each fiscal year in which the Secretary makes such a payment, the amounts authorized by section 101(a) shall be reduced by an amount equal to such payment.

**SEC. 105. OTHER AUTHORIZATIONS.**

There are authorized to be appropriated to the Secretary of Transportation—

(1) \$5,000,000 for each of fiscal years 2007 through 2012 to carry out the rail cooperative research program under section 24910 of title 49, United States Code;

(2) \$5,000,000 for fiscal year 2008, to remain available until expended, for grants to Amtrak and States participating in the Next Generation Corridor Train Equipment Pool Committee established under section 303 of

this Act for the purpose of designing, developing specifications for, and initiating the procurement of an initial order of 1 or more types of standardized next-generation corridor train equipment and establishing a jointly-owned corporation to manage that equipment; and

(3) \$2,000,000 for fiscal year 2008, for the use of Amtrak in conducting the evaluation required by section 216 of this Act.

**TITLE II—AMTRAK REFORM AND OPERATIONAL IMPROVEMENTS****SEC. 201. NATIONAL RAILROAD PASSENGER TRANSPORTATION SYSTEM DEFINED.**

(a) IN GENERAL.—Section 24102 is amended—

- (1) by striking paragraph (2);
- (2) by redesignating paragraphs (3), (4), and (5) as paragraphs (2), (3), and (4), respectively; and

(3) by inserting after paragraph (4) as so redesignated the following:

“(5) ‘national rail passenger transportation system’ means—

“(A) the segment of the Northeast Corridor between Boston, Massachusetts and Washington, DC;

“(B) rail corridors that have been designated by the Secretary of Transportation as high-speed corridors (other than corridors described in subparagraph (A)), 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 Passenger Rail Investment and Improvement Act of 2007; and

“(D) short-distance corridors, or routes of not more than 750 miles between endpoints, operated by—

“(i) Amtrak; or

“(ii) another rail carrier that receives funds under chapter 244.”

**(b) AMTRAK ROUTES WITH STATE FUNDING.**

(1) IN GENERAL.—Chapter 247 is amended by inserting after section 24701 the following:

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

“(a) CONTRACTS FOR TRANSPORTATION.—Amtrak may enter into a contract with a State, a regional or local authority, or another person 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 by either party, Amtrak may discontinue such service or route, notwithstanding any other provision of law.”.

(2) CONFORMING AMENDMENT.—The chapter analysis for chapter 247 is amended by inserting after the item relating to section 24701 the following:

“24702. Transportation requested by States, authorities, and other persons.”

(c) AMTRAK TO CONTINUE TO PROVIDE NON-HIGH-SPEED SERVICES.—Nothing in this Act is intended to preclude Amtrak from restoring, improving, or developing non-high-speed intercity passenger rail service.

(d) APPLICABILITY OF SECTION 24706.—Section 24706 is amended by adding at the end the following:

“(c) APPLICABILITY.—This section applies to all service over routes provided by Amtrak, notwithstanding any provision of section 24701 of this title or any other provision of this title except section 24702(b).”.

**SEC. 202. AMTRAK BOARD OF DIRECTORS.**

(a) IN GENERAL.—Section 24302 is amended to read as follows:

**§ 24302. Board of directors**

## “(a) COMPOSITION AND TERMS.—

“(1) The Board of Directors of Amtrak is composed of the following 10 directors, each of whom must be a citizen of the United States:

“(A) The Secretary of Transportation.

“(B) The President of Amtrak, who shall serve ex officio, as a non-voting member.

“(C) 8 individuals appointed by the President of the United States, by and with the advice and consent of the Senate, with general business and financial experience, experience or qualifications in transportation, freight and passenger rail transportation, travel, hospitality, cruise line, and passenger air transportation businesses, or representatives of employees or users of passenger rail transportation or a State government.

“(2) In selecting individuals described in paragraph (1) for nominations for appointments to the Board, the President shall 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 and try to provide adequate and balanced representation of the major geographic regions of the United States served by Amtrak.

“(3) 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 5 individuals appointed under paragraph (1)(C) may be members of the same political party.

“(4) 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.

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

“(6) The voting privileges of the President can be changed by a unanimous decision of the Board.

“(b) PAY AND EXPENSES.—Each director not employed by the United States Government is entitled to \$300 a day when performing Board duties. 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) QUORUM.—A majority of the members serving shall constitute a quorum for doing business.

“(e) 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.”

(b) EFFECTIVE DATE FOR DIRECTORS' PROVISION.—The amendment made by subsection (a) shall take effect on October 1, 2007. The members of the Amtrak Board serving on the date of enactment of this Act may continue to serve for the remainder of the term to which they were appointed.

**SEC. 203. ESTABLISHMENT OF IMPROVED FINANCIAL ACCOUNTING SYSTEM.**

(a) IN GENERAL.—The Amtrak Board of Directors—

(1) may employ an independent financial consultant with experience in railroad accounting to assist Amtrak in improving Amtrak's financial accounting and reporting system and practices; and

(2) shall implement a modern financial accounting and reporting system that will produce accurate and timely financial information in sufficient detail—

(A) to enable Amtrak to assign revenues and expenses appropriately to each of its lines of business and to each major activity within each line of business activity, including train operations, equipment maintenance, ticketing, and reservations;

(B) to aggregate expenses and revenues related to infrastructure and distinguish them from expenses and revenues related to rail operations;

(C) to allow the analysis of ticketing and reservation information on a real-time basis;

(D) to provide Amtrak cost accounting data; and

(E) to allow financial analysis by route and service.

(b) VERIFICATION OF SYSTEM; REPORT.—The Inspector General of the Department of Transportation shall review the accounting system designed and implemented under subsection (a) to ensure that it accomplishes the purposes for which it is intended. The Inspector General shall report his findings and conclusions, together with any recommendations, to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

**SEC. 204. DEVELOPMENT OF 5-YEAR FINANCIAL PLAN.**

(a) DEVELOPMENT OF 5-YEAR FINANCIAL PLAN.—The Amtrak Board of Directors shall submit an annual budget and business plan for Amtrak, and a 5-year financial plan for the fiscal year to which that budget and business plan relate and the subsequent 4 years, prepared in accordance with this section, to the Secretary of Transportation and the Inspector General of the Department of Transportation no later than—

(1) the first day of each fiscal year beginning after the date of enactment of this Act; or

(2) the date that is 60 days after the date of enactment of an appropriation Act for the fiscal year, if later.

(b) CONTENTS OF 5-YEAR FINANCIAL PLAN.—The 5-year financial plan for Amtrak shall include, at a minimum—

(1) all projected revenues and expenditures for Amtrak, including governmental funding sources;

(2) projected ridership levels for all Amtrak passenger operations;

(3) revenue and expenditure forecasts for non-passenger operations;

(4) capital funding requirements and expenditures necessary to maintain passenger service which will accommodate predicted ridership levels and predicted sources of capital funding;

(5) operational funding needs, if any, to maintain current and projected levels of passenger service, including state-supported routes and predicted funding sources;

(6) projected capital and operating requirements, ridership, and revenue for any new passenger service operations or service expansions;

(7) an assessment of the continuing financial stability of Amtrak, as indicated by factors such as the ability of the Federal government to fund capital and operating requirements adequately, Amtrak's ability to efficiently manage its workforce, and Amtrak's ability to effectively provide passenger train service;

(8) estimates of long-term and short-term debt and associated principal and interest payments (both current and anticipated);

(9) annual cash flow forecasts;

(10) a statement describing methods of estimation and significant assumptions;

(11) specific measures that demonstrate measurable improvement year over year in Amtrak's ability to operate with reduced Federal operating assistance; and

(12) capital and operating expenditures for anticipated security needs.

(c) STANDARDS TO PROMOTE FINANCIAL STABILITY.—In meeting the requirements of subsection (b), Amtrak shall—

(1) apply sound budgetary practices, including reducing costs and other expenditures, improving productivity, increasing revenues, or combinations of such practices;

(2) use the categories specified in the financial accounting and reporting system developed under section 203 when preparing its 5-year financial plan; and

(3) ensure that the plan is consistent with the authorizations of appropriations under title I of this Act.

(d) ASSESSMENT BY DOT INSPECTOR GENERAL.—

(1) IN GENERAL.—The Inspector General of the Department of Transportation shall assess the 5-year financial plans prepared by Amtrak under this section to determine whether they meet the requirements of subsection (b), and may suggest revisions to any components thereof that do not meet those requirements.

(2) ASSESSMENT TO BE FURNISHED TO THE CONGRESS.—The Inspector General shall furnish to the House of Representatives Committee on Appropriations, the Senate Committee on Appropriations, the House of Representatives Committee on Transportation and Infrastructure, and the Senate Committee on Commerce, Science, and Transportation—

(A) an assessment of the annual budget within 90 days after receiving it from Amtrak; and

(B) an assessment of the remaining 4 years of the 5-year financial plan within 180 days after receiving it from Amtrak.

**SEC. 205. ESTABLISHMENT OF GRANT PROCESS.**

(a) GRANT REQUESTS.—Amtrak shall submit grant requests (including a schedule for the disbursement of funds), consistent with the requirements of this Act, to the Secretary of Transportation for funds authorized to be appropriated to the Secretary for the use of Amtrak under sections 101(a) and (b), 103, and 105.

(b) PROCEDURES FOR GRANT REQUESTS.—The Secretary shall establish substantive and procedural requirements, including schedules, for grant requests under this section not later than 30 days after the date of enactment of this Act and shall transmit copies to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure. As part of those requirements, the Secretary shall require, at a minimum, that Amtrak deposit grant funds, consistent with the appropriated amounts for each area of expenditure in a given fiscal year, in the following 3 accounts:

(1) The Amtrak Operating account.

(2) The Amtrak General Capital account.

(3) The Northeast Corridor Improvement funds account.

Amtrak may not transfer such funds to another account or expend such funds for any purpose other than the purposes covered by the account in which the funds are deposited without approval by the Secretary.

(c) REVIEW AND APPROVAL.—

(1) 30-DAY APPROVAL PROCESS.—The Secretary shall complete the review of a complete grant request (including the disbursement schedule) and approve or disapprove the request within 30 days after the date on which Amtrak submits the grant request. If the Secretary disapproves the request or determines that the request is incomplete or

deficient, the Secretary shall include the reason for disapproval or the incomplete items or deficiencies in the notice to Amtrak.

(2) 15-DAY MODIFICATION PERIOD.—Within 15 days after receiving notification from the Secretary under the preceding sentence, Amtrak shall submit a modified request for the Secretary's review.

(3) REVISED REQUESTS.—Within 15 days after receiving a modified request from Amtrak, the Secretary shall either approve the modified request, or, if the Secretary finds that the request is still incomplete or deficient, the Secretary shall identify in writing to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure the remaining deficiencies and recommend a process for resolving the outstanding portions of the request.

**SEC. 206. STATE-SUPPORTED ROUTES.**

(a) IN GENERAL.—Within 2 years after the date of enactment of this Act, the Board of Directors of Amtrak, in consultation with the Secretary of Transportation and the governors of each State and the Mayor of the District of Columbia or groups representing those officials, shall develop and implement a standardized methodology for establishing and allocating the operating and capital costs among the States and Amtrak associated with trains operated on routes described in section 24102(5)(B) or (D) or section 24702 that—

(1) ensures, within 5 years after the date of enactment of this Act, equal treatment in the provision of like services of all States and groups of States (including the District of Columbia); and

(2) allocates to each route the costs incurred only for the benefit of that route and a proportionate share, based upon factors that reasonably reflect relative use, of costs incurred for the common benefit of more than 1 route.

(b) REVIEW.—If Amtrak and the States (including the District of Columbia) in which Amtrak operates such routes do not voluntarily adopt and implement the methodology developed under subsection (a) in allocating costs and determining compensation for the provision of service in accordance with the date established therein, the Surface Transportation Board shall determine the appropriate methodology required under subsection (a) for such services in accordance with the procedures and procedural schedule applicable to a proceeding under section 24904(c) of title 49, United States Code, and require the full implementation of this methodology with regards to the provision of such service within 1 year after the Board's determination of the appropriate methodology.

(c) USE OF CHAPTER 244 FUNDS.—Funds provided to a State under chapter 244 of title 49, United States Code, may be used, as provided in that chapter, to pay capital costs determined in accordance with this section.

**SEC. 207. INDEPENDENT AUDITOR TO ESTABLISH METHODOLOGIES FOR AMTRAK ROUTE AND SERVICE PLANNING DECISIONS.**

(a) METHODOLOGY DEVELOPMENT.—The Federal Railroad Administration shall obtain the services of an independent auditor or consultant to develop and recommend objective methodologies for determining intercity passenger routes and services, including the establishment of new routes, the elimination of existing routes, and the contraction or expansion of services or frequencies over such routes. In developing such methodologies, the auditor or consultant shall consider—

(1) the current or expected performance and service quality of intercity passenger train operations, including cost recovery, on-

time performance and minutes of delay, ridership, on-board services, stations, facilities, equipment, and other services;

(2) connectivity of a route with other routes;

(3) the transportation needs of communities and populations that are not well served by other forms of public transportation;

(4) Amtrak's and other major intercity passenger rail service providers in other countries' methodologies for determining intercity passenger rail routes and services; and

(5) the views of the States and other interested parties.

(b) SUBMITTAL TO CONGRESS.—The auditor or consultant shall submit recommendations developed under subsection (a) to Amtrak, the House of Representatives Committee on Transportation and Infrastructure, and the Senate Committee on Commerce, Science, and Transportation.

(c) CONSIDERATION OF RECOMMENDATIONS.—Within 90 days after receiving the recommendations developed under subsection (a) by the independent auditor or consultant, the Amtrak Board shall consider the adoption of those recommendations. The Board shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure explaining its action in adopting or failing to adopt any of the recommendations.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be made available to the Secretary of Transportation, out of any amounts authorized by this Act to be appropriated for the benefit of Amtrak and not otherwise obligated or expended, such sums as may be necessary to carry out this section.

(e) PIONEER ROUTE.—Within 2 years after the date of enactment of this Act, Amtrak shall conduct a 1-time evaluation of the Pioneer Route formerly operated by Amtrak to determine, using methodologies adopted under subsection (c), whether a level of passenger demand exists that would warrant consideration of reinstating the entire Pioneer Route service or segments of that service.

**SEC. 208. METRICS AND STANDARDS.**

(a) IN GENERAL.—Within 180 days after the date of enactment of this Act, the Administrator of the Federal Railroad Administration and Amtrak shall jointly, in consultation with the Surface Transportation Board, rail carriers over whose rail lines Amtrak trains operate, States, Amtrak employees, and groups representing Amtrak passengers, as appropriate, develop new or improve existing metrics and minimum standards for measuring the performance and service quality of intercity passenger train operations, including cost recovery, on-time performance and minutes of delay, ridership, on-board services, stations, facilities, equipment, and other services. Such metrics, at a minimum, shall include the percentage of avoidable and fully allocated operating costs covered by passenger revenues on each route, ridership per train mile operated, measures of on-time performance and delays incurred by intercity passenger trains on the rail lines of each rail carrier and, for long distance routes, measures of connectivity with other routes in all regions currently receiving Amtrak service and the transportation needs of communities and populations that are not well-served by other forms of public transportation. Amtrak shall provide reasonable access to the Federal Railroad Administration in order to enable the Administration to carry out its duty under this section.

(b) QUARTERLY REPORTS.—The Administrator of the Federal Railroad Administration shall collect the necessary data and publish a quarterly report on the performance and service quality of intercity passenger train operations, including Amtrak's cost recovery, ridership, on-time performance and minutes of delay, causes of delay, on-board services, stations, facilities, equipment, and other services.

(c) CONTRACT WITH HOST RAIL CARRIERS.—To the extent practicable, Amtrak and its host rail carriers shall incorporate the metrics and standards developed under subsection (a) into their access and service agreements.

(d) ARBITRATION.—If the development of the metrics and standards is not completed within the 180-day period required by subsection (a), any party involved in the development of those standards may petition the Surface Transportation Board to appoint an arbitrator to assist the parties in resolving their disputes through binding arbitration.

**SEC. 209. PASSENGER TRAIN PERFORMANCE.**

(a) IN GENERAL.—Section 24308 is amended by adding at the end the following:

“(f) PASSENGER TRAIN PERFORMANCE AND OTHER STANDARDS.—

“(1) INVESTIGATION OF SUBSTANDARD PERFORMANCE.—If the on-time performance of any intercity passenger train averages less than 80 percent for any 2 consecutive calendar quarters, or the service quality of intercity passenger train operations for which minimum standards are established under section 208 of the Passenger Rail Investment and Improvement Act of 2007 fails to meet those standards for 2 consecutive calendar quarters, the Surface Transportation Board may initiate an investigation, or upon the filing of a complaint by Amtrak, an intercity passenger rail operator, a *host freight railroad over which Amtrak operates*, or an entity for which Amtrak operates intercity passenger rail service, the Board shall initiate an investigation to determine whether, and to what extent, delays or failure to achieve minimum standards are due to causes that could reasonably be addressed by a rail carrier over tracks of which the intercity passenger train operates or reasonably addressed by Amtrak or other intercity passenger rail operator. In making its determination or carrying out such an investigation, the Board shall obtain information from all parties involved and identify reasonable measures and make recommendations to improve the service, quality, and on-time performance of the train.

“(2) PROBLEMS CAUSED BY HOST RAIL CARRIER.—If the Board determines that delays or failures to achieve minimum standards investigated under paragraph (1) are attributable to a rail carrier's failure to provide preference to Amtrak over freight transportation as required under subsection (c), the Board may award damages against the host rail carrier, including prescribing such other relief to Amtrak as it determines to be reasonable and appropriate pursuant to paragraph (3) of this subsection.

“(3) DAMAGES AND RELIEF.—In awarding damages and prescribing other relief under this subsection the Board shall consider such factors as—

“(A) the extent to which Amtrak suffers financial loss as a result of host rail carrier delays or failure to achieve minimum standards; and

“(B) what reasonable measures would adequately deter future actions which may reasonably be expected to be likely to result in delays to Amtrak on the route involved.

“(4) USE OF DAMAGES.—The Board shall, as it deems appropriate, remit the damages awarded under this subsection to Amtrak or

to an entity for which Amtrak operates intercity passenger rail service. Such damages shall be used for capital or operating expenditures on the routes over which delays or failures to achieve minimum standards were the result of a rail carrier's failure to provide preference to Amtrak over freight transportation as determined in accordance with paragraph (2).".

(b) CHANGE OF REFERENCE.—Section 24308 is amended—

(1) by striking "Interstate Commerce Commission" in subsection (a)(2)(A) and inserting "Surface Transportation Board";

(2) by striking "Commission" each place it appears and inserting "Board";

(3) by striking "Secretary of Transportation" in subsection (c) and inserting "Board"; and

(4) by striking "Secretary" the last 3 places it appears in subsection (c) and each place it appears in subsections (d) and (e) and inserting "Board".

#### SEC. 210. LONG DISTANCE ROUTES.

(a) IN GENERAL.—Chapter 247 is amended by adding at the end thereof the following:

##### § 24710. Long distance routes

"(a) ANNUAL EVALUATION.—Using the financial and performance metrics developed under section 208 of the Passenger Rail Investment and Improvement Act of 2007, Amtrak shall—

"(1) evaluate annually the financial and operating performance of each long distance passenger rail route operated by Amtrak; and

"(2) rank the overall performance of such routes for 2006 and identify each long distance passenger rail route operated by Amtrak in 2006 according to its overall performance as belonging to the best performing third of such routes, the second best performing third of such routes, or the worst performing third of such routes.

"(b) PERFORMANCE IMPROVEMENT PLAN.—Amtrak shall develop and publish a performance improvement plan for its long distance passenger rail routes to achieve financial and operating improvements based on the data collected through the application of the financial and performance metrics developed under section 208 of that Act. The plan shall address—

"(1) on-time performance;

"(2) scheduling, frequency, routes, and stops;

"(3) the feasibility of restructuring service into connected corridor service;

"(4) performance-related equipment changes and capital improvements;

"(5) on-board amenities and service, including food, first class, and sleeping car service;

"(6) State or other non-Federal financial contributions;

"(7) improving financial performance; and

"(8) other aspects of Amtrak's long distance passenger rail routes that affect the financial, competitive, and functional performance of service on Amtrak's long distance passenger rail routes.

"(c) IMPLEMENTATION.—Amtrak shall implement the performance improvement plan developed under subsection (b)—

"(1) beginning in fiscal year 2008 for those routes identified as being in the worst performing third under subsection (a)(2);

"(2) beginning in fiscal year 2009 for those routes identified as being in the second best performing third under subsection (a)(2); and

"(3) beginning in fiscal year 2010 for those routes identified as being in the best performing third under subsection (a)(2).

"(d) ENFORCEMENT.—The Federal Railroad Administration shall monitor the development, implementation, and outcome of improvement plans under this section. If, for

any year, it determines that Amtrak is not making reasonable progress in implementing its performance improvement plan or in achieving the expected outcome of the plan for any calendar year, the Federal Railroad Administration—

"(1) shall notify Amtrak, the Inspector General of the Department of Transportation, and appropriate Congressional committees of its determination under this subsection;

"(2) shall provide an opportunity for a hearing with respect to that determination; and

"(3) may withhold any appropriated funds otherwise available to Amtrak for the operation of a route or routes on which it is not making progress, other than funds made available for passenger safety or security measures."

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 247 is amended by inserting after the item relating to section 24709 the following:

"24710. Long distance routes."

#### SEC. 211. ALTERNATE PASSENGER RAIL SERVICE PROGRAM.

(a) IN GENERAL.—Chapter 247, as amended by section 209, is amended by adding at the end thereof the following:

##### § 24711. Alternate passenger rail service program

"(a) IN GENERAL.—Within 1 year after the date of enactment of the Passenger Rail Investment and Improvement Act of 2007, the Federal Railroad Administration shall initiate a rulemaking proceeding to develop a program under which—

"(1) a rail carrier or rail carriers that own infrastructure over which Amtrak operates a passenger rail service route described in subparagraph (B), (C), or (D) of section 24102(5) or in section 24702 of title 49, United States [Code] Code, or any entity operating as a rail carrier that has negotiated a contingent agreement to lease necessary rights-of-way from a rail carrier or rail carriers that own the infrastructure on which Amtrak operates such routes, may petition the Federal Railroad Administration to be considered as a passenger rail service provider over that route in lieu of Amtrak;

"(2) the Administration would notify Amtrak within 30 days after receiving a petition under paragraph (1) and establish a deadline by which both the petitioner and Amtrak would be required to submit a bid to provide passenger rail service over the route to which the petition relates;

"(3) each bid would describe how the bidder would operate the route, what Amtrak passenger equipment would be needed, if any, what sources of non-Federal funding the bidder would use, including any State subsidy, among other things;

"(4) the Administration would make a decision and execute a contract within a specified, limited time after that deadline awarding to the winning bidder—

"(A) the right and obligation to provide passenger rail service over that route subject to such performance standards as the Administration may require, consistent with the standards developed under section 208 of this Act; and

"(B) an operating subsidy—

"(i) for the first year at a level not in excess of the level in effect during the fiscal year preceding the fiscal year in which the petition was received, adjusted for inflation;

"(ii) for any subsequent years at such level, adjusted for inflation; and

"(5) each bid would contain a staffing plan describing the number of employees needed to operate the service, the job assignments and requirements, and the terms of work for prospective and current employees of the

bidder for the service outlined in the bid, and such staffing plan would be made available by the winning bidder to the public after the bid award.

"(B) IMPLEMENTATION.—

"(1) INITIAL PETITIONS.—Pursuant to any rules or regulations promulgated under subsection (A), the Administration shall establish a deadline for the submission of a petition under subsection (a)—

"(A) during fiscal year 2008 for operations commencing in fiscal year 2009; and

"(B) during the immediately preceding fiscal year for operations commencing in subsequent fiscal years.

"(2) ROUTE LIMITATIONS.—The Administration may not make the program available with respect to more than 1 Amtrak passenger rail route for operations beginning in fiscal year 2009 nor to more than 2 such routes for operations beginning in fiscal year 2011 and subsequent fiscal years.

"(C) PERFORMANCE STANDARDS; ACCESS TO FACILITIES; EMPLOYEES.—If the Administration awards the right and obligation to provide passenger rail service over a route under the program to a rail carrier or rail carriers—

"(1) it shall execute a contract with the rail carrier or rail carriers for rail passenger operations on that route that conditions the operating and subsidy rights upon—

"(A) the service provider continuing to provide passenger rail service on the route that is no less frequent, nor over a shorter distance, than Amtrak provided on that route before the award; and

"(B) the service provider's compliance with the minimum standards established under section 208 of the Passenger Rail Investment and Improvement Act of 2007 and such additional performance standards as the Administration may establish;

"(2) it shall, if the award is made to a rail carrier other than Amtrak, require Amtrak to provide access to its reservation system, stations, and facilities to any rail carrier or rail carriers awarded a contract under this section, in accordance with section 218 of that Act, necessary to carry out the purposes of this section;

"(3) the employees of any person used by a rail carrier or rail carriers (as defined in section 10102(5) of this title) in the operation of a route under this section shall be considered an employee of that carrier or carriers and subject to the applicable Federal laws and regulations governing similar crafts or classes of employees of Amtrak, including provisions under section 121 of the Amtrak Reform and Accountability Act of 1997 relating to employees that provide food and beverage service; and

"(4) the winning bidder shall provide preference in hiring to qualified Amtrak employees displaced by the award of the bid, consistent with the staffing plan submitted by the bidder.

"(D) CESSION OF SERVICE.—If a rail carrier or rail carriers awarded a route under this section cease to operate the service or fail to fulfill their obligations under the contract required under subsection (C), the Administrator, in collaboration with the Surface Transportation Board shall take any necessary action consistent with this title to enforce the contract and ensure the continued provision of service, including the installment of an interim service provider and re-bidding the contract to operate the service. The entity providing service shall either be Amtrak or a rail carrier defined in section 24711(a)(1).

"(E) ADEQUATE RESOURCES.—Before taking any action allowed under this section, the Secretary shall certify that the Administrator has sufficient resources that are adequate to undertake the program established under this section."

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 247, as amended by section 209, is amended by inserting after the item relating to section 24710 the following: “24711. Alternate passenger rail service program.”.

**SEC. 212. EMPLOYEE TRANSITION ASSISTANCE.**

(a) PROVISION OF FINANCIAL INCENTIVES.—For Amtrak employees who are adversely affected by the cessation of the operation of a long distance route or any other route under section 24711 of title 49, United States Code, previously operated by Amtrak, the Secretary shall develop a program under which the Secretary may, in the Secretary’s discretion, provide grants for financial incentives to be provided to employees of the National Railroad Passenger Corporation who voluntarily terminate their employment with the Corporation and relinquish any legal rights to receive termination-related payments under any contractual agreement with the Corporation.

(b) CONDITIONS FOR FINANCIAL INCENTIVES.—As a condition for receiving financial assistance grants under this section, the Corporation must certify that—

(1) a reasonable attempt was made to reassign an employee adversely affected under section 24711 of title 49, United States Code, or by the elimination of any route, to other positions within the Corporation in accordance with any contractual agreements;

(2) the financial assistance results in a net reduction in the total number of employees equal to the number receiving financial incentives;

(3) the financial assistance results in a net reduction in total employment expense equivalent to the total employment expenses associated with the employees receiving financial incentives; and

(4) the total number of employees eligible for termination-related payments will not be increased without the express written consent of the Secretary.

(c) AMOUNT OF FINANCIAL INCENTIVES.—The financial incentives authorized under this section may be no greater than \$50,000 per employee.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are hereby authorized to be appropriated to the Secretary such sums as may be necessary to make grants to the National Railroad Passenger Corporation to provide financial incentives under subsection (a).

(e) TERMINATION-RELATED PAYMENTS.—If Amtrak employees adversely affected by the cessation of Amtrak service resulting from the awarding of a grant to an operator other than Amtrak for the operation of a route under section 24711 of title 49, United States Code, or any other route, previously operated by Amtrak do not receive financial incentives under subsection (a), then the Secretary shall make grants to the National Railroad Passenger Corporation from funds authorized by section 102 of this Act for termination-related payments to employees under existing contractual agreements.

**SEC. 213. NORTHEAST CORRIDOR STATE-OF-GOOD-REPAIR PLAN.**

(a) IN GENERAL.—Within 6 months after the date of enactment of this Act, the National Railroad Passenger Corporation, in consultation with the Secretary and the States (including the District of Columbia) that make up the Northeast Corridor (as defined in section 24102 of title 49, United States Code), shall prepare a capital spending plan for capital projects required to return the railroad right-of-way (including track, signals, and auxiliary structures), facilities, stations, and equipment, of the Northeast Corridor to a state of good repair by the end of fiscal year 2012, consistent with the funding levels authorized in this Act and shall submit the plan to the Secretary.

