

Calendar No. 206104TH CONGRESS }
1st Session }

SENATE

{ REPORT
104-157 }**AMTRAK AND LOCAL RAIL
REVITALIZATION ACT OF 1995**

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 1318



OCTOBER 12 (legislative day, OCTOBER 10), 1995.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

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FIRST SESSION

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(II)

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AMTRAK AND LOCAL RAIL REVITALIZATION ACT OF 1995

OCTOBER 12 (legislative day, OCTOBER 10), 1995.—Ordered to be printed

Mr. PRESSLER, from the Committee on Commerce, Science, and Transportation, submitted the following original bill; which was read twice and placed on the calendar

REPORT

[To accompany S. 318]

The Committee on Commerce, Science, and Transportation, to which was referred the original bill (S. 318) to reform the statutes relating to Amtrak, to authorize appropriations for Amtrak, and for other purposes, having considered the same, reports favorably thereon and recommends that the bill do pass.

PURPOSE OF THE BILL

The bill, as reported, would authorize appropriations of \$772 million for fiscal year (FY) 1995, \$712 million in each of FYs 1996 through 1998, and \$403 million for FY 1999 for Amtrak's general operating expenses and capital expenditures; and of \$200 million for each of FYs 1995 through 1999 for Northeast Corridor improvements. Also, for FYs 1996 through 1999, the bill would authorize appropriations of \$50 million per year for Amtrak's participation in the \$1 billion loan guarantee program created by Section 511 of the Railroad Revitalization and Regulatory Reform Act of 1976. Finally, the bill would authorize \$25 million in appropriations for the Local Rail Freight Assistance program (LRFA), for FY 1996 and each subsequent fiscal year.

With regard to rail passenger service, the bill is intended to enable Amtrak to operate as much like a private business as possible, with a view toward elimination of its need for Federal operating support by the fifth year after the date of enactment. Specifically, the bill provides for Amtrak reforms in the areas of procurement, operations, employee protection, use of railroad facilities, financial

management, revenue enhancement including commercial diversification, and taxation. The bill also would create an Amtrak Reform Council (ARC) responsible for reviewing, at the end of three years, whether Amtrak (1) is meeting certain financial goals; (2) will be able to continue to operate as a national passenger rail system; and (3) is likely not to require Federal operating funds after the fifth anniversary of enactment. The ARC's assessment of Amtrak's success or failure at that point would trigger implementation of a plan to continue, privatize or liquidate Amtrak no later than the fifth year after enactment. Congress would have 45 days upon receiving the ARC's recommended plan in which to disapprove it.

With rail freight service, the bill as reported is intended to address freight rail infrastructure needs in neglected regions of the country. In addition to permanently authorizing LRFA, it would provide for emergency funding for rail lines damaged by natural disasters and otherwise expand the types of projects eligible for funding. The bill also would make the Section 511 loan guarantee program more compatible with the needs of railroads.

BACKGROUND AND NEEDS

In 1970, the Rail Passenger Service Act (RPSA) was enacted. The law created Amtrak in order to relieve the freight railroad industry from the economic burden of providing ongoing passenger service and to ensure that modern, efficient intercity passenger rail service would continue to be a part of the national transportation system. Since 1971, Amtrak has received \$13 billion in Federal funding to help cover its operating, capital, and labor protective costs.

In 1994, the General Accounting Office (GAO) testified before several Congressional committees that Amtrak's financial and operating conditions had deteriorated, seriously threatening the corporation's ability to provide acceptable service. GAO found a widening gap between Amtrak's revenues and expenses beginning in 1990 in spite of increasing Federal support. Amtrak's passenger revenues lagged \$600 million behind those projected between 1991 and 1994, due to factors including an economic recession, declining quality of Amtrak service and equipment, disruptions caused by the 1993 Midwestern floods, unanticipated expenses related to several rail crashes, and increased fare competition from airlines. Amtrak responded by drawing down cash resources, deferring maintenance on equipment and reducing staffing levels and some services. However, its 1994 deficit exceeded the Federal operating grant by \$76 million.

On December 14, 1994, responding to a projected cash shortfall of \$200 million by June 1995, the Amtrak Board of Directors approved an aggressive "strategic and business plan" to improve its service quality and productivity and eventually reduce its overall annual expenses by \$364 million. Under the plan, Amtrak would adjust routes and reduce train miles of service by 21 percent. Amtrak would replace much of its "Heritage fleet," the older passenger and baggage cars inherited from the freight railroads 25 years ago. (The average age of these cars, which make up 43 percent of Amtrak's 2,000 car fleet, is 34 years. Amtrak's passenger cars alone average 40 years in age.) Finally, Amtrak would terminate approxi-

mately 900 non-union and 4,600 union positions out of a total workforce of 25,000 employees.

A full Committee hearing on Amtrak Oversight was chaired by Senator Pressler on January 26, 1995. Witnesses at the hearing included representatives of the Administration, GAO, the National Association of Railroad Passengers, state and local governments, rail labor, and Amtrak. During the hearing, Amtrak President Tom Downs explained that about 26 percent of the savings anticipated by the strategic and business plan would depend upon collective bargaining or legislative changes. Even if the plan were fully implemented, Amtrak would expect a \$2.5 billion operating shortfall through the year 2000 at a current Federal subsidy level of about \$1 billion annually. This subsidy level would not address unmet capital needs over the next five years of nearly \$4 billion across the national rail passenger system, including about \$2.35 billion on the Amtrak-owned Northeast Corridor.

At the request of Senators Pressler and Lott, Amtrak sponsored a series of seven locally-hosted regional forums around the nation between late March and early May of 1995. These forums sought ideas and suggestions from Americans, in both rural and urban settings, regarding comprehensive, long-term reform of Amtrak in order to maintain and improve a national rail passenger system. A follow-up workshop involving a 22-member team of both local hosts and presenters from each of the seven regional forums was conducted in Washington, DC, on May 17th and 18th to develop specific recommendations for Congress.

During a June 16th Surface Transportation and Merchant Marine Subcommittee hearing chaired by Senator Lott on "The Future of Amtrak and Local Rail Freight Assistance", John Robert Smith, Mayor of Meridian, MS, presented the following recommendations from the workshop report, "Listening to America: Regional Public Forums on the Future of Passenger Rail Service in America - 1995":

1. Congress should modify and/or eliminate legislative restrictions that do not apply to businesses other than Amtrak.
2. Congress should establish a Federal passenger rail trust fund to support intercity passenger rail and intermodal facilities.
3. One cent of the Federal gas tax now designated for deficit reduction (expiring 10/1/95) should be dedicated instead to an intercity passenger rail trust fund.
4. Intercity rail passenger user fees should be assessed and put in an intercity rail passenger trust fund.
5. Congress should allow interstate compacts to promote rail passenger service.
6. Congress should permit states flexibility to use Federal surface transportation funds for intercity passenger rail services within their state.
7. Congress should adopt Amtrak/freight liability limitations proposals.
8. Congress should amend rail labor laws to limit to two the number of unions certified for collective bargaining with Amtrak.

9. Amtrak should provide on-time performance incentives for freight railroads; Congress should exempt incentive payments to freight railroads from Federal income tax.

10. Amtrak should pursue profitable entrepreneurial activities and sales of services.

11. Amtrak should identify market opportunities, customized services potential, and use sophisticated market research and analysis in its business planning.

12. Amtrak should listen to its customers and aggressively pursue their ideas, for example, create a "frequent train rider" program.

13. Amtrak should expand private provision and development of on-board customer services, including food, beverage and communications, once statutory prohibitions are removed.

During the June 16th hearing, representatives of the Administration, the American Bus Association, rail labor, the Association of American Railroads and Amtrak commented on the Regional Forum Workshop recommendations and on the provisions of H.R. 1788, the Amtrak Reform and Privatization Act of 1995 introduced by Congresswoman Susan Molinari and reported by the House Rail Subcommittee on May 25th; S. 675, the Rail Investment and Efficiency Act of 1995, introduced by Senators Exon, Dorgan, Kerry and Moynihan on April 4th, and S. 693, the Amtrak Restructuring Act of 1995, introduced by Senator Hollings at the request of the Administration on April 6th.

During the June 16th hearing, Amtrak's President expressed optimism that the earlier anticipated \$200 million cash shortfall could be avoided in FY 1995. He reiterated, however, that Amtrak's long-term survival depends upon enactment of the major legislative reforms included in Amtrak's FY 1996 Legislative Program and the Regional Forum Workshop recommendations. The bill as reported incorporates Amtrak and Regional Forum Workshop recommendations which would enable Amtrak to make up as much as \$1.123 billion of its \$2.5 billion projected deficit over the next five years.

It is intended that no single Amtrak stakeholder bear a disproportionate share of the responsibility for reducing Amtrak's deficit. Under the bill as reported, the burden would be shared more equitably by Amtrak management, labor and passengers; Federal, state, and local governments; and the American taxpayer. Specifically, implementation of Amtrak's strategic and business plan is projected to save another \$1.57 billion over the five-year period through further reductions in Amtrak management personnel, route and service adjustments, pricing changes, and other internal efficiencies. Implementing fully-allocated cost recovery for commuter services provided by Amtrak on the Northeast Corridor would make up at least \$170 million of Amtrak's projected five-year deficit. Increased State contributions across the rest of the Amtrak system would constitute another estimated \$200 million. Immediate availability of Amtrak appropriations would contribute \$15 million. Transferring responsibility for excess mandatory railroad retirement and unemployment insurance payments to the Secretary of Transportation would remove a \$650 million burden from Amtrak. Other creative commercial activities encouraged by the bill as reported, particularly the purchase and sale of power in the

Northeast Corridor, would contribute substantially to Amtrak's financial viability, although precise amounts are difficult to estimate.

Elimination of Federal operating subsidies will require an estimated savings of \$550 million in labor-related costs over five years. The bill as reported assumes an unknown cost savings from Amtrak being permitted to contract out for some services now provided by its own workforce. The extent to which Amtrak will realize savings from contracting out will depend on negotiations between Amtrak and its employees. Indeed, Amtrak cannot meet the financial challenges inherent in the legislation, unless Amtrak's employees are willing to cooperate to find cost reductions in other areas as well, including less restrictive work rules to permit greater cross-utilization of employees, reduction in train and engine manning requirements, the structuring of a more cost-effective health insurance plan after obtaining data on the claims experience of its employees, and a better correlation between pay increases and productivity improvements. Collective bargaining of these issues will need to be pursued vigorously so new agreements can take effect and Amtrak can begin realizing costs savings quickly. Optimally, new agreements should be in place within the first year following enactment of this legislation.

The bill as reported also would create an Intercity Rail Passenger Account. This represents a critical element of the plan to save Amtrak and reduce its dependency on Federal subsidies given Amtrak projections that an expenditure of at least \$4 billion is required over the next five years to bring its Northeast Corridor infrastructure up to a basic "state of good repair" and to purchase the new equipment and locomotives needed for the rest of the national system. Redirecting one-half penny of the per gallon gasoline tax dedicated to deficit reduction through October 1, 1995, to this Intercity Rail Passenger Account could raise up to \$675 million annually for Amtrak capital needs.

During the June 16th hearing, the Subcommittee also addressed the importance of Federal involvement in preserving our nation's shortline and regional rail freight infrastructure through the continuation of the LRFA program, the Section 511 loan guarantee program, and other initiatives. Representatives of the South Dakota Department of Transportation, the American Short Line Railroad Association and the Regional Railroads of America discussed the need for investment capital to maintain secondary rail lines serving smaller cities and rural areas.

LRFA was created in 1973 to provide matching funds to help states save rail lines that otherwise would be abandoned. Its matching requirements enable limited Federal, state and local resources to be leveraged. The LRFA program promotes investment partnerships, maximizing very limited Federal assistance to advance infrastructure improvements.

LRFA has been a very popular program since it has been the only Federal program that provides infrastructure investment in short-line and regional railroads in the absence of Section 511 appropriations. According to the Federal Railroad Administration (FRA), in FY 1995, 31 states requested LRFA assistance for 59 projects—totaling more than \$32 million in funding requests. Less

than one-third of the amount of funding requested was available to meet these rail infrastructure needs.

With continued railroad restructuring, legitimate funding needs will only increase. According to a 1993 report by the FRA on Small Railroad Investment Goals and Financial Options, an estimated funding shortfall of \$440 million exists among the Class II and Class III railroads for necessary rehabilitation projects.

The bill as reported includes the provisions of S. 920, the Rail Infrastructure Preservation Act of 1995, introduced by Senator Pressler on June 14th. It is intended to provide a blueprint for rebuilding and improving rail infrastructure on lines served by regional and short line railroads by permanently authorizing LRFA and by improving the Section 511 loan guarantee program.

SUMMARY OF MAJOR PROVISIONS

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

1. **PROCUREMENT AND LABOR REFORMS.**—The bill as reported includes a 180-day negotiating timeframe for determining which non-food and beverage services now provided by Amtrak workers could be contracted out. The bill would use baseball-style arbitration as a last resort, should regular negotiations fail, wherein a neutral arbitrator would review and choose between the last best offers submitted by labor and Amtrak management. The decision of the arbitrator would be binding. Statutory employee protective arrangements providing up to six years' severance pay to rail workers affected by route discontinuances would be reduced to six months' pay, and this cap would apply to all of Amtrak's labor protection obligations—statutory or contractual.

