

NLWJC- Kagan

Counsel - Box 004 - Folder 018

Amtrak [1]

E X E C U T I V E   O F F I C E   O F   T H E   P R E S I D E N T

01-Nov-1995 11:14am

TO:            Elena Kagan

FROM:          James A. Brown  
                Office of Mgmt and Budget, LRD

SUBJECT:      language for Amtrak SAP on Board

We are informed by DOT that the following compromise language has been agreed to in the course of DOT (Leiber's) discussions with your office and DOJ:

"Delete the provision which would replace the current Amtrak Board of Directors with a new Board. The current Board has proved capable fo directing Amtrak during these sensitive times. (The Administration, however, supports removing existing restrictions on the President's authority to appoint future members of Amtrak's Board and requiring that such appoitnees be confirmed by the Senate.)"

If this language is acceptable to you, we will plug it into the SAP (it is likely that the Amtrak bill will be on the floor next week.)

Thanks for your help.

**EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
Washington, D.C. 20503-0001**

**LRM NO: 2908**

**FILE NO: 159**

**10/24/95**

**LEGISLATIVE REFERRAL MEMORANDUM**

**Total Page(s):** 5

**TO:** Legislative Liaison Officer - See Distribution below:

**FROM:** James JUKES (for)  
Assistant Director for Legislative Reference

**OMB CONTACT:** James BROWN 395-3473  
Legislative Assistant's line (for simple responses): 395-3454  
Daniel TANGHERLINI 395-5707

**SUBJECT:** **\*\*REVISED\*\*** Proposed Statement of Administration Policy RE: HR1788,  
Amtrak Reform and Privatization Act of 1995

55701

**DEADLINE: 3:00 p.m. Today Thursday, October 26, 1995**

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President.

Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

**COMMENTS:** Floor action on this bill is likely to occur at any time, so we expect to finalize this SAP shortly after the deadline for comments. If we do not hear from you by the deadline, we will assume that you have no objection to this SAP.

To Elena Kagan

**LEGISLATIVE REFERRAL MEMORANDUM**  
**Distribution List**

**LRM NO:** 2908

**FILE NO:** 159

**SUBJECT: \*\*REVISED\*\* Proposed Statement of Administration Policy RE: HR1788,  
Amtrak Reform and Privatization Act of 1995**

**AGENCIES:**

18-Council of Economic Advisers - Liaison Officer (vacant) - 3955084  
61-JUSTICE - Andrew Fols - 2025142141  
62-LABOR - Robert A. Shapiro - 2022198201  
76-National Economic Council - Sonya Matthews - 2024562174  
80-National Labor Relations Board - John E. Higgins, Jr. - 2022732910  
81-National Mediation Board - Ronald M. Eilers - 2025235944  
105-Railroad Retirement Board - Catherine Cook - 3127517100  
117-TRANSPORTATION - Tom Herlihy - 2023664687  
118-TREASURY - Richard S. Carro - 2026221146  
126-US Postal Service - Stanley F. Mires - 2022682958

**EOP:**

Dan Tangherlini  
David Tomquist  
Ken Schwartz  
Bob Litan  
Janet Himler  
Joe Wire  
Art Stigile  
Kim Burke  
Ed Rea  
Bob Damus  
Jennifer O'Connor  
Jeff Connaughton  
Carol Johnson  
Bob Rideout  
Mat Blum  
Bill Coleman  
Carter Dutch  
Larry Matlack  
Michael Deich  
Mike Schmidt  
Marius Schwartz  
Ed Clarke  
Jonathan Breul  
Joe Wholey  
Karin Klizer  
Randy Lyon  
Sue Murrin  
Darren Wong  
Jim Murr  
Chuck Konigsberg  
Lydia Muniz

**RESPONSE TO  
LEGISLATIVE REFERRAL MEMORANDUM**

**LRM NO: 2908  
FILE NO: 169**

If your response to this request for views is simple (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet.  
If the response is simple and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:

- (1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
- (2) sending us a memo or letter.

Please include the LRM number shown above, and the subject shown below.