**(b) APPROVAL BY THE SECRETARY.**

(1) The Corporation shall submit the capital spending plan prepared under this section to the Secretary of Transportation for review and approval pursuant to the procedures developed under section 205 of this Act.

(2) The Secretary of Transportation shall require that the plan be updated at least annually and shall review and approve such updates. During review, the Secretary shall seek comments and review from the commission established under section 24905 of title 49, United States Code, and other Northeast Corridor users regarding the plan.

(3) The Secretary shall make grants to the Corporation with funds authorized by section 101(b) for Northeast Corridor capital investments contained within the capital spending plan prepared by the Corporation and approved by the Secretary.

(4) Using the funds authorized by section 101(d), the Secretary shall review Amtrak’s capital expenditures funded by this section to ensure that such expenditures are consistent with the capital spending plan and that Amtrak is providing adequate project management oversight and fiscal controls.

(c) ELIGIBILITY OF EXPENDITURES.—The Federal share of expenditures for capital improvements under this section may not exceed 100 percent.

**SEC. 214. NORTHEAST CORRIDOR INFRASTRUCTURE AND OPERATIONS IMPROVEMENTS.**

(a) IN GENERAL.—Section 24905 is amended to read as follows:

**“§ 24905. Northeast Corridor Infrastructure and Operations Advisory Commission; Safety and Security Committee**

“(a) NORTHEAST CORRIDOR INFRASTRUCTURE AND OPERATIONS ADVISORY COMMISSION.—

“(1) Within 180 days after the date of enactment of the Passenger Rail Investment and Improvement Act of 2007, the Secretary of Transportation shall establish a Northeast Corridor Infrastructure and Operations Advisory Commission (hereinafter referred to in this section as the ‘Commission’) to promote mutual cooperation and planning pertaining to the rail operations and related activities of the Northeast Corridor. The Commission shall be made up of—

“(A) members representing the National Railroad Passenger Corporation;

“(B) members representing the Secretary of Transportation and the Federal Railroad Administration;

“(C) 1 member from each of the States (including the District of Columbia) that constitute the Northeast Corridor as defined in section 24102, designated by, and serving at the pleasure of, the chief executive officer thereof; and

“(D) non-voting representatives of freight railroad carriers using the Northeast Corridor selected by the Secretary.

“(2) The Secretary shall ensure that the membership belonging to any of the groups enumerated under subparagraph (1) shall not constitute a majority of the commission’s memberships.

“(3) The commission shall establish a schedule and location for convening meetings, but shall meet no less than four times per fiscal year, and the commission shall develop rules and procedures to govern the commission’s proceedings.

“(4) A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

“(5) Members shall serve without pay but shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

“(6) The Chairman of the Commission shall be elected by the members.

“(7) The Commission may appoint and fix the pay of such personnel as it considers appropriate.

“(8) Upon request of the Commission, the head of any department or agency of the United States may detail, on a reimbursable basis, any of the personnel of that department or agency to the Commission to assist it in carrying out its duties under this section.

“(9) Upon the request of the Commission, the Administrator of General Services shall provide to the Commission, on a reimbursable basis, the administrative support services necessary for the Commission to carry out its responsibilities under this section.

“(10) The commission shall consult with other entities as appropriate.

“(b) GENERAL RECOMMENDATIONS.—The Commission shall develop recommendations concerning Northeast Corridor rail infrastructure and operations including proposals addressing, as appropriate—

“(1) short-term and long term capital investment needs beyond the state-of-good-repair under section 213;

“(2) future funding requirements for capital improvements and maintenance;

“(3) operational improvements of intercity passenger rail, commuter rail, and freight rail services;

“(4) opportunities for additional non-rail uses of the Northeast Corridor;

“(5) scheduling and dispatching;

“(6) safety and security enhancements;

“(7) equipment design;

“(8) marketing of rail services; and

“(9) future capacity requirements.

“(c) ACCESS COSTS.—

“(1) DEVELOPMENT OF FORMULA.—Within 1 year after verification of Amtrak’s new financial accounting system pursuant to section 203(b) of the Passenger Rail Investment and Improvement Act of 2007, the Commission shall—

“(A) develop a standardized formula for determining and allocating costs, revenues, and compensation for Northeast Corridor commuter rail passenger transportation, as defined in section 24102 of this title, that use National Railroad Passenger Corporation facilities or services or that provide such facilities or services to the National Railroad Passenger Corporation that ensure that—

“(i) there is no cross-subsidization of commuter rail passenger, intercity rail passenger, or freight rail transportation; and

“(ii) each service is assigned the costs incurred only for the benefit of that service, and a proportionate share, based upon factors that reasonably reflect relative use, of costs incurred for the common benefit of more than 1 service;

“(B) develop a proposed timetable for implementing the formula before the end of the 6th year following the date of enactment of that Act;

“(C) transmit the proposed timetable to the Surface Transportation Board; and

“(D) at the request of a Commission member, petition the Surface Transportation Board to appoint a mediator to assist the Commission members through non-binding mediation to reach an agreement under this section.

“(2) IMPLEMENTATION.—The National Railroad Passenger Corporation and the commuter authorities providing commuter rail passenger transportation on the Northeast Corridor shall implement new agreements for usage of facilities or services based on the formula proposed in paragraph (1) in accordance with the timetable established therein. If the entities fail to implement such new agreements in accordance with the timetable, the Commission shall petition the Surface Transportation Board to determine the appropriate compensation amounts for

such services in accordance with section 24904(c) of this title. The Surface Transportation Board shall enforce its determination on the party or parties involved.

“(d) TRANSMISSION OF RECOMMENDATIONS.—The commission shall annually transmit the recommendations developed under subsection (b) and the formula and timetable developed under subsection (c)(1) to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

“(e) NORTHEAST CORRIDOR SAFETY AND SECURITY COMMITTEE.—

“(1) IN GENERAL.—The Secretary shall establish a Northeast Corridor Safety and Security Committee composed of members appointed by the Secretary. 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;

“(G) the Transportation Security Administration; and

“(H) other individuals and organizations the Secretary decides have a significant interest in rail safety or security.

“(2) FUNCTION; MEETINGS.—The Secretary shall consult with the Committee about safety and security 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) REPORT.—At the beginning of the first session of each Congress, the Secretary shall submit a report to the Commission and to Congress on the status of efforts to improve safety and security 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.”.

(b) CONFORMING AMENDMENTS.—Section 24904(c)(2) is amended by—

(1) inserting “commuter rail passenger and” after “between”; and

(2) striking “freight” in the second sentence.

(c) RIDOT ACCESS AGREEMENT.—

(1) IN GENERAL.—Not later than December 15, 2007, Amtrak and the Rhode Island Department of Transportation shall enter into an agreement governing access fees and other costs or charges related to the operation of the South County commuter rail service on the Northeast Corridor between Providence and Wickford Junction, Rhode Island.

(2) FAILURE TO REACH AGREEMENT.—If Amtrak and the Rhode Island Department of Transportation fail to reach the agreement specified under paragraph (1), the Administrator of the Federal Railroad Administration shall, after consultation with both parties, resolve any outstanding disagreements between the parties, including setting access fees and other costs or charges related to the operation of the South County commuter rail service that do not allow for the cross-subsidization of intercity rail passenger and commuter rail passenger service, not later than [January 30, 2008.] October 31, 2007.

(3) INTERIM AGREEMENT.—Any agreement between Amtrak and the Rhode Island Department of Transportation relating to access costs made under this subsection shall be superseded by any access cost formula developed by the Northeast Corridor Infrastructure and Operations Advisory Commission under section 24905(c)(1) of title 49, United States Code, as amended by section 214(a) of this Act.

#### SEC. 215. RESTRUCTURING LONG-TERM DEBT AND CAPITAL LEASES.

(a) IN GENERAL.—The Secretary of the Treasury, in consultation with the Secretary of Transportation and Amtrak, may make agreements to restructure Amtrak’s indebtedness as of the date of enactment of this Act. This authorization expires on October 1, 2008.

(b) DEBT RESTRUCTURING.—The Secretary of Treasury, in consultation with the Secretary of the Transportation and Amtrak, shall enter into negotiations with the holders of Amtrak debt, including leases, outstanding on the date of enactment of this Act for the purpose of restructuring (including repayment) and repaying that debt. The Secretary of the Treasury may secure agreements for restructuring or repayment on such terms as the Secretary of the Treasury deems favorable to the interests of the Government.

(c) CRITERIA.—In restructuring Amtrak’s indebtedness, the Secretary and Amtrak—

(1) shall take into consideration repayment costs, the term of any loan or loans, and market conditions; and

(2) shall ensure that the restructuring results in significant savings to Amtrak and the United States Government.

(d) PAYMENT OF RENEGLIATED DEBT.—If the criteria under subsection (c) are met, the Secretary of Treasury may assume or repay the restructured debt, as appropriate.

(e) AMTRAK PRINCIPAL AND INTEREST PAYMENTS.—

(1) PRINCIPAL ON DEBT SERVICE.—Unless the Secretary of Treasury makes sufficient payments to creditors under subsection (d) so that Amtrak is required to make no payments to creditors in a fiscal year, the Secretary of Transportation shall use funds authorized by section 103(a)(1) for the use of Amtrak for retirement of principal on loans for capital equipment, or capital leases.

(2) INTEREST ON DEBT.—Unless the Secretary of Treasury makes sufficient payments to creditors under subsection (d) so that Amtrak is required to make no payments to creditors in a fiscal year, the Secretary of Transportation shall use funds authorized by section 103(a)(2) for the use of Amtrak for the payment of interest on loans for capital equipment, or capital leases.

(3) REDUCTIONS IN AUTHORIZATION LEVELS.—Whenever action taken by the Secretary of the Treasury under subsection (a) results in reductions in amounts of principal or interest that Amtrak must service on existing debt, the corresponding amounts authorized by section 103(a)(1) or (2) shall be reduced accordingly.

(f) LEGAL EFFECT OF PAYMENTS UNDER THIS SECTION.—The payment of principal and interest on secured debt, other than debt assumed under subsection (d), with the proceeds of grants under subsection (e) shall not—

(1) modify the extent or nature of any indebtedness of the National Railroad Passenger Corporation to the United States in existence of the date of enactment of this Act;

(2) change the private nature of Amtrak’s or its successors’ liabilities; or

(3) imply any Federal guarantee or commitment to amortize Amtrak’s outstanding indebtedness.

(g) SECRETARY APPROVAL.—Amtrak may not incur more debt after the date of enactment of this Act without the express advance approval of the Secretary of Transportation.

(h) REPORT.—The Secretary of the Treasury shall transmit a report to the Senate Committee on Commerce, Science, and Transportation, the Senate Committee on Appropriations, the House of Representa-

tives Committee on Transportation and Infrastructure, and the House of Representatives Committee on Appropriations by November 1, 2008—

(1) describing in detail any agreements to restructure the Amtrak debt; and

(2) providing an estimate of the savings to Amtrak and the United States Government.

#### SEC. 216. STUDY OF COMPLIANCE REQUIREMENTS AT EXISTING INTERCITY RAIL STATIONS.

Amtrak, in consultation with station owners, shall evaluate the improvements necessary to make all existing stations it serves readily accessible to and usable by individuals with disabilities, as required by section 242(e)(2) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12162(e)(2)). The evaluation shall include the estimated cost of the improvements necessary, the identification of the responsible person (as defined in section 241(5) of that Act (42 U.S.C. 12161(5))), and the earliest practicable date when such improvements can be made. Amtrak shall submit the evaluation to the Senate Committee on Commerce, Science, and Transportation, the House of Representatives Committee on Transportation and Infrastructure, and the National Council on Disability by September 30, 2008, along with recommendations for funding the necessary improvements.

#### SEC. 217. INCENTIVE PAY.

The Amtrak Board of Directors is encouraged to develop an incentive pay program for Amtrak management employees.

#### SEC. 218. ACCESS TO AMTRAK EQUIPMENT AND SERVICES.

If a State desires to select or selects an entity other than Amtrak to provide services required for the operation of an intercity passenger train route described in section 24102(5)(D) or 24702 of title 49, United States Code, the State may make an agreement with Amtrak to use facilities and equipment of, or have services provided by, Amtrak under terms agreed to by the State and Amtrak to enable the State to utilize an entity other than Amtrak to provide services required for operation of the route. If the parties cannot agree upon terms, and the Surface Transportation Board finds that access to Amtrak’s facilities or equipment, or the provision of services by Amtrak, is necessary to carry out this provision and that the operation of Amtrak’s other services will not be impaired thereby, the Surface Transportation Board shall, within 120 days after submission of the dispute, issue an order that the facilities and equipment be made available, and that services be provided, by Amtrak, and shall determine reasonable compensation, liability and other terms for use of the facilities and equipment and provision of the services. Compensation shall be determined in accord with the methodology established pursuant to section 206 of this Act.

#### SEC. 219. GENERAL AMTRAK PROVISIONS.

(a) REPEAL OF SELF-SUFFICIENCY REQUIREMENTS.

(1) TITLE 49 AMENDMENTS.—Chapter 241 is amended—

(A) by striking the last sentence of section 24101(d); and

(B) by striking the last sentence of section 24104(a).

(2) AMTRAK REFORM AND ACCOUNTABILITY ACT AMENDMENTS.—Title II of the Amtrak Reform and Accountability Act of 1997 (49 U.S.C. 24101 nt) is amended by striking sections 204 and 205.

(b) LEASE ARRANGEMENTS.—Amtrak may obtain services from the Administrator of General Services, and the Administrator may provide services to Amtrak, under section 201(b) and 211(b) of the Federal Property and Administrative Service Act of 1949 (40

U.S.C. 481(b) and 491(b)) for each of fiscal years 2007 through 2012.

(c) APPLICABILITY OF DISTRICT OF COLUMBIA LAW TO CERTAIN AMTRAK CONTRACTS.—Section 24301 is amended by adding at the end the following:

“(0) APPLICABILITY OF DISTRICT OF COLUMBIA LAW.—Any lease or contract entered into between the National Railroad Passenger Corporation and the State of Maryland, or any department or agency of the State of Maryland, after the date of the enactment of this subsection shall be governed by the laws of the District of Columbia.”.

(d) TRAVEL FACILITATION.—Using existing authority or agreements, or upon reaching additional agreements with Canada, the Secretary of Transportation and other Federal agencies, as appropriate, are authorized to establish facilities and procedures to conduct preclearance of passengers traveling on Amtrak trains from Canada to the United States. The Secretary shall seek to establish such facilities and procedures—

(1) in Vancouver, Canada, no later than June 1, 2008; and

(2) in other areas as determined appropriate by the Secretary.

#### SEC. 220. PRIVATE SECTOR FUNDING OF PASSENGER TRAINS.

Amtrak is encouraged to increase its operation of trains funded by the private sector in order to minimize its need for Federal subsidies. Amtrak shall utilize the provisions of section 24308 of title 49, United States Code, when necessary to obtain access to facilities, train and engine crews, or services of a rail carrier or regional transportation authority that are required to operate such trains.

#### SEC. 221. ON-BOARD SERVICE IMPROVEMENTS.

(a) IN GENERAL.—Within 1 year after metrics and standards are established under section 208 of this Act, Amtrak shall develop and implement a plan to improve on-board service pursuant to the metrics and standards for such service developed under that section.

(b) REPORT.—Amtrak shall provide a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on the on-board service improvements proscribed in the plan and the timeline for implementing such improvements.

#### SEC. 222. AMTRAK MANAGEMENT ACCOUNTABILITY.

(a) IN GENERAL.—Chapter 243 is amended by inserting after section 24309 the following:

##### “§ 24310. Management accountability

“(a) IN GENERAL.—Three years after the date of enactment of the Passenger Rail Investment and Improvement Act of 2007, and two years thereafter, the Inspector General of the Department of Transportation shall complete an overall assessment of the progress made by Amtrak management and the Department of Transportation in implementing the provisions of that Act.

“(b) ASSESSMENT.—The management assessment undertaken by the Inspector General may include a review of—

“(1) effectiveness improving annual financial planning;

“(2) effectiveness in implementing improved financial accounting;

“(3) efforts to implement minimum train performance standards;

“(4) progress maximizing revenues and minimizing Federal subsidies; and

“(5) any other aspect of Amtrak operations the Inspector General finds appropriate to review.”.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 243 is amended by inserting after the item relating to section 24309 the following:

“24310. Management accountability.”.

#### SEC. 223. LOCOMOTIVE BIODIESEL FUEL USE STUDY.

(a) IN GENERAL.—The Federal Railroad Administration, in consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency, shall conduct a study to determine the extent to which Amtrak could use biodiesel fuel blends to power its fleet of locomotives and any of its other motor vehicles that can operate on diesel fuel.

(b) FACTORS.—In conducting the study, the Federal Railroad Administration shall consider—

(1) environmental and energy security effects of biodiesel fuel use;

(2) the cost of purchasing biodiesel fuel blends for such purposes;

(3) whether sufficient biodiesel fuel is readily available; and

(4) the effect of biodiesel fuel use on relevant performance or warranty specifications.

(c) REPORT.—Not later than April 1, 2008, the Federal Railroad Administration shall report the results of its study to the Congress together with such findings, conclusions, and recommendations as it deems appropriate.

### TITLE III—INTERCITY PASSENGER RAIL POLICY

#### SEC. 301. CAPITAL ASSISTANCE FOR INTERCITY PASSENGER RAIL SERVICE; STATE RAIL PLANS.

(a) IN GENERAL.—Part C of subtitle V is amended by inserting the following after chapter 243:

#### “CHAPTER 244. INTERCITY PASSENGER RAIL SERVICE CORRIDOR CAPITAL ASSISTANCE

“Sec.

“24401. Definitions.

“24402. Capital investment grants to support intercity passenger rail service.

“24403. Project management oversight.

“24404. Use of capital grants to finance first-dollar liability of grant project.

“24405. Grant conditions.

##### “§ 24401. Definitions

“In this subchapter:

“(1) APPLICANT.—The term ‘applicant’ means a State (including the District of Columbia), a group of States, an Interstate Compact, or a public agency established by one or more States and having responsibility for providing intercity passenger rail service.

“(2) CAPITAL PROJECT.—The term ‘capital project’ means a project or program in a State rail plan developed under chapter 225 of this title for—

“(A) acquiring, constructing, improving, or inspecting equipment, track and track structures, or a facility for use in or for the primary benefit of intercity passenger rail service, expenses incidental to the acquisition or construction (including designing, engineering, location surveying, mapping, environmental studies, and acquiring rights-of-way), payments for the capital portions of rail

trackage rights agreements, highway-rail grade crossing improvements related to intercity passenger rail service, security, mitigating environmental impacts, communication and signalization improvements, relocation assistance, acquiring replacement housing sites, and acquiring, constructing, relocating, and rehabilitating replacement housing;

“(B) rehabilitating, remanufacturing or overhauling rail rolling stock and facilities used primarily in intercity passenger rail service;

“(C) costs associated with developing State rail plans; and

“(D) the first-dollar liability costs for insurance related to the provision of intercity passenger rail service under section 24404.

“(3) INTERCITY PASSENGER RAIL SERVICE.—The term ‘intercity passenger rail service’ means transportation services with the primary purpose of passenger transportation

between towns, cities and metropolitan areas by rail, including high-speed rail, as defined in section 24102 of title 49, United States Code.

#### “§ 24402. Capital investment grants to support intercity passenger rail service

“(a) GENERAL AUTHORITY.—

“(1) The Secretary of Transportation may make grants under this section to an applicant to assist in financing the capital costs of facilities and equipment necessary to provide or improve intercity passenger rail transportation.

“(2) The Secretary shall require that a grant under this section be subject to the terms, conditions, requirements, and provisions the Secretary decides are necessary or appropriate for the purposes of this section, including requirements for the disposition of net increases in value of real property resulting from the project assisted under this section and shall prescribe procedures and schedules for the awarding of grants under this title, including application and qualification procedures, and a record of decision on applicant eligibility. The Secretary shall issue a final rule establishing such procedures not later than 90 days after the date of enactment of the Passenger Rail Investment and Improvement Act of 2007.

##### “(b) PROJECT AS PART OF STATE RAIL PLAN.—

“(1) The Secretary may not approve a grant for a project under this section unless the Secretary finds that the project is part of a State rail plan developed under chapter 225 of this title, or under the plan required by section 203 of the Passenger Rail Investment and Improvement Act of 2007, and that the applicant or recipient has or will have the legal, financial, and technical capacity to carry out the project, satisfactory continuing control over the use of the equipment or facilities, and the capability and willingness to maintain the equipment or facilities.

“(2) An applicant shall provide sufficient information upon which the Secretary can make the findings required by this subsection.

“(3) If an applicant has not selected the proposed operator of its service competitively, the applicant shall provide written justification to the Secretary showing why the proposed operator is the best, taking into account price and other factors, and that use of the proposed operator will not unnecessarily increase the cost of the project.

“(c) PROJECT SELECTION CRITERIA.—The Secretary, in selecting the recipients of financial assistance to be provided under subsection (a), shall—

“(1) require that each proposed project meet all safety and security requirements that are applicable to the project under law;

“(2) give preference to projects with high levels of estimated ridership, increased on-time performance, reduced trip time, additional service frequency to meet anticipated or existing demand, or other significant service enhancements as measured against minimum standards developed under section 208 of the Passenger Rail Investment and Improvement Act of 2007;

“(3) encourage intermodal connectivity through projects that provide direct connections between train stations, airports, bus terminals, subway stations, ferry ports, and other modes of transportation;

“(4) ensure that each project is compatible with, and is operated in conformance with—

“(A) plans developed pursuant to the requirements of section 135 of title 23, United States Code; and

“(B) the national rail plan (if it is available); and

“(5) favor the following kinds of projects:

“(A) Projects that are expected to have a significant favorable impact on air or highway traffic congestion, capacity, or safety.

“(B) Projects that also improve freight or commuter rail operations.

“(C) Projects that have significant environmental benefits.

“(D) Projects that are—

“(i) at a stage of preparation that all pre-commencement compliance with environmental protection requirements has already been completed; and

“(ii) ready to be commenced.

“(E) Projects with positive economic and employment impacts.

“(F) Projects that encourage the use of positive train control technologies.

“(G) Projects that have commitments of funding from non-Federal Government sources in a total amount that exceeds the minimum amount of the non-Federal contribution required for the project.

“(H) Projects that involve donated property interests or services.

“(I) Projects that are identified by the Surface Transportation Board as necessary to improve the on time performance and reliability of intercity passenger rail under section 24308(f).

“(J) Projects described in section 5302(a)(1)(G) of this title that are designed to support intercity passenger rail service.

“(d) AMTRAK ELIGIBILITY.—To receive a grant under this section, the National Railroad Passenger Corporation may enter into a cooperative agreement with 1 or more States to carry out 1 or more projects on a State rail plan's ranked list of rail capital projects developed under section 22504(a)(5) of this title.

“(e) LETTERS OF INTENT, FULL FUNDING GRANT AGREEMENTS, AND EARLY SYSTEMS WORK AGREEMENTS.—

“(1)(A) The Secretary may issue a letter of intent to an applicant announcing an intention to obligate, for a major capital project under this section, an amount from future available budget authority specified in law that is not more than the amount stipulated as the financial participation of the Secretary in the project.

“(B) At least 30 days before issuing a letter under subparagraph (A) of this paragraph or entering into a full funding grant agreement, the Secretary shall notify in writing the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate and the House and Senate Committees on Appropriations of the proposed letter or agreement. The Secretary shall include with the notification a copy of the proposed letter or agreement as well as the evaluations and ratings for the project.

“(C) An obligation or administrative commitment may be made only when amounts are appropriated.

“(2)(A) The Secretary may make a full funding grant agreement with an applicant. The agreement shall—

“(i) establish the terms of participation by the United States Government in a project under this section;

“(ii) establish the maximum amount of Government financial assistance for the project;

“(iii) cover the period of time for completing the project, including a period extending beyond the period of an authorization; and

“(iv) make timely and efficient management of the project easier according to the law of the United States.

“(B) An agreement under this paragraph obligates an amount of available budget authority specified in law and may include a commitment, contingent on amounts to be specified in law in advance for commitments under this paragraph, to obligate an additional amount from future available budget authority specified in law. The agreement shall state that the contingent commitment is not an obligation of the Government and is subject to the availability of appropriations made by Federal law and to Federal laws in force on or enacted after the date of the contingent commitment. Interest and other financing costs of efficiently carrying out a part of the project within a reasonable time are a cost of carrying out the project under a full funding grant agreement, except that eligible costs may not be more than the cost of the most favorable financing terms reasonably available for the project at the time of borrowing. The applicant shall certify, in a way satisfactory to the Secretary, that the applicant has shown reasonable diligence in seeking the most favorable financing terms.

“(3)(A) The Secretary may make an early systems work agreement with an applicant if a record of decision under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) has been issued on the project and the Secretary finds there is reason to believe—

“(i) a full funding grant agreement for the project will be made; and

“(ii) the terms of the work agreement will promote ultimate completion of the project more rapidly and at less cost.

“(B) A work agreement under this paragraph obligates an amount of available budget authority specified in law and shall provide for reimbursement of preliminary costs of carrying out the project, including land acquisition, timely procurement of system elements for which specifications are decided, and other activities the Secretary decides are appropriate to make efficient, long-term project management easier. A work agreement shall cover the period of time the Secretary considers appropriate. The period may extend beyond the period of current authorization. Interest and other financing costs of efficiently carrying out the work agreement within a reasonable time are a cost of carrying out the agreement, except that eligible costs may not be more than the cost of the most favorable financing terms reasonably available for the project at the time of borrowing. The applicant shall certify, in a way satisfactory to the Secretary, that the applicant has shown reasonable diligence in seeking the most favorable financing terms. If an applicant does not carry out the project for reasons within the control of the applicant, the applicant shall repay all Government payments made under the work agreement plus reasonable interest and penalty charges the Secretary establishes in the agreement.

“(4) The total estimated amount of future obligations of the Government and contingent commitments to incur obligations covered by all outstanding letters of intent, full funding grant agreements, and early systems work agreements may be not more than the amount authorized under section 101(c) of Passenger Rail Investment and Improvement Act of 2007, less an amount the Secretary reasonably estimates is necessary for grants under this section not covered by a letter. The total amount covered by new letters and contingent commitments included in full funding grant agreements and early systems work agreements may be not more than a limitation specified in law.

“(f) FEDERAL SHARE OF NET PROJECT COST.—

“(1)(A) Based on engineering studies, studies of economic feasibility, and information on the expected use of equipment or facilities, the Secretary shall estimate the net project cost.

“(B) A grant for the project shall not exceed 80 percent of the project net capital cost.

“(C) The Secretary shall give priority in allocating future obligations and contingent commitments to incur obligations to grant requests seeking a lower Federal share of the project net capital cost.

“(2) Up to an additional 20 percent of the required non-Federal funds may be funded from amounts appropriated to or made available to a department or agency of the Federal Government that are eligible to be expended for transportation.

“(3) 50 percent of the average amounts expended by a State or group of States (including the District of Columbia) for capital projects to benefit intercity passenger rail service and *operating costs of up to \$5,000,000 per fiscal year of such service* in fiscal years 2004, 2005, and 2006 shall be credited towards the matching requirements for grants awarded *in fiscal years 2007, 2008, and 2009* under this section. The Secretary may require such information as necessary to verify such expenditures.

“(4) 50 percent of the average amounts expended by a State or group of States (including the District of Columbia) in a *fiscal year beginning in 2007* *fiscal year, beginning in fiscal year 2007*, for capital projects to benefit intercity passenger rail service or for the operating costs of such service above the average *[of] capital and operating expenditures* made for such service in fiscal years 2004, 2005, and 2006 shall be credited towards the matching requirements for grants awarded under this section. The Secretary may require such information as necessary to verify such expenditures.

“(g) UNDERTAKING PROJECTS IN ADVANCE.—

“(1) The Secretary may pay the Federal share of the net capital project cost to an applicant that carries out any part of a project described in this section according to all applicable procedures and requirements if—

“(A) the applicant applies for the payment;

“(B) the Secretary approves the payment; and

“(C) before carrying out the part of the project, the Secretary approves the plans and specifications for the part in the same way as other projects under this section.

“(2) The cost of carrying out part of a project includes the amount of interest earned and payable on bonds issued by the applicant to the extent proceeds of the bonds are expended in carrying out the part. However, the amount of interest under this paragraph may not be more than the most favorable interest terms reasonably available for the project at the time of borrowing. The applicant shall certify, in a manner satisfactory to the Secretary, that the applicant has shown reasonable diligence in seeking the most favorable financial terms.

