

AMTRAK REFORM AND PRIVATIZATION ACT OF 1995

OCTOBER 30, 1995.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 1788]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 1788) to reform the statutes relating to Amtrak, to authorize appropriations for Amtrak, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Amtrak Reform and Privatization Act of 1995".

TITLE I—PROCUREMENT REFORMS

SEC. 101. CONTRACTING OUT.

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

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

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

- “(B) If Amtrak enters into a contract as described in subparagraph (A)—
- “(i) such contract shall not relieve Amtrak of any obligation in connection with the use of facilities of another entity for the operation covered by such contract; and
- “(ii) such operation shall be subject to any operating or safety restrictions and conditions required by the agreement providing for the use of such facilities.
- “(C) This paragraph shall not restrict Amtrak’s authority to enter into contracts for access to or use of tracks or facilities for the operation of trains.”.
- (b) EFFECTIVE DATE.—Subsection (a) shall take effect 254 days after the date of the enactment of this Act.

SEC. 102. CONTRACTING PRACTICES.

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

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

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

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

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

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

“(i) if the motor carrier is not a public recipient of governmental assistance, as such term is defined in section 10922(d)(1)(F)(i) of this title, other than a recipient of funds under section 18 of the Federal Transit Act;

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

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

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

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

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

SEC. 103. FREEDOM OF INFORMATION ACT.

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

TITLE II—OPERATIONAL REFORMS

SEC. 201. BASIC SYSTEM.

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

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

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

- (1) in subsection (a)(1)—
 - (A) by striking “90 days” and inserting in lieu thereof “180 days”;
 - (B) by striking “a discontinuance under section 24704 or 24707 (a) or (b) of this title” and inserting in lieu thereof “discontinuing service over a route”; and
 - (C) by inserting “or assume” after “agree to share”;
- (2) in subsection (a)(2), by striking “section 24704 or 24707 (a) or (b) of this title” and inserting in lieu thereof “paragraph (1)”; and
- (3) by striking subsection (b).
- (d) **COST AND PERFORMANCE REVIEW.**—Section 24707 of title 49, United States Code, and the item relating thereto in the table of sections of chapter 247 of such title, are repealed.
- (e) **SPECIAL COMMUTER TRANSPORTATION.**—Section 24708 of title 49, United States Code, and the item relating thereto in the table of sections of chapter 247 of such title, are repealed.
- (f) **CONFORMING AMENDMENT.**—Section 24312(a)(1) of title 49, United States Code, is amended by striking “, 24701(a).”.

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

- (a) **REPEAL.**—Section 24306 of title 49, United States Code, and the item relating thereto in the table of sections of chapter 243 of such title, are repealed.
- (b) **CONFORMING AMENDMENT.**—Section 24301 of title 49, United States Code, is amended by adding at the end the following new subsection:
 - “(c) **NONAPPLICATION OF CERTAIN OTHER LAWS.**—State and local laws and regulations that impair the provision of mail, express, and auto-ferry transportation do not apply to Amtrak or a rail carrier providing mail, express, or auto-ferry transportation.”.

SEC. 203. ROUTE AND SERVICE CRITERIA.

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

SEC. 204. ADDITIONAL QUALIFYING ROUTES.

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

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

- (a) **REPEAL.**—Section 24704 of title 49, United States Code, and the item relating thereto in the table of sections of chapter 247 of such title, are repealed.
- (b) **EXISTING AGREEMENTS.**—Amtrak shall not, after the date of the enactment of this Act, be required to provide transportation services pursuant to an agreement entered into before such date of enactment under the section repealed by subsection (a) of this section.
- (c) **STATE, REGIONAL, AND LOCAL COOPERATION.**—Section 24101(c)(2) of title 49, United States Code, is amended by inserting “, separately or in combination,” after “and the private sector”.
- (d) **CONFORMING AMENDMENT.**—Section 24312(a)(1) of title 49, United States Code, is amended by striking “or 24704(b)(2)”.

SEC. 206. AMTRAK COMMUTER.

- (a) **REPEAL OF CHAPTER 245.**—Chapter 245 of title 49, United States Code, and the item relating thereto in the table of chapters of subtitle V of such title, are repealed.
- (b) **CONFORMING AMENDMENTS.**—(1) Section 24301(f) of title 49, United States Code, is amended to read as follows:
 - “(f) **TAX EXEMPTION FOR CERTAIN COMMUTER AUTHORITIES.**—A commuter authority that was eligible to make a contract with Amtrak Commuter to provide commuter rail passenger transportation but which decided to provide its own rail passenger transportation beginning January 1, 1983, is exempt, effective October 1, 1981, from paying a tax or fee to the same extent Amtrak is exempt.”.
- (2) Subsection (a) of this section shall not affect any trackage rights held by Amtrak or the Consolidated Rail Corporation.

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

- (a) **DETERMINATION OF COMPENSATION.**—Section 24904 of title 49, United States Code, is amended—
 - (1) by striking subsection (b);
 - (2) by redesignating subsection (c) as subsection (b);
 - (3) in subsection (b), as so redesignated by paragraph (2) of this subsection—

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

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

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

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

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

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

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

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

SEC. 208. ACCESS TO RECORDS AND ACCOUNTS.

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

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

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

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

TITLE III—COLLECTIVE BARGAINING REFORMS

SEC. 301. RAILWAY LABOR ACT PROCEDURES.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 302. SERVICE DISCONTINUANCE.

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

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

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

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

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

(B) In the case of provisions of a collective bargaining agreement with respect to which a moratorium is in effect 90 days after the date of the enactment of this Act, subparagraph (A) shall take effect 164 days after the date of the expiration of such moratorium.

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

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

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

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

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

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

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

“(2) Notwithstanding any other provision of law, agreement, or arrangement, with respect to employees in any class or craft in train or engine service, Conrail shall have the right to furlough one such employee for each employee in train or engine service who moves from Amtrak to Conrail in excess of the cumulative number of such employees who move from Conrail to Amtrak. Conrail shall not be obligated to fill any position governed by an agreement concerning crew consist, attrition arrangements, reserve boards, or reserve engine service positions, where an increase in positions is the result of the return of an Amtrak employee pursuant to an agreement entered into under paragraph (1). Conrail’s collective bargaining agreements

with organizations representing its train and engine service employees shall be deemed to have been amended to conform to this paragraph. Any dispute or controversy with respect to the interpretation, application, or enforcement of this paragraph which has not been resolved within 90 days after the date of the enactment of this paragraph may be submitted by either party to an adjustment board for a final and binding decision under section 3 of the Railway Labor Act.”.

(c) TECHNICAL AMENDMENT.—Section 11347 of title 49, United States Code, is amended by striking “sections 24307(c), 24312, and” and inserting in lieu thereof “section”.

TITLE IV—USE OF RAILROAD FACILITIES

SEC. 401. LIABILITY LIMITATION.

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

“§ 28103. Limitations on rail passenger transportation liability

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

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

“(i) \$250,000; or

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

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

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

“(3) For purposes of this subsection—

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

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

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

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

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

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

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

“(b) INDEMNIFICATION OBLIGATIONS.—Obligations of any party, however arising, including obligations arising under leases or contracts or pursuant to orders of an administrative agency, to indemnify against damages or liability for personal injury, death, or damage to property described in subsection (a), incurred after the date of the enactment of the Amtrak Reform and Privatization Act of 1995, shall be enforceable, notwithstanding any other statutory or common law or public policy, or the nature of the conduct giving rise to the damages or liability.

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

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

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

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

TITLE V—FINANCIAL REFORMS

SEC. 501. FINANCIAL POWERS.

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

“§ 24304. Employee stock ownership plans

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

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

“24304. Employee stock ownership plans.”.

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

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

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

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

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

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

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

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

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

(3) No amount shall be includible in Amtrak’s gross income for Federal tax purposes as a result of the application of this subsection or subsection (c).

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

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

SEC. 502. DISBURSEMENT OF FEDERAL FUNDS.

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

“(d) ADMINISTRATION OF APPROPRIATIONS.—Federal funds appropriated to Amtrak shall be provided to Amtrak upon appropriation when requested by Amtrak, and shall not be includible in Amtrak’s gross income for Federal tax purposes.”.

SEC. 503. BOARD OF DIRECTORS.

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

“§ 24302. Board of Directors

“(a) EMERGENCY REFORM BOARD.—

“(1) ESTABLISHMENT AND DUTIES.—The Emergency Reform Board described in paragraph (2) shall assume the responsibilities of the Board of Directors of Amtrak 60 days after the date of the enactment of the Amtrak Reform and Privatization Act of 1995, or as soon thereafter as such Board is sufficiently constituted to function as a board of directors under applicable corporate law. Such Board shall adopt new bylaws, including procedures for the selection of members of the Board of Directors under subsection (c) which provide for employee representation.

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

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

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

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

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

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

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

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

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

“(b) DIRECTOR GENERAL.—If the Emergency Reform Board described in subsection (a)(2) is not sufficiently constituted to function as a board of directors under applicable corporate law before the expiration of 60 days after the date of the enactment of the Amtrak Reform and Privatization Act of 1995, the special court established under section 209(b) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 719(b)) shall appoint a Director General, who shall exercise all powers of the Board of Directors of Amtrak until the Emergency Reform Board assumes such powers.

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

(b) EFFECT ON AUTHORIZATIONS.—If the Emergency Reform Board has not assumed the responsibilities of the Board of Directors of Amtrak before March 15, 1996, all provisions authorizing appropriations under the amendments made by section 701 of this Act for a fiscal year after fiscal year 1996 shall cease to be effective.

SEC. 504. REPORTS AND AUDITS.

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

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

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

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

SEC. 505. OFFICERS' PAY.

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

SEC. 506. EXEMPTION FROM TAXES.

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

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

(2) by striking “or fee imposed” and all that follows through “levied on it” and inserting in lieu thereof “, fee, head charge, or other charge, imposed or levied by a State, political subdivision, or local taxing authority, directly or indirectly on Amtrak or on persons traveling in intercity rail passenger transportation or on mail or express transportation provided by Amtrak or a rail carrier subsidi-

ary of Amtrak, or on the carriage of such persons, mail, or express, or on the sale of any such transportation, or on the gross receipts derived therefrom"; and

(3) by amending the last sentence thereof to read as follows: "In the case of a tax or fee that Amtrak was required to pay as of September 10, 1982, Amtrak is not exempt from such tax or fee if it was assessed before April 1, 1995."

TITLE VI—MISCELLANEOUS

SEC. 601. TEMPORARY RAIL ADVISORY COUNCIL.

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

(b) DUTIES.—The Council shall—

(1) evaluate Amtrak's performance;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 602. PRINCIPAL OFFICE AND PLACE OF BUSINESS.

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

(1) by striking the first sentence;

(2) by striking "of the District of Columbia" and inserting in lieu thereof "of the State in which its principal office and place of business is located"; and

(3) by inserting "For purposes of this subsection, the term 'State' includes the District of Columbia. Notwithstanding section 3 of the District of Columbia Business Corporation Act, Amtrak, if its principal office and place of business

is located in the District of Columbia, shall be considered organized under the provisions of such Act.” after “in a civil action.”.

SEC. 603. STATUS AND APPLICABLE LAWS.

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

(1) in subsection (a)(1), by striking “rail carrier under section 10102” and inserting in lieu thereof “railroad carrier under section 20102(2) and chapters 261 and 281”; and

(2) by amending subsection (c) to read as follows:

“(c) APPLICATION OF SUBTITLE IV.—Subtitle IV of this title shall not apply to Amtrak, except for sections 11303, 11342(a), 11504 (a) and (d), and 11707. Notwithstanding the preceding sentence, Amtrak shall continue to be considered an employer under the Railroad Retirement Act of 1974, the Railroad Unemployment Insurance Act, and the Railroad Retirement Tax Act.”.

SEC. 604. WASTE DISPOSAL.

Section 24301(m)(1)(A) of title 49, United States Code, is amended by striking “1996” and inserting in lieu thereof “2001”.

SEC. 605. ASSISTANCE FOR UPGRADING FACILITIES.

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

SEC. 606. RAIL SAFETY SYSTEM PROGRAM.

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

SEC. 607. DEMONSTRATION OF NEW TECHNOLOGY.

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

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

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

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

SEC. 609. BOSTON-NEW HAVEN ELECTRIFICATION PROJECT.

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

(1) by inserting “(1)” before “Improvements under”; and

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

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

SEC. 610. AMERICANS WITH DISABILITIES ACT OF 1990.

(a) APPLICATION TO AMTRAK.—Amtrak shall not be subject to any requirement under section 242 (a)(1) and (3) and (e)(2) of the Americans With Disabilities Act of 1990 (42 U.S.C. 12162 (a)(1) and (3) and (e)(2)) until January 1, 1998.

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

(1) by striking subsection (b); and

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

SEC. 611. DEFINITIONS.

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

(1) by striking paragraphs (2), (3), and (11);

(2) by redesignating paragraphs (4) through (8) as paragraphs (2) through (6), respectively;

(3) by inserting after paragraph (6), as so redesignated by paragraph (2) of this section, the following new paragraph:

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

(4) in paragraph (6), as so redesignated by paragraph (2) of this section, by inserting “, including a unit of State or local government,” after “means a person”; and

(5) by redesignating paragraphs (9) and (10) as paragraphs (8) and (9), respectively.

SEC. 612. NORTHEAST CORRIDOR COST DISPUTE.

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

SEC. 613. INSPECTOR GENERAL ACT OF 1978 AMENDMENT.

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

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

SEC. 614. CONSOLIDATED RAIL CORPORATION.

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

SEC. 615. INTERSTATE RAIL COMPACTS.

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

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

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

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

SEC. 616. CONFORMING AMENDMENT.

Section 10362(b) of title 49, United States Code, is amended by striking paragraph (5) and redesignating paragraphs (6) through (8) as paragraphs (5) through (7), respectively.

TITLE VII—AUTHORIZATION OF APPROPRIATIONS

SEC. 701. AUTHORIZATION OF APPROPRIATIONS.

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

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

- “(1) \$772,000,000 for fiscal year 1995;
- “(2) \$712,000,000 for fiscal year 1996;
- “(3) \$712,000,000 for fiscal year 1997;
- “(4) \$712,000,000 for fiscal year 1998; and
- “(5) \$403,000,000 for fiscal year 1999,

for the benefit of Amtrak for capital expenditures under chapters 243 and 247 of this title, operating expenses, and payments described in subsection (c)(1)(A) through (C).”.

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

“(b) ADDITIONAL AUTHORIZATIONS.—(1) In addition to amounts appropriated under subsection (a), there are authorized to be appropriated to the Secretary of Transportation—

- “(A) \$200,000,000 for fiscal year 1995;
- “(B) \$200,000,000 for fiscal year 1996;
- “(C) \$200,000,000 for fiscal year 1997;
- “(D) \$200,000,000 for fiscal year 1998; and
- “(E) \$200,000,000 for fiscal year 1999,

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

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

- “(A) \$21,500,000 for fiscal year 1995;
- “(B) \$10,000,000 for fiscal year 1996;
- “(C) \$10,000,000 for fiscal year 1997;
- “(D) \$10,000,000 for fiscal year 1998; and
- “(E) \$10,000,000 for fiscal year 1999,

for the benefit of Amtrak to be used for engineering, design, and construction activities to enable the James A. Farley Post Office in New York, New York, to be used as a train station and commercial center and for necessary improvements and redevelopment of the existing Pennsylvania Station and associated service building in New York, New York.”.

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

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

- (1) \$50,000,000 for fiscal year 1996;
- (2) \$50,000,000 for fiscal year 1997;
- (3) \$50,000,000 for fiscal year 1998; and
- (4) \$50,000,000 for fiscal year 1999,

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

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

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

PURPOSE AND SUMMARY

On June 8, 1995, H.R. 1788, the Amtrak Reauthorization and Privatization Act of 1995 was introduced. Amtrak’s previous authorization expired on September 30, 1994. H.R. 1788 authorizes appropriations totaling \$3.58 billion over the fiscal years 1996–1999 for Amtrak and represents a thorough overhaul of Amtrak’s authorizing statutes, aimed at reducing costs and eliminating Federal micromanagement of Amtrak’s operations.

H.R. 1788 provides Amtrak with far greater flexibility in managing its work force. H.R. 1788 calls for an accelerated bargaining process on the issue of contracting out work and on the issue of labor protection. At the end of the bargaining process (254 days in total), both Amtrak’s statutory ban on contracting out work other than food and beverage service and pre-enactment contract terms that implement that ban, as well as all statutory and contract terms relating to labor protection, would lapse. At that point, labor and management could employ “self-help” measures under the Railway Labor Act. Any union with a current contract moratorium in force at the date of enactment would begin negotiations when the moratorium expires.

Also, H.R. 1788 provides that ICC ("New York Dock") labor protection standards do not apply in the event of an Amtrak bankruptcy and revises the Northeast Rail Service Act to restrict but not eliminate "flowback" labor protection rights for employees who joined Amtrak from Conrail or its predecessor railroads.

The bill also provides Amtrak with flexibility in designing and managing its route system. H.R. 1788 repeals Amtrak's current obligation to operate the "basic system" of routes (consisting primarily of routes inherited from private railroads in 1971), unless excused by financial emergency or insufficient funding. Under the legislation, Amtrak would decide the merits of various routes according to commercial potential, not arbitrary statutory preference. Further, the bill eliminates current statutory criteria for evaluating routes and services, and the statutory matching formula that currently applies to State-requested service. To assist the States in contributing to continued rail service in cases where Amtrak is no longer able to offer service entirely on its own, the bill provides for interstate compact pre-approval, allowing the States to enter into long-term agreements with each other that ensure stability in the provision of rail service.

H.R. 1788 establishes a new procedure by which commuter authorities on the Northeast Corridor would compensate Amtrak for their use of the Corridor. Under the current practice, commuter authorities pay Amtrak only for the incremental costs of their use of the Corridor, but not for the shared capital costs. Outside the Northeast Corridor, commuter authorities simply negotiate the terms of their use of right-of-way with the owner of the property, whether a State entity or a private freight railroad. H.R. 1788 would place Northeast Corridor commuter operators on the same footing as their off-Corridor counterparts by repealing the statutory formula by which commuters reimburse Amtrak. Henceforward, Amtrak and the commuter authorities would negotiate the terms for reimbursement according to standard business practices. Any disputes that could not be resolved by the parties would be submitted to binding arbitration, with the Interstate Commerce Commission available as an arbitrator if chosen by the parties.

Further, H.R. 1788 contains dramatic financial reforms that will afford Amtrak many more options in obtaining private financing. The bill calls for Amtrak to redeem all of its common stock (now held with one exception by freight railroads), and removes the voting rights and liquidation preference of the preferred stock now held exclusively by the Department of Transportation. DOT's note and mortgage on the Northeast Corridor are extinguished as well. This would have the benefit of removing DOT as a preferred creditor who stands ahead of other potential commercial lenders in all Amtrak financial transactions.

H.R. 1788 also provides for new leadership at Amtrak to deal with Amtrak's financial crisis. Sixty days after enactment, the existing board of directors would be removed, to be replaced by a 4-year emergency reform board to be appointed by the President in consultation with the Congressional leadership. All new board members would be required to have background and expertise in transportation and business management and would be confirmed by the Senate.

