

107TH CONGRESS
1ST SESSION

H. R. 2654

To designate the Surface Transportation Board as a forum to improve passenger rail and other fixed guideway passenger transportation by allowing improved access to freight track and rights-of-way for fixed guideway transportation in consideration for just and reasonable compensation to freight railroads.

IN THE HOUSE OF REPRESENTATIVES

JULY 26, 2001

Mr. CLEMENT (for himself, Ms. KAPTUR, Mr. BLUMENAUER, Mrs. TAUSCHER, Mr. MICA, and Mr. HONDA) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

A BILL

To designate the Surface Transportation Board as a forum to improve passenger rail and other fixed guideway passenger transportation by allowing improved access to freight track and rights-of-way for fixed guideway transportation in consideration for just and reasonable compensation to freight railroads.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Transit Rail Accommo-
5 dation Improvement and Needs Act for the 21st Century”.

1 **SEC. 2. FINDINGS.**

2 The Congress finds that—

3 (1) modern and efficient fixed guideway trans-
4 portation is important to the viability and well-being
5 of metropolitan areas and to the energy conservation
6 and self-sufficiency goals of the United States;

7 (2) public convenience and necessity require the
8 development of fixed guideway transportation sys-
9 tems in metropolitan areas presently without such
10 service, and the expansion of existing systems in
11 metropolitan areas already receiving such service;

12 (3) use of existing railroad trackage and rights-
13 of-way in and around metropolitan areas provides a
14 unique and valuable opportunity for the development
15 and expansion of fixed guideway transportation fa-
16 cilities with a minimum of disruption to the environ-
17 ment and the surrounding community; and

18 (4) voluntary negotiations between mass trans-
19 portation authorities and rail carriers regarding
20 shared use of existing railroad trackage and rights-
21 of-way have not been adequate to ensure the devel-
22 opment of sound and efficient fixed guideway trans-
23 portation systems.

1 **SEC. 3. RAIL TRANSIT ACCESS.**

2 (a) AMENDMENT.—Part E of subtitle V of title 49,
3 United States Code, is amended by adding at the end the
4 following new chapter:

5 **“CHAPTER 285—RAIL TRANSIT ACCESS**

“Sec.

“28501. Definitions.

“28502. Shared use of rail carrier trackage by mass transportation authorities.

“28503. Shared use of rail rights-of-way by mass transportation authorities.

“28504. Applicability of other laws.

“28505. Standards for Board action.

6 **“§ 28501. Definitions**

7 “In this chapter—

8 “(1) the term ‘Board’ means the Surface
9 Transportation Board;

10 “(2) the term ‘capital work’ means mainte-
11 nance, restoration, reconstruction, capacity enhance-
12 ment, or rehabilitation work on trackage that would
13 be treated, in accordance with generally accepted ac-
14 counting principles, as a capital item rather than an
15 expense;

16 “(3) the term ‘fixed guideway transportation’
17 means mass transportation (as defined in section
18 5302(a)(7)) provided on, by, or using a fixed guide-
19 way (as defined in section 5302(a)(4));

20 “(4) the term ‘mass transportation authority’
21 means a local governmental authority (as defined in
22 section 5302(a)(6)) established to provide, or make

1 a contract providing for, fixed guideway transpor-
2 tation;

3 “(5) the term ‘rail carrier’ means a person,
4 other than a governmental authority, providing com-
5 mon carrier railroad transportation for compensation
6 subject to the jurisdiction of the Board under chap-
7 ter 105;

8 “(6) the term ‘segregated fixed guideway facil-
9 ity’ means a fixed guideway facility constructed
10 within the railroad right-of-way of a rail carrier but
11 physically separate from trackage, including relo-
12 cated trackage, within the right-of-way used by a
13 rail carrier for freight transportation purposes; and

14 “(7) the term ‘trackage’ means a railroad line
15 of a rail carrier, including a spur, industrial, team,
16 switching, side, yard, or station track, and a facility
17 of a rail carrier.