“(3) The Secretary shall consider changes in capital project cost indices when determining the estimated cost under paragraph (2) of this subsection.

“(h) 2-YEAR AVAILABILITY.—Funds appropriated under this section shall remain available until expended. If any amount provided as a grant under this section is not obligated or expended for the purposes described in subsection (a) within 2 years after the date on which the State received the grant, such sums shall be returned to the Secretary for other intercity passenger rail development projects under this section at the discretion of the Secretary.

“(i) PUBLIC-PRIVATE PARTNERSHIPS.—

“(1) IN GENERAL.—A metropolitan planning organization, State transportation department, or other project sponsor may enter into an agreement with any public, private, or nonprofit entity to cooperatively implement any project funded with a grant under this title.

“(2) FORMS OF PARTICIPATION.—Participation by an entity under paragraph (1) may consist of—

“(A) ownership or operation of any land, facility, locomotive, rail car, vehicle, or other physical asset associated with the project;

“(B) cost-sharing of any project expense;

“(C) carrying out administration, construction management, project management, project operation, or any other management or operational duty associated with the project; and

“(D) any other form of participation approved by the Secretary.

“(3) SUB-ALLOCATION.—A State may allocate funds under this section to any entity described in paragraph (1).

“(j) SPECIAL TRANSPORTATION CIRCUMSTANCES.—In carrying out this section, the Secretary shall allocate an appropriate portion of the amounts available under this section to provide grants to States—

“(1) in which there is no intercity passenger rail service for the purpose of funding freight rail capital projects that are on a State rail plan developed under chapter 225 of this title that provide public benefits (as defined in chapter 225) as determined by the Secretary; or

“(2) in which the rail transportation system is not physically connected to rail systems in the continental United States or may not otherwise qualify for a grant under this section due to the unique characteristics of the geography of that State or other relevant considerations, for the purpose of funding transportation-related capital projects.

“(k) SMALL CAPITAL PROJECTS.—The Secretary shall make available \$10,000,000 annually from the amounts authorized under section 101(c) of the Passenger Rail Investment and Improvement Act of 2007 beginning in fiscal year 2008 for grants for capital projects eligible under this section not exceeding \$2,000,000, including costs eligible under section 206(c) of that Act. The Secretary may waive requirements of this section, including state rail plan requirements, as appropriate.

#### § 24403. Project management oversight

“(a) PROJECT MANAGEMENT PLAN REQUIREMENTS.—To receive Federal financial assistance for a major capital project under this subchapter, an applicant must prepare and carry out a project management plan approved by the Secretary of Transportation. The plan shall provide for—

“(1) adequate recipient staff organization with well-defined reporting relationships, statements of functional responsibilities, job descriptions, and job qualifications;

“(2) a budget covering the project management organization, appropriate consultants, property acquisition, utility relocation, systems demonstration staff, audits, and miscellaneous payments the recipient may be prepared to justify;

“(3) a construction schedule for the project;

“(4) a document control procedure and recordkeeping system;

“(5) a change order procedure that includes a documented, systematic approach to handling the construction change orders;

“(6) organizational structures, management skills, and staffing levels required throughout the construction phase;

“(7) quality control and quality assurance functions, procedures, and responsibilities

for construction, system installation, and integration of system components;

“(8) material testing policies and procedures;

“(9) internal plan implementation and reporting requirements;

“(10) criteria and procedures to be used for testing the operational system or its major components;

“(11) periodic updates of the plan, especially related to project budget and project schedule, financing, and ridership estimates; and

“(12) the recipient’s commitment to submit a project budget and project schedule to the Secretary each month.

#### “(b) SECRETARIAL OVERSIGHT.—

“(1) The Secretary may use no more than 0.5 percent of amounts made available in a fiscal year for capital projects under this subchapter to enter into contracts to oversee the construction of such projects.

“(2) The Secretary may use amounts available under paragraph (1) of this subsection to make contracts for safety, procurement, management, and financial compliance reviews and audits of a recipient of amounts under paragraph (1).

“(3) The Federal Government shall pay the entire cost of carrying out a contract under this subsection.

“(c) ACCESS TO SITES AND RECORDS.—Each recipient of assistance under this subchapter shall provide the Secretary and a contractor the Secretary chooses under subsection (c) of this section with access to the construction sites and records of the recipient when reasonably necessary.

#### “§ 24404. Use of capital grants to finance first-dollar liability of grant project

“Notwithstanding the requirements of section 24402 of this subchapter, the Secretary of Transportation may approve the use of capital assistance under this subchapter to fund self-insured retention of risk for the first tier of liability insurance coverage for rail passenger service associated with the capital assistance grant, but the coverage may not exceed \$20,000,000 per occurrence or \$20,000,000 in aggregate per year.

#### “§ 24405. Grant conditions

“(a) DOMESTIC BUYING PREFERENCE.—

“(1) REQUIREMENT.—

“(A) IN GENERAL.—In carrying out a project funded in whole or in part with a grant under this title, the grant recipient shall purchase only—

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

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

“(B) DE MINIMIS AMOUNT.—Subparagraph (1) applies only to a purchase in an total amount that is not less than \$1,000,000.

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

“(A) such requirements are inconsistent with the public interest;

“(B) the cost of imposing the 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.

“(3) 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.

“(b) OPERATORS DEEMED RAIL CARRIERS AND EMPLOYERS FOR CERTAIN PURPOSES.—A person that conducts rail operations over rail infrastructure constructed or improved with funding provided in whole or in part in a grant made under this title shall be considered a rail carrier as defined in section 10102(5) of this title for purposes of this title and any other statute that adopts the that definition or in which that definition applies, including—

“(1) the Railroad Retirement Act of 1974 (45 U.S.C. 231 et seq.); and

“(2) the Railway Labor Act (43 U.S.C. 151 et seq.).

“(c) GRANT CONDITIONS.—The Secretary shall require as a condition of making any grant under this title for a project that uses rights-of-way owned by a railroad that—

“(1) a written agreement exist between the applicant and the railroad regarding such use and ownership, including—

“(A) any compensation for such use;

“(B) assurances regarding the adequacy of infrastructure capacity to accommodate both existing and future freight and passenger operations;

“(C) an assurance by the railroad that collective bargaining agreements with the railroad’s employees (including terms regulating the contracting of work) will remain in full force and effect according to their terms for work performed by the railroad on the railroad transportation corridor; and

“(D) an assurance that an applicant complies with liability requirements consistent with section 28103 of this title; and

“(2) the applicant agrees to comply with—

“(A) the standards of section 24312 of this title, as such section was in effect on September 1, 2003, with respect to the project in the same manner that the National Railroad Passenger Corporation is required to comply with those standards for construction work financed under an agreement made under section 24308(a) of this title; and

“(B) the protective arrangements established under section 504 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 836) with respect to employees affected by actions taken in connection with the project to be financed in whole or in part by grants under this subchapter.

“(d) REPLACEMENT OF EXISTING INTERCITY PASSENGER RAIL SERVICE.—

“(1) COLLECTIVE BARGAINING AGREEMENT FOR INTERCITY PASSENGER RAIL PROJECTS.—Any entity providing intercity passenger railroad transportation that begins operations after the date of enactment of this Act on a project funded in whole or in part by grants made under this title and replaces intercity rail passenger service that was provided by Amtrak, unless such service was provided solely by Amtrak to another entity, as of such date shall enter into an agreement with the authorized bargaining agent or agents for adversely affected employees of the predecessor provider that—

“(A) gives each such qualified employee of the predecessor provider priority in hiring according to the employee’s seniority on the predecessor provider for each position with the replacing entity that is in the employee’s craft or class and is available within 3 years after the termination of the service being replaced;

“(B) establishes a procedure for notifying such an employee of such positions;

“(C) establishes a procedure for such an employee to apply for such positions; and

“(D) establishes rates of pay, rules, and working conditions.

“(2) IMMEDIATE REPLACEMENT SERVICE.—

“(A) NEGOTIATIONS.—If the replacement of preexisting intercity rail passenger service occurs concurrent with or within a reasonable time before the commencement of the

replacing entity's rail passenger service, the replacing entity shall give written notice of its plan to replace existing rail passenger service to the authorized collective bargaining agent or agents for the potentially adversely affected employees of the predecessor provider at least 90 days before the date on which it plans to commence service. Within 5 days after the date of receipt of such written notice, negotiations between the replacing entity and the collective bargaining agent or agents for the employees of the predecessor provider shall commence for the purpose of reaching agreement with respect to all matters set forth in subparagraphs (A) through (D) of paragraph (1). The negotiations shall continue for 30 days or until an agreement is reached, whichever is sooner. If at the end of 30 days the parties have not entered into an agreement with respect to all such matters, the unresolved issues shall be submitted for arbitration in accordance with the procedure set forth in subparagraph (B).

“(B) ARBITRATION.—If an agreement has not been entered into with respect to all matters set forth in subparagraphs (A) through (D) of paragraph (1) as described in subparagraph (A) of this paragraph, the parties shall select an arbitrator. If the parties are unable to agree upon the selection of such arbitrator within 5 days, either or both parties shall notify the National Mediation Board, which shall provide a list of seven arbitrators with experience in arbitrating rail labor protection disputes. Within 5 days after such notification, the parties shall alternately strike names from the list until only 1 name remains, and that person shall serve as the neutral arbitrator. Within 45 days after selection of the arbitrator, the arbitrator shall conduct a hearing on the dispute and shall render a decision with respect to the unresolved issues among the matters set forth in subparagraphs (A) through (D) of paragraph (1). This decision shall be final, binding, and conclusive upon the parties. The salary and expenses of the arbitrator shall be borne equally by the parties; all other expenses shall be paid by the party incurring them.

“(C) SERVICE COMMENCEMENT.—A replacing entity under this subsection shall commence service only after an agreement is entered into with respect to the matters set forth in subparagraphs (A) through (D) of paragraph (1) or the decision of the arbitrator has been rendered.

“(D) SUBSEQUENT REPLACEMENT OF SERVICE.—If the replacement of existing rail passenger service takes place within 3 years after the replacing entity commences intercity passenger rail service, the replacing entity and the collective bargaining agent or agents for the adversely affected employees of the predecessor provider shall enter into an agreement with respect to the matters set forth in subparagraphs (A) through (D) of paragraph (1). If the parties have not entered into an agreement with respect to all such matters within 60 days after the date on which the replacing entity replaces the predecessor provider, the parties shall select an arbitrator using the procedures set forth in paragraph (2)(B), who shall, within 20 days after the commencement of the arbitration, conduct a hearing and decide all unresolved issues. This decision shall be final, binding, and conclusive upon the parties.

“(E) INAPPLICABILITY TO CERTAIN RAIL OPERATIONS.—Nothing in this section applies to—

“(1) commuter rail passenger transportation (as defined in section 24102(4) of this title) operations of a State or local government authority (as those terms are defined in section 5302(11) and (6), respectively, of this title) eligible to receive financial assist-

ance under section 5307 of this title, or to its contractor performing services in connection with commuter rail passenger operations (as so defined);

“(2) the Alaska Railroad or its contractors; or

“(3) the National Railroad Passenger Corporation's access rights to railroad rights of way and facilities under current law.”.

(b) CONFORMING AMENDMENTS.—

(1) The table of chapters for the title is amended by inserting the following after the item relating to chapter 243:

“244. Intercity passenger rail service capital assistance ..... 24401”.

“(2) The chapter analysis for subtitle V is amended by inserting the following after the item relating to chapter 243:

“244. Intercity passenger rail service capital assistance ..... 24401”.

**SEC. 302. STATE RAIL PLANS.**

(a) IN GENERAL.—Part B of subtitle V is amended by adding at the end the following:

**CHAPTER 225. STATE RAIL PLANS AND HIGH PRIORITY PROJECTS**

“Sec.

“22501. Definitions.

“22502. Authority.

“22503. Purposes.

“22504. Transparency; coordination; review.

“22505. Content.

“22506. Review.

**§ 22501. Definitions**

“In this subchapter:

“(1) PRIVATE BENEFIT.—

“(A) IN GENERAL.—The term ‘private benefit’—

“(i) means a benefit accrued to a person or private entity, other than the National Railroad Passenger Corporation, that directly improves the economic and competitive condition of that person or entity through improved assets, cost reductions, service improvements, or any other means as defined by the Secretary; and

“(ii) shall be determined on a project-by-project basis, based upon an agreement between the parties.

“(B) CONSULTATION.—The Secretary may seek the advice of the States and rail carriers in further defining this term.

“(2) PUBLIC BENEFIT.—

“(A) IN GENERAL.—The term ‘public benefit’—

“(i) means a benefit accrued to the public in the form of enhanced mobility of people or goods, environmental protection or enhancement, congestion mitigation, enhanced trade and economic development, improved air quality or land use, more efficient energy use, enhanced public safety or security, reduction of public expenditures due to improved transportation efficiency or infrastructure preservation, and any other positive community effects as defined by the Secretary; and

“(ii) shall be determined on a project-by-project basis, based upon an agreement between the parties.

“(B) CONSULTATION.—The Secretary may seek the advice of the States and rail carriers in further defining this term.

“(C) STATE.—The term ‘State’ means any of the 50 States and the District of Columbia.

“(D) STATE RAIL TRANSPORTATION AUTHORITY.—The term ‘State rail transportation authority’ means the State agency or official responsible under the direction of the Governor of the State or a State law for preparation, maintenance, coordination, and administration of the State rail plan.”.

**§ 22502. Authority**

“(a) IN GENERAL.—Each State may prepare and maintain a State rail plan in accordance with the provisions of this subchapter.

“(b) REQUIREMENTS.—For the preparation and periodic revision of a State rail plan, a State shall—

“(1) establish or designate a State rail transportation authority to prepare, maintain, coordinate, and administer the plan;

“(2) establish or designate a State rail plan approval authority to approve the plan;

“(3) submit the State's approved plan to the Secretary of Transportation for review; and

“(4) revise and resubmit a State-approved plan no less frequently than once every 5 years for reapproval by the Secretary.

**§ 22503. Purposes**

“(a) PURPOSES.—The purposes of a State rail plan are as follows:

“(1) To set forth State policy involving freight and passenger rail transportation, including commuter rail operations, in the State.

“(2) To establish the period covered by the State rail plan.

“(3) To present priorities and strategies to enhance rail service in the State that benefits the public.

“(4) To serve as the basis for Federal and State rail investments within the State.

“(b) COORDINATION.—A State rail plan shall be coordinated with other State transportation planning goals and programs and set forth rail transportation's role within the State transportation system.

**§ 22504. Transparency; coordination; review**

“(a) PREPARATION.—A State shall provide adequate and reasonable notice and opportunity for comment and other input to the public, rail carriers, commuter and transit authorities operating in, or affected by rail operations within the State, units of local government, and other interested parties in the preparation and review of its State rail plan.

“(b) INTERGOVERNMENTAL COORDINATION.—A State shall review the freight and passenger rail service activities and initiatives by regional planning agencies, regional transportation authorities, and municipalities within the State, or in the region in which the State is located, while preparing the plan, and shall include any recommendations made by such agencies, authorities, and municipalities as deemed appropriate by the State.

**§ 22505. Content**

“(a) IN GENERAL.—Each State rail plan shall contain the following:

“(1) An inventory of the existing overall rail transportation system and rail services and facilities within the State and an analysis of the role of rail transportation within the State's surface transportation system.

“(2) A review of all rail lines within the State, including proposed high speed rail corridors and significant rail line segments not currently in service.

“(3) A statement of the State's passenger rail service objectives, including minimum service levels, for rail transportation routes in the State.

“(4) A general analysis of rail's transportation, economic, and environmental impacts in the State, including congestion mitigation, trade and economic development, air quality, land-use, energy-use, and community impacts.

“(5) A long-range rail investment program for current and future freight and passenger infrastructure in the State that meets the requirements of subsection (b).

“(6) A statement of public financing issues for rail projects and service in the State, including a list of current and prospective public capital and operating funding resources, public subsidies, State taxation, and other financial policies relating to rail infrastructure development.

“(7) An identification of rail infrastructure issues within the State that reflects consultation with all relevant stakeholders.

“(8) A review of major passenger and freight intermodal rail connections and facilities within the State, including seaports, and prioritized options to maximize service integration and efficiency between rail and other modes of transportation within the State.

“(9) A review of publicly funded projects within the State to improve rail transportation safety and security, including all major projects funded under section 130 of title 23.

“(10) A performance evaluation of passenger rail services operating in the State, including possible improvements in those services, and a description of strategies to achieve those improvements.

“(11) A compilation of studies and reports on high-speed rail corridor development within the State not included in a previous plan under this subchapter, and a plan for funding any recommended development of such corridors in the State.

“(12) A statement that the State is in compliance with the requirements of section 22102.

**(b) LONG-RANGE SERVICE AND INVESTMENT PROGRAM.—**

“(1) PROGRAM CONTENT.—A long-range rail investment program included in a State rail plan under subsection (a)(5) shall include the following matters:

“(A) A list of any rail capital projects expected to be undertaken or supported in whole or in part by the State.

“(B) A detailed funding plan for those projects.

“(2) PROJECT LIST CONTENT.—The list of rail capital projects shall contain—

“(A) a description of the anticipated public and private benefits of each such project; and

“(B) a statement of the correlation between—

“(i) public funding contributions for the projects; and

“(ii) the public benefits.

“(3) CONSIDERATIONS FOR PROJECT LIST.—In preparing the list of freight and intercity passenger rail capital projects, a State rail transportation authority should take into consideration the following matters:

“(A) Contributions made by non-Federal and non-State sources through user fees, matching funds, or other private capital involvement.

“(B) Rail capacity and congestion effects.

“(C) Effects on highway, aviation, and maritime capacity, congestion, or safety.

“(D) Regional balance.

“(E) Environmental impact.

“(F) Economic and employment impacts.

“(G) Projected ridership and other service measures for passenger rail projects.

**§ 22506. Review**

The Secretary shall prescribe procedures for States to submit State rail plans for review under this title, including standardized format and data requirements. State rail plans completed before the date of enactment of the Passenger Rail Investment and Improvement Act of 2007 that substantially meet the requirements of this chapter, as determined by the Secretary, shall be deemed by the Secretary to have met the requirements of this chapter’.

**(b) CONFORMING AMENDMENTS.—**

(1) The table of chapters for the title is amended by inserting the following after the item relating to chapter 223:

“225. State rail plans ..... 22501”.

“(2) The chapter analysis for subtitle V is amended by inserting the following after the item relating to chapter 223:

“225. State rail plans ..... 24401”.

**SEC. 303. NEXT GENERATION CORRIDOR TRAIN EQUIPMENT POOL.**

“(a) IN GENERAL.—Within 180 days after the date of enactment of this Act, Amtrak shall establish a Next Generation Corridor Equipment Pool Committee, comprised of representatives of Amtrak, the Federal Railroad Administration, and interested States. The purpose of the Committee shall be to design, develop specifications for, and procure standardized next-generation corridor equipment.

“(b) FUNCTIONS.—The Committee may—

(1) determine the number of different types of equipment required, taking into account variations in operational needs and corridor infrastructure;

(2) establish a pool of equipment to be used on corridor routes funded by participating States; and

(3) subject to agreements between Amtrak and States, utilize services provided by Amtrak to design, maintain and remanufacture equipment.

“(c) COOPERATIVE AGREEMENTS.—Amtrak and States participating in the Committee may enter into agreements for the funding, procurement, remanufacture, ownership and management of corridor equipment, including equipment currently owned or leased by Amtrak and next-generation corridor equipment acquired as a result of the Committee’s actions, and may establish a corporation, which may be owned or jointly-owned by Amtrak, participating States or other entities, to perform these functions.

“(d) FUNDING.—In addition to the authorization provided in section 105 of this Act, capital projects to carry out the purposes of this section shall be eligible for grants made pursuant to chapter 244 of title 49, United States Code.

**SEC. 304. FEDERAL RAIL POLICY.**

Section 103 is amended—

(1) by inserting “IN GENERAL.—” before “The Federal” in subsection (a);

(2) by striking the second and third sentences of subsection (a);

(3) by inserting “ADMINISTRATOR.—” before “The head” in subsection (b);

(4) by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively and by inserting after subsection (b) the following:

“(c) SAFETY.—To carry out all railroad safety laws of the United States, the Administration is divided on a geographical basis into at least 8 safety offices. The Secretary of Transportation is responsible for all acts taken under those laws and for ensuring that the laws are uniformly administered and enforced among the safety offices.”;

(5) by inserting “POWERS AND DUTIES.—” before “The” in subsection (d), as redesignated;

(6) by striking “and” after the semicolon in paragraph (1) of subsection (d), as redesigned;

(7) by redesignating paragraph (2) of subsection (d), as redesignated, as paragraph (3) and inserting after paragraph (1) the following:

“(2) the duties and powers related to railroad policy and development under subsection (e); and”;

(8) by inserting “TRANSFERS OF DUTY.—” before “A duty” in subsection (e), as redesigned;

(9) by inserting “CONTRACTS, GRANTS, LEASES, COOPERATIVE AGREEMENTS, AND SIMILAR TRANSACTIONS.—” before “Subject” in subsection (f), as redesignated;

(10) by striking the last sentence in subsection (f), as redesignated; and

(11) by adding at the end the following:

“(g) ADDITIONAL DUTIES OF THE ADMINISTRATOR.—The Administrator shall—

“(1) provide assistance to States in developing State rail plans prepared under chap-

ter 225 and review all State rail plans submitted under that section;

“(2) develop a long range national rail plan that is consistent with approved State rail plans and the rail needs of the Nation, as determined by the Secretary in order to promote an integrated, cohesive, efficient, and optimized national rail system for the movement of goods and people;

“(3) develop a preliminary national rail plan within a year after the date of enactment of the Passenger Rail Investment and Improvement Act of 2007;

“(4) develop and enhance partnerships with the freight and passenger railroad industry, States, and the public concerning rail development;

“(5) support rail intermodal development and high-speed rail development, including high speed rail planning;

“(6) ensure that programs and initiatives developed under this section benefit the public and work toward achieving regional and national transportation goals; and

“(7) facilitate and coordinate efforts to assist freight and passenger rail carriers, transit agencies and authorities, municipalities, and States in passenger-freight service integration on shared rights of way by providing neutral assistance at the joint request of affected rail service providers and infrastructure owners relating to operations and capacity analysis, capital requirements, operating costs, and other research and planning related to corridors shared by passenger or commuter rail service and freight rail operations.

**(h) PERFORMANCE GOALS AND REPORTS.—**

“(1) PERFORMANCE GOALS.—In conjunction with the objectives established and activities undertaken under section 103(e) of this title, the Administrator shall develop a schedule for achieving specific, measurable performance goals.

“(2) RESOURCE NEEDS.—The strategy and annual plans shall include estimates of the funds and staff resources needed to accomplish each goal and the additional duties required under section 103(e).

“(3) SUBMISSION WITH PRESIDENT’S BUDGET.—Beginning with fiscal year 2009 and each fiscal year thereafter, the Secretary shall submit to Congress, at the same time as the President’s budget submission, the Administration’s performance goals and schedule developed under paragraph (1), including an assessment of the progress of the Administration toward achieving its performance goals.”;

**SEC. 305. RAIL COOPERATIVE RESEARCH PROGRAM.**

(a) ESTABLISHMENT AND CONTENT.—Chapter 249 is amended by adding at the end the following:

**“§ 24910. Rail cooperative research program**

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

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

“(2) address ways to expand the transportation of international trade traffic by rail, enhance the efficiency of intermodal interchange at ports and other intermodal terminals, and increase capacity and availability of rail service for seasonal freight needs;

“(3) consider research on the interconnectedness of commuter rail, passenger rail, freight rail, and other rail networks; and

“(4) give consideration to regional concerns regarding rail passenger and freight transportation, including meeting research

needs common to designated high-speed corridors, long-distance rail services, and regional intercity rail corridors, projects, and entities.

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

“(1) to identify the unique aspects and attributes of rail passenger and freight service;

“(2) to develop more accurate models for evaluating the impact of rail passenger and freight service, including the effects on highway and airport and airway congestion, environmental quality, and energy consumption;

“(3) to develop a better understanding of modal choice as it affects rail passenger and freight transportation, including development of better models to predict utilization;

“(4) to recommend priorities for technology demonstration and development;

“(5) to meet additional priorities as determined by the advisory board established under subsection (c), including any recommendations made by the National Research Council;

“(6) to explore improvements in management, financing, and institutional structures;

“(7) to address rail capacity constraints that affect passenger and freight rail service through a wide variety of options, ranging from operating improvements to dedicated new infrastructure, taking into account the impact of such options on operations;

“(8) to improve maintenance, operations, customer service, or other aspects of intercity rail passenger and freight service;

“(9) to recommend objective methodologies for determining intercity passenger rail routes and services, including the establishment of new routes, the elimination of existing routes, and the contraction or expansion of services or frequencies over such routes;

“(10) to review the impact of equipment and operational safety standards on the further development of high speed passenger rail operations connected to or integrated with non-high speed freight or passenger rail operations; and

“(11) to recommend any legislative or regulatory changes necessary to foster further development and implementation of high speed passenger rail operations while ensuring the safety of such operations that are connected to or integrated with non-high speed freight or passenger rail operations.

“(c) ADVISORY BOARD.—

“(1) ESTABLISHMENT.—In consultation with the heads of appropriate Federal departments and agencies, the Secretary shall establish an advisory board to recommend research, technology, and technology transfer activities related to rail passenger and freight 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, freight railroads, 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.”.

(b) CLERICAL AMENDMENT.—The chapter analysis for chapter 249 is amended by adding at the end the following:

“24910. Rail cooperative research program.”.

**TITLE IV—PASSENGER RAIL SECURITY AND SAFETY**

**I SEC. 400. SHORT TITLE.**

This title may be cited as the “Surface Transportation and Rail Security Act of 2007”.

**I SEC. 401. RAIL TRANSPORTATION SECURITY RISK ASSESSMENT.**

**I(a) IN GENERAL.—**

**I(b) VULNERABILITY AND RISK ASSESSMENT.**—The Secretary of Homeland Security shall establish a task force, including the Transportation Security Administration, the Department of Transportation, and other appropriate agencies, to complete a vulnerability and risk assessment of freight and passenger rail transportation (encompassing railroads, as that term is defined in section 20102(1) of title 49, United States Code). The assessment shall include—

|(A) a methodology for conducting the risk assessment, including timelines, that addresses how the Department of Homeland Security will work with the entities described in subsection (b) and make use of existing Federal expertise within the Department of Homeland Security, the Department of Transportation, and other appropriate agencies;

|(B) identification and evaluation of critical assets and infrastructures;

|(C) identification of vulnerabilities and risks to those assets and infrastructures;

|(D) identification of vulnerabilities and risks that are specific to the transportation of hazardous materials via railroad;

|(E) identification of security weaknesses in passenger and cargo security, transportation infrastructure, protection systems, procedural policies, communications systems, employee training, emergency response planning, and any other area identified by the assessment; and

|(F) an account of actions taken or planned by both public and private entities to address identified rail security issues and assess the effective integration of such actions.

**I(2) RECOMMENDATIONS.**—Based on the assessment conducted under paragraph (1), the Secretary, in consultation with the Secretary of Transportation, shall develop prioritized recommendations for improving rail security, including any recommendations the Secretary has for—

|(A) improving the security of rail tunnels, rail bridges, rail switching and car storage areas, other rail infrastructure and facilities, information systems, and other areas identified by the Secretary as posing significant rail-related risks to public safety and the movement of interstate commerce, taking into account the impact that any proposed security measure might have on the provision of rail service;

|(B) deploying equipment to detect explosives and hazardous chemical, biological, and radioactive substances, and any appropriate countermeasures;

|(C) training appropriate railroad or railroad shipper employees in terrorism prevention, passenger evacuation, and response activities;

|(D) conducting public outreach campaigns on passenger railroads;

|(E) deploying surveillance equipment; and

|(F) identifying the immediate and long-term costs of measures that may be required to address those risks.

**I(3) PLANS.**—The report required by subsection (c) shall include—

|(A) a plan, developed in consultation with the freight and intercity passenger railroads, and State and local governments, for the Federal government to provide increased security support at high or severe threat levels of alert;

|(B) a plan for coordinating existing and planned rail security initiatives undertaken by the public and private sectors; and

|(C) a contingency plan, developed in conjunction with freight and intercity and commuter passenger railroads, to ensure the continued movement of freight and passengers in the event of an attack affecting the railroad system, which shall contemplate—

|(i) the possibility of rerouting traffic due to the loss of critical infrastructure, such as a bridge, tunnel, yard, or station; and

|(ii) methods of continuing railroad service in the Northeast Corridor in the event of a commercial power loss, or catastrophe affecting a critical bridge, tunnel, yard, or station.