The bill also resolves an issue of longstanding concern to Amtrak and to the freight railroads over which Amtrak operates and removes a major barrier to the expansion of passenger rail service—exposure to tort liability from passenger train accidents. This exposure results from the usually involuntary participation of the freight railroad as a provider of facilities and infrastructure. H.R. 1788 establishes two limits on tort liability exposure of freight and passenger carriers who operate or provide facilities for rail passenger service: (1) a cap of \$250,000 or three times noneconomic damages, whichever is greater, on punitive or exemplary damages, and (2) a cap of \$250,000 above economic losses per claimant on noneconomic damages. The bill also affirms that indemnity contracts between a passenger rail operator and any other party are fully enforceable without regard to any other law or public policy.

Finally, to assist Amtrak's efforts to reach financial stability and eventual removal from dependence on Federal assistance, H.R. 1788 calls for the establishment of a 7-member advisory council of business experts who have no affiliation with the railroad industry, Amtrak, or the United States Government. Called the Temporary Rail Advisory Council (TRAC), this expert body is to submit an interim report within 120 days of enactment and a final report within 270 days of enactment. The reports are to evaluate Amtrak's performance, business plan, cost-containment and productivity-improvement strategies, and cost and accounting procedures and recommend actions Amtrak can take to reduce Federal subsidies to achieve a complete or partial privatization.

BACKGROUND AND NEED FOR LEGISLATION

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

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

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

Unfortunately, given Federal budget pressures, a major increase in Amtrak funding is not on the horizon. The House 1996 Budget

Resolution eliminated Federal capital and operating subsidies for Amtrak by the year 2002, and the Senate 1996 Budget Resolution provided for substantially reduced subsidies over the 7 years. Further, the FY 1996 Transportation and Related Agencies Appropriations Act is likely to provide a substantial decrease in FY 1996 Amtrak funding compared to FY 1995. (A decrease of approximately 25 percent in total funding is likely, given the current conference funding level.) Dramatic restructuring of Amtrak's operations that questions all of the basic assumptions upon which Amtrak was originally formed is a vital necessity. H.R. 1788 represents a thorough overhaul of Amtrak's corporate structure and labor requirements aimed at rescuing Amtrak from potential liquidation and preserving intercity passenger rail service in this country.

Amtrak has already begun to address its financial crisis. In December 1994, Amtrak officials announced that without immediate economy moves, Amtrak would run short of FY 1995 funds by June 1995, with a cash shortfall of almost \$200 million. Amtrak has initiated an aggressive 5-year business plan aimed at reducing costs and increasing productivity. In FY 1995 routes have been eliminated and service reduced to lower costs to bring Amtrak's budget into balance by the end of the fiscal year. These cuts amount to 20 percent of Amtrak's annual train-miles and affect 41 States. In addition, 1,500 employees have been laid off. Additional plans include retiring Amtrak's oldest cars, replacing Amtrak's non-diner, non-specialty cars with modern cars, and continued reductions in employment.

To date, Amtrak has been successful in its cost reduction efforts and is currently ahead of schedule in meeting the targets set forth in its business plan. Amtrak had assumed that it needed to generate \$36 million in bottom-line improvements by April, yet the most recent GAO reports show that Amtrak had already generated \$58 million in savings at that time. Even more encouraging, Amtrak's revenues are higher than anticipated, thus supporting Amtrak's assumption that it could reduce frequency without incurring a proportionate reduction in ridership. The Committee commends Amtrak for its efforts in taking actions required to complete the fiscal year with a balanced budget.

Unfortunately, however, Amtrak's financial woes are not limited to a potential operating shortfall in FY 1995. The GAO has reported that underinvestment in Amtrak's physical assets over the last decade has produced a substantial backlog in unmet capital needs, for which a total of between \$4 billion and \$5 billion is required. Major investments are required to purchase new equipment, conduct equipment overhauls, modernize maintenance facilities, and return the Northeast Corridor to a decent state of repair. If these investments are not made, Amtrak's service quality will continue to deteriorate, leading to a decline in ridership and increased operating costs. In the long term, without major reforms and dramatic restructuring, this will mean the end of Amtrak.

LABOR REFORMS

The Committee recognizes that, if Amtrak is to survive, sacrifices will have to be made by all present beneficiaries of Federal spending on Amtrak, including Amtrak's employees. Gone are the days

when Amtrak employees could enjoy exceptionally generous severance benefits and outsourcing restrictions that far surpass the standards for other U.S. passenger carriers. The Committee believes that, since Amtrak is a taxpayer-funded corporation, it should be operated as efficiently as possible to give the taxpayers the greatest return for their investment.

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

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

A second unique feature of the Amtrak labor protection package, without counterpart in freight railroad labor-protection agreements, is the “30-mile rule.” This provision stipulates that a covered employee can invoke the full wage-continuation and severance benefits if Amtrak seeks to move his work location 30 miles or more. Actually, if the employee already lives 30 or more miles from his work location, any transfer (1 mile, 5 miles, etc.) can trigger the option to take labor protection benefits in lieu of the transfer. In some cases the “30-mile rule” has been altered by subsequent contract.

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

Even if liquidation options are not considered, the current requirements impose major operational handicaps on Amtrak. The 30-mile rule seriously reduces, and could virtually eliminate, Amtrak’s ability to redeploy its work force from the least promising routes to those with the most revenue potential. And in redesigning its route system to reduce costs, Amtrak has had to rely on fre-

quency reductions (as distinguished from closure or relocation of routes) in many cases simply to avoid triggering C-2 payments.

The Committee notes that the actual payout of labor protection benefits—generally rather small up to now—is not the critical problem. Rather, it is the large and potentially debilitating opportunity cost that the C-2 requirements impose on any attempts by Amtrak to streamline and redeploy its work force. In short, the real costs of statutorily mandated labor protection lie not in the actual payments to employees, but in the other continuing costs imposed on Amtrak by depriving it of the ability to make normal business decisions about redeployment of its personnel and equipment to match changing market conditions.

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

This ban is particularly onerous in light of Amtrak's tremendous backlog of unmet capital needs. Although usually considered to provide primarily operating savings through reduced labor costs, the ability to contract out for Amtrak is actually more important as a means to provide desperately needed capital savings. For example, Amtrak's maintenance facilities were built, in some cases, in the 19th century and are in a state of extreme disrepair. GAO's February 1992 report noted that at one major facility, Amtrak's newest diesel locomotives are too large to fit inside the locomotive shop building. Standing derailments are common at these facilities, and seats are stored outdoors because there is insufficient indoor storage space. The GAO has estimated that \$262 million is required to repair and modernize Amtrak's principal facilities.

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

PRIVATIZATION

When Congress created Amtrak in 1970, it established Amtrak as a corporation—not a Federal agency—under the laws of the District of Columbia. However, Amtrak's corporate structure contains a number of public features. For example, the Department of Transportation is the sole holder of preferred stock, which gives the Federal Government a preference over common stockholders in claiming any Amtrak assets in the event of a liquidation. (Amtrak also has common stock—generally considered to have no market value, but carried on Amtrak's books at about \$93 million—which

was issued to certain freight railroads at their option instead of a tax credit for the private railroads' cash or equipment "buy-ins" that helped provide Amtrak with its initial capital.) DOT also holds a 999-year lien on the Northeast Corridor, which means that title to the Northeast Corridor would revert to DOT if Amtrak were to shut down. Further, Amtrak's board of directors is appointed by the President and the Secretary of Transportation, and the Secretary of Transportation is an ex officio member of the board of directors.

H.R. 1788 goes a long way toward clarifying Amtrak's status as a private entity. First, Amtrak is required to redeem its common stock at fair market value. Second, DOT's liquidation preference and voting rights that attach to its preferred stock are extinguished. Also, DOT's note and mortgage on the Northeast Corridor are relinquished. These steps will free Amtrak to enter into commercial financing arrangements that maximize the utility of Amtrak's assets, including its real estate holdings, without first having to obtain a DOT waiver. The bill encourages Amtrak to include employee stock ownership plans as part of any new stock issuances.

A key feature of H.R. 1788 is its change in the structure of the board of directors. Currently, the 9-member board of directors is appointed by the President and the Secretary of Transportation. In some cases, members must by law be selected from lists provided by certain interest groups pursuant to specific statutory recognition of the groups. The Committee is aware that some legal analysts consider the existing board to be a violation of the Appointments Clause of the Constitution, because some of the President's appointments are restricted to names from lists provided by outside groups.

H.R. 1788 would establish a new 4-year temporary emergency reform board of directors. This new board would establish the bylaws under which future boards of directors would be appointed, just as other private companies determine who sits on their boards. The only requirement imposed by H.R. 1788 for such future boards is that they include employee representation.

The temporary emergency reform board would be a 7-member board appointed by the President in consultation with the Congressional leadership. All members would be Senate-confirmed. If the temporary board is not in place 60 days after enactment, the special rail court established under the Regional Rail Reorganization Act of 1973 would appoint a "director general" to exercise the powers of the board until the new board of directors is appointed. The main task of the temporary emergency reform board would be to usher Amtrak through its current fiscal crisis and to establish procedures for future boards to be selected.

LIABILITY REFORM

Reforms to Amtrak's liability arrangements with the freight railroads are tied directly to Amtrak's budget situation. The current liability arrangement leaves the freight railroads, over whose tracks Amtrak operates by law, potentially exposed to the full cost of a passenger rail accident. This raises Amtrak costs, since the fees that Amtrak pays to the freight railroads include the cost of that

liability, including insurance—if available—that freight railroads have to purchase to cover their liability exposure.

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

Amtrak's access and payments to the freight railroads are governed by 25-year access agreements signed in 1971 when Amtrak began operations. These expire in April 1996. Virtually all the existing agreements contain a "no-fault" indemnity provision stating that, regardless of fault, the freight railroad will bear all property and injury losses to its own equipment and personnel, and Amtrak will do the same for its equipment and personnel, including passengers.

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

Since all access agreements expire in 1996, failure by Congress to provide any containment of rail passenger liability will mean that the incremental costs charged to Amtrak are likely to include a substantially increased component to cover the liability exposure (whether insured or not). This could make the price of access prohibitively expensive for Amtrak and thus curtail or prevent rail passenger operations. Amtrak is already reserving nearly \$200 million on its books to cover liability exposure (including employee claims under the Federal Employers' Liability Act, which are unaffected by H.R. 1788). With the threat of runaway jury verdicts, Amtrak's liability, litigation, and insurance costs are likely only to increase, thus imposing added costs on the taxpayers.

It should be noted that there is precedent for limitations on liability in domestic transportation due to the taxpayer-funded nature of the activity. A number of State laws and court decisions have served to limit liability in taxpayer-funded transportation, including in New York (the Long Island Railroad), Pennsylvania (Southeastern Pennsylvania Transportation Authority), New Jersey (New Jersey Transit) and Illinois (Chicago Transit). In addition, a 1990 Federal law limits the liability exposure of the Virginia Railway Express commuter authority. In general, the rationale for imposing limitations on liability in public transportation is to encour-

age certain activities that yield substantial social benefits that otherwise would not be undertaken due to the exposure to liability, and to protect the taxpayers who ultimately bear the costs of tort liability incurred in providing the public transportation.

The Committee rejects the contention that restrictions on liability will adversely impact rail safety. This allegation ignores the fact that there are significant incentives in place outside of tort liability for railroads to continue sound safety practices. Railroad safety is subject to regulation by the Federal Railroad Administration. Under current law, any single violation of a Federal safety law or regulation can subject an individual or a company to a fine from \$500 to \$10,000—with the maximum increase to \$20,000 for willful violations. (There is a separate schedule for violations of the Hours of Service Act.) Total civil penalties collected by the Federal Railroad Administration in FY 1994 were \$7.94 million.

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

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

STATE PARTICIPATION

One of the greatest changes at Amtrak during the last year is the increased participation on the part of the States in funding Amtrak service. The Committee is pleased that the States have exhibited such strong support for Amtrak service and encourages their continued participation in preserving intercity rail service. Several features of H.R. 1788 are designed to assist the States in this endeavor.

From Amtrak's beginning in 1971 until this year, it has been unique among passenger transportation services in that its public funding came almost entirely from the Federal government. Both

the highways and mass transit programs require a State match for Federal funds, and States and local entities contribute substantially to construction of airports. Until recently, however, outside of service that Amtrak initiated at State request, Amtrak service has been funded solely through farebox revenues and Federal subsidies.

With Amtrak's announcement of substantial route and service cutbacks early this year, the States have shown strong support for Amtrak service and begun to contribute significantly toward continuing Amtrak service that would otherwise have to be eliminated due to the funding shortage. Of the 8.8 million train-miles that Amtrak originally planned to terminate as part of its strategic business plan, the States have "bought back" 1.1 million train-miles at a total cost to them of \$14.5 million on an annualized basis.

This increased State participation in Amtrak service has raised a number of issues that are addressed in H.R. 1788. For example, one concern that States have had is what to do when service being threatened with elimination crosses State lines, and coordination between several States is required to preserve the service. H.R. 1788 establishes Congressional advance consent to multi-State agreements providing for State cooperation to support intercity rail service. This is meant to promote stable, long-term relationships among States who wish to enter joint ventures to retain or expand rail passenger service to supplement Amtrak's own operations. These interstate compacts could include agreements to retain existing service, commence new service, assemble rights-of-way, and perform capital improvements. The compacts could also provide for the States to borrow money on a short-term basis and to issue notes for borrowing. H.R. 1788 also requires longer advance notice to States of service discontinuances, to allow time to make alternative arrangements.

The States have also expressed an interest in having authority to contract for the provision of passenger rail service. H.R. 1788 would facilitate this in a number of ways. First, because Amtrak's prohibition on contracting out is repealed 254 days after enactment, States would be eligible to hire a contractor under Amtrak auspices to operate intercity passenger service. In fact, H.R. 1788 permits Amtrak to contract for the operation of trains *only* with States or State authorities. Second, Amtrak's right of first refusal on intercity routes is eliminated, which means a State (or private) entity would be free to initiate intercity rail passenger service without first obtaining Amtrak's consent.

A number of States have complained that Amtrak has taken an autocratic approach in its dealings with the states, and has exhibited an unwillingness to consider new marketing approaches and to share cost information. The Committee urges Amtrak to adopt a more cooperative approach with the States. As partners in the financing of intercity rail service they should participate in determining the type of service that is to be delivered. In addition, the Committee wants to ensure that Amtrak's cost information is made available to the States. To that end, H.R. 1788 requires that States have access to Amtrak's records, accounts and other necessary documents used to determine the amount a State is asked to reimburse Amtrak for rail service.

CONCLUSION

H.R. 1788 is designed to set Amtrak on a course to financial stability and preserve intercity passenger rail in this country. Many factors have contributed to Amtrak's problems, some going back to the legislation that created Amtrak in 1970. At that time, Amtrak was assigned the virtually impossible task of becoming a profit-making entity while being shackled by onerous cost and operational burdens that have no counterpart in private enterprise.

H.R. 1788 will go a long way toward freeing Amtrak from these impediments and allowing it to follow sound business practices, while providing for fair and equitable treatment of Amtrak's employees. The negotiated procedures for determining Amtrak's new labor protection requirements and terms for contracting out should produce standards that make more sense for a taxpayer-funded operation, while permitting Amtrak's employees to have a role in the determination of new terms. The clarification of Amtrak's status as a private enterprise will allow for more commercial financing alternatives, permitting Amtrak to achieve the maximum benefit from its assets. The new temporary reform board, whose members will be required to have expertise in intercity common carrier transportation and corporate management, will bring fresh ideas and a new start for Amtrak. Liability reform will allow for a smooth renegotiation of Amtrak's operating agreements with the freight railroads and will lower the costs Amtrak is required to pay to the freight railroads for the use of their rights-of-way.

The Committee believes that enactment of H.R. 1788 is critical to Amtrak's survival. Without substantial reforms, Amtrak's very existence is threatened. Congress has signaled its intent to remove Amtrak from dependence on Federal operating subsidies over the next seven years. The Clinton Administration also has proposed declining subsidies for Amtrak. Dramatic changes must be made if Amtrak is to achieve the cost savings that will be required to meet these lower funding levels while improving service quality and achieving financial stability.

HEARINGS

The Subcommittee on Railroads held three hearings on Amtrak. On February 7, 1995, the Subcommittee held a hearing on Amtrak's fiscal crisis. Testimony was received from the following witnesses: The Honorable Jolene Molitoris, Administrator, Federal Railroad Administration, Department of Transportation; Mr. Kenneth Mead, Director, Transportation Issues, General Accounting Office; Mr. Tom Downs, President and Chairman of the Board, National Railroad Passenger Corporation. Additional material was submitted for the record by Mr. Downs, Mr. Mead, Ms. Molitoris, and the Railroad Retirement Board.

The Subcommittee held a second hearing on February 10, 1995, on the concerns of Members of Congress regarding Amtrak issues. Testimony was received from the following Members: Mr. Thomas M. Barrett of Wisconsin, Mr. Joe Barton of Texas, Mr. Charles Bass of New Hampshire, Senator Joseph R. Biden of Delaware, Mr. Peter Blute of Massachusetts, Mr. Michael N. Castle of Delaware, Ms. Eva Clayton of North Carolina, Mr. Vernon Ehlers of Michi-

gan, Mr. Sam Gejdenson of Connecticut, Mr. George Gekas of Pennsylvania, Mr. Joel Hefley of Colorado, Mr. Earl Hilliard of Alabama, Mr. Peter Hoekstra of Michigan, Mr. Andrew Jacobs, Jr. of Indiana, Mr. Joseph Moakley of Massachusetts, Mr. Sonny Montgomery of Mississippi (with Mr. John Robert Smith, Mayor of Meridian, Mississippi), Mr. Richard Neal of Massachusetts, Mr. Earl Pomeroy of North Dakota, and Mr. Peter Torkildsen of Massachusetts. Additional material was submitted for the record by the following Members: Mr. Spencer Bachus of Alabama, Mr. Nathan Deal of Georgia, Mr. Barney Frank of Massachusetts, Mr. Charlie Rose of North Carolina, and Mr. Frank R. Wolf of Virginia.

A third hearing was held of February 13, 1995, on Amtrak's statutory mandates. Testimony was received from the following witnesses: The Honorable James H. Burnley, former Secretary of Transportation, Winston & Strawn; Mr. Edwin Harper, President and Chief Executive Office, Association of American Railroads; Mr. Greg Lawler, General Counsel, Safe Transit and Rail Transportation; Mr. Tom Downs, President and Chairman of the Board, National Railroad Passenger Corporation; Mr. Ross Capon, Executive Director, National Association of Railroad Passengers; and Mr. Ted Knappen, Greyhound Corporation. Additional material was submitted for the record by: Hon. Gilbert H. Carmichael, former Federal Railroad Administrator; Mr. A.R. Carpenter, President and CEO, CSX Transportation, Inc.; Mr. Barry T. Hill, Associate Director, Transportation Issues, General Accounting Office, Mr. David R. Horth, Chairman, National Railroad Construction and Maintenance Association, Inc.; and Mr. Paul Reistrup, Chairman Emeritus, High Speed Rail/Maglev Association.