2. **OPERATIONAL REFORMS.**—Amtrak would be instructed to strive to operate as a national rail passenger transportation system which provides access and intermodal linkage to all areas of the country. The existing 403(b) program would be repealed on the basis that states now are negotiating directly with Amtrak regarding the provision of such service without regard to matching formulas. Amtrak would be required to give 180 days' notice prior to discontinuance of routes to give states the opportunity to share or assume the cost of such service. States on the Northeast Corridor, within two years of enactment, would be required to pay "fully allocated costs" for services provided by Amtrak. States would have full access to Amtrak's records to confirm the amount of payments owed.

3. **LIABILITY REFORM.**—The bill as reported would authorize Amtrak to establish "contracts" with its passengers to limit claims related to rail passenger transportation to no less than the limits established by the Senate-passed product liability reform legislation (i.e., punitive damages, where permitted, equal to 2 times compensatory damages or \$250,000, whichever is greater). Amtrak passengers could purchase supplemental insurance coverage when they purchase Amtrak tickets or at the point of departure.

4. **AMTRAK SUNSET TRIGGER.**—A Presidentially appointed Amtrak Reform Council (ARC), modelled after the Base Closing Commission concept, would review and report to Congress annually on Amtrak's progress toward eliminating the need for Federal operating support within five years of enactment. Based on an assess-

ment of Amtrak's success or failure at the end of three years, the Council would submit to Congress a plan for Amtrak's continuation or liquidation after the fifth anniversary of enactment. Implementation of the final ARC plan would begin 45 days after its submission, unless rejected by Congress within that time.

5. FINANCIAL REFORMS.—Federal appropriations would be disbursed immediately to Amtrak upon request. Payments for excess railroad retirement and unemployment taxes would become the responsibility of the Department of Transportation (DOT), Amtrak would remain liable, however, for any obligations not paid by DOT due to inadequate appropriations in order to assure the continuation of all retirement benefits. In any event, payment of these taxes would not be considered a Federal subsidy of Amtrak.

6. COMMERCIAL DIVERSIFICATION.—Amtrak would be encouraged to increase non-Federal revenues through sale of concessions and use of vending machines and video and audio equipment on trains; sale of advertising; telecommunications network use; and the purchase and sale of power and other creative marketing and service activities.

7. FISCAL REVITALIZATION.—An Intercity Rail Passenger Account would be created to provide a stable source of capital support for Amtrak and rail passenger services in states not currently served by Amtrak. The account would receive funds from several sources, including one-half cent of the per gallon fuel taxes that are now deposited into general revenues, but that, on October 1, 1995, are slated to contribute to the excess funding in the mass transit account. Tax incentives would be created to encourage State and local government support and private sector investment in Amtrak. Amtrak would be permitted to issue tax free debt.

8. PRESERVATION OF RAIL INFRASTRUCTURE.—LRFA would be permanently authorized at a funding level of \$25 million annually and made available for emergency funding related to natural disasters, closing or improving grade crossings, and creating State-supervised grain car pools. The existing Section 511 railroad loan guarantee program would be made more "user friendly".

ESTIMATED COSTS

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

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 20, 1995.

Hon. LARRY PRESSLER,
*Chairman, Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed revised cost estimate for the Amtrak and Local Rail Revitalization Act of 1995. On August 11, 1995, CBO transmitted a cost estimate of this bill. This cost estimate reflects subsequent changes to the bill.

Enacting this bill 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, *Director*).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: Not yet assigned.
2. Bill title: Amtrak and Local Rail Revitalization Act of 1995.
3. Bill status: As ordered reported by the Senate Committee on Commerce, Science, and Transportation on July 20, 1995.
4. Bill purpose: In general, the bill 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'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);

Prohibiting cross-subsidization between Amtrak, freight railroads, and commuter rail authorities on the Northeast Corridor starting two years after enactment of the bill;

Restricting labor protection, including limiting severance pay, from 6 years to 6 months for Amtrak employees;

Establishing new procedures for settling punitive or exemplary damages claimed against Amtrak;

Allowing Amtrak to purchase electricity without being regulated by the state utility commissions;

Allowing Amtrak to use the Northeast Corridor's electrical lines to transfer power between electrical utility companies; and

Establishing an Amtrak Reform Council, which would determine the fate of Amtrak, subject to a Congressional veto. If the council determines that Amtrak cannot provide passenger rail service throughout the country and operate without federal operating subsidies in five years, the Secretary of Transportation would have to carry out a plan, developed by the council, to liquidate Amtrak within five years.

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

Transfer 0.5 cents per gallon of the existing gasoline tax to Amtrak for capital improvements;

Transfer all the unexpended funds appropriated for the Northeast Corridor Improvement Project to Amtrak so that Amtrak can earn interest on these funds until they are expended;

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

Authorize appropriations over the next four years totaling \$2.5 billion for Amtrak operating and capital grants, \$800 million for Northeast Corridor grants, and \$200 million to guarantee Amtrak loans;

Authorize an annual appropriation of \$25 million to assist freight railroads for fiscal year 1996 and each year thereafter; and

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

The bill also contains tax provisions that would:

Exempt Amtrak passengers and clients from paying state and local taxes and fees;

Reduce Amtrak's tax liability for railroad retirement and unemployment if funds are appropriated for the Secretary of Transportation to make these payments;

Reaffirm the tax-exempt status of commuter railroads;

Give railroads a tax break for payments from Amtrak for ensuring that Amtrak's trains are on-time when Amtrak uses the railroads' track;

Refund to Amtrak the diesel fuel taxes it pays the federal government;

Change the tax treatment of leased property; and

Make Amtrak's debt tax-exempt.

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. Over the next five years this bill would increase direct spending by \$3.8 billion and authorize appropriations totaling \$4.3 billion.

[By fiscal years, in millions of dollars]

	1995	1996	1997	1998	1999	2000
REVENUES						
Tax Provisions	(1)	(1)	(1)	(1)	(1)	(1)
DIRECT SPENDING						
Estimated Budget Authority:						
Transfer of Gasoline Tax Receipts		720	736	751	766	781
Northeast Corridor Transfer						
Amtrak Grant Transfer						
Total		720	736	751	766	781
Estimated Outlays:						
Transfer of Gasoline Tax Receipt		720	736	751	766	781
Northeast Corridor Transfer		238	-145	-53	-30	-10
Amtrak Grant Transfer		61	-61			
Total		1,019	530	698	736	771

[By fiscal years, in millions of dollars]

	1995	1996	1997	1998	1999	2000
SPENDING SUBJECT TO APPROPRIATIONS						
Spending Under Current Law:						
Budget Authority ²	1,004				
Estimated Outlays	983	382	212	55	31	10
Proposed Changes:						
Authorization Level		1,122	1,107	1,107	798	145
Estimated Outlays		1,087	1,095	1,107	798	165
Spending Under this Bill:						
Authorization Level ²	1,004	1,122	1,107	1,107	798	145
Estimated Outlays	983	1,469	1,307	1,162	829	175

¹The Joint Committee on Taxation will provide these estimates at a later date.²The 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.—Transferring 0.5 cents per gallon of the federal gasoline tax to Amtrak would cost the federal government an estimated \$3.8 billion from fiscal year 1996 through fiscal year 2000. Under current law, 2 cents per gallon of the gasoline tax will be deposited in the Mass Transit Account of the Highway Trust Fund. We estimate that these taxes would average about \$3 billion per year over the next five years. Hence, the bill's provision to direct 0.5 cents per gallon to Amtrak would increase federal outlays by one-quarter of those annual amounts, an average of about \$750 million per year. Finally, transferring these funds would reduce the amount of funds available to be spent on transit programs. However, the Mass Transit Account would still have sufficient funds to maintain obligation limitations at 1995 levels through 2000.

Under current law, CBO estimates the unexpended balance for the Northeast Corridor Improvement Project will be \$470 million at the end of fiscal year 1995; 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 \$238 million of the unexpended balances that would be expended between 1997 and 2000 under current law would be expended in 1996 if this bill is enacted.

Similarly, the bill would allow Amtrak to receive and earn interest on any unexpended funds from its opening and capital appropriations for 1995. CBO estimates that the funds transferred would total \$196 million, but \$135 million of these funds would be expended in 1996 under current law anyway. Therefore, only \$61 million of outlays would be shifted from 1997 to 1996 because of these provisions.

The cash management principles outlined in Title 31 of the United States Code requires an entity to pay the federal government any interest that it earns with federal money. It is unclear to CBO if these transfer provisions supersede Title 31. For the purpose of this estimate, CBO assumes that the bill's provisions would supersede Title 31, and therefore, we do not project any payments from interest to the federal government.

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 grants and Northeast Corridor 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. However, it is unclear if this provision supersedes the cash management principles outlined in Title 31 of the United States Code. For the purpose of this estimate, CBO assumes that the bill's provisions would supersede Title 31, and therefore, we do not project any payments from interest to the federal government.

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 gives Amtrak permanent assistance from transfers of gasoline tax revenues, which would decrease the probability of default.

The estimated outlays for local rail freight assistance are based on the historical rates of spending for this program. CBO estimates that the operations of the Amtrak Reform Council would cost the federal government between \$300,000 and \$500,000 per year. Finally, the modifications to the conditions under which loan guarantees would be given to freight railroads would decrease the federal government's protection against defaults and increase the cost to the federal government if loans guarantees are provided in the future.

Possible Amtrak liquidation.—Subject to a Congressional veto, this bill would direct the Secretary of Transportation and Amtrak to liquidate Amtrak if the Amtrak Reform Council finds that Amtrak cannot provide passenger rail service throughout the country without an operating subsidy in five years. Under current budgetary treatment, Amtrak is not a federal entity, and its operations are not included in the budget beyond the operating and capital subsidies that it receives. If liquidation were to occur, the transfer of receipts from the gasoline tax would cease. In addition, the federal government could obtain receipts from the preferred stock that it owns and the lien it has on the right of way for the Northeast Corridor; however, CBO believes that obtaining significant receipts is extremely unlikely. Alternatively, it is possible that the courts would decide that Amtrak is a federal entity and is liable for any of Amtrak outstanding liabilities. This bill however, would reduce one of the potentially largest liabilities—labor protection. For the purpose of this estimate, CBO assumes operations will continue.

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 increase direct spending by transferring gasoline tax money and

unexpected funds to Amtrak. 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	0	1,019	530	698
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 and Northeast Corridor Grants.

8. Estimated cost to State and local governments: Most sections of the bill affecting state and local governments (primarily commuter authorities) would make it more expensive for them to provide rail service within their jurisdictions. To the extent that state and local governments choose to maintain current levels of commuter 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 preempt local and state governments from collecting sales taxes on interstate services provided by Amtrak. The bill does not impose any new enforceable duties on state and local governments.

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. This provision would apply primarily to Amtrak's seven commuter rail contracts, which generated \$270 million in revenues 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 end the requirement that Amtrak continue to provide special commuter transportation 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.

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 budget impact on 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 larger shares 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 507 of the bill would exempt Amtrak's passengers and customers from most state and local taxes, fees, or charges, whereas current law exempts only Amtrak and its subsidiaries. This section would 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.

Finally, Section 803 of the bill would make it easier for Amtrak to raise revenue through the sale or transmission of electric power. Commuter authorities might be able to buy electricity from Amtrak more cheaply than they currently purchase it from electric utility companies, although it would be difficult to estimate the amount of savings that would occur.

9. Estimate comparison: None.

10. Previous CBO estimate: On August 11, 1995, CBO transmitted a cost estimate of this bill as ordered reported by the Senate Committee on Commerce, Science, and Transportation on July 20, 1995. This revised estimate reflects subsequent changes to the bill.

The proposed tax relief from railroad retirement and unemployment taxes would now be contingent on funds being appropriated to the Secretary of Transportation to make these payments for Amtrak. The federal government would not forgive the debt owed by the Union Station Redevelopment Corporation. Finally, Amtrak passengers and clients would not be exempted from intrastate sales taxes.

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.

REGULATORY IMPACT STATEMENT

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

NUMBER OF PERSONS COVERED

The bill as reported would authorize appropriations for Amtrak operating expenses and capital expenditures for fiscal years 1995 through 1999. As this legislation is intended to enable Amtrak to continue to operate as a national rail passenger system serving all areas of the country, the number of persons covered should be consistent with current levels.

Section 101 of the bill as reported would remove the statutory prohibition against Amtrak contracting out for non-food work now done by Amtrak employees. Amtrak and its employees would negotiate rules stating under what conditions, if any, Amtrak may contract out for such work. In any event, the number of persons required to provide Amtrak services, whether directly employed or under contract, is likely to be similar.

ECONOMIC IMPACT

Title VII of the bill as reported authorizes appropriations at levels similar to or less than previously authorized for Amtrak. The \$25 million authorized annually for LRFA is less than the \$30 million authorized in FY 1994, the last year in which a specific funding level was approved. A total of \$50 million of funding is authorized in each of FYs 1996 through 1999 to permit Amtrak to obtain loan guarantees out of the approximately \$980 million dollars now available for Section 511 loan guarantees overall.