**I(b) CONSULTATION; USE OF EXISTING RESOURCES.**—In carrying out the assessment and developing the recommendations and plans required by subsection (a), the Secretary of Homeland Security shall consult with rail management, rail labor, owners or lessors of rail cars used to transport hazardous materials, first responders, shippers of hazardous materials, public safety officials, and other relevant parties.

**I(c) REPORT.—**

**I(1) CONTENTS.**—Within 180 days after the date of enactment of this Act, the Secretary shall transmit to the Senate Committee on Commerce, Science, and Transportation, the House of Representatives Committee on Transportation and Infrastructure, and the House of Representatives Committee on Homeland Security a report containing the assessment, prioritized recommendations, and plans required by subsection (a) and an estimate of the cost to implement such recommendations.

**I(2) FORMAT.**—The Secretary may submit the report in both classified and redacted formats if the Secretary determines that such action is appropriate or necessary.

**I(d) ANNUAL UPDATES.**—The Secretary, in consultation with the Secretary of Transportation, shall update the assessment and recommendations each year and transmit a report, which may be submitted in both classified and redacted formats, to the Committees named in subsection (c)(1), containing the updated assessment and recommendations.

**I(e) FUNDING.**—Out of funds appropriated pursuant to section 114(u) of title 49, United States Code, as amended by section 416 of this title, there shall be made available to the Secretary of Homeland Security to carry out this section \$5,000,000 for fiscal year 2008.

**I SEC. 402. SYSTEMWIDE AMTRAK SECURITY UPDATES.**

**I(a) IN GENERAL.**—Subject to subsection (c) the Secretary of Homeland Security, in consultation with the Assistant Secretary of Homeland Security (Transportation Security Administration), is authorized to make grants to Amtrak

|(1) to secure major tunnel access points and ensure tunnel integrity in New York, Baltimore, and Washington, DC;

|(2) to secure Amtrak trains;

|(3) to secure Amtrak stations;

|(4) to obtain a watch list identification system approved by the Secretary;

|(5) to obtain train tracking and interoperable communications systems that are coordinated to the maximum extent possible;

|(6) to hire additional police and security officers, including canine units;

|(7) to expand emergency preparedness efforts; and

|(8) for employee security training.

**I(b) CONDITIONS.**—The Secretary of Transportation shall disburse funds to Amtrak provided under subsection (a) for projects contained in a systemwide security plan approved by the Secretary of Homeland Security. The plan shall include appropriate

measures to address security awareness, emergency response, and passenger evacuation training.

**[(c) EQUITABLE GEOGRAPHIC ALLOCATION.]**—The Secretary shall ensure that, subject to meeting the highest security needs on Amtrak's entire system and consistent with the risk assessment required under section 401, stations and facilities located outside of the Northeast Corridor receive an equitable share of the security funds authorized by this section.

**[(d) AVAILABILITY OF FUNDS.]**—Out of funds appropriated pursuant to section 114(u) of title 49, United States Code, as amended by section 416 of this title, there shall be made available to the Secretary of Homeland Security and the Assistant Secretary of Homeland Security (Transportation Security Administration) to carry out this section—

- [(1) \$63,500,000 for fiscal year 2008;
- [(2) \$30,000,000 for fiscal year 2009; and
- [(3) \$30,000,000 for fiscal year 2010.]

Amounts appropriated pursuant to this subsection shall remain available until expended.

**[SEC. 403. FIRE AND LIFE-SAFETY IMPROVEMENTS.]**

**[(a) LIFE-SAFETY NEEDS.]**—The Secretary of Transportation, in consultation with the Secretary of Homeland Security, is authorized to make grants to Amtrak for the purpose of making fire and life-safety improvements to Amtrak tunnels on the Northeast Corridor in New York, NY, Baltimore, MD, and Washington, DC.

**[(b) AUTHORIZATION OF APPROPRIATIONS.]**—Out of funds appropriated pursuant to section 416(b) of this title, there shall be made available to the Secretary of Transportation for the purposes of carrying out subsection (a) the following amounts:

[(1) For the 6 New York tunnels to provide ventilation, electrical, and fire safety technology upgrades, emergency communication and lighting systems, and emergency access and egress for passengers—

- [(A) \$100,000,000 for fiscal year 2008;
- [(B) \$100,000,000 for fiscal year 2009;
- [(C) \$100,000,000 for fiscal year 2010; and
- [(D) \$100,000,000 for fiscal year 2011.]

[(2) For the Baltimore & Potomac tunnel and the Union tunnel, together, to provide adequate drainage, ventilation, communication, lighting, and passenger egress upgrades—

- [(A) \$10,000,000 for fiscal year 2008;
- [(B) \$10,000,000 for fiscal year 2009;
- [(C) \$10,000,000 for fiscal year 2010; and
- [(D) \$10,000,000 for fiscal year 2011.]

[(3) For the Washington, DC, Union Station tunnels to improve ventilation, communication, lighting, and passenger egress upgrades—

- [(A) \$8,000,000 for fiscal year 2008;
- [(B) \$8,000,000 for fiscal year 2009;
- [(C) \$8,000,000 for fiscal year 2010; and
- [(D) \$8,000,000 for fiscal year 2011.]

**[(c) INFRASTRUCTURE UPGRADES.]**—Out of funds appropriated pursuant to section 416(b) of this title, there shall be made available to the Secretary of Transportation for fiscal year 2008 \$3,000,000 for the preliminary design of options for a new tunnel on a different alignment to augment the capacity of the existing Baltimore tunnels.

**[(d) AVAILABILITY OF APPROPRIATED FUNDS.]**—Amounts made available pursuant to this section shall remain available until expended.

**[(e) PLANS REQUIRED.]**—The Secretary of Transportation may not make amounts available to Amtrak for obligation or expenditure under subsection (a)—

[(1) until Amtrak has submitted to the Secretary, and the Secretary has approved, an engineering and financial plan for such projects; and

[(2) unless, for each project funded pursuant to this section, the Secretary has approved a project management plan prepared by Amtrak addressing appropriate project budget, construction schedule, recipient staff organization, document control and record keeping, change order procedure, quality control and assurance, periodic plan updates, and periodic status reports.]

**[(f) REVIEW OF PLANS.]**—The Secretary of Transportation shall complete the review of the plans required by paragraphs (1) and (2) of subsection (e) and approve or disapprove the plans within 45 days after the date on which each such plan is submitted by Amtrak. If the Secretary determines that a plan is incomplete or deficient, the Secretary shall notify Amtrak of the incomplete items or deficiencies and Amtrak shall, within 30 days after receiving the Secretary's notification, submit a modified plan for the Secretary's review. Within 15 days after receiving additional information on items previously included in the plan, and within 45 days after receiving items newly included in a modified plan, the Secretary shall either approve the modified plan, or, if the Secretary finds the plan is still incomplete or deficient, the Secretary shall identify in writing to the Senate Committee on Commerce, Science, and Transportation, the House of Representatives Committee on Transportation and Infrastructure, and the House of Representatives Committee on Homeland Security the portions of the plan the Secretary finds incomplete or deficient, approve all other portions of the plan, obligate the funds associated with those other portions, and execute an agreement with Amtrak within 15 days thereafter on a process for resolving the remaining portions of the plan.

**[(g) FINANCIAL CONTRIBUTION FROM OTHER TUNNEL USERS.]**—The Secretary shall, taking into account the need for the timely completion of all portions of the tunnel projects described in subsection (a)—

[(1) consider the extent to which rail carriers other than Amtrak use or plan to use the tunnels;

[(2) consider the feasibility of seeking a financial contribution from those other rail carriers toward the costs of the projects; and

[(3) obtain financial contributions or commitments from such other rail carriers at levels reflecting the extent of their use or planned use of the tunnels, if feasible.]

**[SEC. 404. FREIGHT AND PASSENGER RAIL SECURITY UPGRADES.]**

**[(a) SECURITY IMPROVEMENT GRANTS.]**—The Secretary of Homeland Security, through the Assistant Secretary of Homeland Security (Transportation Security Administration) and other appropriate agencies, is authorized to make grants to freight railroads, the Alaska Railroad, hazardous materials shippers, owners of rail cars used in the transportation of hazardous materials, universities, colleges and research centers, State and local governments (for rail passenger facilities and infrastructure not owned by Amtrak), and, through the Secretary of Transportation, to Amtrak, for full or partial reimbursement of costs incurred in the conduct of activities to prevent or respond to acts of terrorism, sabotage, or other intercity passenger rail and freight rail security vulnerabilities and risks identified under section 401, including—

[(1) security and redundancy for critical communications, computer, and train control systems essential for secure rail operations;

[(2) accommodation of rail cargo or passenger screening equipment at the United States-Mexico border, the United States-Canada border, or other ports of entry;

[(3) the security of hazardous material transportation by rail;]

[(4) secure intercity passenger rail stations, trains, and infrastructure;]

[(5) structural modification or replacement of rail cars transporting high hazard materials to improve their resistance to acts of terrorism;]

[(6) employee security awareness, preparedness, passenger evacuation, and emergency response training;]

[(7) public security awareness campaigns for passenger train operations;]

[(8) the sharing of intelligence and information about security threats;]

[(9) to obtain train tracking and interoperable communications systems that are coordinated to the maximum extent possible;]

[(10) to hire additional police and security officers, including canine units; and

[(11) other improvements recommended by the report required by section 401, including infrastructure, facilities, and equipment upgrades.]

**[(b) ACCOUNTABILITY.]**—The Secretary shall adopt necessary procedures, including audits, to ensure that grants made under this section are expended in accordance with the purposes of this title and the priorities and other criteria developed by the Secretary.

**[(c) ALLOCATION.]**—The Secretary shall distribute the funds authorized by this section based on risk and vulnerability as determined under section 401, and shall encourage non-Federal financial participation in awarding grants. With respect to grants for intercity passenger rail security, the Secretary shall also take into account passenger volume and whether a station is used by commuter rail passengers as well as intercity rail passengers.

**[(d) CONDITIONS.]**—The Secretary of Transportation may not disburse funds to Amtrak under subsection (a) unless Amtrak meets the conditions set forth in section 402(b) of this title.

**[(e) ALLOCATION BETWEEN RAILROADS AND OTHERS.]**—Unless as a result of the assessment required by section 401 the Secretary of Homeland Security determines that critical rail transportation security needs require reimbursement in greater amounts to any eligible entity, no grants under this section may be made—

[(1) in excess of \$45,000,000 to Amtrak; or

[(2) in excess of \$80,000,000 for the purposes described in paragraphs (3) and (5) of subsection (a).]

**[(f) AUTHORIZATION OF APPROPRIATIONS.]**—Out of funds appropriated pursuant to section 114(u) of title 49, United States Code, as amended by section 416 of this title, there shall be made available to the Secretary of Homeland Security to carry out this section—

[(1) \$100,000,000 for fiscal year 2008;

[(2) \$100,000,000 for fiscal year 2009; and

[(3) \$100,000,000 for fiscal year 2010.]

Amounts made available pursuant to this subsection shall remain available until expended.

**[(g) HIGH HAZARD MATERIALS DEFINED.]**—In this section, the term "high hazard materials" means quantities of poison inhalation hazard materials, Class 2.3 gases, Class 6.1 materials, and anhydrous ammonia that the Secretary, in consultation with the Secretary of Transportation, determines pose a security risk.

**[SEC. 405. RAIL SECURITY RESEARCH AND DEVELOPMENT.]**

**[(a) ESTABLISHMENT OF RESEARCH AND DEVELOPMENT PROGRAM.]**—The Secretary of Homeland Security, through the Under Secretary for Science and Technology and the Assistant Secretary of Homeland Security (Transportation Security Administration), in consultation with the Secretary of Transportation shall carry out a research and development program for the purpose of improving freight and intercity passenger rail

security that may include research and development projects to—

[(1) reduce the vulnerability of passenger trains, stations, and equipment to explosives and hazardous chemical, biological, and radioactive substances;

[(2) test new emergency response techniques and technologies;

[(3) develop improved freight technologies, including—

[(A) technologies for sealing rail cars;

[(B) automatic inspection of rail cars;

[(C) communication-based train controls; and

[(D) emergency response training;

[(4) test wayside detectors that can detect tampering with railroad equipment;

[(5) support enhanced security for the transportation of hazardous materials by rail, including—

[(A) technologies to detect a breach in a tank car or other rail car used to transport hazardous materials and transmit information about the integrity of cars to the train crew or dispatcher;

[(B) research to improve tank car integrity, with a focus on tank cars that carry high hazard materials (as defined in section 404(g) of this title); and

[(C) techniques to transfer hazardous materials from rail cars that are damaged or otherwise represent an unreasonable risk to human life or public safety; and

[(6) other projects that address vulnerabilities and risks identified under section 401.

[(b) COORDINATION WITH OTHER RESEARCH INITIATIVES.—The Secretary of Homeland Security shall ensure that the research and development program authorized by this section is coordinated with other research and development initiatives at the Department of Homeland Security and the Department of Transportation. The Secretary shall carry out any research and development project authorized by this section through a reimbursable agreement with the Secretary of Transportation, if the Secretary of Transportation—

[(1) is already sponsoring a research and development project in a similar area; or

[(2) has a unique facility or capability that would be useful in carrying out the project.

[(c) GRANTS AND ACCOUNTABILITY.—To carry out the research and development program, the Secretary may award grants to the entities described in section 404(a) and shall adopt necessary procedures, including audits, to ensure that grants made under this section are expended in accordance with the purposes of this title and the priorities and other criteria developed by the Secretary.

[(d) AUTHORIZATION OF APPROPRIATIONS.—Out of funds appropriated pursuant to section 114(u) of title 49, United States Code, as amended by section 416 of this title, there shall be made available to the Secretary of Homeland Security to carry out this section—

[(1) \$33,000,000 for fiscal year 2008;

[(2) \$33,000,000 for fiscal year 2009; and

[(3) \$33,000,000 for fiscal year 2010.

[(Amounts made available pursuant to this subsection shall remain available until expended.

#### SEC. 406. OVERSIGHT AND GRANT PROCEDURES.

[(a) SECRETARIAL OVERSIGHT.—The Secretary of Homeland Security may use up to 0.5 percent of amounts made available for capital projects under this title to enter into contracts for the review of proposed capital projects and related program management plans and to oversee construction of such projects.

[(b) USE OF FUNDS.—The Secretary may use amounts available under subsection (a)

of this subsection to make contracts to audit and review the safety, procurement, management, and financial compliance of a recipient of amounts under this title.

[(c) PROCEDURES FOR GRANT AWARD.—The Secretary shall, within 90 days after the date of enactment of this Act, prescribe procedures and schedules for the awarding of grants under this title, including application and qualification procedures (including a requirement that the applicant have a security plan), and a record of decision on applicant eligibility. The procedures shall include the execution of a grant agreement between the grant recipient and the Secretary and shall be consistent, to the extent practicable, with the grant procedures established under section 70107 of title 46, United States Code.

#### SEC. 407. AMTRAK PLAN TO ASSIST FAMILIES OF PASSENGERS INVOLVED IN RAIL PASSENGER ACCIDENTS.

[(a) IN GENERAL.—Chapter 243 of title 49, United States Code, is amended by adding at the end the following:

#### “§ 24316. Plans to address needs of families of passengers involved in rail passenger accidents

[(a) SUBMISSION OF PLAN.—Not later than 6 months after the date of the enactment of the Surface Transportation and Rail Security Act of 2007 Amtrak shall submit to the Chairman of the National Transportation Safety Board, the Secretary of Transportation, and the Secretary of Homeland Security a plan for addressing the needs of the families of passengers involved in any rail passenger accident involving an Amtrak intercity train and resulting in a loss of life.

[(b) CONTENTS OF PLANS.—The plan to be submitted by Amtrak under subsection (a) shall include, at a minimum, the following:

[(1) A process by which Amtrak will maintain and provide to the National Transportation Safety Board and the Secretary of Transportation, immediately upon request, a list (which is based on the best available information at the time of the request) of the names of the passengers aboard the train (whether or not such names have been verified), and will periodically update the list. The plan shall include a procedure, with respect to unreserved trains and passengers not holding reservations on other trains, for Amtrak to use reasonable efforts to ascertain the number and names of passengers aboard a train involved in an accident.

[(2) A plan for creating and publicizing a reliable, toll-free telephone number within 4 hours after such an accident occurs, and for providing staff, to handle calls from the families of the passengers.

[(3) A process for notifying the families of the passengers, before providing any public notice of the names of the passengers, by suitably trained individuals.

[(4) A process for providing the notice described in paragraph (2) to the family of a passenger as soon as Amtrak has verified that the passenger was aboard the train (whether or not the names of all of the passengers have been verified).

[(5) A process by which the family of each passenger will be consulted about the disposition of all remains and personal effects of the passenger within Amtrak's control; that any possession of the passenger within Amtrak's control will be returned to the family unless the possession is needed for the accident investigation or any criminal investigation; and that any unclaimed possession of a passenger within Amtrak's control will be retained by the rail passenger carrier for at least 18 months.

[(6) A process by which the treatment of the families of nonrevenue passengers will be the same as the treatment of the families of revenue passengers.

[(7) An assurance that Amtrak will provide adequate training to its employees and agents to meet the needs of survivors and family members following an accident.

[(c) USE OF INFORMATION.—The National Transportation Safety Board, the Secretary of Transportation, and Amtrak may not release any personal information on a list obtained under subsection (b)(1) but may provide information on the list about a passenger to the family of the passenger to the extent that the Board or Amtrak considers appropriate.

[(d) LIMITATION ON LIABILITY.—Amtrak shall not be liable for damages in any action brought in a Federal or State court arising out of the performance of Amtrak in preparing or providing a passenger list, or in providing information concerning a train reservation, pursuant to a plan submitted by Amtrak under subsection (b), unless such liability was caused by Amtrak's conduct.

[(e) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section may be construed as limiting the actions that Amtrak may take, or the obligations that Amtrak may have, in providing assistance to the families of passengers involved in a rail passenger accident.

[(f) FUNDING.—Out of funds appropriated pursuant to section 416(b) of the Surface Transportation and Rail Security Act of 2007, there shall be made available to the Secretary of Transportation for the use of Amtrak \$500,000 for fiscal year 2007 to carry out this section. Amounts made available pursuant to this subsection shall remain available until expended.”

[(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 243 of title 49, United States Code, is amended by adding at the end the following:

“24316. Plan to assist families of passengers involved in rail passenger accidents.”

#### SEC. 408. NORTHERN BORDER RAIL PASSENGER REPORT.

[(a) Within 180 days after the date of enactment of this Act, the Secretary of Homeland Security, in consultation with the Assistant Secretary of Homeland Security (Transportation Security Administration), the Secretary of Transportation, heads of other appropriate Federal departments, and agencies and the National Railroad Passenger Corporation, shall transmit a report to the Senate Committee on Commerce, Science, and Transportation, the House of Representatives Committee on Transportation and Infrastructure, and the House of Representatives Committee on Homeland Security that contains—

[(1) a description of the current system for screening passengers and baggage on passenger rail service between the United States and Canada;

[(2) an assessment of the current program to provide preclearance of airline passengers between the United States and Canada as outlined in “The Agreement on Air Transport Preclearance between the Government of Canada and the Government of the United States of America”, dated January 18, 2001;

[(3) an assessment of the current program to provide preclearance of freight railroad traffic between the United States and Canada as outlined in the “Declaration of Principle for the Improved Security of Rail Shipments by Canadian National Railway and Canadian Pacific Railway from Canada to the United States”, dated April 2, 2003;

[(4) information on progress by the Department of Homeland Security and other Federal agencies towards finalizing a bilateral protocol with Canada that would provide for preclearance of passengers on trains operating between the United States and Canada;

[(5) a description of legislative, regulatory, budgetary, or policy barriers within the United States Government to providing pre-screened passenger lists for rail passengers traveling between the United States and Canada to the Department of Homeland Security;

[(6) a description of the position of the Government of Canada and relevant Canadian agencies with respect to preclearance of such passengers;

[(7) a draft of any changes in existing Federal law necessary to provide for pre-screening of such passengers and providing pre-screened passenger lists to the Department of Homeland Security; and

[(8) an analysis of the feasibility of reinstating in-transit inspections onboard international Amtrak trains.

**ISEC. 409. RAIL WORKER SECURITY TRAINING PROGRAM.**

[(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary of Homeland Security and the Secretary of Transportation, in consultation with appropriate law enforcement, security, and terrorism experts, representatives of railroad carriers, and nonprofit employee organizations that represent rail workers, shall develop and issue detailed guidance for a rail worker security training program to prepare front-line workers for potential threat conditions. The guidance shall take into consideration any current security training requirements or best practices.

[(b) PROGRAM ELEMENTS.—The guidance developed under subsection (a) shall include elements, as appropriate to passenger and freight rail service, that address the following:

[(1) Determination of the seriousness of any occurrence.

[(2) Crew communication and coordination.

[(3) Appropriate responses to defend or protect oneself.

[(4) Use of protective devices.

[(5) Evacuation procedures.

[(6) Psychology of terrorists to cope with hijacker behavior and passenger responses.

[(7) Situational training exercises regarding various threat conditions.

[(8) Any other subject the Secretary considers appropriate.

[(c) RAILROAD CARRIER PROGRAMS.—Not later than 90 days after the Secretary of Homeland Security issues guidance under subsection (a) in final form, each railroad carrier shall develop a rail worker security training program in accordance with that guidance and submit it to the Secretary for review. Not later than 30 days after receiving a railroad carrier's program under this subsection, the Secretary shall review the program and transmit comments to the railroad carrier concerning any revisions the Secretary considers necessary for the program to meet the guidance requirements. A railroad carrier shall respond to the Secretary's comments within 30 days after receiving them.

[(d) TRAINING.—Not later than 1 year after the Secretary reviews the training program developed by a railroad carrier under this section, the railroad carrier shall complete the training of all front-line workers in accordance with that program. The Secretary shall review implementation of the training program of a representative sample of railroad carriers and report to the Senate Committee on Commerce, Science, and Transportation, the House of Representatives Committee on Transportation and Infrastructure, and the House of Representatives Committee on Homeland Security on the number of reviews conducted and the results. The Secretary may submit the report in both classified and redacted formats as necessary.

[(e) UPDATES.—The Secretary shall update the training guidance issued under subsection (a) as appropriate to reflect new or different security threats. Railroad carriers shall revise their programs accordingly and provide additional training to their front-line workers within a reasonable time after the guidance is updated.

[(f) FRONT-LINE WORKERS DEFINED.—In this section, the term "front-line workers" means security personnel, dispatchers, train operators, other onboard employees, maintenance and maintenance support personnel, bridge tenders, as well as other appropriate employees of railroad carriers, as defined by the Secretary.

[(g) OTHER EMPLOYEES.—The Secretary of Homeland Security shall issue guidance and best practices for a rail shipper employee security program containing the elements listed under subsection (b) as appropriate.

**ISEC. 410. WHISTLEBLOWER PROTECTION PROGRAM.**

[(a) IN GENERAL.—Subchapter A of chapter 201 of title 49, United States Code, is amended by inserting after section 20117 the following:

**[(§) 20118. Whistleblower protection for rail security matters**

[(a) DISCRIMINATION AGAINST EMPLOYEE.—No rail carrier engaged in interstate or foreign commerce may discharge a railroad employee or otherwise discriminate against a railroad employee because the employee (or any person acting pursuant to a request of the employee)—

[(1) provided, caused to be provided, or is about to provide or cause to be provided, to the employer or the Federal Government information relating to a reasonably perceived threat, in good faith, to security; or

[(2) provided, caused to be provided, or is about to provide or cause to be provided, testimony before Congress or at any Federal or State proceeding regarding a reasonably perceived threat, in good faith, to security; or

[(3) refused to violate or assist in the violation of any law, rule or regulation related to rail security.

[(b) DISPUTE RESOLUTION.—A dispute, grievance, or claim arising under this section is subject to resolution under section 3 of the Railway Labor Act (45 U.S.C. 153). In a proceeding by the National Railroad Adjustment Board, a division or delegate of the Board, or another board of adjustment established under section 3 to resolve the dispute, grievance, or claim the proceeding shall be expedited and the dispute, grievance, or claim shall be resolved not later than 180 days after it is filed. If the violation is a form of discrimination that does not involve discharge, suspension, or another action affecting pay, and no other remedy is available under this subsection, the Board, division, delegate, or other board of adjustment may award the employee reasonable damages, including punitive damages, of not more than \$20,000.

[(c) PROCEDURAL REQUIREMENTS.—Except as provided in subsection (b), the procedure set forth in section 42121(b)(2)(B) of this subtitle, including the burdens of proof, applies to any complaint brought under this section.

[(d) ELECTION OF REMEDIES.—An employee of a railroad carrier may not seek protection under both this section and another provision of law for the same allegedly unlawful act of the carrier.

**[(e) DISCLOSURE OF IDENTITY.—**

[(1) Except as provided in paragraph (2) of this subsection, or with the written consent of the employee, the Secretary of Transportation may not disclose the name of an employee of a railroad carrier who has provided information about an alleged violation of this section.

[(2) The Secretary shall disclose to the Attorney General the name of an employee described in paragraph (1) of this subsection if the matter is referred to the Attorney General for enforcement.”.

[(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 201 of title 49, United States Code, is amended by inserting after the item relating to section 20117 the following:

[(20118. Whistleblower protection for rail security matters.”.

**ISEC. 411. HIGH HAZARD MATERIAL SECURITY THREAT MITIGATION PLANS.**

[(a) IN GENERAL.—The Secretary of Homeland Security, in consultation with the Assistant Secretary of Homeland Security (Transportation Security Administration) and the Secretary of Transportation, shall require rail carriers transporting a high hazard material, as defined in section 404(g) of this title to develop a high hazard material security threat mitigation plan containing appropriate measures, including alternative routing and temporary shipment suspension options, to address assessed risks to high consequence targets. The plan, and any information submitted to the Secretary under this section shall be protected as sensitive security information under the regulations prescribed under section 114(s) of title 49, United States Code.

[(b) IMPLEMENTATION.—A high hazard material security threat mitigation plan shall be put into effect by a rail carrier for the shipment of high hazardous materials by rail on the rail carrier's right-of-way when the threat levels of the Homeland Security Advisory System are high or severe and specific intelligence of probable or imminent threat exists towards—

[(1) a high-consequence target that is within the catastrophic impact zone of a railroad right-of-way used to transport high hazardous material; or

[(2) rail infrastructure or operations within the immediate vicinity of a high-consequence target.

**[(c) COMPLETION AND REVIEW OF PLANS.—**

[(1) PLANS REQUIRED.—Each rail carrier shall—

[(A) submit a list of routes used to transport high hazard materials to the Secretary of Homeland Security within 60 days after the date of enactment of this Act;

[(B) develop and submit a high hazard material security threat mitigation plan to the Secretary within 180 days after it receives the notice of high consequence targets on such routes by the Secretary; and

[(C) submit any subsequent revisions to the plan to the Secretary within 30 days after making the revisions.

[(2) REVIEW AND UPDATES.—The Secretary, with assistance of the Secretary of Transportation, shall review the plans and transmit comments to the railroad carrier concerning any revisions the Secretary considers necessary. A railroad carrier shall respond to the Secretary's comments within 30 days after receiving them. Each rail carrier shall update and resubmit its plan for review not less than every 2 years.

[(d) DEFINITIONS.—In this section:

[(1) The term "high-consequence target" means a building, buildings, infrastructure, public space, or natural resource designated by the Secretary of Homeland Security that is viable terrorist target of national significance, the attack of which could result in—

[(A) catastrophic loss of life; and

[(B) significantly damaged national security and defense capabilities; or

[(C) national economic harm.

[(2) The term "catastrophic impact zone" means the area immediately adjacent to, under, or above an active railroad right-of-

way used to ship high hazard materials in which the potential release or explosion of the high hazard material being transported would likely cause—

[(A) loss of life; or

[(B) significant damage to property or structures.

[(3) The term “rail carrier” has the meaning given that term by section 10102(5) of title 49, United States Code.

#### SEC. 412. MEMORANDUM OF AGREEMENT.

[(a) MEMORANDUM OF AGREEMENT.—Similar to the public transportation security annex between the two departments signed on September 8, 2005, within 1 year after the date of enactment of this Act, the Secretary of Transportation and the Secretary of Homeland Security shall execute and develop an annex to the memorandum of agreement between the two departments signed on September 28, 2004, governing the specific roles, delineations of responsibilities, resources and commitments of the Department of Transportation and the Department of Homeland Security, respectively, in addressing railroad transportation security matters, including the processes the departments will follow to promote communications, efficiency, and nonduplication of effort.