COMMITTEE CONSIDERATION

On May 25, 1995, the Subcommittee on Railroads met in open session and ordered reported the staff draft of the Amtrak Reauthorization and Privatization Act of 1995, as amended, by a recorded vote of 11 to 5, a quorum being present. On September 21, 1995, the Committee met in open session and approved an amendment in the nature of a substitute offered by Chairman Shuster and ordered reported the bill H.R. 1788 as amended, by a voice vote, a quorum being present.

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

NO. 1. MOLINARI AMENDMENT: LABOR PROTECTION

This amendment would impose a 6-month cap on any wage continuation or severance benefits that accrue to an employee whose job is eliminated as a result of a service discontinuance (defined as terminating service or reducing frequency below 3 times weekly) as long as Amtrak is receiving Federal operating subsidies.

Amendment failed 21-36

Ayes: Shuster, Baker, Bateman, Blute, Coble, Ehlers, Ewing, Fowler, Gilchrest, Horn, Hutchinson, Kelly, Kim, LaHood, Latham, Molinari, Parker, Seastrand, Wamp, Weller, and Zeliff.

Nays: Bachus, Barcia, Boehlert, Borski, Brewster, Brown, Clement, Clyburn, Collins, Costello, Cramer, Danner, DeFazio, Filner, Franks, Hayes, Johnson, LaTourette, Laughlin, Lipinski, McCarthy, Martini, Menendez, Mica, Nadler, Norton, Oberstar, Petri, Poshard, Quinn, Rahall, Tate, Traficant, Tucker, Wise, and Young.

NO. 2. OBERSTAR 2D DEGREE AMENDMENT TO HUTCHISON
AMENDMENT ON ADA COMPLIANCE

This amendment would provide Amtrak with a one year deferral on complying with the requirements of the Americans with Disabilities Act that apply to rolling stock.

Amendment failed 21-34

Ayes: Barcia, Borski, Clement, Clyburn, Collins, Costello, Danner, DeFazio, Filner, Johnson, Lipinski, McCarthy, Menendez, Nadler, Norton, Oberstar, Poshard, Rahall, Traficant, Tucker, and Wise.

Nays: Shuster, Bachus, Baker, Bateman, Blute, Boehlert, Brewster, Brown, Coble, Cramer, Fowler, Franks, Gilchrest, Hayes, Horn, Hutchinson, Kelly, Kim, LaHood, Latham, LaTourette, Laughlin, Martini, Mica, Molinari, Parker, Petri, Quinn, Seastrand, Tate, Wamp, Weller, Young, and Zeliff.

NO. 3 HUTCHINSON AMENDMENT: ADA COMPLIANCE

This amendment would provide Amtrak with a 3-year deferral on meeting the requirements of the Americans with Disabilities Act that apply to rolling stock and stations and facilities.

Amendment agreed to 35-17

Ayes: Shuster, Bachus, Barcia, Bateman, Blute, Boehlert, Brewster, Clement, Clinger, Coble, Cramer, Duncan, Ewing, Fowler, Franks, Gilchrest, Hutchinson, Kelly, Kim, LaHood, Latham, LaTourette, Laughlin, Martini, Mica, Molinari, Parker, Petri, Quinn, Seastrand, Tate, Wamp, Weller, Young, and Zeliff.

Nays: Baker, Borski, Clyburn, Collins, Costello, Danner, DeFazio, Lipinski, McCarthy, Nadler, Norton, Oberstar, Poshard, Rahall, Traficant, Tucker, and Wise.

NO. 4 BAKER SUBSTITUTE FOR QUINN AMENDMENT ON CONTRACTING
OUT

This amendment would prevent Amtrak from agreeing to any restrictions to its ability to contract out work as long as Amtrak receives appropriated Federal funds.

Substitute failed 5-55

Ayes: Baker, Hutchinson, Mica, Parker, and Seastrand.

Nays: Shuster, Bachus, Barcia, Blute, Boehlert, Borski, Brewster, Brown, Clement, Clinger, Clyburn, Coble, Collins, Costello, Cramer, Danner, DeFazio, Duncan, Ehlers, Emerson, Ewing, Filner, Fowler, Franks, Gilchrest, Hayes, Horn, Johnson, Kelly, Kim, LaHood, Latham, LaTourette, Laughlin, Lipinski, McCarthy, Martini, Menendez, Mineta, Molinari, Nadler, Norton, Oberstar,

Petri, Poshard, Quinn, Rahall, Tate, Traficant, Tucker, Wamp, Weller, Wise, Young, and Zelif.

NO. 5 QUINN AMENDMENT ON CONTRACTING OUT

This amendment would make the existing statutory labor protection requirements part of all Amtrak labor contracts and establish a 270-day Railway Labor Act bargaining process for Amtrak and its unions to negotiate terms on the issue of contracting out.

Amendment agreed to 38–22

Ayes: Barcia, Blute, Boehlert, Borski, Brewster, Brown, Clement, Clyburn, Collins, Costello, Cramer, Danner, DeFazio, Filner, Hayes, Horn, Johnson, LaHood, LaTourette, Laughlin, Lipinski, McCarthy, Martini, Menendez, Mineta, Nadler, Norton, Oberstar, Poshard, Quinn, Rahall, Tate, Traficant, Tucker, Wamp, Weller, Wise, and Young.

Nays: Shuster, Bachus, Baker, Bateman, Clinger, Coble, Ehlers, Emerson, Ewing, Fowler, Franks, Gilchrest, Hutchinson, Kelly, Kim, Latham, Mica, Molinari, Parker, Petri, Seastrand, and Zelif.

NO. 6 BORSKI AMENDMENT: COMMUTER REIMBURSEMENT ON
NORTHEAST CORRIDOR

This amendment would delete a provision that would have required commuter authorities to reimburse Amtrak for the fully allocated costs of their use of the Northeast Corridor.

Amendment agreed to 29–25

Ayes: Barcia, Blute, Borski, Brewster, Brown, Clinger, Clyburn, Collins, Costello, Cramer, DeFazio, Filner, Franks, Gilchrest, Johnson, Laughlin, Lipinski, McCarthy, Martini, Menendez, Mineta, Nadler, Oberstar, Parker, Poshard, Rahall, Traficant, Tucker, and Wise.

Nays: Shuster, Bachus, Baker, Clement, Coble, Danner, Duncan, Emerson, Ewing, Horn, Kelly, Kim, LaHood, Latham, LaTourette, Mica, Molinari, Petri, Quinn, Seastrand, Tate, Wamp, Weller, Young, and Zelif.

COMMITTEE OVERSIGHT FINDINGS

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

COMMITTEE ON GOVERNMENT OPERATIONS

Pursuant to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Operations.

COMMITTEE COST ESTIMATE

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the Committee believes that the cost of administering H.R. 1788 would be no more than the amounts described in the estimate provided by the Congressional Budget Office that accompanies this report:

U.S. CONGRESS,
 CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 29, 1995.

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

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1788, the Amtrak Reform and Privatization Act of 1995.

Enacting H.R. 1788 would affect direct spending and receipts. Therefore, pay-as-you-go procedures would apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES L. BLUM
 (For June E. O'Neill).

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill Number: H.R. 1788.
2. Bill Title: Amtrak Reform and Privatization Act of 1995.
3. Bill Status: As ordered reported by the House Committee on Transportation and Infrastructure on September 21, 1995.
4. Bill Purpose: In General, H.R. 1788 would restructure Amtrak's operations and reauthorize federal subsidies for Amtrak. Specifically, the bill would try to decrease Amtrak's reliance on federal operating subsidies by decreasing its costs and increasing its revenue. This goal would be supported by several provisions:
 - Allowing Amtrak to contract out for services—a practice that is prohibited under current law—rather than provide them internally;
 - Terminating the requirement that Amtrak provide service over a basic system of routes and that Amtrak's route discontinuances and additions comply with established criteria, and requiring Amtrak to give states a 180-day notice before discontinuing routes, rather than a 90-day notice as currently stipulated in law;
 - Terminating the requirements that Amtrak provide commuter service in areas specified in law (referred to as section 403(d) service) and subsidize certain passenger rail routes that are requested by states (referred to as section 403(b) service);
 - Requiring Amtrak and commuter authorities to renegotiate how much compensation commuter authorities will pay Amtrak for use of the right-of-way on the Northeast corridor;
 - Requiring Amtrak and railroad unions to renegotiate labor protection agreements, including severance pay;
 - Specifying in law that labor protection agreements shall not apply to Amtrak in the case of bankruptcy;
 - Establishing new procedures for settling punitive or exemplary damages claimed against Amtrak; and
 - Establishing a Temporary Rail Advisory Council, which would review Amtrak's business methods and accounting procedures.

The bill contains other provisions that would affect federal outlays. These provisions would:

Transfer all subsidies to Amtrak upon appropriation so that Amtrak can earn interest on these funds until they are expended;

Authorize for fiscal years 1996 and through 2000 appropriations totaling \$2.5 billion for Amtrak operating and capital grants, \$800 million for Northeast Corridor grants, \$40 million for capital improvements in the vicinity of New York City's Pennsylvania Station, and \$200 million to guarantee Amtrak loans; and

Change the conditions under which the federal government would guarantee loans for railroads.

In addition, the bill would remove the liquidation preference currently granted to the Amtrak preferred stock owned by the federal government. The federal government's lien on the Northeast Corridor right-of-way would also be eliminated.

Finally, the bill contains tax provisions that would exempt certain sources of funds from Amtrak's gross income for federal tax purposes.

5. Estimated cost to the Federal Government: The following table summarizes the impact this bill would have on Federal spending. The revenue estimates will be provided by the Joint Committee on Taxation. H.R. 1788 would shift \$121 million of federal spending that would have occurred under current law in fiscal year 1997 to fiscal year 1996. In addition, the bill would authorize appropriations totaling \$3.6 billion.

[By fiscal year, in millions of dollars]

	1995	1996	1997	1998	1999	2000
REVENUES						
Tax provisions	(1)	(1)	(1)	(1)	(1)	(1)
DIRECT SPENDING						
Estimated budget authority:						
Northeast Corridor transfer	—	—	—	—	—	—
Amtrak grant transfer	—	—	—	—	—	—
Total	—	—	—	—	—	—
Estimated outlays:						
Northeast Corridor transfer	—	60	-60	—	—	—
Amtrak grant transfer	—	61	-61	—	—	—
Total	—	121	-121	—	—	—
SPENDING SUBJECT TO APPROPRIATIONS						
Spending under current law:						
Budget authority ²	994	—	—	—	—	—
Estimated outlays	965	370	206	53	30	10
Proposed changes:						
Authorization level	—	972	972	972	663	—
Estimated outlays	—	952	965	972	663	—
Spending under this bill:						
Authorization level ²	994	972	972	972	663	—
Estimated outlays	965	1,322	1,171	1,025	693	10

¹ The Joint Committee on Taxation will provide these estimates at a later date.

² The 1995 level is the amount appropriated for that year.

The costs of this bill fall within budget function 400.

6. Basis of estimate:

Revenues.—Tax estimates will be provided by the Joint Committee on Taxation.

Direct spending.—Under current law, CBO estimates the unexpended balance at the end of fiscal year 1995 for funds appropriated to Amtrak in 1995 will be \$307 million; these funds will be transferred to Amtrak as bills come due. This bill would transfer these balances to Amtrak upon enactment so that Amtrak can earn interest on the funds until they are expended. The transfer would not increase outlays over time but would cause outlays to occur earlier than they would have otherwise. CBO estimates that \$121 million of the unexpended balances would have expended in 1997 under current law but would be expended in 1996 if this bill is enacted.

Authorization of appropriations.—For purposes of this estimate, CBO assumes that the full amounts authorized would be appropriated at the start of each fiscal year. If this bill is enacted, the outlay rates for Amtrak, Northeast Corridor, and Pennsylvania Station grants would increase to 100 percent because the bill would allow Amtrak to receive all the funds up front in order to earn interest on them.

The bill would authorize appropriations of \$50 million each year for fiscal years 1996 through 1999 for the cost of guaranteeing loans to Amtrak. Based on information provided by Amtrak, CBO projects that the loans to Amtrak guaranteed by the federal government would be disbursed over three years. The amount of loan guarantees that \$50 million of subsidy funds would support is very uncertain for Amtrak. Because Amtrak is in financial trouble and these guaranteed loans would likely be subordinated to existing debt, the probability of default would be very high. However, the bill would allow Amtrak to use the Northeast Corridor as collateral, which would decrease the probability of default.

CBO estimates that the operations of the Temporary Rail Advisory Council would cost the federal government less than \$500,000 in 1996. Finally, the modifications to the conditions under which loan guarantees would be given to railroads would decrease the federal government's protection against defaults and increase the cost to the federal government if loan guarantees are provided in the future.

Preferred stock and lien on Northeast Corridor.—H.R. 1788 would eliminate the liquidation preference granted to the Amtrak preferred stock owned by the federal government and the lien on the Northeast Corridor held by the federal government. These two provisions do not have a direct impact on the federal budget. However, if Amtrak were to enter into bankruptcy, these provisions could result in a loss of receipts to the federal government that might accrue as a result of selling Amtrak assets such as the Northeast Corridor right-of-way.

7. Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1998. CBO estimates that enacting this bill would affect direct spending by transferring unexpended funds to Amtrak,

resulting in a shift in the timing of outlays. The following table summarizes CBO's estimate of the bill's pay-as-you-go effect.

[By fiscal year, in millions of dollars]

	1995	1996	1997	1998
Change in outlays	—	121	- 121	—
Change in receipts	(1)	(1)	(1)	(1)

¹ Revenue estimates will be provided by the Joint Committee on Taxation.

In addition, if this bill is enacted after the 1996 transportation bill, additional direct spending will occur. If the appropriations bill is enacted first, this bill would increase the outlay rates for Amtrak, Pennsylvania Station, and Northeast Corridor Grants.

8. Estimated cost to State and local governments: The bill would not impose any new enforceable duties on state and local governments; however, most sections affecting state and local governments (primarily commuter transit authorities) would make it more expensive for them to provide rail service within their jurisdictions. To the extent that state governments and transit authorities choose to maintain current levels of service, these provisions would shift costs from Amtrak to local authorities. CBO is unable to predict the likelihood or magnitude of any resulting costs at this time. The bill would also preempt local and state governments from collecting sales taxes on either intrastate or interstate services provided by Amtrak. This change would preempt existing sales taxes in three states, but the revenue loss would be minimal. Finally, the bill would place a cap on the liability of states and commuter authorities in the event of a passenger train accident and might lower the cost of operating passenger trains over freight rail right-of-ways.

Section 102 of the bill would prohibit Amtrak from submitting below-cost bids to provide certain services for local governments and commuter authorities. There is no such prohibition in current law. To the extent that Amtrak would have made below-cost bids on future contracts, state and local transportation authorities would have to pay more for contracted services. The type of contracts affected by this provision account for a small portion of Amtrak's revenues (less than five percent in fiscal year 1994). Because it is unclear whether Amtrak actually does bid below cost on contracts, CBO cannot estimate the effect this change would have on commuter authorities.

Section 201 of the bill would make it easier for Amtrak to discontinue routes, but it would require Amtrak to give earlier notice to state and local governments of its decision to do so. The section would end the requirement that Amtrak operate a specified "basic system" of routes, which current law requires Amtrak to provide unless it is financially unable to do so.

It would also end the requirement that Amtrak continue to provide special commuter transportation provided under section 403(d) of the Rail Passenger Service Act. Under current law, Amtrak must provide this service as long as the short-term avoidable loss on a route does not exceed a specific threshold. According to Amtrak officials, all 403(d) services currently run by Amtrak either cover their short-term avoidable losses or are already fully supported by states. Therefore, this change would not shift any costs to state or

local governments. Finally, the section would require Amtrak to notify state and local governments at least 180 days before a discontinuance, whereas current law requires only 90 days of advance warning.

Sections 203 and 204 of the bill would end Congressional review of changes to Amtrak's route and service criteria and end additional route requirements. State and local governments would face higher costs if they decided to pay for the provision of any services that Amtrak discontinued as a result of these changes. We currently have no information on which routes, if any, Amtrak would discontinue if these changes were to become law. Furthermore, we cannot estimate how states and local governments would respond to Amtrak's decisions. Therefore, CBO cannot estimate the budgetary impact of these changes.

Section 205 of the bill would end the requirement that Amtrak consider applications from state and local governments to provide or continue to provide services under section 403(b) of the Rail Passenger Service Act. Currently, Amtrak may approve such applications if the applicants agree to pay a certain share of short-term avoidable losses or capital costs that Amtrak incurs by providing the services. This section also would allow Amtrak to end agreements reached prior to the enactment of this change. In fiscal year 1993, Amtrak absorbed approximately \$82 million in losses on services of this kind. Amtrak officials say that losses have been smaller since then, because some state and local governments have agreed to bear a larger share of the costs. If Amtrak renegotiated all agreements that are currently generating losses, the costs shifted to state and local governments would be somewhat less than \$82 million annually. State and local governments would not be compelled to continue these services, however.

Section 207 of the bill would affect the way Amtrak charges other carriers and commuter authorities for services it provides on its Northeast Corridor right-of-way. Amtrak estimates that, in total, this change would increase commuter authority payments from about \$60 million to about \$90 million annually. In discussions with CBO, officials of commuter authorities noted that the actual increase in payments could be substantially different from this estimate, because it would be determined by separate negotiations with each of the commuter authorities.

Section 401 would limit the punitive damages and non-economic losses that passengers could recover from rail carriers in the event of an accident. These limits would place a cap on the potential liability of commuter authorities and states. With such caps in place, commuter authorities would probably pay less to operate on freight lines and might pay less for liability insurance.

This section would also reaffirm the right of rail passenger operators and owners of rights-of-way and other facilities to indemnify each other contractually for liability arising out of rail passenger accidents. A court settlement pertaining to a 1987 collision of an Amtrak and a Conrail train has increased the concern of freight railroads that they are not receiving adequate compensation for their potential liability in accidents involving passenger trains. This section would clarify the extent to which freight railroads are liable for damages. In the absence of enactment of this section,

freight rail owners would likely press for higher compensation from Amtrak and commuter rail authorities when current operating agreements come up for renegotiation. CBO is unable to estimate how much more commuter authorities would have to pay for the use of freight rail tracks in the absence of this legislation.

Section 506 of the bill would exempt passengers and customers of Amtrak and its subsidiaries from most state and local taxes, fees, or charges, whereas current law exempts only Amtrak and its subsidiaries. This section would override existing sales taxes on intrastate travel provided by Amtrak in Georgia, Wyoming, and Utah. Because there is little intrastate travel on Amtrak in these states, however, the loss in existing revenues would be minimal. This section would also prohibit new state or local taxes of any kind on Amtrak services. An April 1995 Supreme Court ruling upheld the right of states to place unapportioned sales taxes on interstate bus tickets. This ruling could be used to justify state taxes on Amtrak's interstate passenger tickets and possibly on its interstate mail or freight transportation services. Therefore, this change would preempt state and local taxing authority and would foreclose a potential source of state and local revenues. In fiscal year 1994, Amtrak collected about \$830 million from ticket sales and about \$60 million from mail and express services.

Section 615 would allow states to enter into interstate compacts to retain existing intercity passenger rail services or create new services. These compacts could finance their activities by issuing notes or bonds. This change would make it easier for states to provide any services discontinued by Amtrak.