TO: James BROWN 395-3473  
 Office of Management and Budget  
 Fax Number: 395-3109  
 Branch-Wide Line (to reach legislative assistant): 395-3454

FROM: \_\_\_\_\_ (Date)  
 \_\_\_\_\_ (Name)  
 \_\_\_\_\_ (Agency)  
 \_\_\_\_\_ (Telephone)

SUBJECT: **\*\*REVISED\*\*** Proposed Statement of Administration Policy RE: HR1788, Amtrak Reform and Privatization Act of 1995

The following is the response of our agency to your request for views on the above-captioned subject:

- \_\_\_\_\_ Concur
- \_\_\_\_\_ No Objection
- \_\_\_\_\_ No Comment
- \_\_\_\_\_ See proposed edits on pages \_\_\_\_\_
- \_\_\_\_\_ Other: \_\_\_\_\_
- \_\_\_\_\_ FAX RETURN of \_\_\_\_\_ pages, attached to this response sheet

DRAFT  
 October 24, 1995  
 (House)

H.R. 1788 - Amtrak Reform and Privatization Act of 1995  
 (Molinari (R) New York and Shuster (R) Pennsylvania)

The Administration supports House passage of H.R. 1788, with the amendments outlined below.

H.R. 1788 establishes a framework for developing an entrepreneurial Amtrak capable of anticipating and responding to consumer needs and market realities -- and of operating without Federal subsidies. The bill permits changes to Amtrak's current statutory operating requirements to be negotiated between Amtrak and the unions, which is similar to the negotiated approach originally proposed by the Administration in its Amtrak reform proposal.

Although a significant step forward, H.R. 1788 can be improved. In particular, the Administration will work for amendments to:

- o Delete the provision which would replace the current Amtrak Board of Directors with a new Board. The current Board has proved capable of directing Amtrak during these sensitive times. Replacing the Board would only cause confusion and delay Amtrak's ongoing reform efforts. (The Administration, however, supports the removal of existing restrictions on the President's authority to appoint future members of Amtrak's Board.)

*OLC suggestion*

*and requiring that such appointees be confirmed by the Senate.*

- o Delete the proposed borrowing authority for Amtrak. Authority for Amtrak to borrow already exists. Moreover, absent data to the contrary, almost all borrowing by Amtrak would require Federal subsidies for repayment. OMB and CBO scoring conventions would therefore call for scoring the subsidy rate of such loans at, or approaching, 100 percent.
- o Guarantee that Amtrak's assets, which represent a substantial Federal investment, continue to be used to provide intercity rail passenger service.
- o Avoid the imposition of arbitrary caps on punitive damage amounts.

Pay-As-You-Go Scoring

H.R. 1788 would increase direct spending. It is therefore subject to the pay-as-you-go

requirements of the Omnibus Budget Reconciliation Act of 1990. OMB's preliminary scoring estimates for this bill are presented in the table below. Final scoring of this legislation may deviate from these estimates.

Pay-As-You-Go Estimates  
(\$ millions)

	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>1996-2000</u>
Outlays	.1175	.1175	0	0	0	.235

\* \* \* \* \*

# Airtrak appointments

Secy hasn't reappointed - DeLaune / Neal

of Kiley - has expired. / Peers (May 95)

Amy Rosen

Commuter authority recommendation - pres appointments

4-6 wks to "intent to terminate"

then... it all depends

~~at~~ 2-4 weeks

Total - 2 mos.

Mtg w/ K. Whalen, personnel

ISSUE: AMTRAK BOARD APPOINTMENTS

1. **Aggressively oppose House provision.**

Our draft SAP language reflected this outlook. DOJ/OLC strongly objected. The White House would have to overrule DOJ on a legal matter, which seems unlikely.

2. **Raise objections to changing Amtrak Board, but propose that, if changes are made, they should be phased in over time.**

Consensus is that DOJ would likely find this still unsatisfactory, though it is closer to their "compromise" position.