Title X of the bill as reported would transfer to the Intercity Rail Passenger Account one-half cent of the per gallon fuel taxes collected now for deposit into general revenues. Under Public Law 103-66, this one-half cent was scheduled to be deposited in the Mass Transit Account beginning on October 1, 1995. If this amount were designated instead to the Amtrak capital account, the Mass Transit Account would continue to receive the one and one-half cent share it now receives of fuel taxes collected. Use of one-half penny would generate approximately \$675 million annually for Amtrak, and should not threaten funding available for mass transit purposes in any way, as the Mass Transit Account now holds an

estimated surplus of \$5.4 billion in excess of its approved obligation level.

PRIVACY

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

PAPERWORK

Paperwork requirements associated with the bill as reported are minimal. The most notable new requirement is created by Title V, which directs the ARC, in each of the first three years after enactment, to assess and report to Congress on progress made by Amtrak in meeting its financial goals. The ARC also would be responsible for developing plans for Amtrak's continuation or liquidation.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section states the short title of this portion of the bill, the Amtrak and Local Rail Revitalization Act of 1995.

Section 2. Findings

This section includes 13 findings related to the importance of intercity rail passenger service as an essential part of a national intermodal passenger transportation system; the need for Amtrak to reduce costs and increase revenues in order to eliminate the need for Federal operating support within five years of enactment of this bill; the importance to Amtrak of adequate capital investment; the roles and responsibilities of Amtrak stakeholders, management and rail labor in helping Amtrak meet its financial objectives; the need for Amtrak and its workers to modify collective bargaining agreements to make more efficient use of manpower and realize cost savings; and the importance of ensuring that management flexibility procedures produce cost savings without compromising safety.

TITLE I. PROCUREMENT REFORMS

Section 101. Contracting out

This section repeals, at the end of 180 days after enactment, statutory language prohibiting Amtrak from contracting out for certain work. Within five days of enactment, Amtrak and its labor organizations would be directed to begin negotiating rules for contracting out work in areas other than food and beverage services. If the issue is not resolved within 90 days, parties would be required to participate in the selection of an arbitrator to assist in negotiations. In the absence of resolution within 120 days of enactment, a hearing would be scheduled, prior to which the arbitrator would meet with the parties to attempt to mediate. Only if all of these efforts fail would a binding, baseball-type arbitration process result with the arbitrator selecting a last best offer within 180 days of enactment.

Section 102. Contracting practices

This section prohibits Amtrak from underbidding actual costs when competing for contracts to provide services other than intercity rail passenger, mail or express transportation (e.g., support, dispatching, maintenance of way, etc.). This prohibition would end when Amtrak ceases to receive Federal support. This section allows Amtrak to contract for intercity bus transportation only for passengers who will move by rail immediately before or after the bus movement. Intermodal passenger service arrangements between Amtrak and bus companies would be encouraged.

Section 103. Rail and motor carrier passenger service

This section encourages rail and motor carrier passenger service providers to combine or package their services and facilities and to coordinate their schedules, routes, rates, reservations and ticketing to provide for enhanced intermodal surface transportation and increased revenues.

Section 104. World class service

This section adds to Amtrak's statutory goals that Amtrak shall manage capital investment in such a way as to provide customers with world class service, and treat all passengers with respect, courtesy, and dignity.

Section 105. Passenger choice

This section would allow Federal employees to choose travel on Amtrak for official business where the total travel cost is competitive on a total trip or time basis.

Section 106. Freedom of Information Act (FOIA)

This section removes Amtrak from FOIA coverage when it no longer receives Federal operating subsidies.

TITLE II. OPERATIONAL REFORMS

Section 201. Basic system

This section would direct Amtrak to strive to operate as a national rail passenger transportation system, providing service to all areas of the country. This section does not repeal the statutory requirement that intercity passenger transportation be provided by Amtrak, or by others with the consent of Amtrak, within a specified "basic system." This section would repeal detailed operational planning directions, including those requiring Amtrak to cooperate with state-requested high speed rail development planning. It repeals mandatory reports to Congress on the cost and performance of various routes. States would be given 180 days' notice, rather than the current 90 days, regarding any proposed discontinuance of a route in order to provide an adequate timeframe for states to have an opportunity to agree to share or assume the cost of retaining the route. This section also repeals an unnecessary "special commuter" provision.

Section 202. Mail, express and auto-ferry transportation

This section repeals the monopoly of Amtrak over auto-plus-passenger service.

Section 203. Route and service criteria

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

Section 204. Additional qualifying routes

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

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

This section repeals the current 403(b) state-supported service matching program, and discontinues any existing 403(b) arrangements, on the basis that Amtrak and affected states already have begun negotiating individualized cost-sharing arrangements without regard to matching formulas.

Section 206. Amtrak commuter

This section repeals a never-used chapter authorizing an “Amtrak Commuter” subsidiary, but retains certain tax exemptions and trackage rights provided under that chapter.

Section 207. Commuter cost-sharing on the Northeast Corridor

This section requires states on the Northeast Corridor to begin, within two years of enactment, to fully compensate Amtrak for commuter services. Currently, only rail freight services operating on Amtrak’s Northeast Corridor are required to pay fully allocated costs.

Section 208. Access to records and accounts

This section would give states access to Amtrak records, accounts and necessary documents to verify the payment owed Amtrak.

TITLE III. EMPLOYEE PROTECTION REFORMS

Section 301. Service discontinuance

This section amends statutory employee protective arrangements which currently provide up to six years’ severance pay to rail workers affected by route discontinuations, frequency reductions to less than tri-weekly, or relocations of more than 30 miles from home. Instead, regardless of the source of any existing entitlement, Amtrak employees would be entitled to protective payments of up to six months’ pay only. The one-time cost savings anticipated from enactment of this provision would be approximately \$90 million, based on Amtrak’s historical experience that only 40 percent of affected employees will require payment under the program. In the absence of this legislative reform, Congress would face a potential taxpayer liability of between \$2.1 billion and \$5.2 billion in labor protection costs should Amtrak cease to exist.

Also, as agreed to by rail labor and Conrail, this section would allow Conrail to furlough one employee for every employee from Amtrak who exercises the "flowback" labor protection arrangements (both statutory and contractual) under the Northeast Rail Service Act of 1981.

TITLE IV. USE OF RAILROAD FACILITIES

Section 401. Liability limitation

This section would authorize Amtrak to establish "contracts" with its passengers to limit claims related to rail passenger transportation to no less than the limits in the Senate product liability reform provisions passed on May 10, 1995 during its consideration of H.R. 956. This essentially would permit Amtrak to limit its exposure to punitive damages, where recoverable, to an amount equal to 2 times compensatory damages or \$250,000, whichever is greater. Amtrak passengers could purchase supplemental insurance coverage when they purchase Amtrak tickets or at the point of departure.

TITLE V. FINANCIAL REFORMS

Section 501. Amtrak financial goals

This section requires Amtrak to prepare a financial plan aimed at the elimination of Federal operating subsidies after the fifth anniversary of enactment of this bill. The plan would include budgetary goals for fiscal years 1995 through 1997, internal reforms to maximize cost savings, steps to maximize revenue, implementation of a commercially rationalized route system, and achievement through negotiation of substantial reductions in labor costs. Each year before the fifth anniversary of the date of enactment of this bill, the Amtrak Reform Council (ARC) created in Section 601 would submit to Congress a progress report outlining the likelihood that Amtrak will not require Federal operating grants.

Section 502. Amtrak sunset trigger

This section would authorize the ARC to review, at the end of three years after enactment, Amtrak's progress toward meeting its financial goals and to report to Congress on the likelihood that Amtrak will not require Federal operating support and will continue to operate a national passenger rail system five years after enactment. If, at the end of three years after enactment, the ARC determines Amtrak is meeting its financial goals, the Secretary of Transportation and Amtrak would implement the plan developed under Section 601(b)(6)(A), unless it is disapproved by Congress within 45 days of its submission. If the ARC determines Amtrak is failing to meet its financial goals, the Secretary and Amtrak would implement the Amtrak sunset plan developed under Section 601(b)(6)(B), unless it is disapproved by Congress within the 45 day limit.

The bill as reported does not include any provision to statutorily reduce the number of Amtrak bargaining units, although such action was recommended by the Regional Forum Workshops. The Committee recognizes that prompt resolution of productivity issues

is important to Amtrak's efficient operation. Therefore, the Committee views the potential for Amtrak sunset in the event that progress is not made in this area a serious incentive for Amtrak and its labor unions to reach mutually acceptable productivity gains.

Section 503. Disbursement of Federal funds; grant release date

This section would allow Amtrak to receive approved appropriations immediately upon request.

Section 504. Transfer of excess railroad taxes

This section would relieve Amtrak, effective October 1, 1995, from any liability or obligation to pay excess railroad retirement and unemployment insurance taxes. Instead, the Secretary of Transportation would be authorized to make payments equal to those from which Amtrak was relieved. Should the Secretary be unable to meet fully this obligation, Amtrak would remain liable for the portion not paid by the Secretary. Nothing in this section may be construed as a basis for reducing any benefit payable to any railroad employee, retiree or beneficiary. Amounts appropriated under this section are not to be considered a United States Government subsidy of Amtrak. In fiscal years 1991 through 1995, between \$137 million and \$150 million were appropriated for Amtrak each year to fund railroad retirement benefits to freight retirees.

Section 505. Reports and audits

This section eliminates several nonessential Congressional reporting requirements.

Section 506. Officers' pay

This section would allow the Amtrak Board to disregard statutory limitations on Amtrak officers' pay in any fiscal year during which Amtrak does not receive Federal operating support.

Section 507. Exemption from taxes

This section would prohibit individual states from imposing sales taxes on Amtrak tickets or Amtrak passengers. Although states are not now taxing Amtrak ticket sales, it is clear that Amtrak's financial condition would be adversely affected if states attempt to tax such sales in the future. This section phases out the special provision in effect since 1981 allowing Beech Grove, IN, to tax Amtrak property, although taxes assessed prior to April 1, 1995, would be required to be paid. This provision would save Amtrak approximately \$800,000 per year in property taxes.

TITLE VI. MISCELLANEOUS

Section 601. Amtrak Reform Council

This section would create an eight-member, Presidentially appointed, independent Amtrak Reform Council that would evaluate and report to Congress on Amtrak's performance; prepare an analysis and critique of Amtrak's business plan; suggest strategies for further cost containment and productivity improvements; consider

the merits, costs and service implications of Amtrak privatization; recommend appropriate methods for Amtrak use of uniform cost and accounting procedures; and develop and submit to Congress action plans for use under the Amtrak Sunset Trigger created in Section 502.

Section 602. Principal office and place of business

This section strikes the requirement that Amtrak be domiciled in the District of Columbia, although Amtrak could elect to remain in the District of Columbia and be governed by its corporate laws.

Section 603. Status and applicable laws

This section makes technical corrections, and makes clear that Amtrak shall continue to be considered an employer for purposes of the railroad retirement and unemployment insurance acts.

Section 604. Waste disposal

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

Section 605. Assistance for upgrading facilities

This section repeals an obsolete provision pertaining to upgrading facilities.

Section 606. Rail Safety System Program

This section repeals a provision requiring Amtrak to develop a model safety system program.

Section 607. Demonstration of new technology

This section repeals a new technology demonstration project completed in 1993.

Section 608. Northeast Corridor improvement project

This section makes Amtrak projects eligible for the exemptions and procedures applicable to other Federal government projects, unless such Amtrak projects are initiated in a fiscal year in which Amtrak receives no Federal operating subsidy.

Section 609. Program master plan for Boston-New York main line

This section repeals a specific planning requirement which was to have been completed prior to October 27, 1993.

Section 610. Americans with Disabilities Act of 1990 (ADA)

This section extends the deadline for ADA compliance with respect to existing equipment until January 1, 1998, and existing stations to October 15, 2001. This extension will obviate the need for retrofits of rolling stock which will be retired when new cars are delivered and permit Amtrak to stretch out the time allowed to perform expensive station retrofit work.

Section 611. Definitions

This section deletes several obsolete definitions; conforms definitions with previous statutory amendments; defines "rail passenger transportation" as including interstate, intrastate, or international

transportation of passengers by rail; and expands the definition of "rail carrier" to include units of state or local government that provide rail transportation for compensation.

Section 612. Northeast Corridor dispute resolution

This section repeals an obsolete section of the Northeast Rail Service Act of 1981.

Section 613. Inspector General Act of 1978 amendment

This section states that Amtrak shall not be considered a Federal entity for purposes of the Inspector General Act of 1978 beginning in the first fiscal year in which it no longer receives Federal operating subsidies.

Section 614. Consolidated Rail Corporation

This section repeals an obsolete section of the Conrail Privatization Act affecting selection of Conrail's Board of Directors.

Section 615. Interstate rail compacts

This section allows states to enter into interstate rail compacts to promote provision of rail passenger service, including activities related to the financing of such service.