9. Estimate comparison: None.

10. Previous CBO estimate: On September 20, 1995, CBO transmitted a cost estimate of the Amtrak and Local Rail Revitalization Act of 1995 as ordered reported by the Senate Committee on Commerce, Science, and Transportation on July 20, 1995. This bill and the Senate bill are very similar. However, the Senate bill includes several provisions not contained in H.R. 1788, including provisions that:

- Grant Amtrak several tax breaks;
- Transfer a portion of the receipts from Federal gasoline taxes to Amtrak; and
- Authorize appropriations for the local rail freight assistance program.

Finally, H.R. 1788 authorizes appropriations for capital improvements in the vicinity of New York City's Pennsylvania Station while the Senate bill does not.

11. Estimate prepared by: Federal Cost Estimate: John Patterson. State and Local Cost Estimate: Pepper Santalucia.

12. Estimate approved by: Paul N. Van de Water, Assistant Director for Budget Analysis.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee believes that the bill will not have any inflationary impact on the prices and costs in the operation of the national economy. The bill is designed to lower Amtrak's costs and allow it to operate more efficiently, thus preserving

jobs and alternatives to highway and air travel. These factors should contribute to lowering the costs of travel, and thus have an anti-inflationary impact.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Section 1. Short title

This section provides that the bill may be cited as the “Amtrak Reform and Privatization Act of 1995.”

TITLE I—PROCUREMENT REFORMS

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

Section 101. Contracting out

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

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

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

Section 102. Contracting practices

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

Subsection (a) prohibits Amtrak from submitting a bid for contract work other than providing intercity rail transportation, commuter rail transportation, or mail or express transportation, at a price that is below Amtrak’s cost for performing the service. Gen-

erally accepted accounting principles are to be used in calculating Amtrak's costs. In addition, subsection (a) provides that any aggrieved individual may commence a civil action against Amtrak for violation of this requirement in the United States district courts. The court is authorized to award bid preparation costs, anticipated profits, and litigation costs to any prevailing or substantially prevailing party. The subsection is only effective as long as Amtrak is receiving Federal operating subsidies.

The Committee has received a number of complaints from companies that compete with Amtrak for contract work, such as track maintenance, on the ground that they are being underbid by Amtrak. They contend that Amtrak is taking advantage of its Federal subsidy to bid below its costs in order to generate short-term revenues. The Committee is concerned about these allegations for two reasons. One is fairness. It is not the intent of Congress that Amtrak use its Federal grants to undercut private companies, who presumably earn a profit and pay taxes. The other is that below-cost bidding, while possibly generating increased revenues for Amtrak in the short-term, will produce losses in the long-term that could only serve to increase Amtrak's need for Federal subsidies. The problem is exacerbated by what many contend are Amtrak's unorthodox accounting procedures, which make it difficult to determine the true costs of a particular job. H.R. 1788 calls for Amtrak to employ generally accepted accounting principles so that the costs of Amtrak's activities can be more accurately measured.

Subsection (b) prohibits Amtrak from making contractual arrangements with charter bus operators to carry both Amtrak and non-rail passengers. Future charter bus contracts will be for carrying only passengers who have had a prior movement by rail, or will have a subsequent movement by rail. The subsection specifically disclaims any effect on State or local government-funded bus operations connecting with Amtrak service or motor carriers receiving Federal assistance under Section 18 of the Federal Transit Act or to ticket selling agreements. Subsection (b) also authorizes consultation between Amtrak and other passenger carriers under the "pooling" provisions of the Interstate Commerce Act.

The Committee is concerned that some of the charter bus operations, which Amtrak enters into to provide connecting feeder bus service to its intercity rail network, may be diverting non-rail passengers who otherwise would ride the regular common carrier bus operating on that route. The Committee believes that Amtrak's charter bus service should be available for Amtrak passengers only. A recent GAO report found that Federal funds are not used to subsidize Amtrak's thruway bus operations, and that, in fact, Amtrak's operating subsidy would increase in the absence of its thruway bus operations. The Committee therefore encourages Amtrak to continue its charter bus service. Subsection (b) is designed to ensure that regular common carrier bus companies are not subjected to unfair competition from Amtrak, while not affecting bus service that is funded by State and local governments or from Section 18 Federal Transit Act funds.

Section 103. Freedom of Information Act

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

TITLE II—OPERATIONAL REFORMS

Section 201. Basic system

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

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

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

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

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

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

Subsection (f) makes a conforming technical amendment.

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

Some potential market opportunities have come to the attention of the Committee and Amtrak is urged to evaluate these options for commercial viability. In southern California, the San

Bernardino Associated Governments and the Riverside County Transportation Commission have proposed to initiate passenger rail service between Indio and Palm Springs to Riverside, and continuing into Ontario and Los Angeles. The Committee believes that this service deserves consideration and encourages Amtrak to undertake a cost-benefit analysis of the proposed route.

In addition, the Committee understands that Amtrak's West Coast Strategic Business Unit is conducting a prototype demonstration on its Seattle-Portland-Eugene route, modifying existing coach baggage cars to accommodate bicycles. The Committee supports this demonstration, and requests that Amtrak report back to the Committee on Transportation and Infrastructure in the House, and the Committee on Commerce, Science and Transportation in the Senate, on the results of this demonstration, by September 30, 1996.

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

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

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

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

Section 203. Route and service criteria

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

Section 204. Additional qualifying routes

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

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

Subsection (a) repeals the procedure governing Amtrak operation of State-assisted "Section 403(b)" trains. The current matching formula governing this service, according to the General Accounting Office, causes Amtrak to lose more than four dollars for every dollar appropriations for these operations. In practice, the financial losses inflicted by this formula have led Amtrak to announce re-

cently the termination of all fund-matching arrangements and to insist upon full-cost-recovery contracts with States wishing to have Amtrak operate State-requested service. Therefore, this provision merely conforms the statute to current financial realities and Amtrak practice.

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

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

Subsection (d) makes a conforming technical amendment.

While the Committee wants to ensure that Amtrak has flexibility in designing its route system according to market potential, the Committee is also interested in ensuring that States that wish to provide for continued rail service that has been targeted for elimination are given an adequate opportunity to do so. The Committee is aware that, in some cases, a State may be unable to produce the funding for continue rail service in the short term due to the timing of a State budget cycle or other temporary cash flow obstacle. The Committee urges Amtrak to accommodate the needs of these States and, where possible, preserve service that would otherwise be eliminated until such time that the States are able fully to fund the service. The changes made by H.R. 1788 to the notification procedures for service discontinuances are also intended to afford an opportunity for timely State action.

Section 205. Amtrak Commuter

This section repeals the subchapter of the Rail Passenger Service Act that authorized a separate subsidiary known as "Amtrak Commuter," which was never created. The section preserves certain provisions reaffirming Amtrak's commuter authorities' existing trackage rights.

Section 207. Commuter cost sharing on the Northeast Corridor

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

Under the new approach established in this section, Amtrak and the commuters will negotiate the terms and costs of commuter use of the Corridor without Federal statutory dictates. (During consideration of the bill, the Committee rejected replacement of the existing mandate with a fully allocated cost mandate.) Any disputes that cannot be resolved by the parties are to be submitted to bind-

ing arbitration, with the Interstate Commerce Commission available as an arbitrator at the discretion of the parties.

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

Subsection (b) establishes the Interstate Commerce Commission as a potential arbitrator of unresolved disputes at the discretion of the parties.

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

The Committee is aware that some commuter operators on the Northeast Corridor have multi-year operating agreements with Amtrak that are still in effect. The Committee intends that these agreements should be honored. Any new terms would only go into effect after the expiration date of existing agreements. In addition, nothing in this section is meant to be interpreted as disallowing the current terms of reimbursement to be reemployed when agreements are negotiated. The section is intended to avoid having the outcome of these negotiations be predetermined by Federal statute. To ensure that commuter operators have access to all necessary information in the negotiation process. The Committee urges Amtrak to make available to commuter operators an accounting of all funds spent on the facilities that they utilize. The Committee does not intend for Amtrak to include in its reimbursement price any extraneous costs beyond those imposed by the commuter operations. In fact, as noted below, Section 208 of H.R. 1788 requires that States have access to any Amtrak records used to determine the amount of any payment required by Amtrak, in order to ensure open and fair accounting of these costs.

Section 208. Access to records and accounts

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

TITLE III—COLLECTIVE BARGAINING REFORMS

Section 301. Railway Labor Act procedures

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

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

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

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

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

Section 302. Service discontinuance

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

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

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

In 1964, with the enactment of the Urban Mass Transit Act (now the Federal Transit Act), employees of transit systems affected by

the reorganizations and consolidations resulting from receipt of Federal transit grants were required to be protected at the same level as ICC merger and abandonment protection—4 years. (This level was established by the regulations of the implementing agency, the Department of Labor.) Receipt of Federal transit assistance is conditioned upon such protective arrangements being in place. This is known, from its original statute, as “Section 13(c)” labor protection, now recodified as 49 U.S.C. 5333(b). Transit labor protection arrangements must “provide benefits *at least equal to* benefits established under section 11347 [the ICC merger and abandonment protection standard].” 49 U.S.C. 5333(b)(3) (emphasis added).

When Amtrak was established by the Rail Passenger Service Act, Congress required in Section 405(a)–(c) that “fair and equitable arrangements” be made for employees adversely affected by service discontinuances. When the implementing agreements were negotiated between Amtrak and its labor unions, the maximum level of protection was set at 6 years’ pay, a 50 per cent increase over the existing freight rail and transit protection.

In 1976, the Railroad Revitalization and Regulatory Reform (“4R”) Act explicitly linked freight (and derivatively transit) labor protection to the level required to be paid by Amtrak. The amended Interstate Commerce Act provision, now recodified as 49 U.S.C. 11347, requires the ICC to provide “a fair arrangement *at least as protective * * ** as the terms imposed under this section [before enactment of the 4R Act] *and the terms imposed under * * ** section 24706(c) [the Amtrak labor protection mandate] (emphasis added)”. As a result of this 1976 change, the ICC was required to increase maximum merger and abandonment labor protection levels from 4 years to 6 years pay; this was accomplished by the Commission in *New York Dock Railway—Control—Brooklyn Eastern District*, 360 I.C.C. 60 (1979). Because the ICC standard increased from 4 to 6 years, the cross-reference in the transit laws also required the Department of Labor to mandate a correlative increase in “section 13(c)” transit protection. See 29 C.F.R. Part 215, 43 Fed. Reg. 13558 (March 31, 1978).

It is clear from this legislative and regulatory history of the related provisions that the Amtrak labor protection mandate was used to force both freight railroad and transit labor protection maximums up by 50 per cent through the applicable statutory cross-references. H.R. 1788 repeals the Amtrak mandate at the end of the 254-day bargaining process. Therefore, the question presented is: what effect, if any, does the repeal of the Amtrak labor protection mandate have upon existing freight railroad and transit labor protection standards?

The freight standards are the key component of the analysis, because they control (directly) the level of protection required in ICC-regulated mergers and abandonments and they control (indirectly, by virtue of the cross-reference in 49 U.S.C. 5333(b)) the level of required transit protection. Looking at the plain language of 49 U.S.C. 11347 as it would be amended by H.R. 1788, the ICC statute would then require that merger and abandonment protection levels be “at least as protective as * * * the terms imposed under this section before February 5, 1976 [the 4R Act] and the terms established under section 24706(c) of this title [the Amtrak stand-

ard].” See H.R. 1788, Section 302 (a) and (c). Under Section 302(a)(4) of the bill, repeal of the Amtrak mandate takes effect 254 days after enactment.

The plain language of a statute is the most basic and reliable guide to its interpretation. The post-enactment language of 49 U.S.C. 11347 would require that the ICC merger and abandonment protection levels be “at least as protective” as the 4-year pre-4R Act level and the Amtrak mandate level. Once the Amtrak mandate has been repealed, what is the status of the *New York Dock* ICC standard? Clearly it is not automatically superseded; just as the ICC had to implement the 1976 amendments administratively in the *New York Dock* case, so too the ICC (or its soon-to-be-selected successor) will have to deal with the effects of the Amtrak repeal.

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

Correlatively, after enactment of H.R. 1788, the current 6-year *New York Dock* standard will still be “at least” as protective as the 4-year pre-4R Act level. Any modification of the present labor protection standards for freight railroad mergers and abandonments will require administrative action by the ICC or its successor. This is reaffirmed by the changes made to Section 302 of H.R. 1788, which as originally drafted would have immediately and automatically reduced the freight railroad standard of 49 U.S.C. 11347 to a 4-year maximum by operation of law. The version approved by the Committee, however, contains the more limited repeal described above.

In light of the plain language of the existing statute and the amendments made by H.R. 1788, as well as the evolution of the language of the Committee-reported version of the bill, it is clear that administrative action by the ICC is the only means by which a lowering of the current *New York Dock* 6-year maximum could be effected. There is however, a contrary school of thought, represented by the views of the Federal Railroad Administration’s chief counsel, solicited by the minority at the time of the Committee’s markup of H.R. 1788.

The chief counsel places very heavy reliance upon two points. First, H.R. 1788 does not extinguish the freight-employee (Appendix C-1) agreements of Amtrak as it does with the C-2 agreements as part of the accelerated bargaining process. The actual language of Section 302 states that the terms extinguished at the end of the 254-day accelerated bargaining period include “any provision of a contract, entered into before the date of enactment of this Act between Amtrak and a labor organization representing Amtrak employees, relating to * * * employee protective arrangements and severance benefits, *including* all provisions of Appendix C-2” (emphasis added). Moreover, the FRA analysis does not address the core legal issue—the complete repeal of the entire Amtrak statutory mandate for labor protection—the section 24706(c) explicitly

cross-referenced as the applicable benchmark in the ICC statute for all labor protection, whether granted pursuant to the C-1 appendix or the C-2 appendix. (We also note as to the distinction between pre-1976 freight protection and both C-1 and C-2 Amtrak protection, the key change was from a 4-year maximum to a 6-year maximum benefit. Therefore, the “terms established” by Amtrak pursuant to its statutory mandate are essentially the same on this key point.)

In any event, whether a particular Amtrak agreement remains in effect does not determine the regulatory authority and discretion of the ICC to revise its *New York Dock* standards in light of an intervening change in the law. After all, there were presumably contracts in effect governing both freight-railroad and transit employees in 1976 when the 4R Act forced the ICC and the Department of Labor to amend (and increase the level of) their existing labor protection standards and regulations.

The second pillar of the FRA analysis is that H.R. 1788 does not alter the language in 49 U.S.C. 11347 requiring that the protection applicable in rail mergers and abandonments must be “at least as protective * * * as the terms established under section 24706(c).” Since Section 24706(c) will be repealed 254 days after enactment, the statute would literally require equaling or exceeding a standard with no substantive content. FRA attempts to avoid this conclusion by seizing upon the fact that H.R. 1788 strikes two other statutory references in 49 U.S.C. 11347, but not the reference to section 24706(c). This reflects a misapprehension of the purpose of the provision, Section 302(c) of the bill, that makes this change.

Section 302(c) strikes references to sections 24307(c) and 24312 as technical amendment. This correction is necessary because of an oversight in the recodification of the relevant parts of title 49 last year. See Pub. L. 103-272, Sec. 5(j)(31), 108 Stat. 745, 1378 (July 5, 1994). The recodification replaced the previous reference in 49 U.S.C. 11347 to “Section 405 of the Rail Passenger Service Act” with references to three newly recodified sections of title 49. However, two of the three deal with subjects entirely separate from labor protection and therefore are irrelevant to the subject-matter of 49 U.S.C. 11347. It should have been clear to the recodifiers that the prior reference to the labor protection “arrangements” and “terms established under Section 405 of the Rail Passenger Service Act” meant that only the successor recodified provision relevant to labor protection should be cross-referenced. That was not done. Therefore, H.R. 1788 corrects this mistake. Thus, contrary to FRA’s interpretation, there is no basis for any inference that repealing the two improperly referenced sections while not repealing the mention of section 24706(c) has any significance for the issue presented here.

This leaves the FRA analysis based solely on the fact that the phrase “terms established” uses the past tense. According to FRA, that gives the *New York Dock* standards the status of a one-time-only agency action, which cannot be revised or superseded to reflect a subsequent change in the law—the proposed repeal of section 24706(c)—that is explicitly cross-referenced. According to FRA, the one-time determinant of the level of *New York Dock* protection is

the 1973 Amtrak agreement governing freight employees (the C-1 Appendix). This contention cannot withstand scrutiny.

Under the FRA interpretation, Amtrak's 1973 contract determines—and permanently freezes—the existing 6-year ICC *New York Dock* standards, regardless of any subsequent changes in the Amtrak agreement. This line of reasoning ignores the distinction drawn in Section 11347 itself between a time-limited standard and a changeable or floating standard. The first cross-reference in Section 11347—to “the terms imposed under this section prior to February 5, 1976”—is clearly time-limited: it cannot change because of subsequent events or administrative decisions. (Prior to its 1978 recodification, the freight cross-reference said “terms heretofore imposed.” See *New York Dock Railway v. United States*, 609 F.2d 83, 90 n.3 (2d Cir. 1979).)

There is no such limitation as to time concerning the second cross-reference, the one that incorporates the Amtrak standard—“terms established under * * * section 24706(c) of this title.” Presumably, if Congress had intended the Amtrak standard to be forever frozen by the 1973 agreements, it could and would have specified the Amtrak terms applicable as of a date certain as it did for the referenced freight protection standard; the Congress did not. Instead, it made the reference to Amtrak's labor protection arrangements generic, and presumably flexible, to allow for subsequent modifications of Amtrak's arrangements. Notwithstanding FRA's reliance on the past tense of “established,” we note that “established” is not equivalent to “established only prior to enactment of this statute.” Moreover, this line of reasoning runs squarely in the face of the plain language of the statute as amended by H.R. 1788—that the freight standard must be “at least” equal to the 1976 pre-4R-Act standards and the Amtrak standards. Surely the “at least” phrase, to have any meaning at all, must confer on the ICC the authority to exercise discretion to alter or modernize its standards (including possibly keeping the freight labor protection standards higher than legally required) as long as the new standards meet the applicable legal minimums, including the cross-referenced statutes, in effect at the time of the ICC's revision.

The Committee also notes that removing the reference to section 24706(c) from section 11347 could have been misconstrued as contradicting the basic design of the accelerated bargaining process provided for in H.R. 1788—to delay repeal of the Amtrak labor protection mandate until the end of the accelerated bargaining process. Prior to that date, the current statutory obligations apply to Amtrak—and derivatively to the ICC's standards.

Based upon the plain language of the existing statute and the amendments contained in H.R. 1788, the ICC or its successor would have the administrative discretion to revise its existing *New York Dock* standards to reflect the repeal of 49 U.S.C. 24706(c).

As noted earlier, however, because of the “at least” language in the ICC statute, the agency would not be required to lower the existing standards solely because of the changes contained in H.R. 1788. A necessary corollary of the ICC's administrative authority to revisit the *New York Dock* standards is that, if the ICC were to revise those standards, the Department of Labor would have a corresponding duty to re-examine transit labor protection, due to the

explicit linkage and cross-reference of its labor protection statute (49 U.S.C. 5333(b)), requiring DOL to maintain standards “at least equal” to the ICC level of protection required under 49 U.S.C. 11347.