(Possible language: "Replacing the entire Amtrak Board at this time would only cause disruption and interfere with Amtrak's ongoing reform efforts. However, if changes are made to the process for selecting and/or approving Amtrak directors, they should be phased in over time or delayed until the end of the five-year authorization period in the bill. Further, the Secretary of Transportation should retain a seat on the Board, in light of the taxpayers' substantial past and continuing investments in Amtrak.")

3. **Don't oppose House provision, but urge that new appointments process be phased in, to avoid disruption.**

This approach seemed acceptable to White House counsel and Ickes' staff, and might be supported by DOJ.

(Possible language: "Any changes to the process for selecting and/or appointing Amtrak directors should only be phased in over time, or at the end of the five-year authorization period in the bill: replacing the entire Board at this time would only cause disruption and interfere with Amtrak's ongoing reform efforts. Further, the Secretary of Transportation should retain a seat on the Board, in light of the taxpayers' substantial past and present investments in Amtrak.")

4. **Say nothing.**

We didn't say anything about the Board in our SAP on the Senate bill. Silence might be perceived as acceptance of House provision. But it would delay any test of strength until conference, which might be a better setting for us to contest the issue.

-----  
A related issue is what to do about [the four Board members whose terms have expired.] Reappointing them would secure Administration influence over the Board in the short term. But it might annoy Congressmen and/or put a spotlight on the entire issue.

\*

E X E C U T I V E   O F F I C E   O F   T H E   P R E S I D E N T

26-Oct-1995 09:22am

TO:            Elena Kagan

FROM:          Jennifer M. O'Connor  
                Office of The Chief of Staff

SUBJECT:      RE: fyi

Harold talked to Pena. Pena whined alot. Harold said, I will look into it but I think OLC is a problem and your staff and WH staff and OLC are trying to work out a compromise.

That was the end of that.

~~S~~

- Re-Appointments - more than.

4 - fill slots / Please, Leave, Neal, Kelly  
easier to fill w/ people still  
in them

- Hard to call Say

1) Fine pres appointments scheme  
w/ phased entry

2) Say nothing

3) Language criticizing H. bill  
but somehow satisfying OCC  
- Mine  
- Theirs -  
see TOCS

NOT START  
for 5  
years?

6-4

o The generally-positive changes to the Board of Directors should only take effect as incumbents complete their terms, or at the end of the five-year authorization period in the bill, because replacing the entire Board at this time would only cause confusion and delay Amtrak's ongoing reform efforts. However, the Secretary of Transportation should retain a seat on the Board.

E X E C U T I V E   O F F I C E   O F   T H E   P R E S I D E N T

18-Oct-1995 06:32pm

TO:            Elena Kagan

FROM:          Jennifer M. O'Connor  
                Office of The Chief of Staff

SUBJECT:      RE: amtrak sap language

Pena never raised the issue! You and I and Janno should have a conference call tomorrow to see whose compromise works best for DoT. Let me know what your schedule is like.

E X E C U T I V E   O F F I C E   O F   T H E   P R E S I D E N T

18-Oct-1995 04:07pm

TO:           Jennifer M. O'Connor

FROM:          Elena Kagan  
              Office of the Counsel

SUBJECT:      RE: amtrak sap language

I'd be perfectly amenable to that, and though I haven't talked to Ab, I suspect he would be as well. For different reasons, I think OLC also would go along: because Dellinger likes the House proposal, he has always wanted to be silent on this issue. The problem, if there is one, will come from DOT: Janno has told me that he wants to use the SAP to lay down a marker on this issue -- to declare that the appointments mechanism, as proposed in the House bill, is unacceptable. (It was because I understood DOT to want something in the SAP that I offered the substitute language -- though DOT now may prefer nothing at all.) I suspect Janno will urge us to object wholesale to the appointments provision, as the SAP does now, with the idea in mind of eventually negotiating to the compromise solution. But if we do that, of course, OLC will object, and for what Ab considers to be good reason. My bottom line, in light of all this, is either to do what you have suggested or to do what I have suggested (with a slight preference for your suggestion over mine), but not to do what Janno has suggested. What do you think? And how did the conversation go between Pena and Harold?