[(b) RAIL SAFETY REGULATIONS.—Section 20103(a) of title 49, United States Code, is amended by striking “safety” the first place it appears, and inserting “safety, including security.”.

#### SEC. 413. RAIL SECURITY ENHANCEMENTS.

[(a) RAIL POLICE OFFICERS.—Section 28101 of title 49, United States Code, is amended—

[(1) by inserting “(a) IN GENERAL.” before “Under”; and

[(2) by striking “the rail carrier” each place it appears and inserting “any rail carrier”.

[(b) REVIEW OF RAIL REGULATIONS.—Within 1 year after the date of enactment of this Act, the Secretary of Transportation, in consultation with the Secretary of Homeland Security and the Assistant Secretary of Homeland Security (Transportation Security Administration), shall review existing rail regulations of the Department of Transportation for the purpose of identifying areas in which those regulations need to be revised to improve rail security.

#### SEC. 414. PUBLIC AWARENESS.

[(Not later than 90 days after the date of enactment of this Act, the Secretary of Homeland Security, in consultation with the Secretary of Transportation, shall develop a national plan for public outreach and awareness. Such plan shall be designed to increase awareness of measures that the general public, railroad passengers, and railroad employees can take to increase railroad system security. Such plan shall also provide outreach to railroad carriers and their employees to improve their awareness of available technologies, ongoing research and development efforts, and available Federal funding sources to improve railroad security. Not later than 9 months after the date of enactment of this Act, the Secretary of Homeland Security shall implement the plan developed under this section.)

#### SEC. 415. RAILROAD HIGH HAZARD MATERIAL TRACKING.

[(a) WIRELESS COMMUNICATIONS.—

[(1) IN GENERAL.—In conjunction with the research and development program established under section 405 and consistent with the results of research relating to wireless tracking technologies, the Secretary of Homeland Security, in consultation with the Assistant Secretary of Homeland Security (Transportation Security Administration), shall develop a program that will encourage the equipping of rail cars transporting high hazard materials (as defined in section 404(g)

of this title) with wireless terrestrial or satellite communications technology that provides—

[(A) car position location and tracking capabilities;

[(B) notification of rail car depressurization, breach, or unsafe temperature; and

[(C) notification of hazardous material release.

[(2) COORDINATION.—In developing the program required by paragraph (1), the Secretary shall—

[(A) consult with the Secretary of Transportation to coordinate the program with any ongoing or planned efforts for rail car tracking at the Department of Transportation; and

[(B) ensure that the program is consistent with recommendations and findings of the Department of Homeland Security’s hazardous material tank rail car tracking pilot programs.

[(b) FUNDING.—Out of funds appropriated pursuant to section 114(u) of title 49, United States Code, as amended by section 416 of this title, there shall be made available to the Secretary of Homeland Security to carry out this section \$3,000,000 for each of fiscal years 2008, 2009, and 2010.

#### SEC. 416. AUTHORIZATION OF APPROPRIATIONS.

[(a) TRANSPORTATION SECURITY ADMINISTRATION AUTHORIZATION.—Section 114 of title 49, United States Code, is amended by adding at the end thereof the following:

[(“(u) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Homeland Security for rail security—

[(“(1) \$205,000,000 for fiscal year 2008;

[(“(2) \$166,000,000 for fiscal year 2009; and

[(“(3) \$166,000,000 for fiscal year 2010.”.

[(b) DEPARTMENT OF TRANSPORTATION.—There are authorized to be appropriated to the Secretary of Transportation to carry out this title and sections 20118 and 24316 of title 49, United States Code, as added by this title—

[(1) \$121,000,000 for fiscal year 2008;

[(2) \$118,000,000 for fiscal year 2009;

[(3) \$118,000,000 for fiscal year 2010; and

[(4) \$118,000,000 for fiscal year 2011.

#### TITLE IV—IMPROVED RAIL SECURITY

##### SEC. 401. DEFINITIONS.

In this title:

[(1) HIGH HAZARD MATERIALS.—The term “high hazard materials” means quantities of poison inhalation hazard materials, Class 2.3 gases, Class 6.1 materials, anhydrous ammonia, and other hazardous materials that the Secretary, in consultation with the Secretary of Transportation, determines pose a security risk.

[(2) SECRETARY.—The term “Secretary” refers to the Secretary of Homeland Security unless otherwise noted.

##### SEC. 402. RAIL TRANSPORTATION SECURITY RISK ASSESSMENT.

(a) IN GENERAL.—

[(1) RISK ASSESSMENT.—The Secretary shall establish a task force, including the Transportation Security Administration and other agencies within the Department, the Department of Transportation, and other appropriate Federal agencies, to complete a risk assessment of freight and passenger rail transportation (encompassing railroads, as that term is defined in section 20102(1) of title 49, United States Code). The assessment shall include—

[(A) a methodology for conducting the risk assessment, including timelines, that addresses how the Department of Homeland Security will work with the entities described in subsection (b) and make use of existing Federal expertise within the Department of Homeland Security, the Department of Transportation, and other appropriate agencies;

[(B) identification and evaluation of critical assets and infrastructures;

[(C) identification of risks to those assets and infrastructures;

[(D) identification of risks that are specific to the transportation of hazardous materials via railroad;

[(E) identification of risks to passenger and cargo security, transportation infrastructure (including rail tunnels used by passenger and freight railroads in high threat urban areas), protection systems, operations, communications systems, employee training, emergency response planning, and any other area identified by the assessment;

[(F) an assessment of public and private operational recovery plans to expedite, to the maximum extent practicable, the return of an adversely affected freight or passenger rail transportation system or facility to its normal performance level after a major terrorist attack or other security event on that system or facility; and

[(G) an account of actions taken or planned by both public and private entities to address identified rail security issues and assess the effective integration of such actions.

(2) RECOMMENDATIONS.—Based on the assessment conducted under paragraph (1), the Secretary, in consultation with the Secretary of Transportation, shall develop prioritized recommendations for improving rail security, including any recommendations the Secretary has for—

[(A) improving the security of rail tunnels, rail bridges, rail switching and car storage areas, other rail infrastructure and facilities, information systems, and other areas identified by the Secretary as posing significant rail-related risks to public safety and the movement of interstate commerce, taking into account the impact that any proposed security measure might have on the provision of rail service or on operations served or otherwise affected by rail service;

[(B) deploying equipment and personnel to detect security threats, including those posed by explosives and hazardous chemical, biological, and radioactive substances, and any appropriate countermeasures;

[(C) training appropriate railroad or railroad shipper employees in terrorism prevention, preparedness, passenger evacuation, and response activities;

[(D) conducting public outreach campaigns on passenger railroads regarding security;

[(E) deploying surveillance equipment;

[(F) identifying the immediate and long-term costs of measures that may be required to address those risks; and

[(G) public and private sector sources to fund such measures.

(3) PLANS.—The report required by subsection (c) shall include—

[(A) a plan, developed in consultation with the freight and intercity passenger railroads, and State and local governments, for the Federal Government to provide adequate security support at high or severe threat levels of alert;

[(B) a plan for coordinating existing and planned rail security initiatives undertaken by the public and private sectors; and

[(C) a contingency plan, developed in coordination with freight and intercity and commuter passenger railroads, to ensure the continued movement of freight and passengers in the event of an attack affecting the railroad system, which shall contemplate—

[(i) the possibility of rerouting traffic due to the loss of critical infrastructure, such as a bridge, tunnel, yard, or station; and

[(ii) methods of continuing railroad service in the Northeast Corridor in the event of a commercial power loss, or catastrophe affecting a critical bridge, tunnel, yard, or station.

(b) CONSULTATION; USE OF EXISTING RESOURCES.—In carrying out the assessment and developing the recommendations and plans required by subsection (a), the Secretary shall consult with rail management, rail labor, owners or lessors of rail cars used to transport hazardous materials, first responders, offerers of

hazardous materials, public safety officials, and other relevant parties. In developing the risk assessment required under this section, the Secretary shall utilize relevant existing risk assessments developed by the Department or other Federal agencies, and, as appropriate, assessments developed by other public and private stakeholders.

(c) REPORT.—

(1) CONTENTS.—Within 1 year after the date of enactment of this Act, the Secretary shall transmit to the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Transportation and Infrastructure and the Committee on Homeland Security of the House of Representatives a report containing—

(A) the assessment, prioritized recommendations, and plans required by subsection (a); and  
(B) an estimate of the cost to implement such recommendations.

(2) FORMAT.—The Secretary may submit the report in both classified and redacted formats if the Secretary determines that such action is appropriate or necessary.

(d) ANNUAL UPDATES.—The Secretary, in consultation with the Secretary of Transportation, shall update the assessment and recommendations each year and transmit a report, which may be submitted in both classified and redacted formats, to the Committees named in subsection (c)(1), containing the updated assessment and recommendations.

(e) FUNDING.—Out of funds appropriated pursuant to section 114(v) of title 49, United States Code, as amended by section 418 of this title, there shall be made available to the Secretary to carry out this section \$5,000,000 for fiscal year 2008.

**SEC. 403. SYSTEMWIDE AMTRAK SECURITY UPDATES.**

(a) IN GENERAL.—

(1) GRANTS.—Subject to subsection (c) the Secretary, in consultation with the Assistant Secretary of Homeland Security (Transportation Security Administration), is authorized to make grants to Amtrak in accordance with the provisions of this section.

(2) GENERAL PURPOSES.—The Secretary may make such grants for the purposes of—

(A) protecting underwater and underground assets and systems;  
(B) protecting high risk and high consequence assets identified through system-wide risk assessments;  
(C) providing counter-terrorism training;  
(D) providing both visible and unpredictable deterrence; and  
(E) conducting emergency preparedness drills and exercises.

(3) SPECIFIC PROJECTS.—The Secretary shall make such grants—

(A) to secure major tunnel access points and ensure tunnel integrity in New York, New Jersey, Maryland, and Washington, DC;  
(B) to secure Amtrak trains;  
(C) to secure Amtrak stations;

(D) to obtain a watch list identification system approved by the Secretary;  
(E) to obtain train tracking and interoperable communications systems that are coordinated to the maximum extent possible;

(F) to hire additional police officers, special agents, security officers, including canine units, and to pay for other labor costs directly associated with security and terrorism prevention activities;  
(G) to expand emergency preparedness efforts; and  
(H) for employee security training.

(b) CONDITIONS.—The Secretary of Transportation shall disburse funds to Amtrak provided under subsection (a) for projects contained in a systemwide security plan approved by the Secretary. Amtrak shall develop the security plan in consultation with constituent States and other relevant parties. The plan shall include appropriate measures to address security awareness, emergency response, and passenger evacua-

tion training and shall be consistent with State security plans to the maximum extent practicable.

(c) EQUITABLE GEOGRAPHIC ALLOCATION.—The Secretary shall ensure that, subject to meeting the highest security needs on Amtrak's entire system and consistent with the risk assessment required under section 403, stations and facilities located outside of the Northeast Corridor receive an equitable share of the security funds authorized by this section.

(d) AVAILABILITY OF FUNDS.—

(1) IN GENERAL.—Out of funds appropriated pursuant to section 114(v) of title 49, United States Code, as amended by section 418 of this title, there shall be made available to the Secretary and the Assistant Secretary of Homeland Security (Transportation Security Administration) to carry out this section—

(A) \$63,500,000 for fiscal year 2008;  
(B) \$30,000,000 for fiscal year 2009; and  
(C) \$30,000,000 for fiscal year 2010.

(2) AVAILABILITY OF APPROPRIATED FUNDS.—Amounts appropriated pursuant to paragraph (1) shall remain available until expended.

**SEC. 404. FIRE AND LIFE-SAFETY IMPROVEMENTS.**

(a) LIFE-SAFETY NEEDS.—The Secretary of Transportation, in consultation with the Secretary, is authorized to make grants to Amtrak for the purpose of making fire and life-safety improvements to Amtrak tunnels on the Northeast Corridor in New York, New Jersey, Maryland, and Washington, DC.

(b) AUTHORIZATION OF APPROPRIATIONS.—Out of funds appropriated pursuant to section 418(b) of this title, there shall be made available to the Secretary of Transportation for the purposes of carrying out subsection (a) the following amounts:

(1) For the 6 New York and New Jersey tunnels to provide ventilation, electrical, and fire safety technology upgrades, emergency communication and lighting systems, and emergency access and egress for passengers—

(A) \$100,000,000 for fiscal year 2008;  
(B) \$100,000,000 for fiscal year 2009;  
(C) \$100,000,000 for fiscal year 2010; and  
(D) \$100,000,000 for fiscal year 2011.

(2) For the Baltimore & Potomac tunnel and the Union tunnel, together, to provide adequate drainage, ventilation, communication, lighting, and passenger egress upgrades—

(A) \$10,000,000 for fiscal year 2008;  
(B) \$10,000,000 for fiscal year 2009;  
(C) \$10,000,000 for fiscal year 2010; and  
(D) \$10,000,000 for fiscal year 2011.

(3) For the Washington, DC, Union Station tunnels to improve ventilation, communication, lighting, and passenger egress upgrades—

(A) \$8,000,000 for fiscal year 2008;  
(B) \$8,000,000 for fiscal year 2009;  
(C) \$8,000,000 for fiscal year 2010; and  
(D) \$8,000,000 for fiscal year 2011.

(c) INFRASTRUCTURE UPDATES.—Out of funds appropriated pursuant to section 418(b) of this title, there shall be made available to the Secretary of Transportation for fiscal year 2008 \$3,000,000 for the preliminary design of options for a new tunnel on a different alignment to augment the capacity of the existing Baltimore tunnels.

(d) AVAILABILITY OF APPROPRIATED FUNDS.—Amounts made available pursuant to this section shall remain available until expended.

(e) PLANS REQUIRED.—The Secretary of Transportation may not make amounts available to Amtrak for obligation or expenditure under subsection (a)—

(1) until Amtrak has submitted to the Secretary, and the Secretary has approved, an engineering and financial plan for such projects; and

(2) unless, for each project funded pursuant to this section, the Secretary has approved a project management plan prepared by Amtrak addressing appropriate project budget, construction schedule, recipient staff organization, doc-

ument control and record keeping, change order procedure, quality control and assurance, periodic plan updates, and periodic status reports.

(f) REVIEW OF PLANS.—

(1) IN GENERAL.—The Secretary of Transportation shall complete the review of the plans required by paragraphs (1) and (2) of subsection (e) and approve or disapprove the plans within 45 days after the date on which each such plan is submitted by Amtrak.

(2) INCOMPLETE OR DEFICIENT PLAN.—If the Secretary determines that a plan is incomplete or deficient, the Secretary shall notify Amtrak of the incomplete items or deficiencies and Amtrak shall, within 30 days after receiving the Secretary's notification, submit a modified plan for the Secretary's review.

(3) APPROVAL OF PLAN.—Within 15 days after receiving additional information on items previously included in the plan, and within 45 days after receiving items newly included in a modified plan, the Secretary shall either approve the modified plan, or, if the Secretary finds the plan is still incomplete or deficient, the Secretary shall—

(A) identify in writing to the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Transportation and Infrastructure and the Committee on Homeland Security of the House of Representatives the portions of the plan the Secretary finds incomplete or deficient;

(B) approve all other portions of the plan;

(C) obligate the funds associated with those other portions; and

(D) execute an agreement with Amtrak within 15 days thereafter on a process for resolving the remaining portions of the plan.

(g) FINANCIAL CONTRIBUTION FROM OTHER TUNNEL USERS.—The Secretary shall, taking into account the need for the timely completion of all portions of the tunnel projects described in subsection (a)—

(1) consider the extent to which rail carriers other than Amtrak use or plan to use the tunnels;

(2) consider the feasibility of seeking a financial contribution from those other rail carriers toward the costs of the projects; and

(3) obtain financial contributions or commitments from such other rail carriers at levels reflecting the extent of their use or planned use of the tunnels, if feasible.

**SEC. 405. FREIGHT AND PASSENGER RAIL SECURITY UPDATES.**

(a) SECURITY IMPROVEMENT GRANTS.—The Secretary, in consultation with Assistant Secretary of Homeland Security (Transportation Security Administration) and other appropriate agencies or officials, is authorized to make grants to freight railroads, the Alaska Railroad, hazardous materials offerers, owners of rail cars used in the transportation of hazardous materials, universities, colleges and research centers, State and local governments (for rail passenger facilities and infrastructure not owned by Amtrak), and to Amtrak for full or partial reimbursement of costs incurred in the conduct of activities to prevent or respond to acts of terrorism, sabotage, or other intercity passenger rail and freight rail security risks identified under section 402, including—

(1) security and redundancy for critical communications, computer, and train control systems essential for secure rail operations;

(2) accommodation of rail cargo or passenger screening equipment at the United States-Mexico border, the United States-Canada border, or other ports of entry;

(3) the security of hazardous material transportation by rail;

(4) secure intercity passenger rail stations, trains, and infrastructure;

(5) structural modification or replacement of rail cars transporting high hazard materials to improve their resistance to acts of terrorism;

(6) employee security awareness, preparedness, passenger evacuation, and emergency response training;

(7) public security awareness campaigns for passenger train operations;

(8) the sharing of intelligence and information about security threats;

(9) to obtain train tracking and interoperable communications systems that are coordinated to the maximum extent possible;

(10) to hire additional police and security officers, including canine units; and

(11) other improvements recommended by the report required by section 402, including infrastructure, facilities, and equipment upgrades.

(b) ACCOUNTABILITY.—The Secretary shall adopt necessary procedures, including audits, to ensure that grants made under this section are expended in accordance with the purposes of this title and the priorities and other criteria developed by the Secretary.

(c) ALLOCATION.—The Secretary shall distribute the funds authorized by this section based on risk as determined under section 402, and shall encourage non-Federal financial participation in projects funded by grants awarded under this section. With respect to grants for intercity passenger rail security, the Secretary shall also take into account passenger volume and whether stations or facilities are used by commuter rail passengers as well as intercity rail passengers. Not later than 240 days after the date of enactment of this Act, the Secretary shall provide a report to the Committees on Commerce, Science and Transportation and Homeland Security and Governmental Affairs in the Senate and the Committee on Homeland Security in the House on the feasibility and appropriateness of requiring a non-Federal match for the grants authorized in subsection (a).

(d) CONDITIONS.—Grants awarded by the Secretary to Amtrak under subsection (a) shall be disbursed to Amtrak through the Secretary of Transportation. The Secretary of Transportation may not disburse such funds unless Amtrak meets the conditions set forth in section 403(b) of this title.

(e) ALLOCATION BETWEEN RAILROADS AND OTHERS.—Unless as a result of the assessment required by section 402 the Secretary determines that critical rail transportation security needs require reimbursement in greater amounts to any eligible entity, no grants under this section may be made cumulatively over the period authorized by this title—

(1) in excess of \$45,000,000 to Amtrak; or

(2) in excess of \$80,000,000 for the purposes described in paragraphs (3) and (5) of subsection (a).

(f) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—Out of funds appropriated pursuant to section 114(v) of title 49, United States Code, as amended by section 418 of this title, there shall be made available to the Secretary to carry out this section—

(A) \$100,000,000 for fiscal year 2008;

(B) \$100,000,000 for fiscal year 2009; and

(C) \$100,000,000 for fiscal year 2010.

(2) AVAILABILITY OF APPROPRIATED FUNDS.—Amounts appropriated pursuant to paragraph (1) shall remain available until expended.

#### SEC. 406. RAIL SECURITY RESEARCH AND DEVELOPMENT.

(a) ESTABLISHMENT OF RESEARCH AND DEVELOPMENT PROGRAM.—The Secretary, through the Under Secretary for Science and Technology and the Assistant Secretary of Homeland Security (Transportation Security Administration), in consultation with the Secretary of Transportation shall carry out a research and development program for the purpose of improving freight and intercity passenger rail security that may include research and development projects to—

(1) reduce the risk of terrorist attacks on rail transportation, including risks posed by explosives and hazardous chemical, biological, and radioactive substances to intercity rail passengers, facilities, and equipment;

(2) test new emergency response techniques and technologies;

(3) develop improved freight rail security technologies, including—

(A) technologies for sealing rail cars;

(B) automatic inspection of rail cars;

(C) communication-based train controls; and

(D) emergency response training;

(4) test wayside detectors that can detect tampering with railroad equipment;

(5) support enhanced security for the transportation of hazardous materials by rail, including—

(A) technologies to detect a breach in a tank car or other rail car used to transport hazardous materials and transmit information about the integrity of cars to the train crew or dispatcher;

(B) research to improve tank car integrity, with a focus on tank cars that carry high hazard materials (as defined in section 401 of this title); and

(C) techniques to transfer hazardous materials from rail cars that are damaged or otherwise represent an unreasonable risk to human life or public safety; and

(6) other projects that address risks identified under section 402.

(b) COORDINATION WITH OTHER RESEARCH INITIATIVES.—The Secretary shall ensure that the research and development program authorized by this section is coordinated with other research and development initiatives at the Department of Homeland Security and the Department of Transportation. The Secretary shall carry out any research and development project authorized by this section through a reimbursable agreement with the Secretary of Transportation, if the Secretary of Transportation—

(1) is already sponsoring a research and development project in a similar area; or

(2) has a unique facility or capability that would be useful in carrying out the project.

(c) GRANTS AND ACCOUNTABILITY.—To carry out the research and development program, the Secretary may award grants to the entities described in section 405(a) and shall adopt necessary procedures, including audits, to ensure that grants made under this section are expended in accordance with the purposes of this title and the priorities and other criteria developed by the Secretary.

(d) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—Out of funds appropriated pursuant to section 114(v) of title 49, United States Code, as amended by section 418 of this title, there shall be made available to the Secretary to carry out this section—

(A) \$33,000,000 for fiscal year 2008;

(B) \$33,000,000 for fiscal year 2009; and

(C) \$33,000,000 for fiscal year 2010.

(2) AVAILABILITY OF APPROPRIATED FUNDS.—Amounts appropriated pursuant to paragraph (1) shall remain available until expended.

#### SEC. 407. OVERSIGHT AND GRANT PROCEDURES.

(a) SECRETARIAL OVERSIGHT.—The Secretary may award contracts to audit and review the safety, security, procurement, management, and financial compliance of a recipient of amounts under this title.

(b) PROCEDURES FOR GRANT AWARD.—The Secretary shall, within 180 days after the date of enactment of this Act, prescribe procedures and schedules for the awarding of grants under this title, including application and qualification procedures (including a requirement that the applicant have a security plan), and a record of decision on applicant eligibility. The procedures shall include the execution of a grant agreement between the grant recipient and the Secretary and shall be consistent, to the extent practicable, with the grant procedures established under section 70107 of title 46, United States Code.

(c) ADDITIONAL AUTHORITY.—The Secretary may issue nonbinding letters under similar terms to those issued pursuant to section 47110(e) of title 49, United States Code, to sponsors of rail projects funded under this title.

#### SEC. 408. AMTRAK PLAN TO ASSIST FAMILIES OF PASSENGERS INVOLVED IN RAIL PASSENGER ACCIDENTS.

(a) IN GENERAL.—Chapter 243 of title 49, United States Code, is amended by adding at the end the following:

##### “§24316. Plans to address needs of families of passengers involved in rail passenger accidents

“(a) SUBMISSION OF PLAN.—Not later than 6 months after the date of the enactment of the Transportation Security and Interoperable Communication Capabilities Act, Amtrak shall submit to the Chairman of the National Transportation Safety Board, the Secretary of Transportation, and the Secretary of Homeland Security a plan for addressing the needs of the families of passengers involved in any rail passenger accident involving an Amtrak intercity train and resulting in a loss of life.

“(b) CONTENTS OF PLANS.—The plan to be submitted by Amtrak under subsection (a) shall include, at a minimum, the following:

“(1) A process by which Amtrak will maintain and provide to the National Transportation Safety Board, the Secretary of Transportation, and the Secretary of Homeland Security, immediately upon request, a list (which is based on the best available information at the time of the request) of the names of the passengers aboard the train (whether or not such names have been verified), and will periodically update the list. The plan shall include a procedure, with respect to unreserved trains and passengers not holding reservations on other trains, for Amtrak to use reasonable efforts to ascertain the number and names of passengers aboard a train involved in an accident.

“(2) A plan for creating and publicizing a reliable, toll-free telephone number within 4 hours after such an accident occurs, and for providing staff, to handle calls from the families of the passengers.

“(3) A process for notifying the families of the passengers, before providing any public notice of the names of the passengers, by suitably trained individuals.

“(4) A process for providing the notice described in paragraph (2) to the family of a passenger as soon as Amtrak has verified that the passenger was aboard the train (whether or not the names of all of the passengers have been verified).

“(5) A process by which the family of each passenger will be consulted about the disposition of all remains and personal effects of the passenger within Amtrak's control; that any possession of the passenger within Amtrak's control will be returned to the family unless the possession is needed for the accident investigation or any criminal investigation; and that any unclaimed possession of a passenger within Amtrak's control will be retained by the rail passenger carrier for at least 18 months.

“(6) A process by which the treatment of the families of nonrevenue passengers will be the same as the treatment of the families of revenue passengers.

“(7) An assurance that Amtrak will provide adequate training to its employees and agents to meet the needs of survivors and family members following an accident.

“(c) USE OF INFORMATION.—Neither the National Transportation Safety Board, the Secretary of Transportation, the Secretary of Homeland Security, nor Amtrak may release any personal information on a list obtained under subsection (b)(1) but may provide information on the list about a passenger to the family of the passenger to the extent that the Board or Amtrak considers appropriate.

“(d) LIMITATION ON LIABILITY.—Amtrak shall not be liable for damages in any action brought in a Federal or State court arising out of the performance of Amtrak under this section in preparing or providing a passenger list, or in

providing information concerning a train reservation, pursuant to a plan submitted by Amtrak under subsection (b), unless such liability was caused by Amtrak's conduct.

**(e) LIMITATION ON STATUTORY CONSTRUCTION.**—Nothing in this section may be construed as limiting the actions that Amtrak may take, or the obligations that Amtrak may have, in providing assistance to the families of passengers involved in a rail passenger accident.

**(f) FUNDING.**—Out of funds appropriated pursuant to section 418(b) of the Passenger Rail Investment and Improvement Act of 2007, there shall be made available to the Secretary of Transportation for the use of Amtrak \$500,000 for fiscal year 2008 to carry out this section. Amounts made available pursuant to this subsection shall remain available until expended.”.

**(b) CONFORMING AMENDMENT.**—The chapter analysis for chapter 243 of title 49, United States Code, is amended by adding at the end the following:

“24316. Plan to assist families of passengers involved in rail passenger accidents.”.

**SEC. 409. NORTHERN BORDER RAIL PASSENGER REPORT.**

Within 1 year after the date of enactment of this Act, the Secretary, in consultation with the Assistant Secretary of Homeland Security (Transportation Security Administration), the Secretary of Transportation, heads of other appropriate Federal departments, and agencies and the National Railroad Passenger Corporation, shall transmit a report to the Senate Committee on Commerce, Science, and Transportation, the House of Representatives Committee on Transportation and Infrastructure, and the House of Representatives Committee on Homeland Security that contains—

(1) a description of the current system for screening passengers and baggage on passenger rail service between the United States and Canada;

(2) an assessment of the current program to provide preclearance of airline passengers between the United States and Canada as outlined in “The Agreement on Air Transport Preclearance between the Government of Canada and the Government of the United States of America”, dated January 18, 2001;

(3) an assessment of the current program to provide preclearance of freight railroad traffic between the United States and Canada as outlined in the “Declaration of Principle for the Improved Security of Rail Shipments by Canadian National Railway and Canadian Pacific Railway from Canada to the United States”, dated April 2, 2003;

(4) information on progress by the Department of Homeland Security and other Federal agencies towards finalizing a bilateral protocol with Canada that would provide for preclearance of passengers on trains operating between the United States and Canada;

(5) a description of legislative, regulatory, budgetary, or policy barriers within the United States Government to providing pre-screened passenger lists for rail passengers traveling between the United States and Canada to the Department of Homeland Security;

(6) a description of the position of the Government of Canada and relevant Canadian agencies with respect to preclearance of such passengers;

(7) a draft of any changes in existing Federal law necessary to provide for pre-screening of such passengers and providing pre-screened passenger lists to the Department of Homeland Security; and

(8) an analysis of the feasibility of reinstating in-transit inspections onboard international Amtrak trains.

**SEC. 410. RAIL WORKER SECURITY TRAINING PROGRAM.**

**(a) IN GENERAL.**—Not later than 1 year after the date of enactment of this Act, the Secretary,

in consultation with the Secretary of Transportation, appropriate law enforcement, security, and terrorism experts, representatives of railroad carriers and shippers, and nonprofit employee organizations that represent rail workers, shall develop and issue detailed guidance for a rail worker security training program to prepare front-line workers for potential threat conditions. The guidance shall take into consideration any current security training requirements or best practices.