TITLE VII. AUTHORIZATION OF APPROPRIATIONS

Section 701. Authorization of appropriations

This section authorizes Amtrak capital and operating expenditures of \$772 million for FY 1995; \$712 million in each of FYs 1996 through 1998; and \$403 million for FY 1999. It authorizes Northeast Corridor improvement funds of \$200 million in each of FYs 1995 through 1999. Appropriations to permit use of Section 511 loan guarantees for Amtrak would be authorized at levels of \$50 million in each of FYs 1996 through 1999. In addition to expanding the use of this loan guarantee program, which currently is used only for freight rail projects, this section would allow Section 511 loans for Amtrak to be used more flexibly. Specifically, Section 511 loans for Amtrak could be used for acquisition, rehabilitation, and development of equipment and facilities. Preexisting obligations would not have to be subordinated to the rights of the Secretary of Transportation in the event of a default on a Section 511 loan.

Most notably, this section requires Amtrak to expend capital funds equitably across its national system, on projects deemed necessary to meet its most critical operating and capital needs without compromising safety. Priority is to be given projects which offer significant return on investment, and which leverage the highest levels of State, local and private financial support. Although the Committee would not statutorily reference specific projects or levels of funding for them, it assumes Amtrak is authorized to proceed, as it deems appropriate, with projects including the Boston Central Artery Rail Link; New York Farley Post Office Redevelopment; New Haven to Boston electrification; infrastructure improvements necessary for implementation of high speed rail service in the Pacific Northwest and other designated corridors; and activities related to the development and improvement of intermodal facilities.

TITLE VIII. AMTRAK REVENUE ENHANCEMENT

Section 801. Intercity Rail Passenger Account

This section establishes a permanent Intercity Rail Passenger Account as a stable source of capital funding for Amtrak and rail passenger services in states not currently served by Amtrak. The account would be authorized to receive 5 percent of Amtrak's ticket revenues for fiscal years 1995 through 1999; payments for the use of Amtrak equipment or facilities; claims recovered by Amtrak; taxes refunded to Amtrak; and amounts from other sources as authorized by law.

Section 802. Transfer of interest in Washington Union Station to Amtrak

Section 802 concerns the transfer of loan repayments into an account to maintain Washington, D.C.'s Union Station in good repair. Currently, the Union Station Redevelopment Corporation owns Union Station subject to a mortgage and other obligations held by the Secretary of Transportation. This section allows the Union Station Redevelopment Corporation to make, in lieu of loan repayments to the Secretary, equal payments into a reserve account to maintain Union Station in good repair.

Section 803. Commercial diversification

Amtrak is authorized and encouraged to increase non-Federal revenues through: (1) the sale of concessions and the use of vending machines on trains; (2) the sale of advertising space on trains and in rail stations; (3) the use of telecommunications networks or infrastructure; (4) other creative marketing and services activities; and (5) the purchase and sale of power, transmission services, etc., to commuter authorities and other consumers of electricity.

TITLE IX. PRESERVATION OF RAIL INFRASTRUCTURE

Section 901. Short title

This section states the short title of this portion of the bill, the Rail Infrastructure Preservation Act of 1995.

Section 902. Local rail freight assistance; authorization of appropriations

This section authorizes for the LRFA program \$25 million for the fiscal year ending September 30, 1996, and for each subsequent fiscal year.

Section 903. Disaster funding for railroads

This section clarifies procedures allowing the Secretary of Transportation to use LRFA for railroad disaster assistance.

Section 904. Grade-crossing eligibility

This section expands the list of activities eligible for LRFA funding to include the cost of grade crossing closure or improvements and the cost of creating a state-supervised grain car pool.

Section 905. Declaration of policy

This section states that continuation of service on and preservation of light density lines are essential for continued employment and community well-being throughout the United States.

Section 906. Railroad loan guarantees; maximum rate of interest

This section sets a rate of interest based on a known number, equivalent to the cost of money to the Federal government, in order to facilitate the loan process.

Section 907. Railroad loan guarantees; minimum repayment period and prepayment penalties

This section would allow minimum repayment of 15 years and permit prepayment after five years without penalty. Under current law, there is only a provision for 25 year maximum repayment.

Section 908. Railroad loan guarantees; determination of repayability

This section is intended to avoid over-collateralization of loans.

Section 909. Railroad loan guarantees; rights of the secretary

This section prohibits the Secretary of Transportation from requiring that an applicant's preexisting loans be subordinated in the event of a default on a Section 511 loan.

TITLE X. FISCAL REVITALIZATION

Section 1001. On-time performance incentives

This section provides that payments received by freight railroads as an incentive for on-time operation of intercity passenger trains would not be taxable as income.

Section 1002. Payment to the Intercity Rail Passenger Account of excise taxes on fuel

This section provides for payment to the Intercity Rail Passenger Account the amount of fuel tax now paid by Amtrak to deficit reduction. Amtrak currently pays between \$5 million and \$7 million annually in such fuel taxes.

Section 1003. Funding for the National Railroad Passenger Corporation from the mass transit account

This section provides that one-half cent of the per gallon fuel tax collected now for deposit into general revenues would be transferred to the Intercity Rail Passenger Account beginning on October 1, 1995. On that date, this amount is slated to be deposited in the mass transit trust fund account, increasing it from one and one-half cents to two cents per gallon. Use of this half penny would contribute approximately \$675 million annually in the Intercity Rail Passenger Account, and should not threaten funding available for mass transit purposes in any way as the mass transit account now holds an estimated surplus of \$5.4 billion in excess of its approved obligation level. Also, the mass transit account would continue to receive its one and one-half cent share of fuel taxes.

Section 1004. Safeharbor leasing of intercity rail passenger equipment and facilities

This section would provide tax incentives to encourage private investment in Amtrak capital projects by facilitating transactions in which investors take deductions for depreciation which Amtrak itself is unable to utilize.

Section 1005. Issuance of tax-exempt debt

This section would allow Amtrak to issue tax exempt debt. Amtrak estimates that it would save \$0.025 in interest per year on every dollar it borrows if the interest were exempt from tax. On a borrowing of \$500 million, for example, the annual savings to Amtrak would be \$12.5 million.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

[Note: Changes in existing law are shown as that law is carried in the United States Code, whether or not a particular title has been enacted into positive law. Changes to tables of sections are not shown.]

TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES

TITLE 5—APPENDIX

INSPECTOR GENERAL ACT OF 1978

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

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

(1) the term “Federal entity” means any Government corporation (within the meaning of section 103(1) of title 5, United States Code), any Government controlled corporation (within the meaning of section 103(2) of such title), or any other entity in the Executive branch of the Government, or any independent regulatory agency, but does not include—

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

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

(C) the Executive Office of the President;

(D) the Central Intelligence Agency;

(E) the General Accounting Office; or

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

any activities under the direction of the Architect of the Capitol;

(2) the term “designated Federal entity” means [Amtrak,] the Appalachian Regional Commission, the Board of Governors of the Federal Reserve System, the Board for International Broadcasting, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Corporation for Public Broadcasting, the Equal Employment Opportunity Commission, the Farm Credit Administration, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Election Commission, the Federal Housing Finance Board, the Federal Labor Relations Authority, the Federal Maritime Commission, the Federal Trade Commission, the Interstate Commerce Commission, the Legal Services Corporation, the National Archives and Records Administration, the National Credit Union Administration, the National Endowment for the Arts, the National Endowment for the Humanities, the National Labor Relations Board, the National Science Foundation, the Panama Canal Commission, the Peace Corps, the Pension Benefit Guaranty Corporation, the Securities and Exchange Commission, the Smithsonian Institution, the Tennessee Valley Authority, the United States International Trade Commission, and the United States Postal Service;

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TITLE 16—CONSERVATION

CHAPTER 12. FEDERAL REGULATION AND DEVELOPMENT OF POWER

REGULATION OF ELECTRIC UTILITY COMPANIES ENGAGED IN INTERSTATE COMMERCE

§ 824k. Orders requiring interconnection or wheeling

(a) RATES, CHARGES, TERMS, AND CONDITIONS FOR WHOLESALE TRANSMISSION SERVICES.—An order under section 211 shall require the transmitting utility subject to the order to provide wholesale transmission services at rates, charges, terms, and conditions which permit the recovery by such utility of all the costs incurred in connection with the transmission services and necessary associated services, including, but not limited to, an appropriate share, if any, of legitimate, verifiable and economic costs, including taking into account any benefits to the transmission system of providing the transmission service, and the costs of any enlargement of transmission facilities. Such rates, charges, terms, and conditions shall promote the economically efficient transmission and generation of electricity and shall be just and reasonable, and not unduly discriminatory or preferential. Rates, charges, terms, and conditions for transmission services provided pursuant to an order under section 211 shall ensure that, to the extent practicable, costs incurred in providing the wholesale transmission services, and properly allocable to the provision of such services, are recovered from the applicant for such order and not from a transmitting utility’s existing wholesale, retail, and transmission customers.

* * * * *

(h) PROHIBITION ON MANDATORY RETAIL WHEELING AND SHAM WHOLESALE TRANSACTIONS.—No order issued under this Act shall be conditioned upon or require the transmission of electric energy:

- (1) directly to an ultimate consumer, or
- (2) to, or for the benefit of, an entity if such electric energy would be sold by such entity directly to an ultimate consumer, unless:

(A) such entity is a Federal power marketing agency; the Tennessee Valley Authority; a State or any political subdivision of a State (or an agency, authority, or instrumentality of a State or a political subdivision); *Amtrak*; a corporation or association that has ever received a loan for the purposes of providing electric service from the Administrator of the Rural Electrification Administration under the Rural Electrification Act of 1936; a person having an obligation arising under State or local law (exclusive of an obligation arising solely from a contract entered into by such person) to provide electric service to the public; or any corporation or association which is wholly owned, directly or indirectly, by any one or more of the foregoing; and

(B) such entity was providing electric service to such ultimate consumer on the date of enactment of this subsection or would utilize transmission or distribution facilities that it owns or controls to deliver all such electric energy to such electric consumer.

Nothing in this subsection shall affect any authority of any State or local government under State law concerning the transmission of electric energy directly to an ultimate consumer.

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TITLE 26—INTERNAL REVENUE CODE OF 1986

SEC. 137. INCENTIVE PAYMENTS FOR ON-TIME PERFORMANCE.

Gross income does not include payments received by a railroad as an incentive for the on-time operation of intercity passenger trains.

SEC. [137.] 138. CROSS REFERENCES TO OTHER ACTS.

* * * * *

SEC. 150. DEFINITIONS AND SPECIAL RULES.

- (a) GENERAL RULE.—For purposes of this part—
 - (1) BOND.—The term “bond” includes any obligation.
 - (2) GOVERNMENTAL UNIT NOT TO INCLUDE FEDERAL GOVERNMENT.—The term “governmental unit” does not include the United States or any agency or instrumentality thereof.
 - (3) NET PROCEEDS.—The term “net proceeds” means, with respect to any issue, the proceeds of such issue reduced by amounts in a reasonably required reserve or replacement fund.
 - (4) 501(c)(3) ORGANIZATION.—The term “501(c)(3) organization” means any organization described in section 501(c)(3) and exempt from tax under section 501(a).

(5) OWNERSHIP OF PROPERTY.—Property shall be treated as owned by a governmental unit if it is owned on behalf of such unit.

(6) TAX-EXEMPT BOND.—The term “tax-exempt” means, with respect to any bond (or issue), that the interest on such bond (or on the bonds issued as part of such issue) is excluded from gross income.

* * * * *

(f) *INTERCITY RAIL PASSENGER BONDS.*—

(1) *IN GENERAL.*—For purposes of this part and section 103—

(A) *TREATMENT AS STATE OR LOCAL BOND.*—An intercity rail passenger bond shall be treated as a State or local bond.

(B) *DEFINITION OF INTERCITY RAIL PASSENGER BOND.*—The term “intercity rail passenger bond” means a bond issued by an intercity passenger railroad created under an Act of Congress (or a related party thereto) 95 percent or more of the net proceeds of which are to be used by the issuer (or a related party) in the trade or business of operating an intercity passenger railroad, including the acquisition, construction, reconstruction, or improvement of property to be used for such purposes and other general purposes of the issuer. Issuance of not more than \$100,000,000 per year shall be treated as a State or local bond under this section.

(C) *NOT FEDERALLY GUARANTEED OR PRIVATE ACTIVITY BOND.*—An intercity rail passenger bond shall not be treated as a private activity bond or as Federally guaranteed.

(2) *COORDINATION WITH OTHER PROVISIONS.*—

(A) *TREATMENT OF BOND-FINANCED PROPERTY.*—Property acquired with the proceeds of intercity rail passenger bonds shall not be treated as tax-exempt bond financed property for purposes of section 168.

(B) *TREATMENT OF ISSUER.*—The issuer of such a bond shall not be treated as a tax-exempt entity for any purpose of this title solely because of such issuance.

(C) *TREATMENT OF LEASE AGREEMENTS.*—An agreement entered into by the issuer of such a bond which otherwise qualifies as a lease of property to the issuer under this title will be treated as a lease, notwithstanding any use of proceeds of the bonds to finance the acquisition of leased property.

SEC. 168. ACCELERATED COST RECOVERY SYSTEM.