TITLE IV—USE OF RAILROAD FACILITIES

Section 401. Liability limitation

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

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

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

TITLE V—FINANCIAL REFORMS

Section 501. Financial powers

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

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

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

Subsection (d) eliminates DOT's note and mortgage on the North-east Corridor.

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

Section 502. Disbursement of Federal funds

This section provides that Amtrak is to receive all appropriated funds for a fiscal year upon request, and that these funds shall not be includible in Amtrak's gross income for Federal tax purposes.

Section 503. Board of directors

This section calls for the appointment of a new 7-member board of directors, called the Emergency Reform Board, who will be charged with setting Amtrak on a course to financial stability during the board's 4-year tenure. The new board will develop bylaws under which future boards of directors are to be selected.

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

The subsection provides that if the Emergency Reform Board is not sufficiently constituted to function as a board of directors 60 days after enactment, the "special court"—a 5-member Federal court created under section 209(b) of the Regional Rail Reorganization Act of 1973 to oversee railroad bankruptcies in the North-east—will appoint a temporary "director general" to exercise board powers until the new board takes office.

Subsection (b) requires that if the Emergency Reform Board is not in place by March 15, 1996, Amtrak funding authorizations beyond Fiscal Year 1996 will lapse.

Section 504. Reports and audits

This section repeals Amtrak's obligation to submit a route-by-route annual performance report to Congress and the obligation of the Secretary of Transportation to submit a report to Congress evaluating Amtrak's report. H.R. 1788 would retain Amtrak's obligation to submit an annual report and legislative agenda to Congress, as well as the requirement that Amtrak have an annual independent audit of its financial statements. In addition, the General Accounting Office maintains its rights of access to any relevant Amtrak records needed to conduct an audit.

Section 505. Officers' pay

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

Section 506. Exemption from taxes

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

TITLE VI—MISCELLANEOUS

Section 601. Temporary Rail Advisory Council

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

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

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

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

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

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

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

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

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

Section 602. Principal office and place of business

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

Section 603. Status and applicable laws

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

Section 604. Waste disposal

This section defers Amtrak's statutory deadlines for full compliance with retention-toilet retrofit requirements to 2001 in lieu of 1996, to allow for retirement of older cars and avoid costly retrofitting of cars about to be retired.

Section 605. Assistance for upgrading facilities

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

Section 606. Rail safety system program

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

Section 607. Demonstration of new technology

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

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

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

Subsection (b) makes a technical conforming amendment.

Section 609. Boston-New Haven electrification project

This section requires Amtrak to design and construct its electrification project between New Haven, Connecticut, and Boston, Massachusetts, to accommodate the installation of a third mainline track between Davisville and Central Falls, Rhode Island. In addi-

tion, if funds are provided, Amtrak is to make clearance improvements on the existing main line tracks to permit double-stack service on this line.

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

Section 610. Americans With Disabilities Act

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

Subsection (b) makes a technical, conforming amendment.

Section 611. Definitions

This section adds a new definition of "rail passenger transportation," to the recodified Rail Passenger Service Act, a term which had been previously undefined. It also clarifies that a unit of State or local government, but not necessarily such a government's contractor, can be included under the definition of rail carrier.

Section 612. Northeast Corridor cost dispute

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

Section 613. Inspector General Act

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

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

Section 614. Consolidated Rail Corporation

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

Section 615. Interstate rail compacts

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

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

While the interstate impact provision is designed to ease the way for agreements between States, the Committee is aware that it does not provide a remedy for rail lines that cross an international

border, such as the Pacific Northwest Corridor that stretches from Eugene, Oregon, through Seattle, Washington, to Vancouver, British Columbia, Canada. In order to ease the way for rail routes that cross international borders, a treaty is needed similar to the "Open Skies" agreement that the United States and Canada have signed to enhance air travel. Such a treaty would provide opportunities for bilateral international cooperation and investment in improved rail passenger service. While legislative treatment of this issue is beyond the scope of H.R. 1788, the Committee urges the Administration to negotiate such agreements as may be necessary to enable the United States and Canadian Federal, State or provincial, and local government funds to be used in compacts between the United States and Canadian provinces comparable to the interstate rail compacts authorized in this section.

Section 616. Conforming amendment

This section repeals an obsolete provision of the Interstate Commerce Act directing the ICC to maintain standards for compensation of Amtrak for commuter and freight use of Amtrak and facilities.

TITLE VII—AUTHORIZATION OF APPROPRIATIONS

Section 701. Authorization of appropriations

Subsection (a) authorizes funds for Amtrak capital and operating expenses, including payments to the Railroad Retirement Board, in the amount of:

- (1) \$772,000,000 for fiscal year 1995;
- (2) \$712,000,000 for fiscal year 1996;
- (3) \$712,000,000 for fiscal year 1997;
- (4) \$712,000,000 for fiscal year 1998; and
- (5) \$403,000,000 for fiscal year 1999.

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

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

In addition, the subsection authorizes funds for Amtrak expenditures relating to the redevelopment of the James A. Farley Post Office building in New York City to be used as an intercity train station and commercial facility in the amount of:

- (1) \$21,500,000 for fiscal year 1995;
- (2) \$10,000,000 for fiscal year 1996;
- (3) \$10,000,000 for fiscal year 1997;
- (4) \$10,000,000 for fiscal year 1998; and
- (5) \$10,000,000 for fiscal year 1999.

Subsection (c) makes a technical conforming amendment.

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

- (1) \$50,000,000 for fiscal year 1996;
- (2) \$50,000,000 for fiscal year 1997;

- (3) \$50,000,000 for fiscal year 1998; and
- (4) \$50,000,000 for fiscal year 1999.

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

Subsection (e) amends Section 511 program requirements to overturn the current DOT policy requiring that the Federal guarantor come ahead of even pre-existing creditors as a condition of making any guaranteed loan.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

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

TITLE 49, UNITED STATES CODE

* * * * *

SUBTITLE IV—INTERSTATE COMMERCE

* * * * *

CHAPTER 103—INTERSTATE COMMERCE COMMISSION

* * * * *

SUBCHAPTER IV—RAIL SERVICES PLANNING OFFICE

* * * * *

§ 10362. Duties

(a) * * *

(b) The Rail Services Planning Office shall—

(1) * * *

* * * * *

[(5) prescribe regulations that contain standards for the computation of subsidies for rail passenger transportation (except passenger transportation compensation disputes subject to the jurisdiction of the Commission under sections 24308(a) and 24903(c)(2) of this title) that are consistent with the compensation principles described in the final system plan established under the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.) and that avoid cross-subsidization among commuter, intercity, and freight rail transportation;]

[(6)] (5) maintain, and from time to time revise and republish after a proceeding under section 553 of title 5, standards for determining the revenue attributable to the rail properties, the avoidable costs of providing transportation, a reasonable return on the value, and a reasonable management fee;

[(7)] (6) maintain regulations that—

(A) develop an accounting system permitting the collection and publication by profitable rail carriers providing transportation over lines scheduled for abandonment, of information necessary for an accurate determination of the attributable revenues, avoidable costs, and operations of light density lines as operating and economic units; and

(B) determine the avoidable cost of providing rail freight transportation; and

[(8)] (7) carry out other duties conferred on the Office by law.

* * * * *

CHAPTER 113—FINANCE

* * * * *

SUBCHAPTER III—COMBINATIONS

* * * * *

§11347. Employee protective arrangements in transactions involving rail carriers

When a rail carrier is involved in a transaction for which approval is sought under sections 11344 and 11345 or section 11346 of this title, the Interstate Commerce Commission shall require the carrier to provide a fair arrangement at least as protective of the interests of employees who are affected by the transaction as the terms imposed under this section before February 5, 1976, and the terms established under [sections 24307(c), 24312, and] *section* 24706(c) of this title. Notwithstanding this subtitle, the arrangement may be made by the rail carrier and the authorized representative of its employees. The arrangement and the order approving the transaction must require that the employees of the affected rail carrier will not be in a worse position related to their employment as a result of the transaction during the 4 years following the effective date of the final action of the Commission (or if an employee was employed for a lesser period of time by the carrier before the action became effective, for that lesser period).

* * * * *

SUBTITLE V—RAIL PROGRAMS

* * * * *

PART A—SAFETY

CHAPTER	Sec.
* * * * *	

PART C—PASSENGER TRANSPORTATION

241. GENERAL	24101
* * * * *	
[245. AMTRAK COMMUTER	24501]
* * * * *	

PART C—PASSENGER TRANSPORTATION

CHAPTER 241—GENERAL

* * * * *

§ 24101. Findings, purpose, and goals

(a) * * *

* * * * *

(c) GOALS.—Amtrak shall—

(1) * * *

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

* * * * *

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

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

§ 24102. Definitions

In this part—

(1) * * *

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

[(3) “basic system” means the system of intercity rail passenger transportation designated by the Secretary of Transportation under section 4 of the Amtrak Improvement Act of 1978 and approved by Congress, and transportation required to be provided under section 24705(a) of this title and section 4(g) of the Act, including changes in the system or transportation that Amtrak makes using the route and service criteria.]

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

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

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

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

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

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

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

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

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

* * * * *

§ 24104. Authorization of appropriations

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

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

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

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

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

[(B) Amounts made available under subparagraph (A) of this paragraph shall be used to develop new intercity rail passenger transportation on corridors between cities undergoing significant population growth and in which the transportation reasonably can be expected to provide travel times comparable with other surface transportation modes. An amount may be expended for the transportation only if a State requests the transportation and the State and Amtrak agree that—

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

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

[(C) Amounts made available under subparagraph (A) of this paragraph shall be used to begin new long distance intercity rail

passenger transportation. An amount may be expended for the transportation only if a State requests the transportation and the State and Amtrak agree that—

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

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

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

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

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

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

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

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

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

(1) \$772,000,000 for fiscal year 1995;

(2) \$712,000,000 for fiscal year 1996;

(3) \$712,000,000 for fiscal year 1997;

(4) \$712,000,000 for fiscal year 1998; and

(5) \$403,000,000 for fiscal year 1999,

for the benefit of Amtrak for capital expenditures under chapters 243 and 247 of this title, operating expenses, and payments described in subsection (c)(1)(A) through (C).

(b) *ADDITIONAL AUTHORIZATIONS.*—(1) *In addition to amounts appropriated under subsection (a), there are authorized to be appropriated to the Secretary of Transportation—*

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

(B) \$200,000,000 for fiscal year 1996;

(C) \$200,000,000 for fiscal year 1997;

(D) \$200,000,000 for fiscal year 1998; and

(E) \$200,000,000 for fiscal year 1999,

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

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

(A) \$21,500,000 for fiscal year 1995;

- (B) \$10,000,000 for fiscal year 1996;
- (C) \$10,000,000 for fiscal year 1997;
- (D) \$10,000,000 for fiscal year 1998; and
- (E) \$10,000,000 for fiscal year 1999,

for the benefit of Amtrak to be used for engineering, design, and construction activities to enable the James A. Farley Post Office in New York, New York, to be used as a train station and commercial center and for necessary improvements and redevelopment of the existing Pennsylvania Station and associated service building in New York, New York.

* * * * *

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

- [(1) 50 percent on October 1.
- [(2) 25 percent on January 1.
- [(3) 25 percent on April 1.]

(d) ADMINISTRATION OF APPROPRIATIONS.—Federal funds appropriated to Amtrak shall be provided to Amtrak upon appropriation when requested by Amtrak, and shall not be includible in Amtrak's gross income for Federal tax purposes.

* * * * *

CHAPTER 243—AMTRAK

Sec.						
24301.	Status and applicable laws.					
24302.	Board of directors.	*	*	*	*	*
[24304.	Capitalization.]					
24304.	Employee stock ownership plans.	*	*	*	*	*
[24306.	Mail, express, and auto-ferry transportation.]					
		*	*	*	*	*
[24310.	Assistance for upgrading facilities.]					
		*	*	*	*	*
[24313.	Rail safety system program.					
[24314.	Demonstration of new technology.]	*	*	*	*	*

§ 24301. Status and applicable laws

(a) STATUS.—Amtrak—

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

* * * * *

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

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

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

[(A) regulation of rates;

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

[(C) regulation of routes and service;

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

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

[(2) Notwithstanding this subsection—

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

[(B) on application of an adversely affected motor carrier, the Interstate Commerce Commission under any provision of subtitle IV of this title applicable to a carrier subject to subchapter I of chapter 105 of this title may hear a complaint about an unfair or predatory rate or marketing practice of Amtrak for a route or service operating at a loss.]

(c) APPLICATION OF SUBTITLE IV.—Subtitle IV of this title shall not apply to Amtrak, except for sections 11303, 11342(a), 11504(a) and (d), and 11707. Notwithstanding the preceding sentence, Amtrak shall continue to be considered an employer under the Railroad Retirement Act of 1974, the Railroad Unemployment Insurance Act, and the Railroad Retirement Tax Act.

* * * * *

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

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

(f) TAX EXEMPTION FOR CERTAIN COMMUTER AUTHORITIES.—A commuter authority that was eligible to make a contract with Amtrak Commuter to provide commuter rail passenger transportation but which decided to provide its own rail passenger transportation

beginning January 1, 1983, is exempt, effective October 1, 1981, from paying a tax or fee to the same extent Amtrak is exempt.

* * * * *

(l) EXEMPTION FROM TAXES LEVIED AFTER SEPTEMBER 30, 1981.—(1) Amtrak or a rail carrier subsidiary of Amtrak, *and any passenger or other customer of Amtrak or such subsidiary*, is exempt from a tax [or fee imposed by a State, a political subdivision of a State, or a local taxing authority and levied on it], *fee, head charge, or other charge, imposed or levied by a State, political subdivision, or local taxing authority, directly or indirectly on Amtrak or on persons traveling in intercity rail passenger transportation or on mail or express transportation provided by Amtrak or a rail carrier subsidiary of Amtrak, or on the carriage of such persons, mail, or express, or on the sale of any such transportation, or on the gross receipts derived therefrom after September 30, 1981. [However, Amtrak is not exempt under this subsection from a tax or fee that it was required to pay as of September 10, 1982.] In the case of a tax or fee that Amtrak was required to pay as of September 10, 1982, Amtrak is not exempt from such tax or fee if it was assessed before April 1, 1995.*

* * * * *

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

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

* * * * *

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

[§ 24302. Board of directors

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

[(A) the Secretary of Transportation.

[(B) the President of Amtrak.

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

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

[(ii) one chief executive officer of a State selected from among the chief executive officers of States with an interest in rail transportation. The chief executive officer may

select an individual to act as the officer's representative at board meetings.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

staff support, and subsistence expenses incurred in attending board meetings.

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

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

§24302. Board of Directors

(a) EMERGENCY REFORM BOARD.—

(1) ESTABLISHMENT AND DUTIES.—*The Emergency Reform Board described in paragraph (2) shall assume the responsibilities of the Board of Directors of Amtrak 60 days after the date of the enactment of the Amtrak Reform and Privatization Act of 1995, or as soon thereafter as such Board is sufficiently constituted to function as a board of directors under applicable corporate law. Such Board shall adopt new bylaws, including procedures for the selection of members of the Board of Directors under subsection (c) which provide for employee representation.*

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

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

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

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

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

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

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

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

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

(b) DIRECTOR GENERAL.—*If the Emergency Reform Board described in subsection (a)(2) is not sufficiently constituted to function as a board of directors under applicable corporate law before the expiration of 60 days after the date of the enactment of the Amtrak Reform and Privatization Act of 1995, the special court established under section 209(b) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 719(b)) shall appoint a Director General, who shall*

exercise all powers of the Board of Directors of Amtrak until the Emergency Reform Board assumes such powers.

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

§ 24303. Officers

(a) * * *

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

* * * * *

§ 24304. Capitalization

[(a) STOCK.—Amtrak may have outstanding one issue of common stock and one issue of preferred stock. Each type of stock is eligible for a dividend. The articles of incorporation of Amtrak shall provide that—

- [(1) each type of stock must be fully paid and nonassessable;
- [(2) common stock has a par value of \$10 a share; and
- [(3) preferred stock has a par value of \$100 a share.

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

- [(A) may not hold preferred stock of Amtrak; and
- [(B) may vote not more than one-third of the total number of shares of outstanding common stock of Amtrak.

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

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

- [(1) its preferred stock has a cumulative dividend of at least 6 percent a year;
- [(2) if a dividend on the preferred stock is not declared and paid or set aside for payment, the deficiency shall be declared and paid or set aside for payment before a dividend or other distribution is made on its common stock;
- [(3) the preferred stock has a liquidation preference over the common stock entitling holders of preferred stock to receive a liquidation payment of at least par value plus all accrued unpaid dividends before a liquidation payment is made to holders of common stock; and
- [(4) the preferred stock may be converted to common stock.

[(d) ISSUANCE OF PREFERRED STOCK TO SECRETARY.—(1) Not later than 30 days after the close of each fiscal quarter, Amtrak shall issue to the Secretary of Transportation preferred stock equal,

to the nearest whole share, to the amount paid to Amtrak under section 24104(d) of this title during the quarter.

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

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

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

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

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

§ 24304. Employee stock ownership plans

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

§ 24305. General authority

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

* * * * *

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

(i) if the motor carrier is not a public recipient of governmental assistance, as such term is defined in section 10922(d)(1)(F)(i) of this title, other than a recipient of funds under section 18 of the Federal Transit Act;

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

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

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

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

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

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

- [(3) enough maintenance employees for cars and locomotives in each region;
- [(4) a systematic preventive maintenance program;
- [(5) periodic evaluations of maintenance costs, time lags, and parts shortages and corrective actions; and
- [(6) other elements or activities Amtrak considers appropriate.]

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

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

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

* * * * *

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

* * * * *

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

* * * * *

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

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

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

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

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

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

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

§ 24307. Special transportation

(a) * * *

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

[(1) acquiring special equipment;

[(2) conducting special training for employees;

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

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

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

[(c)] (b) EMPLOYEE TRANSPORTATION.—(1) In this subsection, “rail carrier employee” means—

(A) * * *

* * * * *

§ 24310. Assistance for upgrading facilities

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

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

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

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

[(b) TO CORRECT STATE AND LOCAL VIOLATIONS.—(1) Amtrak, by itself or jointly with an owner or operator of a rail station Amtrak uses to provide rail passenger transportation, may apply to the Secretary for amounts that may be appropriated under paragraph (2)

of this subsection to pay or reimburse expenses incurred after October 1, 1987, related to the station complying with an official notice received before October 1, 1987, from a State or local authority stating that the station violates or allegedly violates the building, construction, fire, electric, sanitation, mechanical, or plumbing code.

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

* * * * *

§ 24312. Labor standards

(a) PREVAILING WAGES AND HEALTH AND SAFETY STANDARDS.—
 (1) Amtrak shall ensure that laborers and mechanics employed by contractors and subcontractors in construction work financed under an agreement made under section 24308(a)[, 24701(a), or 24704(b)(2)] of this title will be paid wages not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor under the Act of March 3, 1931 (known as the Davis-Bacon Act) (40 U.S.C. 276a—276a-5). Amtrak may make such an agreement only after being assured that required labor standards will be maintained on the construction work. Health and safety standards prescribed by the Secretary under section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) apply to all construction work performed under such an agreement, except for construction work performed by a rail carrier.