E X E C U T I V E   O F F I C E   O F   T H E   P R E S I D E N T

18-Oct-1995 03:15pm

TO:            Elena Kagan

FROM:          Jennifer M. O'Connor  
                Office of The Chief of Staff

SUBJECT:      RE: amtrak sap language

I disagree in the sense that I don't think we should lay out our bottom line before we negotiate over this. I'd prefer that we were silent on the whole issue in the SAP and then we negotiated down to your solution.

What do you think?

E X E C U T I V E   O F F I C E   O F   T H E   P R E S I D E N T

18-Oct-1995 10:40am

TO:           Jennifer M. O'Connor  
FROM:          Elena Kagan  
               Office of the Counsel  
  
SUBJECT:       amtrak sap language

The language I proposed to Janno -- to replace the first bullitt in the Oct. 5 draft of the SAP on HR 1788 -- is as follows:

"Provide a transition period for replacing the current Amtrak Board of Directors by applying the appointment mechanism proposed in the bill to vacancies as and when they arise. Such a transition period will prevent needless disruption of Amtrak's reform efforts."

Let me know anything you find out about the call between Pena and Harold. Ab seemed pretty put out this morning when I told him about it. He believes that Pena's position (i.e., just to keep the current appointment mechanism) is untenable and that the compromise position (i.e., to phase in a new appointments mechanism over time) is the most sensible solution.

Janusz Ciecha

366-7127

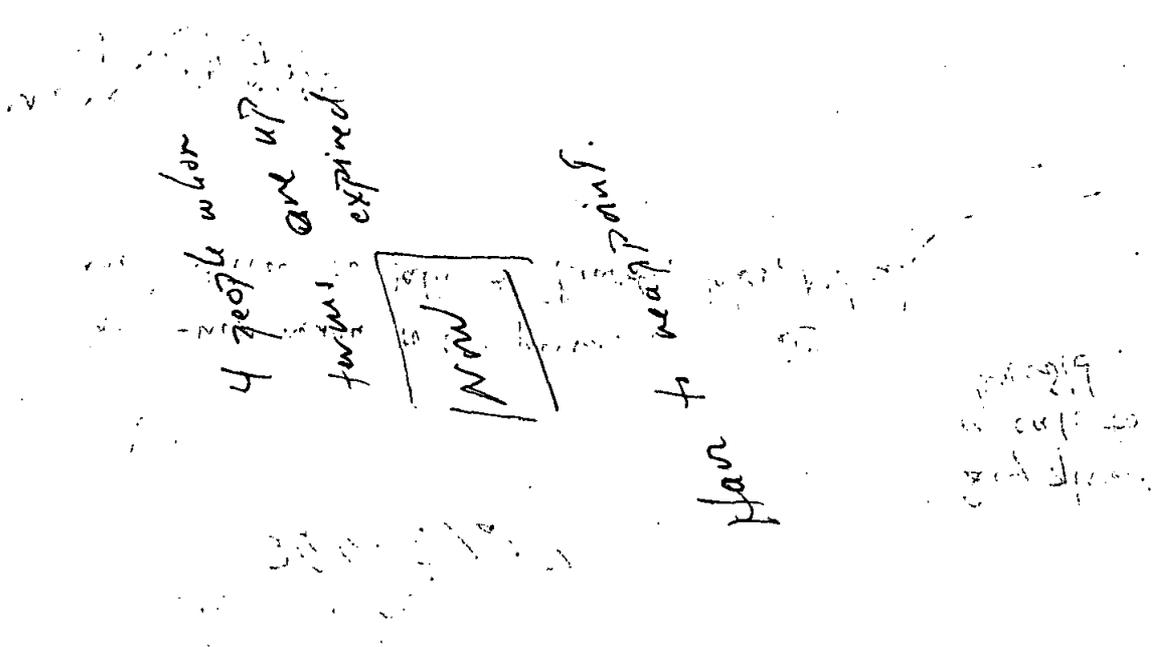


Sey - not ready to compromise. (M)  
May decide to talk to Pawetta, Iches, M. Kwa.