(a) *GENERAL RULE.*—Except as otherwise provided in this section, the depreciation deduction provided by section 167(a) for any tangible property shall be determined by using—

- (1) the applicable depreciation method,
- (2) the applicable recovery period, and
- (3) the applicable convention.

* * * * *

(k) *LEASED PROPERTY USED IN THE PROVISION OF INTERCITY RAIL PASSENGER SERVICE.*—

(1) *IN GENERAL.*—In the case of an agreement with respect to qualified leased property, if all of the parties to the agreement characterize such agreement as a lease and elect to have the provisions of this subsection apply with respect to such agreement, and if the requirements of paragraph (2) are met, then, for purposes of this subtitle, such agreement shall be treated as a lease entered into by the parties in the course of carrying on a trade or business and the lessor shall be treated as the owner of the property and the lessee shall be treated as the lessee of the property.

(2) *CERTAIN REQUIREMENTS MUST BE MET.*—The requirements of this subsection are met if the minimum investment of the lessor at the time the property is first placed in service under the lease and at all times during the lease term is not less than 10 percent of the adjusted basis of such property and the term of the lease (including any extensions) does not exceed the greater of 90 percent of the useful life of such property or 150 percent of the class life of such property.

(3) *NO OTHER FACTORS TAKEN INTO ACCOUNT.*—If the requirements of paragraphs (1) and (2) are met with respect to any transaction described in paragraph (1), no other factors shall be taken into account in making a determination as to whether paragraph (1) applies with respect to the transaction.

(4) *QUALIFIED LEASED PROPERTY.*—For purposes of this subsection, the term “qualified leased property” means property used in the provision of intercity rail passenger service which was leased within 3 months after such property was placed in service by the lessee and with respect to which the adjusted basis of the lessor does not exceed the adjusted basis of the lessee at the time of the lease.

(5) *MINIMUM INVESTMENT.*—For purposes of paragraph (1), the term “minimum investment” means the amount the lessor has at risk with respect to the property (other than financing from the lessee or a related party of the lessee). For the purposes of the preceding sentence, an agreement between the lessor and lessee requiring either or both parties to purchase or sell the qualified leased property at some price (whether or not fixed in the agreement at the end of the lease term) shall not affect the amount the lessor is treated as having at risk with respect to the property.

(6) *USE OF PRIVATE ACTIVITY BOND FINANCING.*—A private activity bond issued to finance qualified leased property shall be deemed to be a qualified bond (within the meaning of section 141) for the purpose of section 103 and subpart A of part IV of this chapter. Qualified leased property financed by a private activity bond shall not be deemed to be “tax-exempt bond financed property” or “tax-exempt use property” for the purpose of subsection (g).

(7) *CHARACTERIZATION BY PARTIES.*—For purposes of this subsection, any determination as to whether a person is a lessor or lessee, or whether property is leased, shall be made on the basis of the characterization of such person or property under the agreement described in paragraph (1).

(8) *REGULATIONS.*—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including regulations consistent with such purposes which limit the aggregate amount of (and timing of) deductions and credits in respect of qualified leased property to the aggregate amount (and the timing) allowable without regard to this subsection.

SEC. 6427. FUELS NOT USED FOR TAXABLE PURPOSES.

(a) **NONTAXABLE USES.**—Except as provided in subsection (k), if tax has been imposed under paragraph (2) or (3) of section 4041(a) or section 4041(c) on the sale of any fuel and the purchaser uses such fuel other than for the use for which sold, or resells such fuel, the Secretary shall pay (without interest) to him an amount equal to—

- (1) the amount of tax imposed on the sale of the fuel to him, reduced by
- (2) if he uses the fuel, the amount of tax which would have been imposed under section 4041 on such use if no tax under section 4041 had been imposed on the sale of the fuel.

* * * * *

(k) **INCOME TAX CREDIT IN LIEU OF PAYMENT.**—

(1) **PERSONS NOT SUBJECT TO INCOME TAX.**—Payment shall be made under this section only to—

(A) the United States or an agency or instrumentality thereof, a State, apolitical subdivision of a State, or any agency or instrumentality of one or more States or political subdivisions, or

(B) an organization exempt from tax under section 501(a) (other than an organization required to make a return of the tax imposed under subtitle A for its taxable year).

(2) **EXCEPTION.**—Paragraph (1) shall not apply to a payment of a claim filed under paragraph (2), (3), (4), or (5) of subsection (i).

(3) **ALLOWANCE OF CREDIT AGAINST INCOME TAX.**—For allowances of credit against the income tax imposed by subtitle A for fuel used or resold by the purchaser, see section 34.

* * * * *

(r) *AMTRAK INTERCITY PASSENGER TRAINS.*—The Secretary shall pay (without interest) to the Intercity Rail Passenger Account established by section 24316 of title 49, United States Code, the amount of tax paid by Amtrak under chapter 31 or 32 on any fuel used in the operation of intercity passenger trains. For purposes of subsection (k)(1) of this section, payment to the Intercity Rail Passenger Account shall be considered to be a payment described in subsection (k)(1)(A).

[(r)] (s) **Cross references.**

(1) For civil penalty for excessive claims under this section, see section 6675.

(2) For fraud penalties, etc., see chapter 75 (section 7201 and following, relating to crimes, other offenses, and forfeitures).

(3) For treatment of an Indian tribal government as a State (and a subdivision of an Indian tribal government as a political subdivision of a State), see section 7871.

§ 9503. Highway Trust Fund

(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the “Highway Trust Fund”, consisting of such amounts as may be appropriated or credited to the Highway Trust Fund as provided in this section or section 9602(b).

* * * * *

(e) ESTABLISHMENT OF MASS TRANSIT ACCOUNT.—

(1) CREATION OF ACCOUNT.—There is established in the Highway Trust Fund a separate account to be known as the “Mass Transit Account” consisting of such amounts as may be transferred or credited to the Mass Transit Account as provided in this subsection or section 9602(b).

(2) TRANSFERS TO MASS TRANSIT ACCOUNT.—The Secretary of the Treasury shall transfer to the Mass Transit Account the mass transit portion of the amounts appropriated to the Highway Trust Fund under subsection (b) which are attributable to taxes under sections 4041 and 4081 imposed after March 31, 1983. For purposes of the preceding sentence, the term “mass transit portion” means an amount determined at the rate of 2 cents for each gallon with respect to which tax was imposed under section 4041 or 4081.

(3) EXPENDITURES FROM ACCOUNT.—Amounts in the Mass Transit Account shall be available, as provided by appropriation Acts, for making capital or capital-related expenditures before October 1, 1997 (including capital expenditures for new projects) in accordance with,

(A) section 5338(a)(1) or (b)(1) of title 49, or

(B) the Intermodal Surface Transportation Efficiency Act of 1991,

as such Acts are in effect on the date of the enactment of the Intermodal Surface Transportation Efficiency Act of 1991.

(4) LIMITATION.—Rules similar to the rules of subsection (d) shall apply to the Mass Transit Account except that subsection (d)(1) shall be applied by substituting “12-month” for “24-month”.

(5) PORTION OF CERTAIN TRANSFERS TO BE MADE FROM ACCOUNT.—

(A) IN GENERAL.—Transfers under paragraphs (2), (3), and (4) of subsection (c) shall be borne by the Highway Account and the Mass Transit Account in proportion to the respective revenues transferred under this section to the Highway Account (after the application of paragraph (2)) and the Mass Transit Account; except that any such transfers to the extent attributable to section 6427(g) shall be borne only by the Highway Account.

(B) HIGHWAY ACCOUNT. For purposes of subparagraph (A), the term “Highway Account” means the portion of the

Highway Trust Fund which is not the Mass Transit Account.

(6) *TRANSFERS TO THE INTERCITY RAIL PASSENGER ACCOUNT.*—Notwithstanding any other provision of law to the contrary, the Secretary shall transfer from the Mass Transit Account to the Intercity Rail Passenger Account established under section 24316 of title 49, United States Code, the intercity rail passenger portion of the amounts appropriated under subsection (b) of this section which are attributable to taxes under sections 4041 and 4081 imposed on or after October 1, 1995. The intercity rail passenger portion is appropriated for the benefit of Amtrak for expenditure in accordance with the provisions of such section 24316. For purposes of this paragraph, the term “intercity rail passenger portion” means the amount attributable to 0.5 cent per gallon of the 2 cents per gallon to be transferred to the Mass Transit Account pursuant to paragraph (2) of this subsection. The Secretary shall transfer such funds at the end of each quarter of a fiscal year.

* * * * *

TITLE 45—RAILROADS

CHAPTER 17 RAILROAD REVITALIZATION AND REGULATORY REFORM

§ 801. Declaration of policy

(a) **PURPOSE.**—It is the purpose of the Congress in this Act to provide the means to rehabilitate and maintain the physical facilities, improve the operations and structure, and restore the financial stability of the railway system of the United States, and to promote the revitalization of such railway system, so that this mode of transportation will remain viable in the private sector of the economy and will be able to provide energy-efficient, ecologically compatible transportation services with greater efficiency, effectiveness, and economy, through—

(1) ratemaking and regulatory reform;

(2) the encouragement of efforts to restructure the system on a more economically justified basis, including planning authority in the Secretary of Transportation, an expedited procedure for determining whether merger and consolidation applications are in the public interest, and continuing reorganization authority;

(3) financing mechanisms that will assure adequate rehabilitation and improvement of facilities and equipment, implementation of the final system plan, and implementation of the Northeast Corridor project;

[(4) transitional continuation of service on light-density rail lines that are necessary to continued employment and community well-being throughout the United States;]

(4) continuation of service on, or preservation of, light density lines that are necessary to continued employment and community well-being throughout the United States;

(5) auditing, accounting, reporting, and other requirements to protect Federal funds and to assure repayment of loans and financial responsibility; and

(6) necessary studies.

* * * * *

§ 831. Guarantee of obligations

(a) GENERAL.—The Secretary may, in accordance with the provisions of this section, guarantee and make commitments to guarantee the payment of the principal balance of, and any interest on, an obligation of an applicant prior to, on, or after the date of execution or the date of disbursement of such obligation, if the proceeds of such obligation shall be or have been used (1) to acquire or to rehabilitate and improve facilities or equipment (which includes but is not limited to computerized car management systems), (2) to develop or establish new railroad facilities, or (3) to acquire, rehabilitate, improve, develop, or establish high-speed rail facilities or equipment. Each guarantee of such an obligation shall be made in accordance with the provisions of sections 511 through 513 of this title and such rules as the Secretary may prescribe to protect reasonably the interest of the United States. Each application for the guarantee of such an obligation or for a commitment to guarantee such an obligation shall be made in writing to the Secretary in such form and with such content as the Secretary prescribes. Such application shall be granted, in whole or in part, if the Secretary determines that the proposed, negotiated, or executed obligation is eligible for such guarantee. Each such guarantee or commitment to guarantee shall be extended in such form, under such terms and conditions, and pursuant to such regulations as the Secretary deems appropriate, consistent with the purposes of this title. Such a guarantee or commitment to guarantee shall inure to the benefit of the holder of the obligation to which such guarantee or commitment to guarantee applies.

(b) FUND.—An obligation guarantee fund shall be established and administered by the Secretary as a revolving fund to carry out the provisions of sections 511 through 513 of this title. Moneys in the obligation guarantee fund shall be deposited in the Treasury of the United States to the credit of such fund or invested in bonds or other obligations of the United States approved by the Secretary of the Treasury.

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

(d) MODIFICATIONS.—The Secretary may approve any modification of any provision of a guarantee, or of a commitment to guarantee an obligation, including the rate of interest, time of payment of interest or principal, security, or any other terms and conditions, if the Secretary makes a finding in writing that such modification is equitable and is in the overall best interests of the United States under this title, and that the holder of such obligation consents to such modification.

(e) EXTENT OF AUTHORITY.—The aggregate unpaid principal amounts of obligations which may be guaranteed by the Secretary under this section shall not exceed \$1,000,000,000 at any one time.