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

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

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

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

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

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

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

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

§ 24313. Rail safety system program

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

- [(1) periodic analyses of accident information, including primary and secondary causes;
- [(2) periodic evaluations of the activities of the program, particularly specific steps taken in response to an accident;
- [(3) periodic reports on amounts spent for occupational health and safety activities of the program;
- [(4) periodic reports on reduced costs and personal injuries because of accident prevention activities of the program;
- [(5) periodic reports on direct accident costs, including claims related to accidents; and
- [(6) reports and evaluations of other information Amtrak considers appropriate.

§ 24314. Demonstration of new technology

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

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

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

§ 24315. Reports and audits

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

- [(1) for each route on which Amtrak provided intercity rail passenger transportation during the prior fiscal year, includes information on—
 - [(A) ridership;
 - [(B) passenger-miles;
 - [(C) the short-term avoidable profit or loss for each passenger-mile;
 - [(D) the revenue-to-cost ratio;
 - [(E) revenues;
 - [(F) the United States Government subsidy;

- [(G) the subsidy not provided by the United States Government; and
- [(H) on-time performance;
- [(2) provides relevant information about a decision to pay an officer of Amtrak more than the rate for level I of the Executive Schedule under section 5312 of title 5; and
- [(3) specifies—
- [(A) significant operational problems Amtrak identifies; and
- [(B) proposals by Amtrak to solve those problems.]
- [(b)] (a) AMTRAK GENERAL AND LEGISLATIVE ANNUAL REPORT.—
- (1) Not later than February 15 of each year, Amtrak shall submit to the President and Congress a complete report of its operations, activities, and accomplishments, including a statement of revenues and expenditures for the prior fiscal year. The report—
- (A) shall include a discussion and accounting of Amtrak's success in meeting the goal of section 24902(b) of this title; and
- (B) may include recommendations for legislation, including the amount of financial assistance needed for operations and capital improvements, the method of computing the assistance, and the sources of the assistance.
- (2) Amtrak may submit reports to the President and Congress at other times Amtrak considers desirable.
- [(c) SECRETARY'S REPORT ON EFFECTIVENESS OF THIS PART.—The Secretary of Transportation shall prepare a report on the effectiveness of this part in meeting the requirements for a balanced transportation system in the United States. The report may include recommendations for legislation. The Secretary shall include this report as part of the annual report the Secretary submits under section 308(a) of this title.]
- [(d)] (b) INDEPENDENT AUDITS.—An independent certified public accountant shall audit the financial statements of Amtrak each year. The audit shall be carried out at the place at which the financial statements normally are kept and under generally accepted auditing standards. A report of the audit shall be included in the report required by subsection (a) of this section.
- [(e)] (c) COMPTROLLER GENERAL AUDITS.—The Comptroller General may conduct *financial or* performance audits of the activities and transactions of Amtrak. Each audit shall be conducted at the place at which the Comptroller General decides and under generally accepted management principles. The Comptroller General may prescribe regulations governing the audit.
- [(f)] (d) AVAILABILITY OF RECORDS AND PROPERTY OF AMTRAK AND RAIL CARRIERS.—Amtrak and, if required by the Comptroller General, a rail carrier with which Amtrak has made a contract for intercity rail passenger transportation shall make available for an audit under subsection [(d) or (e)] (b) or (c) of this section all records and property of, or used by, Amtrak or the carrier that are necessary for the audit. Amtrak and the carrier shall provide facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians. Amtrak and the carrier may keep all reports and property.
- [(g)] (e) COMPTROLLER GENERAL'S REPORT TO CONGRESS.—The Comptroller General shall submit to Congress a report on each

audit, giving comments and information necessary to inform Congress on the financial operations and condition of Amtrak and recommendations related to those operations and conditions. The report also shall specify any financial transaction or undertaking the Comptroller General considers is carried out without authority of law. When the Comptroller General submits a report to Congress, the Comptroller General shall submit a copy of it to the President, the Secretary, and Amtrak at the same time.

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

* * * * *

[CHAPTER 245—AMTRAK COMMUTER

[Sec.

[24501. Status and applicable laws.

[24502. Board of directors.

[24503. Officers.

[24504. General authority.

[24505. Commuter rail passenger transportation.

[24506. Certain duties and powers unaffected.

[§ 24501. Status and applicable laws

[(a) STATUS.—Amtrak Commuter—

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

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

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

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

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

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

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

[(e) PREEMPTION RELATED TO EMPLOYEE WORK REQUIREMENTS.—A State may not adopt or continue in force a law, rule, regulation, order, or standard requiring Amtrak Commuter to em-

ploy a specified number of individuals to perform a particular task, function, or operation.

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

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

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

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

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

[(2) Amtrak Commuter is not required to pay an additional tax because of an expenditure to acquire or improve real property, equipment, a facility, or right-of-way material or structures used to provide rail passenger transportation, even if that use is indirect.

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

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

[(§ 24502. Board of directors

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

[(1) the President of Amtrak Commuter.

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

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

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

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

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

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

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

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

[(§) 24503. Officers

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

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

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

[(§) 24504. General authority

[(a) GENERAL.—Amtrak Commuter may—

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

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

[(3) issue common stock to Amtrak.

[(b) OPERATION AND CONTROL.—To the extent consistent with this part and with an agreement with a commuter authority, Amtrak Commuter shall operate and control all aspects of the commuter rail passenger transportation it provides.

[(c) AGREEMENT TO AVOID DUPLICATING EMPLOYEE FUNCTIONS.—To the maximum extent practicable, Amtrak Commuter and Amtrak shall make an agreement that avoids duplicating employee functions and voluntarily establishes a consolidated work force.

[(§) 24505. Commuter rail passenger transportation

[(a) GENERAL AUTHORITY.—Amtrak Commuter—

[(1) shall provide commuter rail passenger transportation that the Consolidated Rail Corporation was obligated to provide on August 13, 1981, under section 303(b)(2) or 304(e) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 743(b)(2), 744(e)); and

[(2) may provide other commuter rail passenger transportation if the commuter authority for which the transportation will be provided offers to provide a commuter rail passenger transportation payment equal to the—

[(A) avoidable costs of providing the transportation (including the avoidable cost of necessary capital improvements) and a reasonable return on the value; less

[(B) revenue attributable to the transportation.

[(b) OFFER REQUIREMENTS.—(1) A commuter authority making an offer under subsection (a)(2) of this section shall—

[(A) show that it has obtained access to all rail property necessary to provide the additional commuter rail passenger transportation; and

[(B) make the offer according to regulations the Rail Services Planning Office prescribes under section 10362(b)(5)(A) and (6) of this title.

[(2) The Office may revise and update the regulations when necessary to carry out this section.

[(c) ADDITIONAL EMPLOYEE REQUIREMENTS.—Additional employee requirements shall be met through existing seniority arrangements agreed to in the implementing agreement negotiated under section 508 of the Rail Passenger Service Act.

[(d) WHEN OBLIGATION DOES NOT APPLY.—Amtrak Commuter is not obligated to provide commuter rail passenger transportation if a commuter authority provides the transportation or makes a contract under which a person, except Amtrak Commuter, will provide the transportation. When appropriate, Amtrak Commuter shall give the authority or person access to the rail property needed to provide the transportation.

[(e) DISCONTINUANCE OF COMMUTER RAIL PASSENGER TRANSPORTATION.—(1) Amtrak Commuter may discontinue commuter rail passenger transportation provided under this section on 60 days' notice if—

[(A) a commuter authority does not offer a commuter rail passenger transportation payment under subsection (a)(2) of this section; or

[(B) a payment is not paid when due.

[(2) The Office shall prescribe regulations on the necessary contents of the notice required under this subsection.

[(f) COMPENSATION FOR RIGHT-OF-WAY RELATED COSTS.—Compensation by a commuter authority to Amtrak or Amtrak Commuter for right-of-way related costs for transportation over property Amtrak owns shall be determined under a method the Interstate Commerce Commission establishes under section 1163 of the Omnibus Budget Reconciliation Act of 1981 (45 U.S.C. 1111) or to which the parties agree.

[(g) APPLICATION OF OTHER LAWS.—All laws related to commuter rail passenger transportation apply to a commuter authority providing commuter rail passenger transportation under this section.

§ 24506. Certain duties and powers unaffected

[This chapter does not affect a duty or power of the Consolidated Rail Corporation or its successor and any bi-state commuter authority under an agreement, lease, or contract under which prop-

erty was conveyed to the Corporation under the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.).]

CHAPTER 247—AMTRAK ROUTE SYSTEM

Sec.

- [24701. Operation of basic system.
- [24702. Improving rail passenger transportation.
- [24703. Route and service criteria.
- [24704. Transportation requested by States, authorities, and other persons.
- [24705. Additional qualifying routes.]

* * * * *

- [24707. Cost and performance review.
- [24708. Special commuter transportation.]

* * * * *

[§ 24701. Operation of basic system

[(a) BY AMTRAK.—Amtrak shall provide intercity rail passenger transportation within the basic system unless the transportation is provided by—

- [(1) a rail carrier with which Amtrak did not make a contract under section 401(a) of the Rail Passenger Service Act; or
- [(2) a regional transportation authority under contract with Amtrak.

[(b) BY OTHERS WITH CONSENT OF AMTRAK.—Except as provided in section 24306 of this title, a person may provide intercity rail passenger transportation over a route over which Amtrak provides scheduled intercity rail passenger transportation under a contract under section 401(a) of the Act only with the consent of Amtrak.

[§ 24702. Improving rail passenger transportation

[(a) PLAN TO IMPROVE TRANSPORTATION.—Amtrak shall continue to carry out its plan, submitted under section 305(f) of the Rail Passenger Service Act, to improve intercity rail passenger transportation provided in the basic system. The plan shall include—

- [(1) a zero-based assessment of all operating practices;
- [(2) changes to achieve the minimum use of employees consistent with safe operations and adequate transportation;
- [(3) a systematic program for achieving the greatest ratio of train size to passenger demand;
- [(4) a systematic program to reduce trip time in the basic system;
- [(5) establishing training programs to achieve on-time departures;
- [(6) establishing priorities for passenger trains over freight trains;
- [(7) adjusting the buying and pricing of food and beverages so that food and beverage services ultimately will be profitable;
- [(8) cooperative marketing opportunities between Amtrak and governmental authorities that have intercity rail passenger transportation; and
- [(9) cooperative marketing campaigns sponsored by Amtrak and the Secretary of Energy, the Administrator of the Federal Highway Administration, and the Administrator of the Environmental Protection Agency.

[(b) STATE AND LOCAL SPEED RESTRICTIONS.—Amtrak shall—

[(1) identify any speed restriction a State or local government imposes on a train of Amtrak that Amtrak decides impedes Amtrak from achieving high-speed intercity rail passenger transportation; and

[(2) consult with that State or local government—

[(A) to evaluate alternatives to the speed restriction, considering the local safety hazard that is the basis for the restriction; and

[(B) to consider modifying or eliminating the restriction to allow safe operation at higher speeds.

[(c) HIGH-SPEED RAIL TRANSPORTATION DEVELOPMENT.—On reasonable request by a State, political subdivision of a State, regional partnership, private sector representative, or other qualified person, Amtrak shall consult and cooperate to the extent feasible with that person to assist the efforts of that person to achieve high-speed rail transportation through equipment upgrades, grade-crossing safety improvements, and incremental infrastructure improvements on existing rail facilities that Amtrak uses (except the Northeast Corridor facilities). Not later than September 30, 1993, Amtrak shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on its efforts under this subsection.

[(d) ROUTES CONNECTING CORRIDORS.—Amtrak shall begin or improve appropriate rail passenger transportation on a route between corridors that Amtrak decides is justified because it will increase ridership on trains of Amtrak on the route and in the connecting corridors.

[(§ 24703. Route and service criteria

[(a) ROUTE DISCONTINUANCES AND ADDITIONS.—Except as provided in this part, route discontinuances and route additions shall comply with the route and service criteria.

[(b) CONGRESSIONAL REVIEW OF CRITERIA AMENDMENTS.—(1) Amtrak shall submit to Congress a draft of an amendment to the route and service criteria when Amtrak decides an amendment is appropriate. The amendment is effective at the end of the first period of 120 calendar days of continuous session of Congress after it is submitted unless there is enacted into law during the period a joint resolution stating Congress does not approve the amendment.

[(2) In this subsection—

[(A) a continuous session of Congress is broken only by an adjournment sine die; and

[(B) the 120-day period does not include days on which either House is not in session because of adjournment of more than 3 days to a day certain.

[(c) NONAPPLICATION.—The route and service criteria do not apply to—

[(1) increasing or, because of construction schedules or other temporary disruptive facts or seasonal fluctuations in ridership, decreasing the number of trains on an existing route or

a part of an existing route or on a route on which additional trains are being tested;

[(2) carrying out the recommendations developed under section 4 of the Amtrak Improvement Act of 1978;

[(3) rerouting transportation between major population centers on an existing route; or

[(4)(A) modifying transportation operations under section 24707(a) of this title; and

[(B) modifying the route system or discontinuing transportation under section 24707(b) of this title.

[(§)24704. Transportation requested by States, authorities, and other persons

[(a) APPLICATIONS TO BEGIN OR KEEP TRANSPORTATION.—(1) A State, a regional or local authority, or another person may apply to Amtrak and request Amtrak to provide rail passenger transportation or keep any part of a train, route, or service that Amtrak intends to discontinue under section 24706(a) or (b) or 24707(a) or (b) of this title. An application shall—

[(A) assure Amtrak that the State, authority, or person has sufficient resources to meet its share of the cost of the transportation for the time the transportation will be provided;

[(B) contain a market analysis acceptable to Amtrak to ensure that there is adequate demand for the transportation; and

[(C) commit the State, authority, or person to provide at least 45 percent of the short term avoidable loss of providing the transportation the first year the transportation is provided and at least 65 percent of the short term avoidable loss each of the following years, and, except as provided in section 24104(a) of this title, at least 50 percent of associated capital costs each year the transportation is provided.

[(2) An application submitted by more than one State shall be considered in the same way as an application submitted by one State, without it being necessary for each State to comply with paragraph (1) of this subsection.

[(b) ACTIONS ON APPLICATIONS.—(1) Amtrak shall review each application submitted under subsection (a) of this section to decide whether—

[(A) the application complies with subsection (a); and

[(B) there is a reasonable probability that Amtrak can provide the transportation from available resources.

[(2) Amtrak may make an agreement with an applicant under this section to begin or keep the transportation if Amtrak decides that the transportation can be provided with resources available to Amtrak. An agreement may be renewed for additional periods of not more than 2 years each.

[(c) SELECTING AMONG COMPETING APPLICATIONS.—If more than one application is made for transportation consistent with the requirements of subsection (a) of this section, but all the transportation applied for cannot be provided with the available resources of Amtrak, the board of directors of Amtrak shall select the transportation that best serves the public interest and can be provided with the available resources of Amtrak.

[(d) FARE INCREASES.—(1) Before increasing a fare applicable to transportation provided under subsection (b)(2) of this section by more than 5 percent during a 6-month period, Amtrak shall consult with officials of each State affected by the increase and explain why the increase is necessary.

[(2) Except as provided in paragraph (3) of this subsection, a fare increase described in paragraph (1) of this subsection takes effect 90 days after Amtrak first consults with the affected States. However, not later than 30 days after the first consultation, a State may submit proposals to Amtrak for reducing costs and increasing revenues of the transportation. Amtrak shall consider the proposals in deciding how much of the proposed increase shall go into effect.

[(3)(A) Amtrak may increase a fare without regard to the restrictions of this subsection during—

[(i) the first month of a fiscal year if the authorization of appropriations and the appropriations for Amtrak are not enacted at least 90 days before the beginning of the fiscal year; or

[(ii) the 30 days following enactment of an appropriation for Amtrak or a rescission of an appropriation.

[(B) Amtrak shall notify each affected State of an increase under subparagraph (A) of this paragraph as soon as possible after Amtrak decides to increase a fare.

[(e) DETERMINING LOSS, COSTS, AND REVENUES.—After consulting with officials of each State contributing to providing transportation under subsection (b)(2) of this section, the board shall establish the basis for determining short term avoidable loss and associated capital costs of, and revenues from, the transportation. Amtrak shall give State officials the basis for determining the loss, cost, and revenue for each route on which transportation is provided under subsection (b)(2).

[(f) AVAILABILITY OF AMOUNTS.—Amounts provided by Amtrak under an agreement with an applicant under subsection (b)(2) of this section that are allocated for associated capital costs remain available until expended.

[(g) ADVERTISING AND PROMOTION.—At least 2 percent but not more than 5 percent of the revenue generated by transportation provided under subsection (b)(2) of this section shall be used for advertising and promotion at the local level.

§ 24705. Additional qualifying routes

[(a) ROUTES RECOMMENDED FOR DISCONTINUANCE.—(1) To maintain a national intercity rail passenger system in the United States and if a reduction in operating expenses can be achieved, Amtrak shall provide rail passenger transportation over each route the Secretary of Transportation recommended be discontinued under section 4 of the Amtrak Improvement Act of 1978 and may restructure a route to serve a major population center as an ending place or principal intermediate place. Transportation over a long distance route shall be maintained if the Amtrak estimate for the fiscal year ending September 30, 1980, was that the short term avoidable loss for each passenger mile on the route was not more than 7 cents. Transportation over a short distance route shall be maintained if the Amtrak estimate for the fiscal year ending September 30, 1980,

was that the short term avoidable loss for each passenger mile on the route was not more than 9 cents.

[(2) For all routes, Amtrak shall calculate short term avoidable loss for each passenger-mile based on consistently defined factors. Calculations shall be based on the most recent available statistics for a 90-day period, except that Amtrak may use historical information adjusted to reflect the most recent available statistics.]

[(b) DEFERRAL OF SECRETARY'S RECOMMENDATIONS.—(1) To provide equivalent or improved transportation consistent with the goals of section 4(a) of the Act, Amtrak may defer carrying out a recommendation of the Secretary under section 4 of the Act that requires providing transportation over a rail line not used in intercity rail passenger transportation on May 24, 1979, requires using a new facility, or requires making a new labor agreement, until any necessary capital improvements are made in the line or facility or the agreement is made.]

[(2) Notwithstanding another law and the route and service criteria, during the period a decision of the Secretary under section 4 of the Act is deferred, Amtrak shall provide substitute transportation over existing routes recommended for restructuring and over other existing feasible routes. Except for transportation concentrating on commuter ridership over a short haul route, transportation provided under this paragraph may be provided only if the route complies with subsection (a) of this section, adjusted to reflect constant 1979 dollars.]

[(c) SHORT HAUL DEMONSTRATION ROUTES.—Notwithstanding this part, Amtrak may provide short haul trains on additional routes totaling not more than 200 miles that link at least 2 major metropolitan areas—

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

[(2) to the extent available resources allow.]

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

§ 24706. Discontinuance

(a) NOTICE OF DISCONTINUANCE.—(1) Except as provided in subsection (b) of this section, at least [90] 180 days before [a discontinuance under section 24704 or 24707(a) or (b) of this title] *discontinuing service over a route*, Amtrak shall give notice of the discontinuance in the way Amtrak decides will give a State, a regional or local authority, or another person the opportunity to agree to share *or assume* the cost of any part of the train, route, or service to be discontinued.

(2) Notice of the discontinuance under [section 24704 or 24707(a) or (b) of this title] *paragraph (1)* shall be posted in all stations served by the train to be discontinued at least 14 days before the discontinuance.