**(b) PROGRAM ELEMENTS.**—The guidance developed under subsection (a) shall include elements appropriate to passenger and freight rail service that address the following:

(1) Determination of the seriousness of any occurrence.

(2) Crew communication and coordination.

(3) Appropriate responses to defend or protect oneself.

(4) Use of protective devices.

(5) Evacuation procedures.

(6) Psychology, behavior, and methods of terrorists, including observation and analysis.

(7) Situational training exercises regarding various threat conditions.

(8) Any other subject the Secretary considers appropriate.

**(c) RAILROAD CARRIER PROGRAMS.**—Not later than 90 days after the Secretary issues guidance under subsection (a) in final form, each railroad carrier shall develop a rail worker security training program in accordance with that guidance and submit it to the Secretary for review. Not later than 90 days after receiving a railroad carrier's program under this subsection, the Secretary shall review the program and transmit comments to the railroad carrier concerning any revisions the Secretary considers necessary for the program to meet the guidance requirements. A railroad carrier shall respond to the Secretary's comments within 90 days after receiving them.

**(d) TRAINING.**—Not later than 1 year after the Secretary reviews the training program developed by a railroad carrier under this section, the railroad carrier shall complete the training of all front-line workers in accordance with that program. The Secretary shall review implementation of the training program of a representative sample of railroad carriers and report to the Senate Committee on Commerce, Science, and Transportation, the House of Representatives Committee on Transportation and Infrastructure, and the House of Representatives Committee on Homeland Security on the number of reviews conducted and the results. The Secretary may submit the report in both classified and redacted formats as necessary.

**(e) UPDATES.**—The Secretary shall update the training guidance issued under subsection (a) as appropriate to reflect new or different security threats. Railroad carriers shall revise their programs accordingly and provide additional training to their front-line workers within a reasonable time after the guidance is updated.

**(f) FRONT-LINE WORKERS DEFINED.**—In this section, the term “front-line workers” means security personnel, dispatchers, locomotive engineers, conductors, trainmen, other onboard employees, maintenance and maintenance support personnel, bridge tenders, as well as other appropriate employees of railroad carriers, as defined by the Secretary.

**(g) OTHER EMPLOYEES.**—The Secretary shall issue guidance and best practices for a rail shipper employee security program containing the elements listed under subsection (b) as appropriate.

**SEC. 411. WHISTLEBLOWER PROTECTION PROGRAM.**

**(a) IN GENERAL.**—Subchapter A of chapter 201 of title 49, United States Code, is amended by inserting after section 20117 the following:

**“§20118. Whistleblower protection for rail security matters**

**(a) DISCRIMINATION AGAINST EMPLOYEE.**—A railroad carrier engaged in interstate or foreign

commerce may not discharge or in any way discriminate against an employee because the employee, whether acting for the employee or as a representative, has—

“(1) provided, caused to be provided, or is about to provide or cause to be provided, to the employer or the Federal Government information relating to a reasonably perceived threat, in good faith, to security;

“(2) provided, caused to be provided, or is about to provide or cause to be provided, testimony before Congress or at any Federal or State proceeding regarding a reasonably perceived threat, in good faith, to security; or

“(3) refused to violate or assist in the violation of any law, rule or regulation related to rail security.

**(b) DISPUTE RESOLUTION.**—A dispute, grievance, or claim arising under this section is subject to resolution under section 3 of the Railway Labor Act (45 U.S.C. 153). In a proceeding by the National Railroad Adjustment Board, a division or delegate of the Board, or another board of adjustment established under section 3 to resolve the dispute, grievance, or claim the proceeding shall be expedited and the dispute, grievance, or claim shall be resolved not later than 180 days after it is filed. If the violation is a form of discrimination that does not involve discharge, suspension, or another action affecting pay, and no other remedy is available under this subsection, the Board, division, delegate, or other board of adjustment may award the employee reasonable damages, including punitive damages, of not more than \$20,000.

**(c) PROCEDURAL REQUIREMENTS.**—Except as provided in subsection (b), the procedure set forth in section 42121(b)(2)(B) of this subtitle, including the burdens of proof, applies to any complaint brought under this section.

**(d) ELECTION OF REMEDIES.**—An employee of a railroad carrier may not seek protection under both this section and another provision of law for the same allegedly unlawful act of the carrier.

**(e) DISCLOSURE OF IDENTITY.**—

“(1) Except as provided in paragraph (2) of this subsection, or with the written consent of the employee, the Secretary of Transportation or Secretary of Homeland Security may not disclose the name of an employee of a railroad carrier who has provided information about an alleged violation of this section.

“(2) The Secretary shall disclose to the Attorney General the name of an employee described in paragraph (1) of this subsection if the matter is referred to the Attorney General for enforcement.

**(f) PROCESS FOR REPORTING PROBLEMS.**—

**(1) ESTABLISHMENT OF REPORTING PROCESS.**—The Secretary shall establish, and provide information to the public regarding, a process by which any person may submit a report to the Secretary regarding railroad security problems, deficiencies, or vulnerabilities.

**(2) CONFIDENTIALITY.**—The Secretary shall keep confidential the identity of a person who submits a report under paragraph (1) and any such report shall be treated as a record containing protected information to the extent that it does not consist of publicly available information.

**(3) ACKNOWLEDGMENT OF RECEIPT.**—If a report submitted under paragraph (1) identifies the person making the report, the Secretary shall respond promptly to such person and acknowledge receipt of the report.

**(4) STEPS TO ADDRESS PROBLEMS.**—The Secretary shall review and consider the information provided in any report submitted under paragraph (1) and shall take appropriate steps under this title to address any problems or deficiencies identified.

**(5) RETALIATION PROHIBITED.**—No employer may discharge any employee or otherwise discriminate against any employee with respect to the compensation to, or terms, conditions, or privileges of the employment of, such employee

because the employee (or a person acting pursuant to a request of the employee) made a report under paragraph (1).".

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 201 of title 49, United States Code, is amended by inserting after the item relating to section 20117 the following:

“20118. Whistleblower protection for rail security matters.”.

**SEC. 412. HIGH HAZARD MATERIAL SECURITY RISK MITIGATION PLANS.**

(a) IN GENERAL.—The Secretary, in consultation with the Assistant Secretary of Homeland Security (Transportation Security Administration) and the Secretary of Transportation, shall require rail carriers transporting a high hazard material, as defined in section 402 of this title, to develop a high hazard material security risk mitigation plan containing appropriate measures, including alternative routing and temporary shipment suspension options, to address assessed risks to high consequence targets. The plan, and any information submitted to the Secretary under this section shall be protected as sensitive security information under the regulations prescribed under section 114(s) of title 49, United States Code.

(b) IMPLEMENTATION.—A high hazard material security risk mitigation plan shall be put into effect by a rail carrier for the shipment of high hazardous materials by rail on the rail carrier's right-of-way when the threat levels of the Homeland Security Advisory System are high or severe or specific intelligence of probable or imminent threat exists towards—

(1) a high-consequence target that is within the catastrophic impact zone of a railroad right-of-way used to transport high hazardous material; or

(2) rail infrastructure or operations within the immediate vicinity of a high-consequence target.

(c) COMPLETION AND REVIEW OF PLANS.—

(1) PLANS REQUIRED.—Each rail carrier shall—

(A) submit a list of routes used to transport high hazard materials to the Secretary within 60 days after the date of enactment of this Act;

(B) develop and submit a high hazard material security risk mitigation plan to the Secretary within 180 days after it receives the notice of high consequence targets on such routes by the Secretary that includes an operational recovery plan to expedite, to the maximum extent practicable, the return of an adversely affected rail system or facility to its normal performance level following a major terrorist attack or other security incident; and

(C) submit any subsequent revisions to the plan to the Secretary within 30 days after making the revisions.

(2) REVIEW AND UPDATES.—The Secretary, with assistance of the Secretary of Transportation, shall review the plans and transmit comments to the railroad carrier concerning any revisions the Secretary considers necessary. A railroad carrier shall respond to the Secretary's comments within 30 days after receiving them. Each rail carrier shall update and resubmit its plan for review not less than every 2 years.

(d) DEFINITIONS.—In this section:

(1) The term “high-consequence target” means property, infrastructure, public space, or natural resource designated by the Secretary that is a viable terrorist target of national significance, the attack of which could result in—

(A) catastrophic loss of life;

(B) significant damage to national security or defense capabilities; or

(C) national economic harm.

(2) The term “catastrophic impact zone” means the area immediately adjacent to, under, or above an active railroad right-of-way used to ship high hazard materials in which the potential release or explosion of the high hazard material being transported would likely cause—

(A) loss of life; or

(B) significant damage to property or structures.

(3) The term “rail carrier” has the meaning given that term by section 10102(5) of title 49, United States Code.

**SEC. 413. ENFORCEMENT AUTHORITY.**

(a) IN GENERAL.—Section 114 of title 49, United States Code, is amended by adding at the end the following:

“(u) ENFORCEMENT OF REGULATIONS AND ORDERS OF THE SECRETARY OF HOMELAND SECURITY ISSUED UNDER THIS TITLE.—

“(1) APPLICATION OF SUBSECTION.—

“(A) IN GENERAL.—This subsection applies to the enforcement of regulations prescribed, and orders issued, by the Secretary of Homeland Security under a provision of this title other than a provision of chapter 449.

“(B) VIOLATIONS OF CHAPTER 449.—The penalties for violations of regulations prescribed, and orders issued, by the Secretary of Homeland Security under chapter 449 of this title are provided under chapter 463 of this title.

“(C) NONAPPLICATION TO CERTAIN VIOLATIONS.—

“(i) Paragraphs (2) through (5) of this subsection do not apply to violations of regulations prescribed, and orders issued, by the Secretary of Homeland Security under a provision of this title—

“(I) involving the transportation of personnel or shipments of materials by contractors where the Department of Defense has assumed control and responsibility;

“(II) by a member of the armed forces of the United States when performing official duties; or

“(III) by a civilian employee of the Department of Defense when performing official duties.

“(ii) Violations described in subclause (I), (II), or (III) of clause (i) shall be subject to penalties as determined by the Secretary of Defense or the Secretary's designee.

“(2) CIVIL PENALTY.—

“(A) IN GENERAL.—A person is liable to the United States Government for a civil penalty of not more than \$10,000 for a violation of a regulation prescribed, or order issued, by the Secretary of Homeland Security under this title.

“(B) REPEAT VIOLATIONS.—A separate violation occurs under this paragraph for each day the violation continues.

“(3) ADMINISTRATIVE IMPOSITION OF CIVIL PENALTIES.—

“(A) IN GENERAL.—The Secretary of Homeland Security may impose a civil penalty for a violation of a regulation prescribed, or order issued, under this title. The Secretary shall give written notice of the finding of a violation and the penalty.

“(B) SCOPE OF CIVIL ACTION.—In a civil action to collect a civil penalty imposed by the Secretary under this subsection, the court may not re-examine issues of liability or the amount of the penalty.

“(C) JURISDICTION.—The district courts of the United States have exclusive jurisdiction of civil actions to collect a civil penalty imposed by the Secretary under this subsection if—

“(i) the amount in controversy is more than—

“(I) \$400,000, if the violation was committed by a person other than an individual or small business concern; or

“(II) \$50,000, if the violation was committed by an individual or small business concern;

“(ii) the action is in rem or another action in rem based on the same violation has been brought; or

“(iii) another action has been brought for an injunction based on the same violation.

“(D) MAXIMUM PENALTY.—The maximum penalty the Secretary may impose under this paragraph is—

“(i) \$400,000, if the violation was committed by a person other than an individual or small business concern; or

“(ii) \$50,000, if the violation was committed by an individual or small business concern.

“(4) COMPROMISE AND SETOFF.—

“(A) The Secretary may compromise the amount of a civil penalty imposed under this subsection. If the Secretary compromises the amount of a civil penalty under this subparagraph, the Secretary shall—

“(i) notify the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Homeland Security of the compromised penalty and explain the rationale therefor; and

“(ii) make the explanation available to the public to the extent feasible without compromising security.

“(B) The Government may deduct the amount of a civil penalty imposed or compromised under this subsection from amounts it owes the person liable for the penalty.

“(5) INVESTIGATIONS AND PROCEEDINGS.—Chapter 461 of this title shall apply to investigations and proceedings brought under this subsection to the same extent that it applies to investigations and proceedings brought with respect to aviation security duties designated to be carried out by the Secretary.

“(6) DEFINITIONS.—In this subsection:

“(A) PERSON.—The term ‘person’ does not include—

“(i) the United States Postal Service; or

“(ii) the Department of Defense.

“(B) SMALL BUSINESS CONCERN.—The term ‘small business concern’ has the meaning given that term in section 3 of the Small Business Act (15 U.S.C. 632).”.

(b) CONFORMING AMENDMENT.—Section 46301(a)(4) of title 49, United States Code, is amended by striking “or another requirement under this title administered by the Under Secretary of Transportation for Security”.

(c) RAIL SAFETY REGULATIONS.—Section 20103(a) of title 49, United States Code, is amended by striking “safety” the first place it appears, and inserting “safety, including security.”.

**SEC. 414. RAIL SECURITY ENHANCEMENTS.**

(a) RAIL POLICE OFFICERS.—Section 28101 of title 49, United States Code, is amended—

(1) by inserting “(a) IN GENERAL.” before “Under”; and

(2) by adding at the end the following:

“(b) ASSIGNMENT.—A rail police officer employed by a rail carrier and certified or commissioned as a police officer under the laws of a State may be temporarily assigned to assist a second rail carrier in carrying out law enforcement duties upon the request of the second rail carrier, at which time the police officer shall be considered to be an employee of the second rail carrier and shall have authority to enforce the laws of any jurisdiction in which the second rail carrier owns property to the same extent as provided in subsection (a).”.

(b) MODEL STATE LEGISLATION.—By no later than September 7, 2007, the Secretary of Transportation shall develop model State legislation to address the problem of entities that claim to be rail carriers in order to establish and run a police force when the entities do not in fact provide rail transportation and shall make it available to State governments. In developing the model State legislation the Secretary shall solicit the input of the States, railroads companies, and railroad employees. The Secretary shall review and, if necessary, revise such model State legislation periodically.

**SEC. 415. PUBLIC AWARENESS.**

Not later than 90 days after the date of enactment of this Act, the Secretary, in consultation with the Secretary of Transportation, shall develop a national plan for public outreach and awareness. Such plan shall be designed to increase awareness of measures that the general public, railroad passengers, and railroad employees can take to increase railroad system security. Such plan shall also provide outreach to railroad carriers and their employees to improve their awareness of available technologies, ongoing research and development efforts, and available Federal funding sources to improve railroad

security. Not later than 9 months after the date of enactment of this Act, the Secretary shall implement the plan developed under this section.

**SEC. 416. RAILROAD HIGH HAZARD MATERIAL TRACKING.**

(a) WIRELESS COMMUNICATIONS.—

(1) IN GENERAL.—In conjunction with the research and development program established under section 406 and consistent with the results of research relating to wireless tracking technologies, the Secretary, in consultation with the Assistant Secretary of Homeland Security (Transportation Security Administration), shall develop a program that will encourage the equipping of rail cars transporting high hazard materials (as defined in section 402 of this title) with technology that provides—

(A) car position location and tracking capabilities; and

(B) notification of rail car depressurization, breach, unsafe temperature, or release of hazardous materials.

(2) COORDINATION.—In developing the program required by paragraph (1), the Secretary shall—

(A) consult with the Secretary of Transportation to coordinate the program with any ongoing or planned efforts for rail car tracking at the Department of Transportation; and

(B) ensure that the program is consistent with recommendations and findings of the Department of Homeland Security's hazardous material tank rail car tracking pilot programs.

(b) FUNDING.—Out of funds appropriated pursuant to section 114(v) of title 49, United States Code, as amended by section 418 of this title, there shall be made available to the Secretary to carry out this section \$3,000,000 for each of fiscal years 2008, 2009, and 2010.

**SEC. 417. CERTAIN REPORTS SUBMITTED TO SENATE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS.**

The Senate Committee on Homeland Security and Governmental Affairs shall receive the reports required by the following provisions of law in the same manner and to the same extent that the reports are to be received by the Senate Committee on Commerce, Science, and Transportation:

(1) Section 402(c) of this title.

(2) Section 404(f)(3)(A) of this title.

(3) Section 409 of this title.

(4) Section 410(d) of this title.

**SEC. 418. AUTHORIZATION OF APPROPRIATIONS.**

(a) TRANSPORTATION SECURITY ADMINISTRATION AUTHORIZATION.—Section 114 of title 49, United States Code, as amended by section 413, is amended by adding at the end thereof the following:

“(v) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Homeland Security for rail security—

“(1) \$205,000,000 for fiscal year 2008;

“(2) \$166,000,000 for fiscal year 2009; and

“(3) \$166,000,000 for fiscal year 2010.”.

(b) DEPARTMENT OF TRANSPORTATION.—There are authorized to be appropriated to the Secretary of Transportation to carry out this title and sections 20118 and 24316 of title 49, United States Code, as added by this title—

(1) \$121,000,000 for fiscal year 2008;

(2) \$118,000,000 for fiscal year 2009;

(3) \$118,000,000 for fiscal year 2010; and

(4) \$118,000,000 for fiscal year 2011.

Mr. REID. Mr. President, I ask unanimous consent that the committee amendments be agreed to.

The PRESIDING OFFICER. Without objection, it is so ordered.

The committee amendments were agreed to.

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. ALEXANDER. Mr. President, I ask unanimous consent to speak for up to 5 minutes as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ALEXANDER. I thank the Senator from New Jersey and the Senator from Mississippi for allowing me to proceed.

(The remarks of Mr. ALEXANDER are printed in today's RECORD under "Morning Business.")

Mr. ALEXANDER. Mr. President, I thank the bill managers, and I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, our bill has been sent to the desk, and I want to start off by saying that I am pleased, obviously, that the Senate is considering S. 294, the Passenger Rail Investment and Improvement Act of 2007.

The first thing I want to do is to say thanks to my friend and chief cosponsor of the bill, Senator TRENT LOTT. We have worked together on matters related to transportation in the past, and there is no question that he understands the potential for passenger rail, and his long-standing efforts to improve our country's transportation systems are well known and deeply appreciated.

Like him, I believe this is a critical moment—with delays, unavailability of reliable planning for work, personal opportunity to spend time with kids and family or other activities of choice. Anyone who spends any significant time on our roads does not need reminders that highway congestion is a major problem. In almost every city and town of any size throughout our country, it is experienced.

A recent study by the Texas Transportation Institute showed that highway congestion costs our country over \$78 billion per year, including \$4.2 billion in lost productivity and 2.9 billion gallons of wasted fuel and an indeterminable loss in the quality of our lives. These things all cascade upon us.

Congestion, however, isn't just limited to our roads. One in four flights was late last year at our airports. At Newark Liberty International Airport, it is almost one in two flights. Other metropolitan regions are experiencing worsening delays. The DOT finally had to cap the number of flights at Chicago's O'Hare Airport a couple of years ago and is considering doing the same thing for Newark and Kennedy Airport in New York. Even airlines are throwing in the towel. The 38 minutes in the air between here and New York City is now scheduled to take almost 2 hours, gate to gate. It is on the schedule—38 minutes of flying time and almost 2 hours to make the trip. It is outrageous. Coupled with long security lines, these delays make air travel increasingly stressful and inconvenient.

How about those who are stranded in airplanes, for sometimes as long as 9 hours—stuck in an airplane without the amenities that necessarily should be there, like food and potable water and working restrooms and so forth?

Everyone knows what a difficult day going to the airport can be, or that air travel can be like. Further, everyone knows that the high price of gas has created economic hardship for so many Americans. Some experienced voices are predicting that oil prices in the future, not too distant, can be as high as \$200 a barrel, more than twice the current price. One reason why the United States is addicted to oil, as President Bush puts it, is because the Government has not provided other options for travelers. Where reliable rail service is available, people will run to the trains.

Our Nation's passenger railroad, Amtrak, has enjoyed record ridership over the past several years and set a new company record of almost 26 million passengers in the last year. More travelers take the train between Washington and New York City than fly on all the airlines combined between these cities. Amtrak is so popular in the Northeast because people can count on being on time; it is reliable service and it is economical and comfortable.

We see similar results outside of the Northeast corridor, where frequent and reliable passenger service is available. I can tell you from personal experience that riding the train can be a pleasurable experience. Passengers can use their laptops, talk on the phone, have a bite and be productive and not be exhausted when they get there.

Additionally, in most instances, rail service delivers passengers directly to where they need to go in the heart of a city. What a difference that is. You don't have to spend a half hour or an hour to get to the airport a half hour or an hour before the plane takes off so you are ready when the flight is ready to leave. Good passenger rail service is not only good transportation policy, but it is something people in this country are rushing to use.

Everyone is aware now also of the danger of pollution. In the battle against global warming, which is enveloping our country, with erratic weather raising havoc, rail is one of the most effective weapons. To move one passenger a mile, Amtrak emits slightly more than half of the carbon dioxide that airlines do and less than cars as well. Americans want a cleaner option in the air and the water for their children, grandchildren, and future generations than this constant assault on healthy air and water.

In a time where conserving energy and reducing our dependency on foreign oil has never been more important, passenger rail service offers significant fuel-saving benefits. In a time when oil imports continue to expand while prices rise, the quality of life in America is being substantially eroded by these high prices. According to the Department of Energy, airlines on the average consume over 20 percent more energy than Amtrak to move a passenger one mile, while we search for ways to fight against poisoning our atmosphere.

Passenger rail is not just a matter of convenience. It is also an important security asset. One of the lessons we learned on 9/11 was that our country cannot afford to rely on any single mode of transportation. When our aviation system shut down that terrible day, September 11, and for days thereafter, Amtrak was a principal way to reunite thousands of travelers with their families. We also saw chaotic evacuations during Hurricanes Katrina and Rita, with resulting floods, with evacuating motorists stuck for hours and some without cars were left behind altogether. Some investigations showed that with better preparation, passenger trains could have been used to help move thousands out of harm's way.

It is clear that rail service can help move our citizens to safety during emergencies, but you can't do it without the trains and the track that are part of the system. Other nations around the world understand these benefits and, unfortunately, we have been lagging behind. I will never forget a trip I took from Paris to Brussels. There are 18 trains a day between these two cities. You cannot get an airplane that goes between the two. The 210-mile trip takes about 85 minutes. Think about it, 210 miles taking 85 minutes, with trains leaving practically every hour. If you go to Union Station here and travel approximately 210 miles, it is a 3-hour or 2 1/4-hour train ride. We can do so much better.

The Europeans are not better at these things than we are. They are not smarter than we are. But from Spain to Germany, they have simply made the wise decision to invest in passenger rail. These investments extend worldwide.

Taiwan recently opened its \$15 billion, 208-mile rail line this year, where riders can travel its length, 208 miles, in 90 minutes—approximately the length of the trip between Washington, DC, and New York City.

The benefits of these systems are obvious to anyone who travels there. We need the same world-class system in this country. The potential of new rail corridors in our country is enormous. Higher speed, more frequent rail service between Chicago and other Midwestern cities, such as St. Louis, Detroit, and Milwaukee, would revolutionize the way people travel in an entire region of our country.

Likewise, expanded rail service between Atlanta, Charlotte, Richmond, and Washington would allow people options besides having to brave traffic and trucks on Interstate 95.

I am reminded that the train service between Portland, Oregon, and Seattle, Washington, called the Cascades line, is enjoying tremendous ridership, over 600,000 passengers each and every year. It is an invaluable asset. We see something similar in California between San Diego and Los Angeles, where over two and a half million people took the train this past year.

There is enthusiasm for passenger rail service in America, and States are planning rail corridors throughout the country. They are prepared to spend their limited funding for rail projects. But our Federal policies encourage them to build more roads. That is why we need to pass this bill that Senator LOTT and I have presented. Our bill paves the way for an improved modern passenger rail network. It authorizes funding for Amtrak's capital needs as well as State grants for passenger rail. We already make a significant investment in roads. We spend \$40 billion a year. By comparison, we spend almost half that amount on airports and air traffic control towers. Our bill will start to address this investment gap by authorizing nearly \$2 billion a year for Amtrak in the States that participate over the next 6 years.

A yearly average of \$237 million of this money will be used to create a new State grant program for rail projects. Our Amtrak bill also funds the rehabilitation of Amtrak's Northeast corridor and mandates that Amtrak work with the Department of Transportation and the States to develop plans to do so.

Our bill also requires changes at Amtrak—Senator LOTT pursued this diligently—to make sure these funds will help the railroad continue moving in the right direction.

While we had record ridership and revenues last year, we can still improve its efficiency and management practices. That is why our bill would require Amtrak to reform its operations to reduce its Federal operating subsidy by 40 percent over the life of the bill. It also, at the suggestion of the Department of Transportation's inspector general, will allow the Federal Government to refinance Amtrak's \$3 billion in outstanding debt.

With this bill, we are hitting so many of the areas of concern: it not only addresses the funding, but it also helps the management to focus on getting this railroad in a condition that it should be in.

One of these major reforms is for Amtrak to develop a new financial accounting system, which will provide more transparency into the company's financial management and better cost controls.

Most importantly, the LAUTENBERG-LOTT Amtrak bill focuses on improving service for passengers. I learned when I was in the private sector that if you provide a good product, people will buy it. We will require new standards for service quality—on-time performance, onboard and station services, cost recovery, connectivity, to name a few. The public is going to know what Amtrak is doing and would be kept apprised of their performance through quarterly reports from the Federal Railroad Administration.

Our bill also addresses the problem of train delays. On many routes outside the Northeast, freight trains delay Amtrak riders from reaching their des-

tinyation on time. It is against the Federal law. As we know in the airline industry, delays frustrate passengers and hurt the company's bottom line. Our bill would authorize the Surface Transportation Board to issue fines to freight railroads that delay Amtrak trains. We all have to share the system and share it efficiently.

Some have suggested another provider could be more efficient than Amtrak. I doubt this claim, but our bill does authorize a program to allow a freight railroad to bid for Amtrak's subsidy on up to two long-distance or State-supported corridor routes. So we are saying, even if there is some skepticism on our part, the bill authorizes the States to go ahead and work with the freight railroad to bid for an Amtrak subsidy, on up to two long-distance or State-supported corridor routes.

I repeat that because it is very significant. We want the States to participate, and we want to open as much of a change in policy as can be done with practical output. This pilot program could allow freight railroads to maximize efficiencies because they own the tracks already. As many Northeast corridor States have called for more involvement in how that essential corridor is run, this bill will improve governance by giving Northeast States, such as New Jersey, a bigger voice in infrastructure and operations decisions.

The State will join a newly formed commission that will develop recommendations about the short- and long-term capital investments, among other things.

And speaking of governance, our bill restructures Amtrak's board of directors by ensuring a bipartisan nine-member board of qualified members. That gives an opportunity to bring more people into the management decision process, and we think it will be a much more efficient and involved board. One board member, nominated by President Bush, actually told me at his Senate confirmation hearing that he had never even been on an Amtrak train. Well, it does not suggest he is going to be working with knowledge in hand that is significant or helpful to the company.

Currently there is a seven-member board, no qualification requirements, and for years the Administration had taken the position that the board need not be bipartisan at all. Well, it was originally structured as a bipartisan board to give all sides to the principal parties to be able to be engaged in this process.

We worked hard to forge this bipartisan compromise plan. Last Congress, our plan, which was nearly identical to this one, was approved by the Senate as an amendment to the budget bill by a vote of 93 to 6. That tells us this is a well thought-out plan.

There are only slight changes to our bill from the last Congress, and we will have a managers' amendment to address other minor modifications. Our

Nation's passenger rail programs have not been reauthorized for a decade, and the result is chaos in our transportation system.

I urge my colleagues to vote for this Amtrak bill, to provide millions of Americans with more transportation choices. It is fair to say that the public has agreed with this change in droves. They are sick and tired of being delayed, paying more for fuel, and including a more polluted atmosphere at the same time. It is time to make this change.

AMENDMENT NO. 3451

Madam President, I send a managers' amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER (Ms. CANTWELL.) The clerk will report.

The legislative clerk read as follows:

The Senator from New Jersey [Mr. LAUTENBERG] proposes an amendment numbered 3451.

Mr. LAUTENBERG. Madam President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To make minor changes in the bill as reported, to strike title IV, and for other purposes)

In the table of contents, strike the items relating to title IV.

On page 22, line 2, insert "relevant" after "each".

On page 22, line 4, insert "single, Nationwide" after "implement a".

On page 28, line 12, insert "As part of its investigation, the Board has authority to review the accuracy of the train performance data." after "operator."