(f) **RATE OF INTEREST.**—The rate of interest (exclusive of premium charges for a guarantee and service fees) which shall be paid on the unpaid principal balance of each obligation guaranteed by the Secretary under this section, **[shall not exceed an annual percentage rate which the Secretary determines to be reasonable, taking into consideration the prevailing interest rates for similar obligations in the private market.] shall not exceed the annual percentage rate charged equivalent to the cost of money to the Federal government.**

(g) **PREREQUISITES FOR GUARANTEES.**—No obligation shall be guaranteed and no commitment shall be made to guarantee any obligation under this section, unless and until the Secretary makes a finding in writing that—

(1) an obligation for equipment acquisition, rehabilitation, or improvement is secured (A) by the particular equipment which is to be financed or refinanced by such obligation, or (B) in the case of the rehabilitation or improvement of leased equipment, by the lease;

[(2) payment of the obligation is required by its terms to be made within 25 years from the date of its execution;]

(2) payment of the obligation is required by its terms to be made not less than 15 years nor more than 25 years from the date of its execution, with no penalty imposed for prepayment after 5 years;

(3) the financing or refinancing is justified by the present and probable future demand for rail services or high-speed rail services to be rendered by the applicant and will serve to meet demonstrable needs for rail services or high-speed rail services and to provide shippers or passengers with improved service;

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

[(5) the prospective earning power of the applicant, or the value or prospective earning power of any equipment or facilities to be acquired, rehabilitated, improved, developed, or established (or any combination of the foregoing), together with any other security offered by the applicant, is sufficient to provide the United States with reasonable security and protection, except that if the value or prospective earning power of such equipment or facilities is equal to or greater than the amount of the obligation to be guaranteed, the Secretary may not, on the basis of the lack of prospective earning power of the applicant, find that the United States will not be provided with the reasonable security and protection referred to in this paragraph;]

(5) either the loan can reasonably be repaid by the applicant or the loan is collateralized at no more than the current value of assets being financed under this section to provide protection to the United States;

(6) the transaction will result in an improvement in the ability of any affected railroad or high-speed rail carrier to transport passengers or freight; and

(7) in the case of high-speed rail facilities and equipment, at least 85 percent of such facilities and equipment are mined, produced, or manufactured in the United States, unless the Secretary finds in writing that—

(A) such requirement would be inconsistent with the public interest;

(B) such facilities and equipment could not be mined, produced, or manufactured in the United States in sufficient and reasonably available quantities of a satisfactory quality;

(C) such a requirement would increase the cost of the facilities and equipment by more than 25 percent; or

(D) such a requirement would result in a violation of obligations of the United States under international trade agreements.

(h) GENERAL REQUIREMENT.—The recipients of any guarantees of, or of any commitments to guarantee, an obligation under this section, shall, consistent with their capital resources, maintain their facilities, on a continuing basis, in accordance with standards promulgated under this subsection. The Secretary shall assure compliance with this requirement by regular periodic inspection.

(i) CONDITIONS OF GUARANTEES.—

(1) The Secretary shall, before making, approving, or extending any guarantee or commitment to guarantee any obligation under this section, require the obligor to agree to such terms and conditions as are sufficient, in the judgment of the Secretary, to assure that, as long as any principal or interest is due and payable on such obligation, such obligor—

(A) will not make any discretionary dividend payments, except as provided in paragraph (2) of this subsection; and

(B) (i) will not use any funds or assets from railroad operations for nonrail purposes; and

(ii) will not use any funds or assets from high-speed rail operations for purposes other than high-speed rail purposes,

if such payments or use will impair the ability of such obligor to provide rail services or high-speed rail services in an efficient and economic manner or will adversely effect the ability of such obligor to perform any obligation guaranteed by the Secretary.

(2) An obligor shall not be restricted with respect to making dividend payments from its net income for any fiscal year, if such payments do not exceed—

(A) when compared to the net income of such obligor for such fiscal year, the ratio which aggregate dividends paid by such obligor, during the 5 fiscal years prior to the granting of the earliest loan guarantee then outstanding under this section, bore to aggregate net income of such obligor for such period; or

(B) 50 per centum of the total additions to the retained income of such obligor (computed on a cumulative basis and giving cognizance to dividends paid) during the period commencing with the fiscal year prior to the granting of

the earliest loan guarantee then outstanding under this section,
whichever is greater.

(3) The restrictions set forth in paragraphs (1) of this subsection shall not apply with respect to an obligation guaranteed under this section if, in the event of a default by the obligor, the Secretary would be subrogated to the rights of the lender under section 77(j) of the Bankruptcy Act.

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

(j) BREACH OF CONDITIONS.—The Attorney General shall commence a civil action in any appropriate district court of the United States to enjoin any activity which the Secretary finds is in violation of any requirement or condition specified in subsection (i) or (j) of this section, and to secure any other appropriate relief, including termination, suspension, and punitive damages.

(k) INVESTIGATION CHARGE.—The Secretary shall charge and collect from each applicant such amounts as he deems reasonable for the investigation of any application submitted under this section, for appraisal of the value of the equipment or facilities involved, and for making the necessary determinations and findings. Such charges shall not aggregate more than one-half of 1 percent of the principal amount of the obligation with respect to which the applicant seeks a guarantee or commitment to guarantee.

(l) PREMIUM CHARGE.—The Secretary shall assess and collect from the obligor an annual premium charge on each obligation guaranteed under this section. The amount of such premium may not exceed an annual rate of 1 percent on the unpaid principal balance of such obligation at the time payment is due. Payment is due initially when the obligation is guaranteed by the Secretary, and, thereafter, in the anniversary date of such guarantee.

(m) ADMINISTRATIVE COSTS.—All moneys received by the Secretary under this section shall be deposited in the obligation guarantee fund, and to the extent provided in appropriation acts, may be used by the Secretary to pay administrative costs and expenses incurred by him pursuant to this section.

(n) DEFINITIONS.—As used in this section, the term “high-speed rail” means all forms of nonhighway ground transportation that run on rails providing transportation service which is—

- (1) reasonably expected to reach sustained speeds of more than 125 miles per hour; and
- (2) made available to members of the general public as passengers.

Such term does not include rapid transit operations within an urban area that are not connected to the general rail system of transportation.

§ 1111. Northeast Corridor cost dispute

(a) DETERMINATION OF COSTING METHODOLOGY.—

(1) Within 120 days after the effective date of this subtitle, the Commission shall determine an appropriate costing methodology for compensation to Amtrak for the right-of-way relat-

ed costs for the operation of commuter rail passenger service over the Northeast Corridor and other properties owned by Amtrak, unless Conrail, Amtrak, and affected commuter authorities have otherwise agreed on such a methodology by that date. In making its determination, the Commission shall consider all relevant factors, including the standards of sections 205(d) and 304(c) of the Regional Rail Reorganization Act of 1973, section 701(a)(6) of the Railroad Revitalization and Regulatory Reform Act of 1976, and section 402(a) of the Rail Passenger Service Act.

[(2) The Commission, in making such a determination, shall consider all relevant factors, and shall not permit cross subsidization between intercity rail passenger service and commuter rail passenger service.

[(b) EFFECTIVE DATE OF DETERMINATION OR AGREEMENT.—Any determination by the Commission under this section shall be effective on the date of such determination, and any agreement of the parties under this section shall be effective on the date specified in such agreement. Any such determination or agreement shall not apply to any compensation paid to Amtrak prior to the date of such determination or the date so specified, as the case may be, for the right-of-way related costs described in subsection (a) of this section.

[(c) AGREEMENT SUBSEQUENT TO DETERMINATION.—Nothing in this section shall preclude parties from entering into an agreement, after the determination of the Commission or their initial agreement under this section, with respect to the right-of-way related costs described in subsection (a) of this section.

[(d) FINALITY OF DETERMINATION.—Any determination by the Commission under this section shall be final and shall not be reviewable in any court.]

§ 1113. Intercity passenger service

(a) RESPONSIBILITY OF CONRAIL TO PROVIDE CREWS TERMINATED; NEGOTIATIONS FOR EMPLOYEE TRANSFERS.—(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 [of this section] 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 en-*

gine 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.

(b) ELIGIBILITY OF EMPLOYEES PROTECTION BENEFITS.—Conrail employees who are deprived of employment by an assumption or discontinuance of intercity passenger service by Amtrak shall be eligible for employee protection benefits under section 701 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 797), notwithstanding any other provision of law, agreement, or arrangement, and notwithstanding the inability of such employees otherwise to meet the eligibility requirements of such section. Such protection shall be the exclusive protection applicable to Conrail employees deprived of employment or adversely affected by any such assumption or discontinuance.

CHAPTER 22 CONRAIL PRIVATIZATION

§ 1323. 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 ap-

pointed 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 director selected 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.】

TITLE 49—TRANSPORTATION

§ 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 remade 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).

§ 22101. Financial assistance for State projects

(a) GENERAL.—The Secretary of Transportation shall provide financial assistance to a State, as provided under this chapter, for a rail freight assistance project of the State when a rail carrier subject to subchapter I of chapter 105 of this title maintains a rail line in the State. The assistance is for the cost of—

(1) acquiring, in any way the State considers appropriate, an interest in a rail line or rail property to maintain existing, or to provide future, rail freight transportation, but only if the Interstate Commerce Commission has authorized, or exempted

from the requirements of that authorization, the abandonment of, or the discontinuance of rail transportation on, the rail line related to the project;

(2) improving and rehabilitating rail property on a rail line to the extent necessary to allow adequate and efficient rail freight transportation on the line, but only if the rail carrier certifies that the rail line related to the project carried not more than 5,000,000 gross ton-miles of freight a mile in the prior year; [and]

(3) building rail or rail-related facilities (including new connections between at least 2 existing rail lines, intermodal freight terminals, sidings, ridges, and relocation of existing lines) to improve the quality and efficiency of the rail freight transportation, but only if the rail carrier certifies that the rail line related to the project carried not more than 5,000,000 gross ton-miles of freight a mile in the prior [year.] year;

(4) the cost of closing or improving a railroad grade crossing or series of railroad grade crossings; and

(5) the cost of creating a State-supervised grain car pool.

(b) CALCULATING COST-BENEFIT RATIO.—The Secretary shall establish a methodology for calculating the ratio of benefits to costs of projects proposed under this chapter. In establishing the methodology, the Secretary shall consider the need for equitable treatment of different regions of the United States and different commodities transported by rail. The establishment of the methodology is committed to the discretion of the secretary.

(c) CONDITIONS.—

(1) Assistance for a project shall be provided under this chapter only if—

(A) a rail carrier certifies that the rail line related to the project carried more than 20 carloads a mile during the most recent year during which 49 USC 22101 (1994) transportation was provided by the carrier on the line; and

(B) the ratio of benefits to costs for the project, as calculated using the methodology established under subsection (b) of this section, is more than 1.0.

(2) If the rail carrier that provided the transportation on the rail line is no longer in existence, the applicant for the project shall provide the information required by the certification under paragraph (1)(A) of this subsection in the way the Secretary prescribes.

(3) The Secretary may waive the requirement of paragraph (1)(A) or (2) of this subsection if the Secretary—

(A) decides that the rail line has contractual guarantees of at least 40 carloads a mile for each of the first 2 years of operation of the proposed project; and

(B) finds that there is a reasonable expectation that the contractual guarantees will be fulfilled.

(d) DISASTER FUNDING FOR RAILROADS.—

(1) The Secretary may declare that a disaster has occurred and that it is necessary to repair and rebuild rail lines damaged as a result of such disaster. If the Secretary makes the declaration under this paragraph, the Secretary may—

(A) waive the requirements of this section; and

(B) prescribe the form and time for applications for assistance made available herein.

(2) The Secretary may not provide assistance under this subsection unless emergency disaster relief funds are appropriated for that purpose.

(3) Funds provided for under this subsection shall remain available until extended.

[(d)] *(e) LIMITATIONS ON AMOUNTS.—*A State may not receive more than 15 percent of the amounts provided in a fiscal year under this chapter. Not more than 20 percent of the amounts available under this chapter may be provided in a fiscal year for any one project.

§ 22108. Authorization of appropriations

[(a) GENERAL.—(1) Not more than the following amounts may be appropriated to the Secretary of Transportation to carry out this chapter:

[(A) \$25,000,000 for the fiscal year ending September 30, 1993.

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

(a) GENERAL.—

(1) There is authorized to be appropriated to the Secretary of Transportation to carry out this chapter the sum of \$25,000,000 for the fiscal year ending September 30, 1996, and for each subsequent fiscal year.

(2) Amounts appropriated under paragraph (1) of this subsection remain available until expended.

(3) No amount may be appropriated under this subsection to the Secretary for any period after September 30, 1994, to carry out this chapter.

(b) DISTRIBUTION OF AMOUNTS.—The Secretary shall establish procedures necessary to ensure that amounts available to the Secretary for projects under this chapter are distributed not later than April 1 of the fiscal year for which the amounts are appropriated. If any amounts are not distributed by April 1, the Secretary shall report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on the status of those amounts and the reasons for the delay in distribution.

(c) AVAILABILITY OF OTHER AMOUNTS.—Amounts appropriated to carry out section 5(i) of the Department of Transportation Act for fiscal year 1990 that are not applied for or that remain obligated on January 1, 1991, are available to the secretary for projects under this chapter.

§ 24101. Findings, purpose, and goals

(a) FINDINGS.—

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

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

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

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

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

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

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

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

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

(c) GOALS.—Amtrak shall—

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

(A) increasing fares;

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

(C) reducing losses on food service;

(D) improving its contracts with operating rail carriers;

(E) reducing management costs; and

(F) increasing employee productivity;

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

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

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

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

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

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

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

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

(10) manage capital investment in such a way as to provide customers with world class service;

(11) treat all passengers with respect, courtesy, and dignity;

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

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

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

(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. Within 90 days after the date of enactment of the Amtrak and Local Rail Revitalization Act of 1995, Amtrak shall prepare a financial plan to operate within the funding levels authorized by section 24104 of this chapter, including budgetary goals for fiscal years 1995 through 1997. Commencing no later than the fiscal year following the fifth anniversary of the enactment of the Amtrak and Local Rail Revitalization Act of 1995, Amtrak shall operate without the need for any Federal operating grant funds appropriated for its benefit. The plan shall include internal reforms to maximize cost savings through overhead reduction and productivity improvement, steps to maximize revenue, implementation of a commercially rationalized national route system, and achievement through negotiation of substantial reductions in costs directly related to health and welfare plans, train and engine crew size requirements, and mechanical workforce inefficiencies. Each year before the fifth anniversary of the date of enactment of the Amtrak and Local Rail Revitalization Act of 1995, the Amtrak Reform Council shall submit to the congress a progress report outlining the likelihood that Amtrak will not require Federal operating grants after that anniversary.