Sey placed  
a call to  
Aarold.

---

Marty -  
277-0356



To replace first bullitt in October 5, 1995 draft of SAP on H.R. 1788:

Provide a transition period for replacing the current Amtrak Board of Directors by applying the appointment mechanism proposed in the bill to vacancies as and when they arise. Such a transition period will prevent needless disruption of Amtrak's reform efforts.



U. S. Department of Justice

Office of Legal Counsel

Washington, D.C. 20530

DATE: 10/5/95

**FACSIMILE TRANSMISSION SHEET**

FROM: Neil Kinkopf

OFFICE PHONE: 514-3713

TO: Elena Kagan

OFFICE PHONE: \_\_\_\_\_

NUMBER OF PAGES: 1 PLUS COVER SHEET

FAX NUMBER: \_\_\_\_\_

REMARKS:

**IF YOU HAVE ANY QUESTIONS REGARDING THIS FAX, PLEASE CONTACT KATHLEEN MURPHY OF KEVIN SMITH ON 514-2057**

**OFFICE OF LEGAL COUNSEL FAX NUMBER: (202) 514-0563  
FTS NUMBER: (202) 368-0563**

**DRAFT**  
**October 5, 1995**  
**(House)**

**H.R. 1788 - Amtrak Reform and Privatization Act of 1995**  
**(Molinari (R) New York and Shuster (R) Pennsylvania)**

The Administration supports House passage of H.R. 1788, with the amendments outlined below.

H.R. 1788 establishes a framework for developing an entrepreneurial Amtrak capable of anticipating and responding to consumer needs and market realities -- and of operating without Federal subsidies. The bill permits changes to Amtrak's current statutory operating requirements to be negotiated between Amtrak and the unions, which is similar to the negotiated approach originally proposed by the Administration in its Amtrak reform proposal.

Although a significant step forward, H.R. 1788 can be improved. In particular, the Administration will work for amendments to:

- o Delete the provision which would replace the current Amtrak Board of Directors with a new Board. The current Board has proved capable of directing Amtrak during these sensitive times. Replacing the Board would only cause confusion and delay Amtrak's ongoing reform efforts. (The Administration, however, supports the removal of existing restrictions on the President's authority to appoint future members of Amtrak's Board.)
- o Guarantee that Amtrak's assets, which represent a substantial Federal investment, continue to be used to provide intercity rail passenger service.
- o Avoid the imposition of arbitrary caps on punitive damage amounts.

\* \* \* \* \*

Provide a transition period for replacing the current Amtrak Board of Directors ~~with a new Board~~ by applying the appointment mechanism proposed in the bill to vacancies as and when they (min?) open. Such a transition period will prevent needless disruption of Amtrak's reform efforts.



U. S. Department of Justice

Office of Legal Counsel

Office of the  
Assistant Attorney General

Washington, D. C. 20530

October 11, 1995

MEMORANDUM FOR ABNER J. MIKVA,  
COUNSEL TO THE PRESIDENT

From: Walter Dellinger   
Assistant Attorney General

We have recently received a draft Statement of Administration Policy ("SAP") on H.R. 1788, the Amtrak Reform and Privatization Act of 1995. The proposed SAP would place the Administration on record as opposing H.R. 1788's provision to establish a new body to govern Amtrak, the Emergency Reform Board, in place of the current board of directors. In addition, the proposed SAP would state the administration's support for the current board of Amtrak. Because we have determined that Amtrak's Board of Directors, as currently composed, is unconstitutional and because the proposal in H.R. 1788 would correct the constitutional infirmity, we object to the proposed SAP and recommend that the Administration support H.R. 1788 insofar as it remedies the constitutional defect in the composition of Amtrak's governing body.