On page 29, line 15, insert "order the host rail carrier to" after "appropriate."

On page 29, between lines 23 and 24, insert the following:

(b) FEES.—The Surface Transportation Board may establish and collect filing fees from any entity that files a complaint under section 24308(f)(1) of title 49, United States Code, or otherwise requests or requires the Board's services pursuant to this Act. The Board shall establish such fees at levels that will fully or partially, as the Board determines to be appropriate, offset the costs of adjudicating complaints under that section and other requests or requirements for Board action under this Act. The Board may waive any fee established under this subsection for any governmental entity as determined appropriate by the Board.

(c) AUTHORIZATION OF ADDITIONAL STAFF.—The Surface Transportation Board may increase the number of Board employees by up to 15 for the 5 fiscal year period beginning with fiscal year 2008 to carry out its responsibilities under section 24308 of title 49, United States Code, and this Act.

On page 29, line 24, strike "(b)" and insert "(d)".

On page 51, between lines 4 and 5, insert the following:

(d) ACELA SERVICE STUDY.—

(1) IN GENERAL.—Amtrak shall conduct a study to determine the infrastructure and equipment improvements necessary to provide regular Acela service—

(A) between Washington, D.C. and New York City in 2 hours and 30 minutes; and

(B) between New York City and Boston in 3 hours and 15 minutes.

(2) ISSUES.—The study conducted under paragraph (1) shall include—

(A) an estimated time frame for achieving the trip time described in paragraph (1);

(B) an analysis of any significant obstacles that would hinder such an achievement; and

(C) a detailed description and cost estimate of the specific infrastructure and equipment improvements necessary for such an achievement.

(3) SECONDARY STUDY.—Amtrak shall provide an initial assessment of the infrastructure and equipment improvements, including an order of magnitude cost estimate of such improvements, that would be necessary to provide regular Acela service—

(A) between Washington, D.C. and New York City in 2 hours and 15 minutes; and

(B) between New York City and Boston in 3 hours.

(4) REPORT.—Not later than February 1, 2008, Amtrak shall submit a written report containing the results of the studies required under this subsection to—

(A) the Committee on Commerce, Science, and Transportation of the Senate;

(B) the Committee on Appropriations of the Senate;

(C) the Committee on Transportation and Infrastructure of the House of Representatives;

(D) the Committee on Appropriations of the House of Representatives; and

(E) the Federal Railroad Administration.

On page 57, strike lines 3 through 11.

On page 57, line 12, strike "(d)" and insert "(c)".

On page 73, line 1, insert "2003," after "years".

On page 81, line 25, strike "and".

On page 82, line 2, strike "seq.)" and insert "seq.); and".

On page 82, between lines 2 and 3, insert the following:

"(3) the Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.).

On page 144, beginning with line 2, strike through the end of the bill.

Mr. LAUTENBERG. Madam President, this amendment will strike the title on security which has already become law this year. It adds a study on trip time in the Northeast corridor, and makes several technical corrections.

I yield the floor to my distinguished friend and colleague, Senator LOTT.

Mr. LOTT. Let me say with regard to the package that was agreed to, the changes, we did work together on that. It was cleared on both sides. I want to thank the leaders for allowing us to move forward on this legislation. It is never easy to go straight to a bill these days. There are Senators who have reservations about going to this particular bill at this time. Some Senators wanted to make sure they were going to have an opportunity to look at the legislation and prepare thoughtful amendments, amendments that might, frankly, improve the legislation, add additional reforms, delete parts of it.

That is all well and good. I understand that maybe some Senators were not aware we were going to try to go to Amtrak today, even though I know an effort was made to try to inform both sides that would be the intent after we dealt with the Labor-HHS appropriations bill, the Southwick nomination, and the DREAM Act. Maybe it moved a little quicker than people thought be-

cause of some of the earlier actions today.

I want to emphasize this too. While I have been involved in working on this legislation for some 3 years with Senator LAUTENBERG as chairman of this subcommittee and now as ranking member, and I think there are some good things in here worth having, maybe we can even strengthen it more. That would be positive for the future of Amtrak. I am perfectly willing and anxious to see if there are good ideas of how we can make it even a stronger bill. I want Amtrak to succeed. If we are going to keep it, let's fix it where it will work. I do not think it is wise to continue putting money into a system that is not enough, and then complain because it is not doing the job. We are slowly starving it, using it more, and complaining that it is not doing better. I think we need some reforms. I think we need to have authorization. I think we need to expect more of the Amtrak board. We need to expect good service from Amtrak. I think we ought to provide an opportunity for them to have a way to get the funds to do the job. That is what we are trying to do here.

As I said earlier today, this is not something people in my State are going to feel an immediate impact from. We do have Amtrak service that runs through my State, north and south, from New Orleans to Chicago. We have even had it down along the coast. Probably some people would say: Well, it is not worth it.

I believe we need Amtrak. I believe we need a national passenger rail system. It is a part of the package. I support improving aviation and a modernization of the aircraft control system. I want us to have safety in the airways. I want us to have less congestion. I want us to do what we need to do to modernize the system. I want good passenger airline service. I also want to continue to work to improve highways in this country. But I do not believe that lanes and planes will always be enough. There is a limit to what you can do in the air and on the ground with highways. I think we need passenger rail service also.

This is not something, again, that is going to be critical in my State. But I think it is important for our country. My State will benefit, too, when the rest of the country benefits.

I also think if we are going to have this system, it ought to not be just the Northeast corridor. I think we should continue to work to try to find ways to make other routes profitable, on time, provide good service. That is what we are trying to do here.

Some of my friends look at me and say: Well, why are you trying to do this? This is costing money. It is too overly subsidized. They have union problems, this, that and the other. I admit it has problems. I think we are part of the problem, because we are not engaged in trying to improve the law, give them more power to do what they need to do to make the tough decisions, get outside advice, try to figure

out how to do a better job. That is what we do here.

So this is an area I have worked on for most of my career in Congress, transportation and infrastructure. I believe they are critical to the future of our country. It is about jobs. It is about economic development. It is about opportunity. It is about movement. It is about America.

That is why I have been involved for some time, to the consternation of some of my friends. We have worked on this before. I worked on the last Amtrak reform legislation. I had higher hopes from that legislation than the results we got. But I think we have made some progress. And when you do legislation that does not achieve all you want it to do, my attitude is, come back and try again.

But to show you the amount of support we have, when we brought this up on the reconciliation package in 2005, it got 93 votes. Some people said: Well, it is not enough, or, we can do better. But when they voted, 93 Senators voted for it. That is part of the process.

This time, hopefully, we can get it through here freestanding, get the House to act, let us get to conference, let's bring in the administration. If the administration has recommendations or concerns, great, let us hear them.

My problem with the administration is, they have tried to ignore it. So let's try to get them involved. I am not going to be partisan about this. I do not want to blast Amtrak, I don't want to blast the board or the administration. I want us all to get together. That is part of the effort of what we are trying to do here.

This legislation, S. 294, makes a number of important reforms in Amtrak. It has three major themes: Amtrak reform and accountability; cost cutting; and creating funding options for States.

Now, whether are you from Illinois, California, or Missouri, or whether you are from New Jersey, you ought to like this. And if you are a conservative Republican, did you hear what I said? Cost cutting, reform, and accountability. This is made in heaven.

I think we should get this done, and work in good faith with each other. I think we need to increase the executive branch oversight and involvement in Amtrak. The bill ensures that taxpayer money is used more effectively and it builds on the improvements that have been made in recent years. I think you have to give credit to the fact that David Gunn, when he was the president of Amtrak, made some improvements in his management. He did a good job. He finally wound up leaving because he had other opportunities, and maybe some people were critical of him. But I have to say I think he did a great job, and he moved it in the right direction.

The bill requires Amtrak to develop better financial systems and to evaluate its operations objectively. It forces Amtrak to improve the efficiency of long-distance train service. There are

some lines that are losing way too much money. I think the Amtrak officials should look at it and try to make those lines more profitable, put some guidelines on them, put some pressure on them, and if they do not meet them, cut them off. I cannot defend a line that is losing money and is costing \$400 a head subsidy for a passenger.

So the bill reduces Amtrak's operating subsidy by 40 percent by 2012 by requiring Amtrak to use its funds more effectively.

But it does not just say "do it," it provides a number of things that will lead to making that possible. The bill promotes a greater role for the private sector by allowing private companies to bid on operating Amtrak lines.

The bill also creates a new rail capital grant program that States can use to start new inner city passenger rail service. There has been a real increase, and that is where we had a lot of boardings, a lot of passengers. They are using that service where that opportunity has existed. This would be the first time that States will have a Federal program they can use for passenger rail, putting inner city passenger rail on similar footing with highway transit and airports, all of which have Federal assistance programs for infrastructure.

Some people complain about the money in Amtrak, and yet if you look at what we have in these other areas, highways and transit and airports, Amtrak is terribly shortchanged. We provide all of this infrastructure in these other areas, and then we are not prepared to do that with the passenger rail system.

States will not have to rely only on Amtrak for their inner city passenger rail service. It gives them more opportunity, more for themselves, and to have a Federal program work with them to achieve that.

Now, while discussing reform, we should not forget there is good news here. Some people will only say: Well, it is still losing money. In fiscal year 2007, there was a record number of 25.8 million passengers who traveled on Amtrak. People are using it and using it more. It is the chicken-and-egg deal. Once you get better equipment, on-time service, better food, going to places people want to go, they will ride. In the past they haven't done it because maybe the equipment was old or they got delayed. As they have provided better service, more people started riding. The boarding ticket revenues increased 11 percent to \$1.5 billion in fiscal year 2007. Of course, the Acela Express, I guess the old standard of what Amtrak should do, can do—and we use it here in this corridor—had a 20-percent increase in ridership and achieved an on-time performance of 87.8 percent, proving it can be done. Passenger service can be on time. The

Acela is so popular that another round-trip between New York and Washington was created in July.

We should not focus solely on the Northeast corridor though. I want to

make sure we have some service in the South and the Midwest and the West and in the Northwest. The Capital Corridor operating in California between Auburn and San Jose increased ridership by 15 percent and has an ontime performance of 75 percent. Most notably, the Lincoln service connecting Chicago to St. Louis is up 42 percent. Chicago to St. Louis, that is a tremendous increase. It is a direct result of the State more than doubling its contract with Amtrak. Across the country, States are interested in passenger service, and passengers are responding in record numbers to the better service.

S. 294 is the best mechanism to reform Amtrak. I encourage my colleagues to support this bill. Read it. It is not a long, complicated bill. But if you have a better idea, come on out here. Let's hear it. Tomorrow we will be ready for business. We will have some amendments. The way I like to do business, with the cooperation of our chairman, if you have an amendment, let's have you offer it. Let's talk about it, and let's vote. Let's don't be setting them aside and piling them up for later on in the day. Let's do business. I think that is one way you get Senators to actually be here and doing work, actually have some votes. I don't want to go on too long.

Let me just run down some of the areas where we have concentrated in this bill. It does provide for management improvement. The bill requires a financial accounting system for Amtrak operations and a 5-year financial plan. Why in the world wouldn't they have that? I don't know. Families have plans for their budgets and what they are going to do in the future. Amtrak ought to do that.

It deals with debt. The bill directs the Secretary of the Treasury, in consultation with the Secretary of Transportation and Amtrak, to negotiate the restructuring of Amtrak's debt within 1 year. This is something Senator LAUTENBERG has talked about. They can actually save money. Why would they not do that? So we would direct that in the bill.

It does improve corporate governance. It adds the Amtrak president to the Amtrak board, bringing the total number of members of the board to nine. Think about that, the Amtrak president was not on the board. That doesn't make any sense.

It calls for metrics and standards. In consultation with the Surface Transportation Board and the operating freight railroads, the Federal Railroad Administration and Amtrak shall jointly develop metrics and standards for measuring the performance and service quality of intercity train operations. They should include cost recovery, ontime performance, ridership per train mile, onboard and station services, the whole package.

It does improve the route methodology. It would provide access to Amtrak equipment and services.

States wishing to use operators other than Amtrak would be able to do so

under this legislation. It would improve the Northeast corridor. It would work to improve the long distance routes.

I think we have touched on the very important areas, but the one I think that is going to make the greatest difference is the State Capital Grant Program for intercity passenger rail. When I have talked to Governors and transportation officials, railroad people, they say this is what we need. This could really make a difference. I see the Presiding Officer nodding her head. I suspect her State is one that would have an interest up there in the northwest corner of Washington and Oregon.

So there are significant reforms. This is a good effort. This is the kind of work we ought to do more of in the Senate. We have managed for the last few years to find what we could disagree about, something we could fight about. We haven't taken the time to take up issues that affect real people's lives that we can agree on, that are bipartisan. I appreciate the leader putting this in the agenda. He did it at the request of a number of Senators who care about this. Senator CARPER obviously is one of them, Senator LAUTENBERG, myself, and others. We have been pleading with them. I pleaded with the previous majority leader. Let's get this bill up.

Some people say there are other things more important we could be doing. Why aren't you doing something about health care, more appropriations bills? That is a good question. All I know is, this is an issue that matters. We don't know when we are going to have another incident in America with aviation, or somewhere else, when we need trains. We need good service. I am also working in the Finance Committee to see if we can't get a tax credit so that we can continue to improve the capacity of our freight rail and allow them to build off ramps so the freight trains can get out of the way so Amtrak can run without losing time and money. We are looking at that side of the equation too. I know some of our friends in the freight rail industry are not all that excited about this legislation because we want Amtrak to be on time and to get by the slower moving freight trains. Sometimes that costs them money, and it is an inconvenience for them. After all, Amtrak is running on their tracks. But we will work with the freight lines and make sure their points of view are considered in the process.

I won't go on any longer. I would like for us to get to some amendments that may be available on Amtrak. I know Senator SUNUNU has some. We will continue tomorrow.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. Madam President, once again, it is obvious to all that Senator LOTT understands what we have to do to get things done around here, and that it can't be all

one way because each of us does represent a different State. We are brought here to bring in the opinions of the people whom we serve, our constituents, so we do get a mix of views. Sometimes I wish we didn't, but for the most part that is life in the real world.

The thing we sometimes fail to see is, when we do something for the infrastructure, when we do something for rail service, it is in the national interest, even though there are currently many more riders in the very densely populated Northeast corridor. The fact is, as I related before, other places around the country are examining rail service as an alternative to their own congestion and pollution problems. When we look at something called essential air service, it is essential. That is why it is done. The Government does subsidize its existence because communities need that. So it is with rail service.

Interestingly enough, only four States have no contact with Amtrak. One of them is Hawaii, which involves a very long train ride. The other is Alaska. We have heard Senator STEVENS talk about having a railroad that goes to Alaska. But otherwise we have 46 States that have contact with Amtrak. Some of them are more active than others. But as was said by our colleague, Senator LOTT, some of these States don't have the traffic or they are not en route enough. The mission is to get as many States involved with Amtrak, with rail service as we can, national rail passenger service.

We look at ways of improving the management of Amtrak, that which we would with any business. I spent much of my life in business before I came to the Senate. Businesses run differently than government. But there are some principles that are the same; for instance, investments in product. If you don't put the money in, you don't get the money out. What we found here is, since the creation of Amtrak, which goes back to 1971—1971 was the creation of the Amtrak quasi-government corporation. It had been in private hands under different names for many years and never succeeded. Why? The thing that is obvious; that is, with rail passenger rail service, there is going to always be some assistance required from government, just as there is for the aviation system and the highway system. As a matter of fact, we spend more on highways in a year than we have spent on Amtrak since its creation, never having quite put in enough resources to bring the infrastructure up to the level it should be related to the period of time we are talking about.

In Germany, there was a program to establish a rail system that cost about \$70 billion in a 10-year period. China now is establishing a passenger rail service which could cost up to \$200 billion. And here we are in the most powerful nation in the world playing catch-up. We are not talking about insignificant sums of money, but we are talking

about substantial opportunities for us to improve what we are doing with this bill that will run almost \$2 billion a year for 6 years, plus some additional funding in another bill raised by bonding authority. Senator LOTT has been very helpful in the Finance Committee to get this system up to where it ought to be. Whenever we look for opportunities to improve life in America, certainly this looms high on the horizon.

We have made it clear that we are ready to accept amendments. We would like them brought to the floor this evening or tomorrow. But we will not be able to stay here and not see any response, if there isn't enough interest by fellow Members to come down and bring us their amendments.

I ask unanimous consent that the previously agreed to committee amendments be considered as original text for the purpose of further amendments; that the pending managers' amendment be considered and agreed to and considered as original text for the purpose of further amendments; that the bill, as amended, be considered as original text for the purpose of further amendments; that no points of order be considered waived by virtue of this agreement.

As Senator LOTT well knows, this is kind of professional language for the institution.

Mr. LOTT. Madam President, I will not object. I just want to say, we have worked through this, and it is cleared on our side. We have no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 3451) was agreed to.

Mr. LOTT. I thank the Chair and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SUNUNU. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SUNUNU. Madam President, we are moving on into the early hours of the evening, and I appreciate the work that the bill managers, Senator LAUTENBERG and Senator LOTT, have done on this legislation.

I am a member of the Commerce Committee as well, and there is no question that there was strong support for this legislation when we voted on it last year. As Senator LAUTENBERG indicated, it was a 93-to-6 vote. I am sorry to say, at least from his perspective, I was one of the six who voted "no."

Despite the work that has gone into this legislation, I do think it has some real weaknesses. Both Senators LOTT and LAUTENBERG touched on some of those weaknesses in their opening remarks—that at times Amtrak has not delivered the kind of quality service we would expect; at times they have not delivered, year after year, the kind of financial results we would hope for and

expect as taxpayers who are providing the subsidies and the support for Amtrak.

Since its creation well over 25 years ago, the Federal subsidies have amounted to over \$20 billion. Amtrak was originally created with the intention of becoming self-sufficient. There was an Amtrak reform bill passed in 1997, recommitting to this goal, and yet it still has not happened.

As a taxpayer and as a Senator, it causes me great concern we have not done better—better both in terms of performance on the service and the quality side—but also on the financial side.

There was discussion of the Northeast Corridor. The Northeast Corridor does provide for a great opportunity to serve millions of people running from my State of New Hampshire all the way down to Washington, DC, and beyond—some of the more densely populated areas where it makes the most sense to have a train service. But even in the Northeast Corridor, the operation is not what we would want.

I think it is fair to expect more; not just in the financial oversight that is in the legislation, not just in some of the new programs that are in the legislation, but, for example, in the long-distance train service. For the long-distance train routes—I think there are 15 or 16 now—they lose \$200 per passenger. That is not acceptable.

I have a couple amendments I will be offering. One deals with that huge per-passenger subsidy, to say if we are losing \$200 per passenger—every single passenger: a \$200 subsidy—on some of those long-distance routes, we should not continue to operate that route.

There are some proposals for allowing route competition. I think that is also a good idea, but one we can build on and expand on, allowing more and different routes to be offered on a competitive basis.

So I think there are ways to improve the bill that we need to take a look at, and that I hope are at least part of the debate.

I do not necessarily expect to win on all of those amendments, but I think it is important we be realistic about some of the weaknesses that are in the system.

I also want to address an issue that was spoken about early this evening by Senator ALEXANDER. He discussed at some length the Internet tax moratorium and what that would mean to American consumers.

Right now, we have a ban on Internet access taxes. You cannot levy an access tax on the Internet for consumers, or for businesses, for that matter. Everyone talks about the importance of broadband to our economy. Without question, the Internet is important to our economy, not just because it gives us information or brings data into our homes, but because it represents a national—in effect, a global—network for communication and for commerce.

That is something that is the responsibility of Congress to protect—to pro-

TECT from onerous regulation, to protect from taxes that would discourage long-term investment that would raise costs for consumers or businesses.

We have had that ban on Internet taxes in place, and I think it is important we make that tax ban permanent. Unfortunately, after introducing legislation at the beginning of this year, we have not had a single vote on this issue. We have not voted on it in the Commerce Committee or any subcommittee. They have not voted on it in the Finance Committee. We have not had a vote on it on this floor.

Many of us have been trying very hard to get a vote to make this Internet tax moratorium permanent. The moratorium expires on Halloween, of all days. On that day, because the ban will no longer be in effect, States, cities, towns, and counties would be in the position to levy new taxes on Internet access. That is not right. It is not good for consumers. It is not good for the economy. It is not good for the communication system, the data system, and the commerce system we have come to count on with the Internet.

A number of Senators—Senator WYDEN; Senator MCCAIN; Senator McCONNELL; Senator LOTT and numerous House Members, such as ANNA ESHOO from California—have worked very hard on making this ban permanent. For those who have listened to this debate from around the country, I am sure they wonder why it is we cannot do anything in a consistent way. We have research and development tax credits that lasts only for a year. We have a death tax that is repealed in 2011 and comes back from the dead in 2012. And we have a ban on Internet access taxes that only lasts 4 years. It ought to be made permanent for the sake of consistency.

While I do not want to cause any unnecessary delay in underlying legislation, I think that addressing the Internet tax moratorium is something that is important.

#### AMENDMENT NO. 3452

For that reason, Madam President, I send an amendment to the desk at this time and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from New Hampshire [Mr. SUNUNU] proposes an amendment numbered 3452.

Mr. SUNUNU. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To amend the Internet Tax Freedom Act to make permanent the moratorium on certain taxes relating to the Internet and to electronic commerce)

At the end of the bill, add the following:

#### SECTION 1. SHORT TITLE.

This Act may be cited as the “Internet Tax Freedom Act Amendments Act of 2007”.

#### SEC. 2. PERMANENT BAN OF INTERNET ACCESS TAXES.

(a) IN GENERAL.—Section 1101(a) of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by striking “during the period” through “2007”.

(b) GRAND FATHERING OF STATES THAT TAX INTERNET ACCESS.—Section 1104(a)(2) of such Act is amended to read as follows:

“(2) STATE TELECOMMUNICATIONS SERVICE TAX.—

“(A) DATE FOR TERMINATION.—This subsection shall not apply after November 1, 2006, with respect to a State telecommunications service tax described in subparagraph (B).

“(B) DESCRIPTION OF TAX.—A State telecommunications service tax referred to in subparagraph (A) is a State tax—

“(i) enacted by State law on or after October 1, 1991, and imposing a tax on telecommunications service; and

“(ii) applied to Internet access through administrative code or regulation issued on or after December 1, 2002.”

#### SEC. 3. GRANDFATHERING OF STATES THAT TAX INTERNET ACCESS.

Section 1104 of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by adding at the end the following:

“(C) APPLICATION OF DEFINITION.—

“(1) IN GENERAL.—Effective as of November 1, 2003—

“(A) for purposes of subsection (a), the term ‘Internet access’ shall have the meaning given such term by section 1104(5) of this Act, as enacted on October 21, 1998; and

“(B) for purposes of subsection (b), the term ‘Internet access’ shall have the meaning given such term by section 1104(5) of this Act as enacted on October 21, 1998, and amended by section 2(c) of the Internet Tax Nondiscrimination Act (Public Law 108-435).

“(2) EXCEPTIONS.—Paragraph (1) shall not apply until November 1, 2007, to a tax on Internet access that is—

“(A) generally imposed and actually enforced on telecommunications service purchased, used, or sold by a provider of Internet access, but only if the appropriate administrative agency of a State or political subdivision thereof issued a public ruling prior to July 1, 2007, that applied such tax to such service in a manner that is inconsistent with paragraph (1); or

“(B) the subject of litigation instituted in a judicial court of competent jurisdiction prior to July 1, 2007, in which a State or political subdivision is seeking to enforce, in a manner that is inconsistent with paragraph (1), such tax on telecommunications service purchased, used, or sold by a provider of Internet access.

“(3) NO INFERENCE.—No inference of legislative construction shall be drawn from this subsection or the amendments to section 1105(5) made by the Internet Tax Freedom Act Amendments Act of 2007 for any period prior to November 1, 2007, with respect to any tax subject to the exceptions described in subparagraphs (A) and (B) of paragraph (2).”

#### SEC. 4. DEFINITIONS.

Section 1105 of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended—

(1) in paragraph (1) by striking “services”, (2) by amending paragraph (5) to read as follows:

“(5) INTERNET ACCESS.—The term ‘Internet access’—

“(A) means a service that enables users to connect to the Internet to access content, information, or other services offered over the Internet;

“(B) includes the purchase, use or sale of telecommunications by a provider of a service described in subparagraph (A) to the extent such telecommunications are purchased, used or sold—

“(i) to provide such service; or

“(ii) to otherwise enable users to access content, information or other services offered over the Internet;

“(C) includes services that are incidental to the provision of the service described in subparagraph (A) when furnished to users as part of such service, such as a home page, electronic mail and instant messaging (including voice- and video-capable electronic mail and instant messaging), video clips, and personal electronic storage capacity; and

“(D) does not include voice, audio or video programming, or other products and services (except services described in subparagraph (A), (B), or (C)) that utilize Internet protocol or any successor protocol and for which there is a charge, regardless of whether such charge is separately stated or aggregated with the charge for services described in subparagraph (A), (B), or (C).”

(3) by amending paragraph (9) to read as follows:

“(9) TELECOMMUNICATIONS.—The term ‘telecommunications’ means ‘telecommunications’ as such term is defined in section 3(43) of the Communications Act of 1934 (47 U.S.C. 153(43)) and ‘telecommunications service’ as such term is defined in section 3(46) of such Act (47 U.S.C. 153(46)), and includes communications services (as defined in section 4251 of the Internal Revenue Code of 1986 (26 U.S.C. 4251)),” and

(4) in paragraph (10) by adding at the end the following:

“(C) SPECIFIC EXCEPTION.—

“(i) SPECIFIED TAXES.—Effective November 1, 2007, the term ‘tax on Internet access’ also does not include a State tax expressly levied on commercial activity, modified gross receipts, taxable margin, or gross income of the business, by a State law specifically using one of the foregoing terms, that—

“(I) was enacted after June 20, 2005, and before November 1, 2007 (or, in the case of a State business and occupation tax, was enacted after January 1, 1932, and before January 1, 1936);

“(II) replaced, in whole or in part, a modified value-added tax or a tax levied upon or measured by net income, capital stock, or net worth (or, is a State business and occupation tax that was enacted after January 1, 1932 and before January 1, 1936);

“(III) is imposed on a broad range of business activity; and

“(IV) is not discriminatory in its application to providers of communication services, Internet access, or telecommunications.

“(ii) MODIFICATIONS.—Nothing in this subparagraph shall be construed as a limitation on a State’s ability to make modifications to a tax covered by clause (i) of this subparagraph after November 1, 2007, as long as the modifications do not substantially narrow the range of business activities on which the tax is imposed or otherwise disqualify the tax under clause (i).

“(iii) NO INFERENCE.—No inference of legislative construction shall be drawn from this subparagraph regarding the application of subparagraph (A) or (B) to any tax described in clause (i) for periods prior to November 1, 2007.”.

SEC. 5. CONFORMING AMENDMENTS.

(a) ACCOUNTING RULE.—Section 1106 of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended—

(1) by striking “telecommunications services” each place it appears and inserting “telecommunications”, and

(2) in subsection (b)(2)—

(A) in the heading by striking “SERVICES”, (B) by striking “such services” and inserting “such telecommunications”, and

(C) by inserting before the period at the end the following: “or to otherwise enable users to access content, information or other services offered over the Internet”.

(b) VOICE SERVICES.—The Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by striking section 1108.

SEC. 6. EFFECTIVE DATE.

This Act, and the amendments made by this Act, shall take effect on November 1, 2007, and shall apply with respect to taxes in effect as of such date or thereafter enacted, except as provided in section 1104 of the Internet Tax Freedom Act (47 U.S.C. 151 note).

Mr. SUNUNU. Madam President, this legislation would simply take what has already been done in the House—which is to pass a 4-year extension—and to make it permanent. A lot of good work was done in the House to strengthen the current moratorium and ban on Internet access taxes. Unfortunately, despite the fact there were over 240 Democrats and Republicans who supported this legislation, it did not receive an up-or-down vote to make the ban on Internet taxes permanent.

So what we do is take the House language in this amendment and make it permanent. It provides clarification with regard to services and technologies that are dealt with and not dealt with. If you are an Internet business, you still pay property taxes and payroll taxes. You pay business income taxes. But the Government should not be allowed to levy a tax on access to the Internet for the consumers themselves.

There are certain States that are affected by grandfather clauses that were included in the House language. We maintain that language. All we do is fully extend it permanently so that if you are a consumer you know the Internet will not be taxed. If you are a small business, you know your cost of Internet access will not go up. If you are doing business over the Internet, you know there will continue to be investments in the infrastructure necessary to increase broadband deployment.