18 **“§ 28502. Shared use of rail carrier trackage by mass**
19 **transportation authorities**

20 “(a) AUTHORITY.—If, after negotiation, a mass
21 transportation authority cannot reach agreement with a
22 rail carrier to use trackage of, and have related services
23 provided by, the rail carrier for purposes of fixed guideway
24 transportation, the Board shall, upon application of the
25 mass transportation authority or the rail carrier, and if

1 the Board finds it necessary or useful to carry out this
2 chapter—

3 “(1) order that the trackage be made available
4 and the related services be provided to the mass
5 transportation authority; and

6 “(2) prescribe reasonable terms and compensa-
7 tion for use of the trackage and provision of the re-
8 lated services, including the performance of capital
9 work if the mass transportation authority has dem-
10 onstrated that such capital work is required for effi-
11 cient and reliable passenger operations on the track-
12 age to be used.

13 “(b) STANDARD FOR COMPENSATION; QUALITY OF
14 SERVICE.—When prescribing reasonable compensation
15 under subsection (a)(2), the Board shall consider alter-
16 native cost allocation principles, including incremental cost
17 and fully allocated cost, under rules promulgated by the
18 Board within 6 months after the date of the enactment
19 of the Transit Rail Accommodation Improvement and
20 Needs Act for the 21st Century. The Board shall consider
21 quality of service by the rail carrier as a major factor when
22 determining compensation for the use of the trackage and
23 providing the related services.

24 “(c) TERMS OF OPERATION.—When prescribing rea-
25 sonable terms under subsection (a)(2), the Board may pre-

1 scribe the number of trains that may be operated by or
2 for the mass transportation authority, the speeds at which
3 such trains may be operated, and the trackage mainte-
4 nance levels to be provided by the rail carrier.

5 “(d) ADDITIONAL TRAINS.—When a rail carrier and
6 a mass transportation authority cannot agree to terms for
7 the operation of additional trains by or for a mass trans-
8 portation authority over a rail line of the carrier, the mass
9 transportation authority or the rail carrier may apply to
10 the Board for an order establishing such terms. If the
11 Board finds it reasonable to carry out this chapter, the
12 Board shall order the rail carrier to allow operation of the
13 requested additional trains on such terms as the Board
14 finds reasonable under the circumstances.

15 “(e) TRACKAGE MAINTENANCE.—If a mass transpor-
16 tation authority believes that maintenance or related cap-
17 ital work of trackage operated by or for the mass transpor-
18 tation authority has fallen below a necessary level to main-
19 tain reliable service at speeds necessary to provide conven-
20 ient and efficient mass transportation service, the mass
21 transportation authority may, after notice to the rail car-
22 rier and a sufficient period for maintenance or related cap-
23 ital work improvements, apply to the Board for an order
24 requiring the rail carrier to provide increased or improved
25 maintenance or related capital work on the trackage. If

1 the Board finds it reasonable to carry out this part, the
2 Board shall order the rail carrier to provide such increased
3 or improved maintenance or related capital work as the
4 Board finds reasonable under the circumstances. The rem-
5 edy available under this subsection shall be in addition to
6 any contract rights that a mass transportation authority
7 may possess with respect to trackage maintenance or re-
8 lated capital work.

9 “(f) ACCELERATED SPEEDS.—If a rail carrier re-
10 fuses to allow accelerated speeds for trains operated by
11 or for a mass transportation authority, the mass transpor-
12 tation authority may apply to the Board for an order re-
13 quiring the rail carrier to allow the accelerated speeds and
14 related capital work required to permit operation at the
15 accelerated speeds. The Board shall decide whether accel-
16 erated speeds are practicable and which capital work
17 would be required to make accelerated speeds practicable.
18 The Board shall establish the maximum allowable speeds
19 for trains operated by or for a mass transportation author-
20 ity on terms the Board decides are reasonable.