When Congress established Amtrak, it intended to create a private corporation, *i.e.*, one that is not part of the federal government. Consequently, Congress did not take care to hue to the structural requirements that the Constitution imposes on components of the federal government. In the last term, however, the Supreme Court ruled that, at least for purposes of individual constitutional rights, Congress had not succeeded in its attempt to establish Amtrak as an entity outside the federal government. Instead, the Court held that Amtrak is "by its very nature, what the Constitution regards as the Government" and concluded that "[i]t surely cannot be that government, state or federal, is able to evade the most solemn obligations imposed in the Constitution by simply resorting to the corporate form." Lebron v. National Passenger Railroad Corporation, 115 S. Ct. 961, 971, 973 (1995). Among the applicable constitutional obligations is the Appointments Clause. See U.S. Const. art. II, § 2, cl. 2; *cf. Silver v. United States Postal Service*, 951 F.2d 1033 (9th Cir. 1991) (applying the Appointments Clause to the United States Postal Service).

We have previously discussed in detail the various ways that Amtrak's current board violates the Appointments Clause and so will not reprise that discussion here. It may, however, be helpful to offer a summary of the infirmities in the board's composition. First two of the nine board members are appointed by the President alone, without Senate confirmation, and he is confined to selecting from a short list of nominees submitted by local

and regional commuter authorities. Two other board members are selected by the holders of Amtrak preferred stock, which is not a valid repository for the constitutional appointment power. One board member is appointed by the President and confirmed by the Senate, but the President is constrained to make his nomination from a list submitted by various interest groups. Another member must be chosen by the President from an unconstitutionally small universe of candidates, governors of states with an interest in rail transportation. Another board member is appointed by the President and confirmed by the Senate, but the President's nominee must satisfy a constitutionally suspect qualification requirement. The eighth member of the board is the President of Amtrak, who sits *ex officio*. Because the President of Amtrak is selected by an invalidly constituted board, the President of Amtrak's appointment is of extremely doubtful validity. Only the Secretary of Transportation, who also sits *ex officio*, clearly is validly appointed under the Appointments Clause.

These provisions impinge upon one of the President's most significant powers, the constitutional power of appointment. The Constitution vests this power in the President in order to protect the executive branch against congressional encroachments and to give the President control over and accountability for the executive branch. The President therefore has an overarching institutional interest with implications well beyond this SAP in protecting his constitutional appointment power against infringement.

With respect to the specific case of Amtrak, if Amtrak takes any action that is adverse to any party, the defects in the composition of Amtrak's board, including the appointment of its president, are apt to become the subject of litigation. Our assessment is that the litigation risk is high. The likely result of a judicial determination that Amtrak's board of directors violates the Appointments Clause would be that its actions would be invalidated. A number of recent decisions on the *de facto* officer doctrine lead us to be very skeptical that we could successfully resort to that doctrine in an attempt to uphold actions undertaken by Amtrak as it is presently constituted. See, e.g., *FEC v. NRA Political Victory Fund*, 6 F.3d 821 (D.C. Cir. 1993), *aff'd*, 115 S. Ct. 537 (1995). If Amtrak continues under the present board, it risks having a court undo whatever work Amtrak does toward the end of financial reform and privatization. For constitutional, institutional, and practical reasons, we believe that the administration should not oppose legislation that would correct the defects in Amtrak's current board and fully restore the President's appointment power.

If the administration rejects our recommendation to withhold opposition to legislation that immediately corrects the constitutional violations that inhere in Amtrak's board, we suggest that, at a minimum, [the administration propose as an alternative the immediate enactment of legislation that would provide that henceforth those appointed to Amtrak's board be appointed in conformity with the Appointments Clause.] In the event of a judicial determination that the current board is unconstitutionally composed, there would be a mechanism in place for appointing successors to those members whose appointments might be found unconstitutional. Otherwise, the result of such a ruling would be to leave Amtrak without authority to undertake any significant action until legislation providing for a valid board could be enacted.

Telecon w/ Lieder 10/16

Agitated here. - Scy

Partly procedural - launched after hearing @ in middle  
of SAP process.

Could come up in this week - in H. or S.

Have to stand our ground - if take compromise,  
who knows what will happen?

Lebron - talk as if issue  
re invalidating all actions?