[(b) DISCONTINUANCE FOR LACK OF APPROPRIATIONS.—(1) Amtrak may discontinue service under section 24704 or 24707(a) or (b) of this title during—

[(A) the first month of a fiscal year if the authorization of appropriations and the appropriations for Amtrak are not enacted at least 90 days before the beginning of the fiscal year; and

[(B) the 30 days following enactment of an appropriation for Amtrak or a rescission of an appropriation.

[(2) Amtrak shall notify each affected State or regional or local transportation authority of a discontinuance under this subsection as soon as possible after Amtrak decides to discontinue the service.

[(c) EMPLOYEE PROTECTIVE ARRANGEMENTS.—(1) Amtrak or a rail carrier (including a terminal company) shall provide fair and equitable arrangements to protect the interests of employees of Amtrak or a rail carrier, as the case may be, affected by a discontinuance of intercity rail passenger service, including a discontinuance of service provided by a rail carrier under a facility or service agreement under section 24308(a) of this title under a modification or ending of the agreement or because Amtrak begins providing that service. Arrangements shall include provisions that may be necessary for—

[(A) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise;

[(B) the continuation of collective bargaining rights;

[(C) the protection of individual employees against a worsening of their positions related to employment;

[(D) assurances of priority of reemployment of employees whose employment is ended or who are laid off; and

[(E) paid training and retraining programs.

[(2) With respect to Amtrak's obligations under this subsection and in an agreement to carry out this subsection involving only Amtrak and its employees, a discontinuance of intercity rail passenger service does not include an adjustment in frequency, or seasonal suspension of intercity rail passenger trains that causes a temporary suspension of service, unless the adjustment or suspension reduces passenger train operations on a particular route to fewer than 3 round trips a week at any time during a calendar year.

[(3) Arrangements under this subsection shall provide benefits at least equal to benefits established under section 11347 of this title.

[(4) A contract under this chapter or section 24308(a) of this title shall specify the terms of protective arrangements.

[(5) This subsection does not impose on Amtrak an obligation of a rail carrier related to a right, privilege, or benefit earned by an employee because of previous service performed for the carrier.

[(6) This subsection does not apply to Amtrak Commuter.

§24707. Cost and performance review

[(a) ROUTE REVIEWS.—Amtrak shall review annually each route in the basic system to decide if the route meets the long distance or short distance route criterion, as appropriate, under section 24705(a)(1) of this title, adjusted to reflect constant 1979 dollars. The review shall include an evaluation of the potential market demand for, and the cost of providing transportation on, a part of the route and an alternative route. Amtrak shall submit the results of

the review to the House of Representatives, the Senate, and the Secretary of Transportation. If Amtrak decides that a route will not meet the criterion under section 24705(a)(1), as adjusted, Amtrak shall modify or discontinue rail passenger transportation operations on the route so that it will meet the criterion.

[(b) FINANCIAL REQUIREMENTS AND PERFORMANCE STANDARDS.—Not later than 30 days after the beginning of each fiscal year, Amtrak shall evaluate the financial requirements for operating the basic system and the progress in achieving the system-wide performance standards prescribed under this part during the fiscal year. If Amtrak decides amounts available for the fiscal year are not enough to meet estimated operating costs, or if Amtrak estimates it cannot meet the performance standards, Amtrak shall act to reduce costs and improve performance. Action under this subsection shall be designed to continue the maximum level of transportation practicable, including—

- [(1) changing the frequency of transportation;
- [(2) increasing fares;
- [(3) reducing the cost of sleeper car and dining car service on certain routes;
- [(4) increasing the passenger capacity of cars used on certain routes; and
- [(5) modifying the route system or discontinuing transportation over routes, considering short term avoidable loss and the number of passengers served on those routes.

[(c) COST LIMITATIONS AND REVENUE GOALS.—Annual costs of Amtrak may not be more than amounts, including grants made under section 24104 of this title, contributions of States, regional and local authorities, and other persons, and revenues, available to Amtrak in the fiscal year. Amtrak annually shall set a goal of recovering an amount so that its revenues, including contributions, is at least 61 percent of its costs, except capital costs.

[(d) CONDUCTOR REPORTS.—To assess the operational performance of trains, the President of Amtrak may direct the conductor on any train of Amtrak to report to Amtrak any inadequacy of train operation. The report shall be signed by the conductor, contain sufficient information to locate equipment or personnel failures, and be submitted promptly to Amtrak.

[(§ 24708. Special commuter transportation

[(a) TRANSPORTATION TO BE CONTINUED IF CRITERION MET.—Amtrak shall continue to provide rail passenger transportation provided under section 403(d) of the Rail Passenger Service Act before October 1, 1981, if, after considering estimated fare increases and State and local contributions to the transportation, the transportation meets the short distance route criterion under section 24705(a)(1) of this title, as adjusted. Transportation continued under this section shall be financed consistent with the method of financing in effect on September 30, 1981. If the transportation is not estimated to meet the criterion, as adjusted, Amtrak may modify or discontinue the transportation so that the criterion is met.

[(b) TRANSPORTATION WITH SHORT-TERM AVOIDABLE LOSS.—Notwithstanding subsection (a) of this section, if after September 30, 1993, and before October 1, 1995, transportation provided under

subsection (a) on a route during the prior 6 months has a short-term avoidable loss (excluding the cost of providing passenger equipment needed to provide the transportation), Amtrak may choose to consider modifying or discontinuing the transportation. If Amtrak does make such a choice, Amtrak shall solicit public comment for at least 30 days on alternatives to the modification or discontinuance. Not later than 60 days after the comment period ends, Amtrak may modify or discontinue the transportation so that there is no short-term avoidable loss under this section for providing the transportation on the route.]

* * * * *

CHAPTER 249—NORTHEAST CORRIDOR IMPROVEMENT PROGRAM

Sec.

24901. Definitions.

* * * * *

[24903. Program master plan for Boston-New York main line.]

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[24907. Note and mortgage.]

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[24909. Authorization of appropriations.]

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§ 24902. Goals and requirements

(a) NORTHEAST CORRIDOR IMPROVEMENT PLAN.—To the extent of amounts appropriated under section 24909 of this title, Amtrak shall carry out a Northeast Corridor improvement program to achieve the following goals:

(1) establish not later than September 30, 1985, regularly scheduled and dependable intercity rail passenger transportation between—

(A) Boston, Massachusetts, and New York, New York, in not more than 3 hours [and 40 minutes], including intermediate stops; and

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

* * * * *

(f) COMPATIBILITY WITH FUTURE IMPROVEMENTS AND PRODUCTION OF MAXIMUM LABOR BENEFITS.—(1) Improvements under this section shall be compatible with future improvements in transportation and shall produce the maximum labor benefit from hiring individuals presently unemployed.

(2) Amtrak shall design and construct the electrification system between Boston, Massachusetts, and New Haven, Connecticut, to accommodate the installation of a third mainline track between Davisville and Central Falls, Rhode Island, to be used for double-stack freight service to and from the Port of Davisville. Amtrak shall also make clearance improvements on the existing main line tracks to permit double stack service on this line, if funds to defray the costs of clearance improvements beyond Amtrak's own requirements for electrified passenger service are provided by public or pri-

vate entities other than Amtrak. Wherever practicable, Amtrak shall use portal structures and realign existing tracks on undergrade and overgrade bridges to minimize the width of the right-of-way required to add the third track. Amtrak shall take such other steps as may be required to coordinate and facilitate design and construction work. The Secretary of Transportation may provide appropriate support to Amtrak for carrying out this paragraph.

* * * * *

[§ 24903. Program master plan for Boston-New York main line

[(a) CONTENTS.—Not later than October 27, 1993, in consultation with Amtrak and the commuter and freight rail carriers operating over the Northeast Corridor main line between Boston, Massachusetts, and New York, New York, the Secretary of Transportation shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a program master plan for a coordinated program of improvements to that main line that will allow the establishment of regularly scheduled, safe, and dependable rail passenger transportation between Boston, Massachusetts, and New York, New York, in not more than 3 hours, including intermediate stops. The plan shall include—

[(1) a description of the implications of the improvements for the regional transportation system, including the probable effects on general travel trends and on travel volumes in other transportation modes and the implications for State and local governments in achieving compliance with the Clean Air Act (42 U.S.C. 7401 et seq.);

[(2) an identification of the coordinated program of improvements and the specific projects of that program, including the estimated costs, schedules, timing, and relationship of those projects with other projects;

[(3) an identification of the financial responsibility for the specific projects of that program and the sources of the amounts for the projects;

[(4) an operating plan for the construction period of the improvements that shows a coordinated approach to scheduling intercity and commuter trains;

[(5) an operating plan for the coordinated scheduling of intercity and commuter trains for the period after the program is completed, including priority scheduling, dispatching, and occupancy of tracks for appropriately frequent, regularly scheduled intercity rail passenger transportation between Boston, Massachusetts, and New York, New York, in not more than 3 hours, including intermediate stops;

[(6) a comprehensive plan to control future congestion in the Northeast Corridor attributable to increases in intercity and commuter rail passenger transportation;

[(7) an assessment of long-term operational safety needs and a list of specific projects designed to maximize operational safety; and

[(8) comments that Amtrak submits to the Secretary on the plan.]

[(b) SUBMITTING MODIFICATIONS OF PLAN TO CONGRESS.—The Secretary shall submit to Congress any modification made to the program master plan and comments that Amtrak submits on the modification.]

§ 24904. General authority

(a) * * *

[(b) COMPENSATORY AGREEMENTS.—Rail freight and commuter rail passenger transportation provided under subsection (a)(3) of this section shall be provided under compensatory agreements with the responsible carriers.]

[(c)] (b) COMPENSATION FOR [TRANSPORTATION OVER CERTAIN RIGHTS OF WAY AND FACILITIES] *FREIGHT TRANSPORTATION*.—(1) An agreement under subsection (a)(6) of this section *relating to rail freight transportation* shall provide for reasonable reimbursement of costs but may not cross-subsidize intercity rail passenger, commuter rail passenger, and rail freight transportation.

(2) If the parties *to an agreement described in paragraph (1)* do not agree, the Interstate Commerce Commission shall order that the transportation continue over facilities acquired under the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.) and the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 801 et seq.) and shall determine compensation (without allowing cross-subsidization between intercity rail passenger and rail freight transportation) for the transportation not later than 120 days after the dispute is submitted. The Commission shall assign to a rail freight carrier obtaining transportation under this subsection the costs Amtrak incurs only for the benefit of the carrier, plus a proportionate share of all other costs of providing transportation under this paragraph incurred for the common benefit of Amtrak and the carrier. The proportionate share shall be based on relative measures of volume of car operations, tonnage, or other factors that reasonably reflect the relative use of rail property covered by this subsection.

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

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

(2) *The parties to a dispute described in paragraph (1) may agree to use the Interstate Commerce Commission to arbitrate such dispute, and if requested the Interstate Commerce Commission shall perform such function.*

* * * * *

[§ 24907. Note and mortgage

[(a) GENERAL AUTHORITY.—To secure amounts expended by the United States Government to acquire and improve rail property

designated under section 206(c)(1)(C) and (D) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 716(c)(1)(C) and (D)), the Secretary of Transportation may obtain a note of indebtedness from, and make a mortgage agreement with, Amtrak to establish a mortgage lien on the property for the Government. The note and mortgage may not supersede section 24904 of this title.

[(b) EXEMPTIONS FROM LAWS AND REGULATIONS.—The note and agreement under subsection (a) of this section, and a transaction related to the note or agreement, are exempt from any United States, State, or local law or regulation that regulates securities or the issuance of securities. The note, agreement, or transaction under this section has the same immunities from other laws that section 601 of the Act (45 U.S.C. 791) gives to transactions that comply with or carry out the final system plan. The transfer of rail property because of the note, agreement, or transaction has the same exemptions, privileges, and immunities that the Act (45 U.S.C. 701 et seq.) gives to a transfer ordered or approved by the special court under section 303(b) of the Act (45 U.S.C. 743(b)).

[(c) IMMUNITY FROM LIABILITY AND INDEMNIFICATION.—Amtrak, its board of directors, and its individual directors are not liable because Amtrak has given or issued the note or agreement to the Government under subsection (a) of this section. Immunity granted under this subsection also applies to a transaction related to the note or agreement. The Government shall indemnify Amtrak, its board, and individual directors against costs and expenses actually and reasonably incurred in defending a civil action testing the validity of the note, agreement, or transaction.]

* * * * *

[§ 24909. Authorization of appropriations

[(a) GENERAL.—(1) Not more than \$2,313,000,000 may be appropriated to the Secretary of Transportation to achieve the goals of section 24902(a)(1) of this title. From this amount, the following amounts shall be expended by Amtrak:

[(A) at least \$27,000,000 for equipment modification and replacement that a State or a local or regional transportation authority must bear because of the electrification conversion system of the Northeast Corridor under this chapter.

[(B) \$30,000,000—

[(i) to improve the main line track between the Northeast Corridor main line and Atlantic City, New Jersey, to ensure that the track, consistent with a plan New Jersey developed in consultation with Amtrak to provide rail passenger transportation between the Northeast Corridor main line and Atlantic City, New Jersey, would be of sufficient quality to allow safe rail passenger transportation at a minimum of 79 miles an hour not later than September 30, 1985; and

[(ii) to promote rail passenger use of the track.

[(C) necessary amounts to—

[(i) develop Union Station in the District of Columbia;

[(ii) install 189 track-miles, and renew 133 track-miles, of concrete ties with continuously welded rail between the District of Columbia and New York, New York;

[(iii) install reverse signaling between Philadelphia, Pennsylvania, and Morrisville, Pennsylvania, on numbers 2 and 3 track;

[(iv) restore ditch drainage in concrete tie locations between the District of Columbia and New York, New York;

[(v) undercut 83 track-miles between the District of Columbia and New York, New York;

[(vi) rehabilitate bridges between the District of Columbia and New York, New York (including Hi line);

[(vii) develop a maintenance of way equipment repair facility between the District of Columbia and New York, New York, and build maintenance of way bases at Philadelphia, Pennsylvania, Sunnyside, New York, and Cedar Hill, Connecticut;

[(viii) stabilize the roadbed between the District of Columbia and New York, New York;

[(ix) automate the Bush River Drawbridge at milepost 72.14;

[(x) improve the New York Service Facility to develop rolling stock repair capability;

[(xi) install a rail car washer facility at Philadelphia, Pennsylvania;

[(xii) restore storage tracks and buildings at the Washington Service Facility;

[(xiii) install centralized traffic control from Landlith, Delaware, to Philadelphia, Pennsylvania;

[(xiv) improve track, including high speed surfacing, ballast cleaning, and associated equipment repair and material distribution;

[(xv) rehabilitate interlockings between the District of Columbia and New York, New York;

[(xvi) paint the Connecticut River, Groton, and Pelham Bay bridges;

[(xvii) provide additional catenary renewal and power supply upgrading between the District of Columbia and New York, New York;

[(xviii) rehabilitate structural, electrical, and mechanical systems at the 30th Street Station in Philadelphia, Pennsylvania;

[(xix) install evacuation and fire protection facilities in tunnels in New York, New York;

[(xx) improve the communication and signal systems between Wilmington, Delaware, and Boston, Massachusetts, on the Northeast Corridor main line, and between Philadelphia, Pennsylvania, and Harrisburg, Pennsylvania, on the Harrisburg Line;

[(xxi) improve the electric traction systems between Wilmington, Delaware, and Newark, New Jersey;

[(xxii) install baggage rack restraints, seat back guards, and seat lock devices on 348 passenger cars operating in the Northeast Corridor;

[(xxiii) install 44 event recorders and 10 electronic warning devices on locomotives operating within the Northeast Corridor; and

[(xxiv) acquire cab signal test boxes and install 9 way-side loop code transmitters for use within the Northeast Corridor.

[(2) The following additional amounts may be appropriated to the Secretary for expenditure by Amtrak:

[(A) not more than \$150,000,000 to achieve the goal of section 24902(a)(3) of this title.

[(B) not more than \$120,000,000 to acquire interests in property in the Northeast Corridor.

[(C) not more than \$650,000 to develop and use mobile radio frequencies for passenger radio mobile telephone service on high-speed rail passenger transportation.

[(D) not more than \$20,000,000 to acquire and improve interests in rail property designated under section 206(c)(1)(D) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 716(c)(1)(D)).

[(E) not more than \$37,000,000 to carry out section 24902(a)(7) and (j) of this title.

[(b) EMERGENCY MAINTENANCE.—Not more than \$25,000,000 of the amount appropriated under the Act of February 28, 1975 (Public Law 94–6, 89 Stat. 11), may be used by Amtrak for emergency maintenance on rail property designated under section 206(c)(1)(C) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 716(c)(1)(C)).

[(c) PRIORITY IN USING CERTAIN AMOUNTS.—Amounts appropriated under subsection (a)(2)(B) and (D) of this section shall be used first to repay, with interest, obligations guaranteed under section 602 of the Rail Passenger Service Act, if the proceeds of those obligations were used to pay the expenses of acquiring interests in property referred to in subsection (a)(2)(B) and (D).

[(d) PROHIBITION ON SUBSIDIZING COMMUTER AND FREIGHT OPERATING LOSSES.—Amounts appropriated under this section may not be used to subsidize operating losses of commuter rail or rail freight transportation.

[(e) SUBSTITUTING AND DEFERRING CERTAIN IMPROVEMENTS.—(1) A project for which amounts are authorized under subsection (a)(1)(C) of this section is a part of the Northeast Corridor improvement program and is not a substitute for improvements specified in the document “Corridor Master Plan II, NECIP Restructured Program” of January, 1982. However, Amtrak may defer the project to carry out the improvement and rehabilitation for which amounts are authorized under subsection (a)(1)(B) of this section. The total cost of the project that Amtrak defers may not be substantially more than the amount Amtrak is required to expend or reserve under subsection (a)(1)(B).

[(2) Section 24902 of this title is deemed not to be fulfilled until the projects under subsection (a)(1)(C) of this section are completed.

[(f) AVAILABILITY OF AMOUNTS.—Amounts appropriated under subsection (a)(1) and (2)(A) and (C)–(E) of this section remain available until expended.

[(g) AUTHORIZATIONS INCREASED BY PRIOR YEAR DEFICIENCIES.—
An amount greater than that authorized for a fiscal year may be
appropriated to the extent that the amount appropriated for any
prior fiscal year is less than the amount authorized for that year.]

* * * * *

PART E—MISCELLANEOUS

CHAPTER 281—LAW ENFORCEMENT

Sec.

28101. Rail police officers.

28102. Limit on certain accident or incident liability.

28103. *Limitations on rail passenger transportation liability.*

* * * * *

§28103. *Limitations on rail passenger transportation liability*

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

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

(i) *\$250,000; or*

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

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

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

(3) *For purposes of this subsection—*

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

(B) *the term “claim” means a claim made, directly or indirectly—*

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

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

(C) *the term “economic loss” means any pecuniary loss resulting from harm, including the loss of earnings, medical expense loss, replacement services loss, loss due to death, burial costs,*

loss of business or employment opportunities, and any other form of pecuniary loss allowed under applicable State law or under paragraph (2) of this subsection;

(D) the term "noneconomic damages" means damages other than punitive damages or actual damages; and

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

(b) INDEMNIFICATION OBLIGATIONS.—Obligations of any party, however arising, including obligations arising under leases or contracts or pursuant to orders of an administrative agency, to indemnify against damages or liability for personal injury, death, or damage to property described in subsection (a), incurred after the date of the enactment of the Amtrak Reform and Privatization Act of 1995, shall be enforceable, notwithstanding any other statutory or common law or public policy, or the nature of the conduct giving rise to the damages or liability.