I think at the very least we should have an opportunity to vote on making this Internet tax moratorium permanent. I think it is a commonsense approach. We can always come back and look at the technical issues associated with the language if it needs to be modified in 5 years or 10 years or 15 years. That is what Congress does. But we should say, once and for all, we are not going to tax Internet access at the Federal level, at the State level, at the local level.

Madam President, I thank you for the consideration and yield the floor.

The PRESIDING OFFICER. The minority leader is recognized.

Mr. MCCONNELL. Madam President, I thank the Senator from New Hampshire for offering this important amendment. We are running out of time. The Internet tax moratorium does expire in a week. As the Senator

from New Hampshire has indicated, State and local governments across our country could impose taxes on Internet access as soon as a week from now.

I think it is important we address this issue—not that the underlying measure is not important as well. I know it is important to many Senators. But the Internet needs to be protected. Here is our chance to go on record: Are we for a tax on Internet access or not?

The Internet has been at the heart of America’s economic growth over the past decade—all because Government has not gotten in the way. Those days are over if we open the Internet to new taxes. I think there is bipartisan support for a permanent ban, for continuing the moratorium forever, and I think the Senate ought to have an opportunity to go on record.

CLOTURE MOTION

The only way, Madam President, in the parliamentary situation we find ourselves in, that a vote on a permanent moratorium could be achieved is if I were to offer a motion to invoke cloture, which I send to the desk now, on the Sununu amendment.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the pending amendment No. 3452 to make the moratorium on Internet access taxes and multiple and discriminatory taxes on electronic commerce permanent.

Mitch McConnell, John E. Sununu, John Ensign, Ted Stevens, Kay Bailey Hutchison, John Barrasso, R.F. Bennett, Larry Craig, Lindsey Graham, Wayne Allard, Trent Lott, Jim Bunning, Jim DeMint, Mel Martinez, Richard Burr, David Vitter.

Mr. MCCONNELL. Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. SUNUNU. Madam President, I thank the Republican leader for his remarks and for the support he has provided to us. He is not a member of the Commerce Committee. He has a lot of other duties in the Senate, but he has taken a great interest in this issue, as I think most any legislator would, because the Internet is something we all understand, we deal with, we work with at one level or another. Our families, our friends, our neighbors, and businesses we may have worked for before, depend on it in different ways.

Everyone understands when you tax something, you raise its cost; when you tax something, you end up getting less of it—especially in the long run.

Some people stood up and said: Well, there are some States that have some taxes on the Internet, but there has still been broadband deployment in their State. That may well be, but you

cannot argue with the economic fact that when you tax something, you raise its cost; and when you raise its cost, you create a barrier to investment. Those are economic facts of life we cannot change, and those are the economic factors that make implementing a permanent ban on Internet taxes so important.

Opponents of making this ban permanent have also suggested it is an unfunded mandate to tell States they cannot tax the Internet, that it is an unfunded mandate because if we allow them to tax, they could raise money, but because we are telling them they cannot tax Internet access, they cannot raise that money, so there is a cost.

I think that is classic Washington speak, a classic inside-the-beltway mentality, that if we prevent a State from imposing taxes, we have to compensate the State for that. That is plain wrong. If that were true, then we should be compensating every State in the Union because we do not allow them to arbitrarily impose taxes, fees, and tolls on every mile of interstate highway in the country, or because we do not allow every State in the Union to impose unique taxes on any flight or aviation that comes into or leaves their State. We do not allow that because we recognize our aviation system is a national system, because we recognize our interstate highway system is a national system. We do not allow States to tax exports for the same reason. And yet, we do not call those examples unfunded mandates. We do not compensate the States for these activities because the Federal Government has recognized these are important facets to interstate commerce that need to be dealt with in a systematic and uniform way at the Federal level. So I think it is an enormous mistake and very misleading to refer to this as an unfunded mandate.

The second objection that some have made is they recognize: Well, the technologies may change, so defining what is Internet access or data service or voice service—those definitions may have to be modified, as we have modified them over the last 6 or 8 years since the first ban on Internet access taxes was first put in place in 1998.

But if the fact that technology may change is a reason for not legislating or not making something permanent, we could use that as an excuse not to do anything ever or at least to do every bill on a 1- or 2-year basis. Especially in an area where we are dealing with investment and taxation, it is counterproductive at times to do such short-term legislation because those in the economy who are taking risks, making investments, creating jobs and economic opportunity for other people, will not be able to calculate and estimate what long-term returns and benefits might come from a given investment. They do not know what the tax rate will be or they do not know what the regulatory burden will be. As a re-

sult, you get fewer investments in that area. So we know that technology, services, and the approach to the Internet that businesses take may change in the future, but Congress can always and should always revisit laws, rules, or regulations, whether it has to do with Internet access or any other area.

So this is a piece of legislation whose time has come. I hope we can get expeditious consideration and approval because I think this is something that has been shown to have bipartisan support in both the House and the Senate.

At this time, I would like to turn my attention to another amendment I mentioned earlier in my remarks, and that has to do with the long-distance train routes. As I said, I think there are 14, 15, or 16 routes in operation now. None of these long-distance train routes make any money. They do not make any operating profit. They all lose money. They all lose money at different levels. Some of the long-distance routes, by GAO accounting estimates, lose as much as \$200 per passenger. That means there is a Federal taxpayer subsidy, not of \$1, or \$10, or \$20, or \$40, but \$200 for every passenger riding that route over the course of a year. That is a level of cost and subsidy which just can't be justified; especially at a time when we are trying to deal with difficult Federal priorities.

Today and throughout this week, there has been a lot of discussion about SCHIP, the State Children's Health Insurance Program, and the fact that SCHIP is an important program. I agree. I supported the legislation here in the Senate. Its goal is to provide coverage for lower income families who aren't covered by Medicaid, but may not be covered at their place of employment by a health care policy. As we are having a debate about providing that funding and targeting it to the most needy, whether it is health care or any other high-priority initiative, it is so hard to justify running trains across the country that have a subsidy of \$200 for every passenger riding that train through the year.

So what I would propose is that we set a standard of \$200. If your per-passenger subsidy through the course of a year is less than \$200, we will allow the train to operate. Now, we hope it improves. We hope the reforms that were described at the beginning of the evening work—improve the management, reduce the costs, improve the efficiency, and improve the performance. But if they do not, and that subsidy level remains above \$200 over the course of a year, that route should not remain in operation. Then, in subsequent years, we bring that threshold down, and the second year after this amendment would be in effect, the threshold would be \$175. So if you have to subsidize passengers at \$170 for every passenger who rides that train in a year, you can remain in operation, but if it is more than \$175, that route would have to be closed. So on over the lifetime, until at the end of the author-

ization period for this bill we would have a cap of \$100 subsidy per rider. I think that is still too high, but I certainly don't think it is too much to ask in an authorization bill of this type.

AMENDMENT NO. 3453

Mr. President, at this time I ask unanimous consent to set aside any pending amendment and send this amendment to the desk.

The PRESIDING OFFICER (Mr. CASEY). Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Hampshire [Mr. SUNUNU] proposes an amendment numbered 3453.

Mr. SUNUNU. I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

AMENDMENT NO. 3453

(Purpose: To prohibit Federal subsidies in excess of specified amounts on any Amtrak train route)

On page 32, before line 21, insert the following:

(c) LIMIT ON PASSENGER SUBSIDIES.—

(1) IN GENERAL.—The Secretary of Transportation shall prohibit any Federal funds to be used for the operation of an Amtrak train route that has a per passenger subsidy, as determined by the Inspector General under paragraph (2), of not less than—

(A) \$200 during the first fiscal year beginning after the date of the enactment of this Act;

(B) \$175 during the second fiscal year beginning after the date of the enactment of this Act;

(C) \$150 during the third fiscal year beginning after the date of the enactment of this Act;

(D) \$125 during the fourth fiscal year beginning after the date of the enactment of this Act; and

(E) \$100 during any fiscal year beginning after the time period described in subparagraph (D).

(2) DETERMINATION OF SUBSIDY LEVEL.—The Inspector General of the Department of Transportation, using data provided by Amtrak, shall determine the difference between the average fully allocated operating cost per passenger and the average ticket price collected for each train route operated by Amtrak during the most recent 12-month period for which data is available.

(3) REPORT.—

(A) IN GENERAL.—Not later than 6 months before the end of each fiscal year, and every 6 months thereafter, the Inspector General shall publish a report that—

(i) lists the subsidy levels determined under paragraph (2); and

(ii) includes a statement that Amtrak will terminate any train route that has a per passenger subsidy in excess of the limits set forth in paragraph (1).

(B) DISTRIBUTION.—The Inspector General shall display the report published under subparagraph (A) on the Internet and submit a copy of such report to—

(i) the President of Amtrak;

(ii) the Secretary of Transportation;

(iii) the Committee on Commerce, Science, and Transportation of the Senate; and

(iv) the Committee on Transportation and Infrastructure of the House of Representatives.

Mr. SUNUNU. Mr. President, I thank you for the time. The amendment I

have just submitted is as I have described, and I hope this is an idea and an approach which can be incorporated into the legislation. I think it is common sense. I know a lot of Members of the Senate believe strongly that we should have long-distance trains, with long routes across the country. I would like to see those routes maintained and sustained as well, if it can be done in an economically reasonable way.

But the last years have shown that for some of these routes, the passenger levels are so low, the costs of operating are so high, they just can't compete. They can't compete with buses, they can't compete with automobiles, and they can't compete with airplanes in terms of cost and efficiency. So I think a step like this is long overdue. Again, I thank the bill managers, Senator LAUTENBERG and Senator LOTT, for their time and consideration and for allowing me to offer these amendments this evening.

I yield the floor.

Mr. LAUTENBERG. Mr. President, I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BROWN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BROWN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BROWN. Mr. President, I ask unanimous consent to speak as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### 2007 FARM BILL

Mr. BROWN. Mr. President, I appreciate seeing the Senator from Pennsylvania in the chair. We were both in the Agriculture Committee today. I thank him for his leadership for dairy farmers and for nutrition and feeding kids and all that he did that way.

The 2007 farm bill is a chance for Congress to make historic strides in agriculture, alternative energy, and to literally help improve the lives of millions of families across the country—families struggling from Harrisburg to Erie, from Ashtabula to Gallipolis, from Lima to Toledo.

In a State such as Ohio, with a long and rich agricultural history, this means a bright future for our agriculture industry, for our family farmers, and for our families.

I applaud the leadership of Senator HARKIN. I am proud, as Ohio's first Senator to sit on the Agriculture Committee in four decades, to be part of this process.

This bill could mean that low-income families will have more access to better nutrition by increasing Food Stamp Programs and access to affordable healthy foods. That means more fruits

and vegetables into the schools in Hamilton, Middletown, and Akron, and more fruits and vegetables available, grown by local farmers, to go into farmers markets in Columbus and Zanesville and all over our State.

Earlier this year, as the occupant of the chair and I and others gathered in the committee, we heard from Rhonda Stewart of Hamilton, OH. Rhonda is perhaps in her early thirties and has, I believe, a 9-year-old son. She is a single mother, struggling and working full-time and making about \$8, \$9, or \$10 an hour, with no health insurance. She was president of the local PTA and her son is involved in the Cub Scouts and she is a food stamp beneficiary. She struggled every month. At the beginning of the month, she told the committee back in February, she would serve her son pork chops that first week, which is his favorite meal. By the middle of the month, they went to McDonald's or another fast-food place maybe twice. But by the end of the month, as times got tough and she struggled financially, she would almost invariably sit at the dinner table, at the kitchen table with her son, he would be eating and she would not. He would say: What's wrong, Mom? Aren't you hungry? She would say: No, I don't feel well. She simply ran out of money at the end of the month.

In the farm bill, we are helping people like her and her family who work hard and play by the rules and do everything in the workplace and in their homes that we ask them to do as citizen of their communities and our country. This bill could mean new investment and a new direction for farmers in Ohio.

The 2007 farm bill reflects the values of farmers across Ohio: forward-thinking, responsible, and working to protect our natural resources and our rural communities.

This bill will help family farmers in my State and in Pennsylvania and across the country by strengthening the farm safety net, one that will provide better protection for farmers against disasters, such as either low yield or low prices. Either one can be obviously devastating to farmers.

The Average Crop Revenue Program, which Senator DURBIN and I introduced a bill to create as part of the farm bill—amended by Chairman HARKIN into the farm bill—offers a much needed choice to farmers. It represents significant reform for farmers and huge savings—literally \$3.5 billion—for tax-payers.

Farmers can stay in the current or old program that does little to protect against drops in revenue or, for the first time ever, farmers will be able to switch to a forward-looking policy that better protects against volatile crop prices, natural disasters, and rising production costs. If farmers are doing well and prices and yields are good, farmers would not get tax dollars. If times are bad—the yield is low or there are floods or tornadoes that cause

major crop yield drops or if the price is low—then the farmer will get help. That is the way that agriculture should be. That is the way most farmers I find in northwest Ohio and all over my State want to do it too. I traveled throughout Ohio this Spring—to Chillicothe, where we did roundtables with fruit and vegetable farmers, and in Montgomery County, not too far from Troy, and Piqua, near Dayton. We talked to farmers there, and near Wooster, OH. We talked to dairy farmers. In Lake County we talked to specialty farmers, especially those who do landscaping and greenhouses. In northwest Ohio we talked to farmers who grow corn and soybeans.

I met with a corn farmer in Henry County who will be supplying corn to one of the first ethanol plants in Ohio. I met with a hog farmer in Montgomery County who uses wind turbines to provide on-farm energy.

This farm bill makes a commitment to move beyond antiquated energy sources and wean ourselves from Middle Eastern oil and prepare American agriculture to lead the world in renewable energy production.

With the right resources and the right incentives, farmers can help decrease our dependence on foreign oil and produce clean, sustainable, renewable energy.

In a State such as Ohio, with a talented labor force and a proud lead-the-nation manufacturing history, that doesn't just mean stronger farms and more prosperous farmers; it means a stronger economy.

Rural communities across the Nation will benefit from additional Federal assistance in the farm bill and small towns not far from where I grew up in Lexington, OH, places like Butler and Belleville, will benefit from funding for infrastructure and hospitals, while expanding access to broadband for all of my State, especially southeast Ohio, which doesn't have the access it needs.

This bill will also provide more than \$4 billion in additional funding for conservation programs to help farmers protect our water quality, expand wildlife habitat, and preserve endangered farmland.

While I am pleased with the bill overall, it can be improved. The public is perfectly willing to help family farmers when they need it, but taxpayers will not support massive payments to farms that have substantial net incomes.

We should not be sending tax dollars to Florida real estate developers, to city farmers who live in New York, to NBA players, or to media personalities. Those are not the people who should benefit from the farm bill.

I regret that we have not funded the McGovern-Dole international feeding program. I hope as this legislation progresses, we will do so.

The agricultural industry in Ohio has experienced unprecedented change in recent years, but the values of Ohio farmers—hard work, stewardship of the

land, caring for their families—remains steadfast.

We, too, must be steadfast in our support for farmers, but we must also change how we go about providing that support.

I applaud the proposal put before us in the Agriculture Committee today. I hope we can even improve upon it in the weeks ahead.

I yield the floor.

Mr. LAUTENBERG. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. LAUTENBERG. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LAUTENBERG. Mr. President, I ask for the regular order.

The PRESIDING OFFICER. Amendment No. 3452 is pending.

AMENDMENT NO. 3454 TO AMENDMENT NO. 3452

Mr. LAUTENBERG. Mr. President, I send an amendment to the desk on behalf of Senator CARPER, which is No. 3452.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from New Jersey [Mr. LAUTENBERG], for Mr. CARPER, proposes an amendment numbered 3454 to Amendment No. 3452.

Mr. LAUTENBERG. I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike all after the first word and insert the following:

#### 1. SHORT TITLE.

This Act may be cited as the “Internet Tax Freedom Act Amendments Act of 2007”.

#### SEC. 2. MORATORIUM.

The Internet Tax Freedom Act (47 U.S.C. 151 note) is amended—

(1) in section 1101(a) by striking “2007” and inserting “2011”, and

(2) in section 1104(a)(2)(A) by striking “2007” and inserting “2011”.

#### SEC. 3. GRANDFATHERING OF STATES THAT TAX INTERNET ACCESS.

Section 1104 of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by adding at the end the following:

“(c) APPLICATION OF DEFINITION.—

“(1) IN GENERAL.—Effective as of November 1, 2003—

“(A) for purposes of subsection (a), the term ‘Internet access’ shall have the meaning given such term by section 1104(5) of this Act, as enacted on October 21, 1998; and

“(B) for purposes of subsection (b), the term ‘Internet access’ shall have the meaning given such term by section 1104(5) of this Act as enacted on October 21, 1998, and amended by section 2(e) of the Internet Tax Nondiscrimination Act (Public Law 108-435).

“(2) EXCEPTIONS.—Paragraph (1) shall not apply until November 1, 2007, to a tax on Internet access that is—

“(A) generally imposed and actually enforced on telecommunications service purchased, used, or sold by a provider of Internet access, but only if the appropriate ad-

ministrative agency of a State or political subdivision thereof issued a public ruling prior to July 1, 2007, that applied such tax to such service in a manner that is inconsistent with paragraph (1); or

“(B) the subject of litigation instituted in a judicial court of competent jurisdiction prior to July 1, 2007, in which a State or political subdivision is seeking to enforce, in a manner that is inconsistent with paragraph (1), such tax on telecommunications service purchased, used, or sold by a provider of Internet access.

“(3) NO INFERENCE.—No inference of legislative construction shall be drawn from this subsection or the amendments to section 1105(5) made by the Internet Tax Freedom Act Amendments Act of 2007 for any period prior to November 1, 2007, with respect to any tax subject to the exceptions described in subparagraphs (A) and (B) of paragraph (2).”

#### SEC. 4. DEFINITIONS.

Section 1105 of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended—

(1) in paragraph (1) by striking “services”, (2) by amending paragraph (5) to read as follows:

“(5) INTERNET ACCESS.—The term ‘Internet access’—

“(A) means a service that enables users to connect to the Internet to access content, information, or other services offered over the Internet;

“(B) includes the purchase, use or sale of telecommunications by a provider of a service described in subparagraph (A) to the extent such telecommunications are purchased, used or sold—

“(i) to provide such service; or

“(ii) to otherwise enable users to access content, information or other services offered over the Internet;

“(C) includes services that are incidental to the provision of the service described in subparagraph (A) when furnished to users as part of such service, such as a home page, electronic mail and instant messaging (including voice- and video-capable electronic mail and instant messaging), video clips, and personal electronic storage capacity; and

“(D) does not include voice, audio or video programming, or other products and services (except services described in subparagraph (A), (B), or (C)) that utilize Internet protocol or any successor protocol and for which there is a charge, regardless of whether such charge is separately stated or aggregated, with the charge for services described in subparagraph (A), (B), or (C).”

(3) by amending paragraph (9) to read as follows:

“(9) TELECOMMUNICATIONS.—The term ‘telecommunications’ means ‘telecommunications’ as such term is defined in section 3(43) of the Communications Act of 1934 (47 U.S.C. 153(43)) and ‘telecommunications service’ as such term is defined in section 3(46) of such Act (47 U.S.C. 153(46)), and includes communications services (as defined in section 4251 of the Internal Revenue Code of 1986 (26 U.S.C. 4251)).”;

(4) in paragraph (10) by adding at the end the following:

“(C) SPECIFIC EXCEPTION.—

“(i) SPECIFIED TAXES.—Effective November 1, 2007, the term ‘tax on Internet access’ also does not include a State tax expressly levied on commercial activity, modified gross receipts, taxable margin, or gross income of the business, by a State law specifically using one of the foregoing terms, that—

“(I) was enacted after June 20, 2005, and before November 1, 2007 (or, in the case of a State business and occupation tax, was enacted after January 1, 1932, and before January 1, 1936);

“(II) replaced, in whole or in part, a modified value-added tax or a tax levied upon or measured by net income, capital stock, or net worth (or, is a State business and occupation tax that was enacted after January 1, 1932 and before January 1, 1936);

“(III) is imposed on a broad range of business activity; and

“(IV) is not discriminatory in its application to providers of communication services, Internet access, or telecommunications.

“(ii) MODIFICATIONS.—Nothing in this subparagraph shall be construed as a limitation on a State’s ability to make modifications to a tax covered by clause (i) of this subparagraph after November 1, 2007, as long as the modifications do not substantially narrow the range of business activities on which the tax is imposed or otherwise disqualify the tax under clause (i).

“(iii) NO INFERENCE.—No inference of legislative construction shall be drawn from this subparagraph regarding the application of subparagraph (A) or (B) to any tax described in clause (i) for periods prior to November 1, 2007.”

#### SEC. 5. CONFORMING AMENDMENTS.

(a) ACCOUNTING RULE.—Section 1106 of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended—

(1) by striking “telecommunications services” each place it appears and inserting “telecommunications”, and (2) in subsection (b)(2)—

(A) in the heading by striking “SERVICES”;

(B) by striking “such services” and inserting ‘such telecommunications’, and

(C) by inserting before the period at the end the following: “or to otherwise enable users to access content, information or other services offered over the Internet”.

(b) VOICE SERVICES.—The Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by striking section 1108.

#### SEC. 6. EFFECTIVE DATE.

This Act, and the amendments made by this Act, shall take effect on November 1, 2007, and shall apply with respect to taxes in effect as of such date or thereafter enacted, except as provided in section 1104 of the Internet Tax Freedom Act (47 U.S.C. 151 note).

Mr. LAUTENBERG. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. LAUTENBERG. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LAUTENBERG. Mr. President, I ask unanimous consent that when the Senate resumes consideration of S. 294 on Thursday, October 25, there be 2 hours of debate prior to a vote in relation to the SUNUNU amendment No. 3453, with the time equally divided and controlled between Senators LAUTENBERG and SUNUNU or their designees, with no amendment in order to the amendment prior to the vote; that upon the use or yielding back of time, the Senate proceed to vote in relation to the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LAUTENBERG. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. LAUTENBERG. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### MORNING BUSINESS

Mr. LAUTENBERG. Mr. President, I ask unanimous consent that the Senate now proceed to a period for the transaction of morning business, with Senators permitted to speak therein for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### INTERNET TAX MORATORIUM

Mr. ALEXANDER. Mr. President, the House voted recently 405 to 2 to extend the current Internet tax moratorium which expires at the end of this month. They voted to extend it for 4 more years. I believe the Senate should do the same thing and do it before the end of the month rather than enact a permanent moratorium, as some want to do, because permanent action is likely to invoke a far higher law—the law of unintended consequences.

We can't imagine the future impact of the World Wide Web, and a permanent moratorium could produce at least two unintended consequences: No. 1, a big unintended tax increase, or No. 2, a big unintended, unfunded Federal mandate.

Here is an example of how a permanent moratorium could produce an unintended new tax. At the time the original moratorium was enacted in 1998, Internet access meant dial-up. Today, Internet access also includes broadband. Fortunately, Congress updated the moratorium definition in 2004 so that access to broadband is exempt from taxation.

Or, here is an example of how an outdated moratorium could produce an unintended, unfunded Federal mandate on States, cities, and counties. States and local governments collect billions of dollars in sales tax on telephone services to pay for schools, roads, police, and hospital workers. Under the old definition of Internet access, telephone calls made over the Internet might have escaped such taxation. That might sound good to conservatives like me who favor lower taxes, but most members of my Republican Party were elected promising to end the practice of unfunded Federal mandates—that is, those of us in Washington telling Governors, mayors, and county commissioners what services to provide and how to pay for them. In fact, Republican candidates for Congress stood with Newt Gingrich on the Capitol steps in 1994 and said, as part of a Contract With America, “No more unfunded mandates. If we break our promise, throw us out.” In 1995, the new Republican Congress enacted a new Federal Unfunded Mandates Reform Act, banning unfunded mandates.

Make no mistake, Mr. President, the permanent extension that is proposed would be an unfunded Federal mandate because it would not allow the grandfathered States—and there are currently nine of them collecting this tax—the ability to continue to make their own decisions about what revenues to collect. It would freeze into place forever an Internet access definition that might not be wise for industry and that might not be wise for State and local governments.

That is why so many people support the idea of a 4-year moratorium on taxation of Internet access. It has the support of the National Governors Association, the National Association of Counties, The U.S. Conference of Mayors, the National League of Cities, the Multistate Tax Commission, and the AFL-CIO.

In addition to that, even though many in the industry would like to have a longer moratorium, the Don't Tax Our Web Coalition has written a letter to JOHN CONYERS, chairman of the House Judiciary Committee, saying that they prefer the permanent extension but that they believe the House-passed bill is a step forward and one they can support.

Mr. President, I ask unanimous consent to have printed in the RECORD a copy of the letter from the Don't Tax Our Web Coalition and also a copy of the Congressional Budget Office cost estimate from September 9, 2003, which makes absolutely clear that such a law would be an unfunded Federal mandate under the terms of the 1995 Unfunded Federal Mandate Act.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DO NOT TAX OUR WEB COALITION,  
October 2, 2007.

Hon. JOHN CONYERS, JR.,  
Chairman, Committee on the Judiciary,  
House of Representatives, Washington, DC.

DEAR CHAIRMAN CONYERS: On behalf of the Don't Tax Our Web Coalition (“Coalition”), I am pleased to express the Coalition's support of your effort to extend the Internet tax moratorium. Your continued leadership on these and other important matters affecting our industry is critical to consumers, and to strengthening the economy and job creation.

H.R. 3678, if enacted, would provide a temporary, four-year extension of the moratorium that is set to expire on November 1. Your bill also contains important definitional and statutory changes that improve current law. H.R. 3678 will provide much needed clarity to the communications and internet industries. By helping keep Internet access affordable, the moratorium promotes ubiquitous broadband access.

As you know, the Coalition has long endorsed H.R. 743, the Permanent Internet Tax Freedom Act. While we prefer a permanent extension, we believe that H.R. 3678 is a step forward and thus a bill we can support.

We look forward to continuing to work with you on this most important issue.

Sincerely,

BRODERICK D. JOHNSON.

S. 150—Internet Tax Nondiscrimination Act

Summary: S. 150 would permanently extend a moratorium on certain state and local taxation of online services and electronic

commerce, and after October 1, 2006, would eliminate an exception to that prohibition for certain states. Under current law, the moratorium is set to expire on November 1, 2003. CBO estimates that enacting S. 150 would have no impact on the federal budget, but beginning in 2007, it would impose significant annual costs on some state and local governments.

By extending and expanding the moratorium on certain types of state and local taxes, S. 150 would impose an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates that the mandate would cause state and local governments to lose revenue beginning in October 2006; those losses would exceed the threshold established in UMRA (\$64 million in 2007, adjusted annually for inflation) by 2007. While there is some uncertainty about the number of states affected, CBO estimates that the direct costs to states and local governments would probably total between \$80 million and \$120 million annually, beginning in 2007. The bill contains no new private-sector mandates as defined in UMRA.

Estimated cost to the Federal Government: CBO estimates that enacting S. 150 would have no impact on the federal budget.

Intergovernmental mandates contained in the bill: The Internet Tax Freedom Act (ITFA) currently prohibits state and local governments from imposing taxes on Internet access until November 1, 2003. The ITFA, enacted as Public Law 105-277 on October 21, 1998, also contains an exception to this moratorium, sometimes referred to as the “grandfather clause,” which allows certain state and local governments to tax Internet access if such tax was generally imposed and actually enforced prior to October 1, 1998.

S. 150 would make the moratorium permanent and, after October 1, 2006, would eliminate the grandfather clause. The bill also would state that the term “Internet access” or “Internet access services” as defined in ITFA would not include telecommunications services except to the extent that such services are used to provide Internet access (known as “aggregating” or “bundling” of services). These extensions and expansions of the moratorium constitute intergovernmental mandates as defined in UMRA because they would prohibit states from collecting taxes that they otherwise could collect.

Estimated direct costs of mandates to state and local governments: CBO estimates that repealing the grandfather clause would result in revenue losses for as many as 10 states and for several local governments totaling between \$80 million and \$120 million annually, beginning in 2007. We also estimate that the change in the definition of Internet access could affect tax revenues for many states and local governments, but we cannot estimate the magnitude or the timing of any such additional impacts at this time.

UMRA includes in its definition of the direct costs of a mandate the amounts that state and local governments would be prohibited from raising in revenues to comply with the mandate. The direct costs of eliminating the grandfather clause would be the tax revenues that state and local governments are currently collecting but would be precluded from collecting under S. 150. States also could lose revenues that they currently collect on certain services, if those services are redefined as Internet access under the bill.

Over the next five years there will likely be changes in the technology and the market for Internet access. Such changes are likely to affect, at minimum, the price for access to the Internet as well as the demand for and the methods of such access. How these technological and market changes will ultimately affect state and local tax revenues is