§ 24102. Definitions

In this part—

(1) "Amtrak" means the National Railroad Passenger Corporation and any successor, assign, subsidiary, and, except for purposes of the Internal Revenue Code of 1986, any affiliate, or joint venture in which that Corporation has a material interest.

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

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

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

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

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

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

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

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

(8) “*rail passenger transportation*” means the interstate, intrastate, or international transportation of passengers by rail, including mail and express.

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

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

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

§ 24104. Authorization of appropriations

[(a) CAPITAL ACQUISITION AND CORRIDOR DEVELOPMENT.—

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

[(2)] In addition to amounts that may be appropriated under section 24909 of this title, not more than the following

amounts may be appropriated to the secretary for the benefit of Amtrak to make capital expenditures under chapter 249 of this title:

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

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

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

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

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

[(ii) the State will pay at least 90 percent of the cost of improving the right of way, including track structure, signal systems, passenger station facilities, 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). In fiscal years following the fifth anniversary of the enactment of the Amtrak and Local Rail Revitalization Act of 1995 no funds authorized for Amtrak shall be used for operating expenses.

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

- (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,

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

(c) *MANDATORY PAYMENTS.*—

(1) Not more than \$150,000,000 for the fiscal year ending September 30, 1993, and amounts that may be necessary for the fiscal year ending September 30, 1994, may be appropriated to the Secretary to pay—

(A) tax liabilities under section 3221 of the Internal Revenue Code of 1986 (26 U.S.C. 3221) due in those fiscal years that are more than the amount needed for benefits for individuals who retire from Amtrak and for their beneficiaries;

(B) obligations of Amtrak under section 8(a) of the Railroad Unemployment Insurance Act (45 U.S.C. 358(a)) due in those fiscal years that are more than obligations of Amtrak calculated on an experience-related basis; and

(C) obligations of Amtrak due under section 3321 of the Code (26 U.S.C. 3321).

(2) Amounts appropriated under this subsection are not a United States government subsidy of Amtrak.

[(d) *PAYMENT TO AMTRAK.*—Amounts appropriated under this section shall be paid to Amtrak under the budget request of the Secretary as approved or modified congress when the amounts are appropriated. A payment may not be made more 49 USC 24104 (1994) 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.*—Funds appropriated pursuant to this section shall be provided to Amtrak upon appropriation when requested by Amtrak. Notwithstanding any agreement to the contrary, funds that have been appropriated to the Secretary for use in implementing the Northeast Corridor Improvement Project prior to September 30, 1995, shall be made immediately available to Amtrak for use in undertaking the improvements authorized by chapter 249 of this title.

(e) *AVAILABILITY OF AMOUNTS AND EARLY APPROPRIATIONS.*—

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

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

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

(g) *SUNSET TRIGGER.*—

(1) *Following the third anniversary of the enactment of the Amtrak and Local Rail Revitalization Act of 1995, the Amtrak Reform Council shall review the progress Amtrak has made under its plan to achieve the financial goals specified in section 24101(d), and determine on the basis of performance under the plan the likelihood that Amtrak will not require Federal operating grant funds appropriated for its benefit after the fifth anniversary of the enactment of that Act. The Amtrak Reform Council will submit a report on its findings and determinations, and the action plan recommended for implementation by the Secretary and Amtrak under section 601 of that Act to the Congress 90 days after the third anniversary of the enactment of that Act. Authorizations for appropriations made by this section for fiscal years beginning after the submission of the report to the Congress pursuant to this subsection are conditioned on Amtrak achieving the targets in its plan and findings that Amtrak will not require Federal operating grant funds to be appropriated for its benefit in fiscal years following the fifth anniversary of the enactment of that Act.*

(2) *In determining whether Amtrak has met the targets in its plans and the likelihood that it will not require a Federal operating subsidy for fiscal years beginning after the fifth anniversary of the date of enactment of the Amtrak and Local Rail Revitalization Act of 1995, the Amtrak Reform Council shall take into account Acts of God, national emergencies, and other events beyond the reasonable control of Amtrak, and shall not consider any liability of Amtrak under section 24301(g) of title 49, United States Code.*

(3) *If the Amtrak Reform Council finds that—*

(A) Amtrak—

(i) has met the financial goals anticipated for it at the end of 3 years, taking into account the factors in paragraph (2), and

(ii) will be able to maintain a national passenger rail system which provides access to all areas of the country without Federal operational support,

then the Secretary and Amtrak shall implement the Amtrak plan developed under section 601(b)(6)(A) of the Amtrak and Local Rail Revitalization Act of 1995 providing the continued operation of Amtrak unless the Congress disapproves the plan within 45 days after it is submitted to the Congress; or

(B) Amtrak has failed to meet the financial goals anticipated for it at the end of 3 years, taking into account the factors in paragraph (3), then the Secretary and Amtrak shall implement the Amtrak sunset plan developed under section 601(b)(6)(B) of that Act providing for the complete liquidation of Amtrak, unless the Congress disapproves the plan within 45 days after it is submitted to the Congress.

(4) The annual report of the Amtrak Reform Council shall include an assessment of progress on the resolution or status of productivity issues, including—

(A) train and engine manning requirements;

(B) utilization of employees in the mechanical operations;

(C) health and welfare benefits and plan design;

(D) management efficiency improvement;

(E) property utilization and management;

(F) revenue enhancement and ridership;

(G) Amtrak's operation as a national passenger rail system which provides access to all areas of the country and ties together existing and emerging regional rail passenger networks and other intermodal passenger service;

(H) technology utilization; and

(I) procurement reforms.

§ 24301. Status and applicable laws

(a) STATUS.—Amtrak—

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

(2) shall be operated and managed as a for-profit corporation; and

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

(b) PRINCIPAL OFFICE AND PLACE OF BUSINESS.—[The principal office and place of business of Amtrak are in the District of Columbia.] Amtrak is qualified to do business in each State in which Amtrak carries out an activity authorized under this part. Amtrak shall accept service of process by certified mail addressed to the secretary of Amtrak at its principal office and place of business. Amtrak is a citizen only of the [District of Columbia] *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 may, at its election, continue to be organized under the provisions of that 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.

(d) APPLICATION OF SAFETY AND EMPLOYEE RELATIONS LAWS AND REGULATIONS.—Laws and regulations governing safety, employee representation for collective bargaining purposes, the handling of disputes between carriers and employees, employee retirement, annuity, and unemployment systems, and other dealings with employees that apply to a common carrier subject to subchapter I of chapter 105 of this title apply to Amtrak.

(e) APPLICATION OF CERTAIN ADDITIONAL LAWS.—Section 552 of title 5, this part, and, to the extent consistent with this part, [the District of Columbia Business Corporation Act (D.C. Code § 29–301 et seq.)] the corporate law of the State in which it is incorporated apply to Amtrak. Section 552 of title 5, United States Code, shall apply to Amtrak in any fiscal year for which Amtrak receives a Federal operating subsidy.

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

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

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

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

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

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

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

(k) EXEMPTION FROM ADDITIONAL TAXES.—

(1) In this subsection—

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

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

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

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

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

(l) EXEMPTION FROM TAXES LEVIED AFTER SEPTEMBER 30, 1981.—

(1) Amtrak or a rail carrier subsidiary of **[Amtrak]** *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] tax, fee, head charge, or other charge, imposed or levied by a State, political subdivision, or local taxing authority, directly or indirectly on Amtrak, a rail carrier subsidiary of Amtrak, or on persons traveling in intercity rail passenger transportation or on mail or express transportation provided by Amtrak or such a subsidiary, or on the carriage of such persons, mail, or express, or on the sale of any such transportation, or on the gross receipts derived therefrom after September 30, 1981. [However, Amtrak is not exempt under this subsection from a tax or fee that it was required to pay as of September 10,*

1982.] *Amtrak is not exempt from a tax or fee it was required to pay as of September 10, 1982, if that tax or fee was assessed before April 1, 1995.*

(2) The district courts of the United States have original jurisdiction over a civil action Amtrak brings to enforce this subsection and may grant equitable or declaratory relief requested by Amtrak.

(m) WASTE DISPOSAL.—

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

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

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

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

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

(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.*

(p) TAX RELIEF.—

(1) *IN GENERAL.—To the extent funds are appropriated pursuant to paragraph (3) of this subsection, Amtrak shall, effective October 1, 1995, be relieved from any liability or obligation to pay—*

(A) *tax liabilities under section 3221 of the Internal Revenue Code of 1986 that are more than the amount needed for benefits for individuals who retire from Amtrak and for their beneficiaries; and*

(B) *obligations of Amtrak under section 8(a) of the Railroad Unemployment Insurance Act (45 U.S.C. 358(a)) that*

are more than obligations of Amtrak calculated on an experience-related basis.

(2) *SCOPE.*—

(A) *EMPLOYEE CLASSIFICATION.*—In determining Amtrak's liabilities or obligations under the provisions of law to which reference is made in paragraph (1), workers not on Amtrak's employee roster shall not be classified as Amtrak's employees.

(B) *NO REDUCTION OF BENEFIT.*—Nothing in this paragraph shall be construed as a basis for reducing any benefit payable to any railroad employee, retiree, or beneficiary.

(C) *RESIDUAL LIABILITY.*—Amtrak remains liable for any obligations not paid under paragraph (3).

(3) *AUTHORIZATION OF APPROPRIATIONS.*—There are authorized to be appropriated to the Secretary amounts necessary to relieve Amtrak of portions of its liabilities under section 3221 of the Internal Revenue Code of 1986 and section 8(a) of the railroad Unemployment Insurance Act, as provided in paragraph (1) of this subsection, up to the estimated amount of such portions in each calendar year. To the extent funds are appropriated pursuant to this paragraph, Amtrak is relieved of such liabilities. Appropriations to the Secretary which have been authorized by this subsection shall be paid in the same manner as tax liabilities or obligations from which Amtrak has not been relieved. Amounts appropriated under this subsection shall not be considered a United States Government subsidy of Amtrak.

(q) *POWER PURCHASES.*—The sale of power to Amtrak for its own use, including operating its electric traction system, does not constitute a direct sale of electric energy to an ultimate consumer under section 212(h)(1) of the Federal Power Act (16 U.S.C. 824k(h)(1)).

(r) *POWER SALES TO COMMUTER AUTHORITIES AND OTHERS.*—A State or other law, rule, regulation, order, or standard relating to the licensing, rates, terms, and conditions of sales of electric energy at retail does not apply to Amtrak in making sales of electric energy in the Northeast Corridor from its electric power transmission and distribution system to commuter authorities and other consumers of electricity. For purposes of this subsection, the term 'sales' means sales to consumers of electricity directly connected to Amtrak's electric power system except to the extent that Amtrak is otherwise authorized by law to make other sales of electric energy.

(s) *TRANSMISSION SERVICE.*—Amtrak, or any entity selling power to Amtrak for Amtrak's use or to be resold by Amtrak to commuter authorities or other consumers of electricity in the Northeast Corridor from Amtrak's electric power transmission and distribution system, may seek an order under section 211(a) of the Federal Power Act (16 U.S.C. 824j(a)) requiring a utility to provide transmission service for this power without regard to any restrictions in subsections (g) and (h) of section 212 of such Act (16 U.S.C. 824k).

§24303. Officers

(a) *APPOINTMENT AND TERMS.*—Amtrak has a President and other officers that are named and appointed by the board of directors of Amtrak. An officer of Amtrak must be a citizen of the

United States. Officers of Amtrak serve at the pleasure of the board.

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

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

§ 24305. General authority

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

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

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

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

(i) if the motor carrier is not a public recipient of governmental assistance, as such term is defined in section 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 system wide inventory of spare equipment parts in each operational region;

[(3) enough maintenance employees for cars and locomotives in each region;

[(4) a systematic preventive maintenance program;

[(5) periodic evaluations of maintenance costs, time lags, and parts shortages and corrective actions; and

[(6) other elements or activities Amtrak considers appropriate.]

(b) *BELOW-COST COMPETITION.*—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, 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. This subsection shall not apply for any fiscal year for which Amtrak receives no Federal subsidy.

(c) MISCELLANEOUS AUTHORITY.—Amtrak may—

- (1) make and carry out appropriate agreements;
- (2) transport mail and express and shall use all feasible methods to obtain the bulk mail business of the United States Postal Service;
- (3) improve its reservation system and advertising;
- (4) provide food and beverage services on its trains only if revenues from the services each year at least equal the cost of providing the services;
- (5) conduct research, development, and demonstration programs related to the mission of Amtrak; and
- (6) buy or lease rail rolling stock and develop and demonstrate improved rolling stock.