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

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

* * * * *

NORTHEAST RAIL SERVICE ACT OF 1981

* * * * *

PART 6—MISCELLANEOUS PROVISIONS

* * * * *

[NORTHEAST CORRIDOR COST DISPUTE

[SEC. 1163. (a)(1) Within 120 days after the effective date of this subtitle, the Commission shall determine an appropriate costing methodology for compensation to Amtrak for the right-of-way related costs for the operation of commuter rail passenger service over the Northeast Corridor and other properties owned by Amtrak, unless Conrail, Amtrak, and affected commuter authorities have otherwise agreed on such a methodology by that date. In making its determination, the Commission shall consider all relevant factors, including the standards of sections 204(d) and 304(c) of the Regional Rail Reorganization Act of 1973, section 701(a)(6) of the Railroad Revitalization and Regulatory Reform Act of 1976, and section 401(a) of the Rail Passenger Service Act.

[(2) The Commission, in making such a determination, shall consider all relevant factors, and shall not permit cross subsidization

between intercity rail passenger service and commuter rail passenger service.

[(b) Any determination by the Commission under this section shall be effective on the date of such determination, and any agreement of the parties under this section shall be effective on the date specified in such agreement. Any such determination or agreement shall not apply to any compensation paid to Amtrak prior to the date of such determination or the date so specified, as the case may be, for the right-of-way related costs described in subsection (a) of this section.]

[(c) Nothing in this section shall preclude parties from entering into an agreement, after the determination of the Commission or their initial agreement under this section, with respect to the right-of-way related costs described in subsection (a) of this section.]

[(d) Any determination by the Commission under this section shall be final and shall not be reviewable in any court.]

* * * * *

INTERCITY PASSENGER SERVICE EMPLOYEES

SEC. 1165. (a)(1) After January 1, 1983, Conrail shall be relieved of the responsibility to provide crews for intercity passenger service on the Northeast Corridor. [Amtrak, Amtrak Commuter, and Conrail] *Amtrak and Conrail*, and the employees with seniority in both freight and passenger service shall commence negotiations not later than 120 days after the date of the enactment for the right of such employees to move from one service to the other once each six-month period. [Such agreement shall ensure that Conrail, Amtrak, and Amtrak Commuter have the right to furlough one employee in the same class or craft for each employee who returns through the exercise of seniority rights. If agreement is not reached within 360 days, such matter shall be submitted to binding arbitration.]

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

* * * * *



SECTION 9101 OF TITLE 31, UNITED STATES CODE

§9101. Definitions

In this chapter—

(1) * * *

(2) “mixed-ownership Government corporation” means—

[(A)] Amtrak.]

[(B)] (A) the Central Bank for Cooperatives.

[(C)] (B) the Federal Deposit Insurance Corporation.

[(D)] (C) the Federal Home Loan Banks.

[(E)] (D) the Federal Intermediate Credit Banks.

[(F)] (E) the Federal Land Banks.

[(G)] (F) the National Credit Union Administration
Central Liquidity Facility.

[(H)] (G) the Regional Banks for Cooperatives.

[(I)] (H) the Rural Telephone Bank when the ownership,
control, and operation of the Bank are converted under
section 410(a) of the Rural Electrification Act of 1936 (7
U.S.C. 950(a)).

[(J)] (I) the United States Railway Association.

[(K)] (J) the Financing Corporation.

[(L)] (K) the Resolution Trust Corporation.

[(M)] (L) the Resolution Funding Corporation.

* * * * *

SECTION 8G OF THE INSPECTOR GENERAL ACT OF 1978

REQUIREMENTS FOR FEDERAL ENTITIES AND DESIGNATED FEDERAL
ENTITIES

SEC. 8G. (a) Notwithstanding section 11 of this Act, as used in
this section—

(1) * * *

(2) the term “designated Federal entity” means **[Amtrak,]**
the Appalachian Regional Commission, the Board of Governors
of the Federal Reserve System, the Board for International
Broadcasting, the Commodity Futures Trading Commission,
the Consumer Product Safety Commission, the Corporation for
Public Broadcasting, the Equal Employment Opportunity Com-
mission, the Farm Credit Administration, the Federal Commu-
nications Commission, the Federal Deposit Insurance Corpora-
tion, the Federal Election Commission, the Federal Housing Fi-
nance Board, the Federal Labor Relations Authority, the Fed-
eral Maritime Commission, the Federal Trade Commission, the
Interstate Commerce Commission, the Legal Services Corpora-
tion, the National Archives and Records Administration, the
National Credit Union Administration, the National Endow-
ment for the Arts, the National Endowment for the Human-
ities, the National Labor Relations Board, the National Science
Foundation, the Panama Canal Commission, the Peace Corps,
the Pension Benefit Guaranty Corporation, the Securities and

Exchange Commission, the Smithsonian Institution, the Tennessee Valley Authority, the United States International Trade Commission, and the United States Postal Service;

* * * * *

CONRAIL PRIVATIZATION ACT

* * * * *

SEC. 4001. SHORT TITLE; TABLE OF CONTENTS OF SUBTITLE.

(a) SHORT TITLE.—This subtitle may be cited as the “Conrail Privatization Act”.

(b) TABLE OF CONTENTS OF SUBTITLE.—

PART 1—GENERAL PROVISIONS

Sec. 4001. Short title; table of contents of subtitle.

* * * * *

PART 2—CONRAIL

SUBPART A—SALE OF CONRAIL

* * * * *

SUBPART B—OTHER MATTERS RELATING TO THE SALE

Sec. 4021. Rail service obligations.

Sec. 4022. Ownership limitations.

[Sec. 4023. Board of Directors.]

* * * * *

PART 2—CONRAIL

* * * * *

Subpart B—Other Matters Relating to the Sale

* * * * *

[SEC. 4023. BOARD OF DIRECTORS.]

[The Board of Directors of the Corporation shall be comprised as follows:

[(1) Except as provided in paragraph (3), with respect to the period ending June 30, 1987, the board shall remain as it exists on the date of the enactment of this Act, with any vacancies being filled by directors nominated and elected by the remainder of the members of the board.

[(2)(A) Except as provided in paragraph (3), with respect to the period beginning July 1, 1987, the board shall consist of—

[(i) 3 directors appointed by the Secretary of Transportation;

[(ii) the Chief Executive Officer and the Chief Operating Officer of the Corporation; and

[(iii) 8 directors appointed from among persons knowledgeable in business affairs by the special court trustees named under subparagraph (C), in consultation with the Secretary of Transportation and the Chairman of the

Board of Directors of the Corporation, and recognizing the need for and importance of—

【(I) continuity in the direction of the Corporation's business and affairs;

【(II) preserving the value of the investment of the United States in the Corporation;

【(III) preserving essential rail service provided by the Corporation; and

【(IV) providing for the sale of the United States shares.

【(B) The Secretary of Transportation and the special court trustees may appoint directors under subparagraph (A) from among existing directors of the Corporation.

【(C)(i) If more than 50 percent of the interest of the United States in the Corporation has not been sold before June 1, 1987, the special court established under section 209 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 719) shall, on that date, name 3 trustees from among persons knowledgeable in business affairs to make the appointments required by subparagraph (A)(iii). The Corporation shall compensate the special court trustees in an amount to be specified by the special court, not to exceed the amount paid by the Corporation to its directors for comparable services.

【(ii) No person shall be eligible to be appointed as a special court trustee under this subparagraph who, at any time during the 30 months immediately preceding such appointment, was an officer, employee, or director of the United States Railway Association, the Corporation, or the Department of Transportation.

【(3)(A) After the sale date, one director shall be elected by the public shareholders of the Corporation for each increment of 12.5 percent of the interest of the United States in the Corporation that has been sold through public offering.

【(B) With respect to the period ending June 30, 1987—

【(i) the first director elected under this paragraph shall replace the member of the board who became a director most recently from among—

【(I) directors appointed by the United States Railway Association, or elected under paragraph (1) to replace such a director, and

【(II) directors appointed by the Secretary of Transportation, or elected under paragraph (1) to replace such a director;

【(ii) the second director elected under this paragraph shall replace the member of the Board who became a director most recently from among directors described in clause (i) (I) or (II), whichever group the first director replaced under this subparagraph was not a member of; and

【(iii) subsequent directors elected under this paragraph shall replace members alternately from the groups described in clause (i) (I) and (II).

【(C) With respect to the period beginning July 1, 1987, directors elected under this paragraph shall replace directors appointed by the special court trustees under paragraph

(2)(A)(iii), in the order designated by the special court trustees in a list to be issued at the time of such original appointments.

[(D) With respect to the period beginning on the first date more than 50 percent of the interest of the United States in the Corporation has been sold through public offering and ending when 100 percent of such interest has been sold—

[(i) all remaining members of the board referred to in paragraph (2)(A)(iii), and

[(ii) with respect to the period ending June 30, 1987, all remaining members of the board, except 3 members appointed by the Secretary of Transportation and the Chief Executive Officer and the Chief Operating Officer of the Corporation,

shall be replaced by directors elected by the public shareholders of the Corporation.

[(E) After 100 percent of the interest of the United States in the Corporation has been sold, any remaining directors appointed by the Secretary of Transportation, the United States Railway Association, or the special court trustees referred to under paragraph (2)(A)(iii), shall be replaced by directors elected by the public shareholders of the Corporation.

[(F) Nothing in this paragraph shall be construed to prohibit any director referred to in this section from being elected as a director by the public shareholders of the Corporation.

[(4)(A) No director appointed or elected under this section shall be a special court trustee or an employee of the United States, except as elected by the public shareholders of the Corporation.

[(B) No director appointed or elected under this section shall be an employee of the Corporation, except as provided in paragraph (2)(A)(ii) or as elected by the public shareholders of the Corporation.]

* * * * *

SECTION 511 OF THE RAILROAD REVITALIZATION AND REGULATORY REFORM ACT OF 1976

GUARANTEE OF OBLIGATIONS

SEC. 511. (a) * * *

* * * * *

(i) CONDITIONS OF GUARANTEES.—(1) * * *

* * * * *

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

* * * * *

MINORITY VIEWS

The report includes a lengthy theoretical discussion of whether some of the provisions of the reported bill, which deal with employee protection for Amtrak employees, might lead to changes in employee protection established under other laws for employees of freight railroads and mass transit systems. The laws governing protection for employees of freight railroads and urban mass transit include the Interstate Commerce Act and the Federal Transit Act. These laws were *not* amended by the reported bill. We do not believe that discussion of these other laws, which were not before the Committee in this bill, should be given weight as legislative history affecting these laws.

It should also be clearly understood that we do not agree with any implication in this report that labor protection for employees of freight railroad and mass transit systems should be reduced. In addition, we disagree with the report's criticisms of the Opinion of the Chief Counsel of the Federal Railroad Administration on these issues. The chief Counsel concluded that "the labor protection accorded freight railroad employees * * * would not be affected by the passage of the (reported) bill."

A copy of the Chief Counsel's opinion follows:

OFFICE OF CHIEF COUNSEL,
U.S. DEPARTMENT OF TRANSPORTATION,
FEDERAL RAILROAD ADMINISTRATION,
Washington, DC.

Date: September 20, 1995.

From S. Mark Lindsey, Chief Counsel.

To: Jolene Molitoris, Administrator.

Subject: Effect of repealing 49 U.S.C. § 24706(c) and extinguishing Appendix C-2 agreement.

ISSUE

The House Transportation and Infrastructure Committee's draft Amtrak reauthorization bill ("House bill") authorizes Amtrak and its unions to negotiate new labor protection terms.¹ The House bill also eliminates the existing labor protection afforded Amtrak employees under 49 U.S.C. § 24706(c),² and the Amtrak collective bargaining agreement implementing the section (referred to as Appendix C-2).³ We have been asked whether the House bill affects the

¹ Whenever term "labor protection" appears, it refers to all forms of labor protection, including severance benefits.

² Unless otherwise indicated all section references will be to Title 49 of the United States Code.

³ Section 24706(c) was originally 45 U.S.C. § 565(a)-(c), before being recodified in 1994. It requires Amtrak, and any freight railroads furnishing services or facilities to Amtrak, to provide fair and equitable arrangements to protect the interests of employees whose jobs are abolished or adversely affected by a discontinuance of intercity rail passenger service, including a modification or termination of a facilities or service agreement between a freight railroad and Am-

labor protection accorded freight railroad employees under the Interstate Commerce Act and the agreement (referred to as Appendix C-1) negotiated under § 24706(c) to protect freight railroad employees in the event of a discontinuance of intercity rail passenger service.

CONCLUSION

It is my opinion that the labor protection accorded freight railroad employees under the Interstate Commerce Act and Appendix C-1 would not be affected by the House bill for two reasons. First, while the House Bill would repeal § 24706(c), and extinguish the Appendix C-2 agreement (pertaining to Amtrak employees), the House bill does not similarly extinguish the Appendix C-1 agreement (pertaining to freight railroad employees). The Appendix C-1 agreement therefore would remain in place unaltered. Second, the labor protection afforded freight railroad employees under § 11347 of the Interstate Commerce Act is required to be at least as protective as that established under § 24706(c)—namely the Appendix C-1 terms. Significantly, while the House bill amends § 11347, it leaves unaltered the language requiring the imposition of labor protection terms no less than those established under § 24706(c).

DISCUSSION

Section 301 of the House bill provides for an expedited collective bargaining process between Amtrak and its unions to establish new labor protection arrangements to replace the terms contained in § 24706(c) and the Appendix C-2 agreement; existing labor protections for Amtrak employees would stay in place for a period of 254 days to allow the parties time to reach an agreement. Effective 254 days after date of enactment, § 24706(c) would be repealed, and any provision in any pre-Act Amtrak labor contract relating to labor protection, including all provisions of the Appendix C-2 agreement, would be extinguished. Subsection 302(a) of the House bill. Section 302 of the House bill does not similarly extinguish the Appendix C-1 agreement, which protects freight railroad employees in the event of a discontinuance of intercity rail passenger service. Appendix C-1 agreement would, therefore, not be affected by the House bill.

The Appendix C-1 agreement establishes the floor on labor protection that the Interstate Commerce Commission (ICC) must impose in approving various transactions involving the freight rail-

trak or by Amtrak's taking over operation of a passenger service from a freight railroad. Implementing labor protection contracts were required to be approved by the Secretary of Labor, who had to certify that the contracts afforded affected employees fair and equitable protection. 45 U.S.C. § 565 (b) and (c). Acting pursuant to this statutory mandate, the Secretary in 1971 approved a labor protection arrangement for the freight railroad employees (Appendix C-1 to the agreements between Amtrak and the freight railroads) and in 1973 for Amtrak employees (Appendix C-2 to these agreements), that provide one year of salary protection for each year of prior service up to a maximum of 6 years' pay for affected employees. The Secretary's 1971 certification was upheld as proper in *Congress of Railway Unions v. Hodgson*, 325 F.Supp. 68 (1971). Given the establishment of the necessary implementing labor protection agreements, Congress dropped as surplus, the approval procedure specified in 45 U.S.C. § 565 when the section was recodified. In taking this action, Congress made clear that it did not intend to make any substantive change in the section even through the recodification makes minor changes in the statutory language. See Pub. L. No. 103-272, § 6(a), 108 Stat. 1378; H.R. Rep. No. 180, 103d Cong., 1st Sess. 1-5 (1993).

roads. Under the Interstate Commerce Act, the ICC is required to impose labor protection under § 11347,⁴ in approving the following transactions involving freight railroad carriers:

- Railroad consolidations—whether by merger, asset acquisition, stock purchase, or other form of control (§ 11343);
- line transfers, leases and trackage rights between carriers (§ 11343); and
- line abandonments (§ 10903).

Prior to the passage of the Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act), the minimum level of labor protection that was imposed by the ICC under § 11347 was 4 years of salary protection.⁵ In the 4R Act, Congress modified § 11347 to link the freight carriers' labor protection obligations to those established under 45 U.S.C. § 565 (now § 24706(c)). Pub. L. No. 94-210; section 402(a). As amended, § 11347 provides that the ICC—

shall require the carrier to provide a fair arrangement at least as protective of the interest of employees who are affected by the transaction as the terms imposed under this section before February 5, 1976 [up to 4 years of salary protection], and the terms established under sections 24307(c), 24312, and 24706(c) [up to 6 years of salary protection] of this title. * * * The arrangement and the order approving the transaction must require that the employees of the affected rail carrier will not be in a worse position related to their employment as a result of the transaction during the 4 years following the effective date of the final action of the Commission (or if an employee was employed for a lesser period of time by the carrier before the action became effective, for that lesser period).

In 1979, the ICC implemented the 4R Act change to § 11347 by requiring up to 6 years of salary protection for freight railroad employees (commonly referred to as “New York Dock” benefits). *New York Dock Railway—Control—Brooklyn Eastern District*, 360 I.C.C. 60 (1979). The ICC's decision was upheld by the Second Circuit; the court ruled that the reference in § 11347 to terms established under 45 U.S.C. § 565 (now § 24706(c)) “means the Appendix C-1 conditions.” *New York Dock Ry. v. United States*, Id. at 94.

Subsection 302(c) of the House bill amends § 11347 by striking the requirement that the labor protection imposed by the ICC must be at least as protective as terms established under §§ 24307(c) and 24312. Significantly, however, subsection 302(c) of the House bill does not strike the requirement that the labor protection afforded freight railroad employees be at least as protective as the terms “established [past tense] under section 24706(c) of this title.” Appendix C-1 contains the terms established under § 24706(c).

In summation, Congress established a one-time process for the development of labor protection terms to protect freight railroad employees in the event of a discontinuance of intercity rail pas-

⁴ Originally § 5(2)(f) before being recodified as § 11347 in 1978 (Pub. L. No. 95-473).

⁵ In 1944, the ICC adopted the “Oklahoma” conditions (dismissed employees receive 100% of prior earnings up to 4 years, with protection to commence on the date of ICC approval of the transaction). Later that year, the ICC adopted the “Burlington” conditions (extended protection to abandonments). In 1952, the ICC adopted the “New Orleans” conditions (protection begins from the date an employee is adversely affected rather than from the date of the ICC order). See *New York Dock Ry. v. United States*, 609 F.2d 83 (2d Cir. 1979), for a discussion of the types of labor protection by the ICC prior to the enactment of the 4R Act.

senger service. This process provided for collective bargaining and review and approval of the resulting contract (Appendix C-1) by the Secretary of Labor. This process is complete and Appendix C-1 is in place. Nothing in the House bill extinguishes Appendix C-1, and it remains in place unaltered. The labor protection afforded freight railroad employees under §11347 of the Interstate Commerce Act is required to be at least as protective as that established under §24706(c)—namely, the Appendix C-1 terms. The House bill amends §11347, but does not alter the requirement that labor protection imposed by the ICC not drop below the levels established under §24706(c). It is clear then that the labor protection accorded freight railroad employees under §11347 and Appendix C-1 would not be affected by the passage of the House bill.

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