21 “(g) PREFERENCE OVER FREIGHT TRANSPOR-
22 TATION.—Except in an emergency, fixed guideway trans-
23 portation provided by or for a mass transportation author-
24 ity pursuant to an order issued under subsection (a) has
25 preference over freight transportation in using a rail line,

1 junction, or crossing unless the Board orders otherwise
2 under this chapter. A rail carrier affected by this sub-
3 section may apply to the Board for relief. If the Board
4 decides that preference for fixed guideway transportation
5 materially will lessen the quality of freight transportation
6 provided to shippers, the Board shall establish the rights
7 of the rail carrier and the mass transportation authority
8 on reasonable terms.

9 “(h) FINAL DETERMINATION.—The Board shall
10 make a determination under this section not later than
11 120 days after a mass transportation authority or a rail
12 carrier submits an application to the Board.

13 **“§ 28503. Shared use of rail rights-of-way by mass**
14 **transportation authorities**

15 “(a) GENERAL AUTHORITY.—If, after negotiation, a
16 mass transportation authority cannot reach agreement
17 with a rail carrier to acquire an interest in a railroad
18 right-of-way for the construction and operation of a seg-
19 regated fixed guideway facility, the mass transportation
20 authority may apply to the Board for an order requiring
21 the rail carrier to convey an interest to the authority. The
22 Board, not later than 120 days after receiving the applica-
23 tion, shall order the interest conveyed if—

24 “(1) the mass transportation authority assumes
25 a reasonable allocation of costs associated with any

1 necessary relocation of a rail carrier’s trackage with-
2 in the right-of-way; and

3 “(2) the fixed guideway transportation purpose
4 of the proposed segregated fixed guideway facility
5 cannot be met adequately at a reasonable cost by ac-
6 quiring an interest in other property.

7 “(b) COMPENSATION AND TERMS.—A conveyance or-
8 dered by the Board under this section shall be subject to
9 the payment of just compensation and to such other rea-
10 sonable terms as the Board may prescribe.

11 **“§ 28504. Applicability of other laws**

12 “(a) BOARD REVIEW OR APPROVAL.—Operations or
13 conveyances undertaken pursuant to an order issued
14 under section 28502 or 28503 are not subject to Board
15 review or approval under subtitle IV of this title unless
16 the Board, on a case-by-case basis, has determined that
17 the mass transportation authority has assumed rights or
18 obligations under such order to provide transportation
19 subject to the jurisdiction of the Board under chapter 105.

20 “(b) CONTRACTUAL OBLIGATIONS FOR CLAIMS.—
21 Nothing in this chapter shall be construed to limit a rail
22 transportation provider’s right under section 28103(b) to
23 enter into contracts that allocate financial responsibility
24 for claims.

1 **“§ 28505. Standards for Board action**

2 “In proceedings under sections 28502 and 28503 the
3 Board shall utilize, to the extent relevant and feasible, the
4 principles, standards, and precedents utilized in pro-
5 ceedings under sections 24308 and 24311(c) involving the
6 National Railroad Passenger Corporation.”.

7 (b) CONFORMING AMENDMENTS.—

8 (1) LIMITATIONS ON RAIL PASSENGER TRANS-
9 PORTATION LIABILITY.—Section 28103(a) of title
10 49, United States Code, is amended by inserting “or
11 other fixed guideway transportation” after “com-
12 muter”.

13 (2) TABLE OF CHAPTERS.—The table of chap-
14 ters of subtitle V of title 49, United States Code, is
15 amended by adding after the item relating to chap-
16 ter 283 the following new item:

“285. RAIL TRANSIT ACCESS 28501”.

17 **SEC. 4. RAIL TRANSPORTATION POLICY.**

18 Section 10101 of title 49, United States Code, is
19 amended—

20 (1) by striking “and” at the end of paragraph
21 (14);

22 (2) by striking the period at the end of para-
23 graph (15) and inserting “; and”; and

24 (3) by adding at the end the following new
25 paragraph:

1 “(16) to encourage and promote the operation
2 of safe, efficient, and reliable commuter rail pas-
3 senger service and other fixed guideway transpor-
4 tation systems, including operations where the serv-
5 ice will share lines, corridors, or other facilities with
6 freight railroads or with intercity rail passenger
7 service.”.

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