(d) THROUGH ROUTES AND JOINT FARES.—

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

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

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

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

(f) DOMESTIC BUYING PREFERENCES.—

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

(2) Amtrak shall buy only—

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

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

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

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

(A) for particular articles, material, or supplies—

(i) the requirements of paragraph (2) of this subsection are inconsistent with the public interest;

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

(iii) the articles, material, or supplies, or the articles, material, or supplies from which they are manufactured, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and are not of a satisfactory quality; or

(B) rolling stock or power train equipment cannot be bought and delivered in the United States within a reasonable time.

(g) *SALE OF SURPLUS POWER.*—Whenever Amtrak owns electric energy or power transmission capacity that is surplus to its traction power needs, it may sell such power at wholesale or retail to any purchaser in the Northeast Corridor, sell power transmission services, seek interconnection under section 210 of the Federal Power Act (16 U.S.C. 824i), and enter into coordination, power pooling, and other arrangements with electric utilities designed to increase Amtrak's revenues or decrease its costs.

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

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

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

- 【(1) acquiring special equipment;
- 【(2) conducting special training for employees;
- 【(3) designing and acquiring new equipment and facilities;
- 【(4) eliminating barriers in existing equipment and facilities to comply with the highest standards of design, construction, and alteration of property accommodate elderly and handicapped individuals; and
- 【(5) providing special assistance to elderly and handicapped individuals when getting on and off trains and in terminal areas.】

【(c)】 (b) EMPLOYEE TRANSPORTATION.—

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

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

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

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

§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.]

TITLE 49—TRANSPORTATION

SUBTITLE V. RAIL PROGRAMS

PART C. PASSENGER TRANSPORTATION

CHAPTER 243. AMTRAK

§24312. Labor standards

(a) PREVAILING WAGES AND HEALTH AND SAFETY STANDARDS.—

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

apply to all construction work performed under such an agreement, except for construction work performed by a rail carrier.

[(2)] (b) Wage rates in a collective bargaining agreement negotiated under the railway Labor Act (45 U.S.C. 151 et seq.) are deemed to comply with the Act of March 3, 1931 (known as the Davis-Bacon Act) (40 U.S.C. 276a 276a-5).

[(b) CONTRACTING OUT.—

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

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

[(§ 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 308¹ (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 performance audits of the activities and trans-

actions 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.

“§24316. Intercity Rail Passenger Account

(a) ESTABLISHMENT.—Amtrak shall establish an Intercity Rail Passenger Account. Amounts deposited in this account shall be available for use by Amtrak to—

- (1) acquire passenger equipment and locomotives;*
- (2) encourage State and local investment in facilities and equipment used to provide intercity rail passenger transportation; and*
- (3) address other critical capital priorities.*

(b) DEPOSITS.—During fiscal years 1995 through 1999, Amtrak shall deposit amounts equal in the aggregate to 5 percent of ticket revenue for that 5 fiscal year period into the Intercity Rail Passenger Account and may deposit into the Account—

- (1) payments received for the use of its equipment or facilities;*
- (2) claims recovered by Amtrak;*
- (3) amounts from any other source to the extent authorized by law; and*
- (4) amounts received by Amtrak as refunds of taxes on the fuel required for its operations.*

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

[(f) EXEMPTION FROM ADDITIONAL TAXES.—

[(1) In this subsection—

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

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

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

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

[(2) Amtrak Commuter is not required to pay an additional tax because of an expenditure to acquire or improve real property, equipment, a facility, or right-of-way material or struc-

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

* * * * *

[(§ 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 ses-

sion 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 are 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 inter city 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 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 days] 180 days before [a discontinuance under section 24704 or 24707(a) or (b) of this title] *discontinuing service over a route*, Amtrak shall give notice of the discontinuance in the way Amtrak decides will give a State, a regional or local authority, or another person the opportunity to agree to share or assume the cost of any part of the train, route, or service to be discontinued.

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

(b) DISCONTINUANCE FOR LACK OF APPROPRIATIONS.—

(1) Amtrak may discontinue service under [section 24704 or 24707(a) or (b) of this title] *paragraph (1)* during—

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

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

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

(c) EMPLOYEE PROTECTIVE ARRANGEMENTS.—

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

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

[(B) the continuation of collective bargaining rights;

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

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

[(E) paid training and retraining programs.

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

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

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

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

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

(c) *EMPLOYEE PROTECTION.—Notwithstanding any arrangement in effect before the enactment of the Amtrak and Local Rail Revitalization Act of 1995—*

(1) an employee of Amtrak shall be entitled to protective benefits only if deprived of employment as a result of a discontinuance of intercity rail passenger service or other transaction creating an entitlement to such benefits;

(2) the total amount of protective payments shall not exceed 6 months' pay; and

(3) fringe benefits shall not be continued in excess of 6 months or the minimum period established by other Federal law for such benefits, whichever is longer.

§ 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 sub-

section shall be designed to continue the maximum level of transportation practicable, including—

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

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

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

[(§ 24708. Special commuter transportation

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

[(b) TRANSPORTATION WITH SHORT-TERM AVOIDABLE LOSS.—Notwithstanding subsection (a) of this section, if after September 30, 1993, and before October 1, 1995, transportation provided under subsection (a) on a route during the prior 6 months has a short-term avoidable loss (excluding the cost of providing passenger equipment needed to provide the transportation), Amtrak may choose to consider modifying or discontinuing the transportation. If Amtrak does make such a choice, Amtrak shall solicit public comment for at least 30 days on alternatives to the modification or discontinuance. Not later than 60 days after the comment period ends, Amtrak may modify or discontinue the transportation so that there is no short-term avoidable loss under this section for providing the transportation on the route.]

CHAPTER 249. NORTHEAST CORRIDOR IMPROVEMENT PROGRAM

§ 24902. Goals and requirements

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

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

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

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

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

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

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

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

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

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

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

[(c) COST SHARING FOR NONOPERATIONAL FACILITIES.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[(f) (c) COMPATIBILITY WITH FUTURE IMPROVEMENTS AND PRODUCTION OF MAXIMUM LABOR BENEFITS.—Improvements under this section shall be compatible with future improvements in transpor-

tation and shall produce the maximum labor benefit from hiring individuals presently unemployed.

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

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

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

[(j)] (g) AGREEMENTS FOR OFF-CORRIDOR ROUTING OF RAIL FREIGHT TRANSPORTATION.—

(1) Amtrak may make an agreement with a rail freight carrier or a regional transportation authority under which the carrier will carry out an alternate off-corridor routing of rail freight transportation over rail lines in the Northeast Corridor between the District of Columbia and New York metropolitan areas, including intermediate points. The agreement shall be for at least 5 years.

(2) Amtrak shall apply to the Interstate Commerce Commission for approval of the agreement and all related agreements accompanying the application as soon as the agreement is made. If the Commission finds that approval is necessary to carry out this chapter, the Commission shall approve the application and related agreements not later than 90 days after receiving the application.

(3) If an agreement is not made under paragraph (1) of this subsection, Amtrak, with the consent of the other parties, may apply to the Interstate Commerce Commission. Not later than 90 days after the application, the Commission shall decide on the terms of an agreement if it decides that doing so is necessary to carry out this chapter. The decision of the Commission is binding on the other parties.

[(k)] (h) COORDINATION.—

(1) The Secretary of Transportation shall coordinate—

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

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

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

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

(j) *APPLICABLE PROCEDURES.*—For the purpose of any State or local requirement for permit or other approval for construction or operation of any improvement undertaken by or for the benefit of Amtrak as part of, or in furtherance of, the Northeast Corridor Improvement Project, or chapter 241, 243, or 247 of this title, the exemptions and procedures applicable to a project undertaken by the Federal Government or an agency thereof shall apply. The preceding sentence shall not apply to any project initiated in any fiscal year for which Amtrak receives no Federal operating subsidy.

CHAPTER 249. NORTHEAST CORRIDOR IMPROVEMENT PROGRAM

[§ 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 (42U.S.C. 7401 et seq.);

[(2) an identification of the coordinated program of improvements and the specific projects of that program, including the estimated costs, schedules, timing, and relationship of those projects with other projects;

[(3) an identification of the financial responsibility for the specific projects of that program and the sources of the amounts for the projects;

[(4) an operating plan for the construction period of the improvements that shows a coordinated approach to scheduling intercity and commuter trains;

[(5) an operating plan for the coordinated scheduling of intercity and commuter trains for the period after the program

is completed, including priority scheduling, dispatching, and occupancy of tracks for appropriately frequent, regularly scheduled intercity rail passenger transportation between Boston, Massachusetts, and New York, New York, in not more than 3 hours, including intermediate stops;

[(6) a comprehensive plan to control future congestion in the Northeast corridor attributable to increases in intercity and commuter rail passenger transportation;

[(7) an assessment of long-term operational safety needs and a list of specific projects designed to maximize operational safety; and

[(8) comments that Amtrak submits to the Secretary on the plan.

[(b) SUBMITTING MODIFICATIONS OF PLAN TO CONGRESS.—The Secretary shall submit to Congress any modification made to the program master plan and comments that Amtrak submits on the modification.]

CHAPTER 249. NORTHEAST CORRIDOR IMPROVEMENT PROGRAM

§ 24904. General authority

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

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

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

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

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

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

(6) make agreements with other carriers and commuter authorities to grant, acquire, or make arrangements for rail freight or commuter rail passenger transportation over, rights of way and facilities acquired under the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.) and the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 801 et seq.);

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

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

(b) COMPENSATORY AGREEMENTS.—Rail freight and commuter rail passenger transportation provided under subsection (a)(3) of this section shall be provided under compensatory agreements with the responsible carriers.

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

(1) An agreement under subsection (a)(6) of this section shall provide for reasonable reimbursement of costs but may not cross-subsidize intercity rail passenger, commuter rail passenger, and rail freight transportation.

(2) If the parties do not agree, the Interstate Commerce Commission shall order that the transportation continue over facilities acquired under the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.) and the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 801 et seq.) and shall determine compensation (without allowing cross-subsidization **between intercity rail passenger and rail freight transportation**) *among intercity rail passenger, commuter 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 *commuter rail carrier* or rail freight carrier obtaining transportation under this subsection the costs Amtrak incurs only for the benefit of the carrier, plus a proportionate share of all other costs of providing transportation under this paragraph incurred for the common benefit of Amtrak and the carrier. The proportionate share shall be based on relative measures of volume of car operations, tonnage, or other factors that reasonably reflect the relative use of rail property covered by this subsection.

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

CHAPTER 249. NORTHEAST CORRIDOR IMPROVEMENT PROGRAM

§ 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 wayside 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.]

CHAPTER 281—LAW ENFORCEMENT

§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, a contract between Amtrak and its passengers, the Alaskan Railroad and its passengers, or private railroad car operators and their passengers regarding claims for personal injury, death, or damage to property arising from or in connection with the provision of rail passenger transportation, or from or in connection with any operations over or use of right-of-way or facilities owned, leased, or maintained by Amtrak or the Alaskan Railroad, or from or in connection with any rail passenger transportation operations over or rail passenger transportation use of right-of-way or facilities owned, leased, or maintained by any high-speed railroad authority or operator, any commuter authority or operator, or any rail carrier shall be enforceable if—*

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

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

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

(2) For purposes of this subsection, the term "claim" means a claim made directly or indirectly—

(A) against Amtrak, any high-speed railroad authority or operator, any commuter authority or operator, or any rail carrier including the Alaskan Railroad or private rail car operators; or

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

(3) Notwithstanding paragraph (1)(A), if, in any case in which death was caused, the law of the place where the act or omission complained of occurred provides, or has been construed to provide, for damages only punitive in nature, a claimant may recover in a claim limited by this subsection for actual or compensatory damages measured by the pecuniary injuries, resulting from such death, to the persons for whose benefit the action was brought, subject to the provisions of paragraph (1)(B).

(b) *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.

ROLLCALL VOTES IN COMMITTEE

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

Senator Breaux (for himself, and Mr. Packwood) offered an amendment. By rollcall vote of 9 yeas and 10 nays as follows, the amendment was defeated:

YEAS—10	NAYS—9
Mr. Hollings	Mr. Pressler
Mr. Packwood ¹	Mr. Stevens
Mr. Inouye	Mr. McCain
Mr. Ford	Mr. Burns
Mr. Rockefeller	Mr. Gorton
Mr. Kerry	Mr. Lott
Mr. Breaux	Mrs. Hutchison
Mr. Bryan ¹	Ms. Snowe
Mr. Dorgan	Mr. Ashcroft ¹
	Mr. Exon ¹

¹ By proxy.

At the close of debate on S. —, the Chairman announced a roll-call vote on the bill. On a rollcall vote of 17 yeas and 2 nays as follows, the bill was ordered reported:

YEAS—17
Mr. Pressler
Mr. Stevens
Mr. Burns
Mr. Gorton
Mr. Lott
Mrs. Hutchison¹
Ms. Snowe
Mr. Ashcroft
Mr. Hollings
Mr. Inouye¹
Mr. Ford¹
Mr. Exon
Mr. Rockefeller¹
Mr. Kerry
Mr. Breaux
Mr. Bryan¹
Mr. Dorgan
Mr. Pressler

NAYS—2
Mr. Packwood
Mr. McCain¹

¹ By proxy.