Telecom - John Lieber

1. Process. We asked them / they didn't get us anything.
2. Substance objections - see last conversation

Telecom - Dawn Johnson

Current Bd is going to be struck down - just a matter of time.

Any future appointments to be done like this.

Eventually get us into compliance

Also - if they held unconst, there's a provision <sup>to remove current structure</sup> to remove & replace / sth in place if it held unconst.

Draft memo to ASM - wants to run by Day letter in Civil.

Bd members  
How long served?

**EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
Washington, D.C. 20503-0001**

**LRM NO: 2794**

**FILE NO: 189**

**10/12/95**

**LEGISLATIVE REFERRAL MEMORANDUM**

**Total Page(s): 5**

**TO: Legislative Liaison Officer - See Distribution below:**

**FROM: James JUKEG (for)  
Assistant Director for Legislative Reference**

**OMB CONTACT: James BROWN 395-3473  
Legislative Assistant's line (for simple responses): 395-3454  
Daniel TANGHERLINI 395-5707**

**SUBJECT: Proposed Statement of Administration Policy RE: 81916, -  
Amtrak Authorization, as ordered reported by the Senate  
Commerce, Science, and Transportation Committee**

**DEADLINE: 10:00 A.M. Monday, October 16, 1995**

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President.

Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

**COMMENTS: The text of this bill was previously circulated to you via LRM 2145 on July 27th. Floor action on this bill is expected to occur during the week of October 16th. We therefore need the benefit of your views as soon as possible, but no later than the deadline.**

**LEGISLATIVE REFERRAL MEMORANDUM**  
Distribution List

LRM NO: 2784

FILE NO: 189

**SUBJECT:** Proposed Statement of Administration Policy RE: S1318, Congressional Draft Bill, S—, Amtrak Authorization, as ordered reported by the Senate Commerce, Science, and Transportation Committee

**AGENCIES:**

- 18-Council of Economic Advisers - Liaison Officer (vacant) - 3856084
- 33-Environmental Protection Agency - Chris Hoff - 2022605414
- 61-~~JUSTICE~~ - Andrew Fols - 2025142141
- 62-LABOR - Robert A. Shapiro - 2022198201
- 76-National Economic Council - Sonyia Matthews - 2024582174
- 80-National Labor Relations Board - John E. Higgins, Jr. - 2022732910
- 81-National Mediation Board - Ronald M. Etters - 2025235944
- 106-Railroad Retirement Board - Catherine Cook - 3127517100
- 117-TRANSPORTATION - Tom Herlihy - 2023864687
- 118-TREASURY - Richard S. Carr - 2026221148
- 128-US Postal Service - Stanley F. Mires - 2022682868

*Energy*

**GOP:**

- Mat Blum
- Bill Coleman
- Larry Mattack
- David Tomquist
- Dan Tengherlin
- Janet Himler
- Joe Wire
- Sharon Barkeloo
- Art Stigle
- Ed Rea
- Kim Burka
- Bob Damus
- Jennifer O'Connor
- Jeff Connaughton
- Carter Dulch
- Ed Clarke
- Sue Murrin
- Jonathan Braul
- Bob Llan
- Ken Apfel
- Roz Rettman
- Jonathan Braul
- Joe Wholey
- Karin Kizer
- Randy Lyon
- Gary Pennerthum*
- Art Fols*
- Jim Murr*

**DRAFT**  
**October 13, 1995**  
**(Senate)**

**S. 1318 - Amtrak and Local Rail Revitalization Act of 1995**  
**(Pressler (R) South Dakota)**

Enabling Amtrak to respond to consumer needs and market realities and free itself from Federal subsidies is an Administration priority. While S. 1318 represents a significant effort to address the complexities of Amtrak reform, some of its provisions could impede achievement of this objective or impose other unnecessary burdens. The Administration therefore strongly opposes Senate passage of S. 1318 unless it is amended to:

- o Provide for negotiated, rather than externally dictated, solutions to problems involving collective bargaining agreements between Amtrak and its unions. (With respect to collective bargaining issues, the Administration recommends the adoption of provisions similar to those in H.R. 1788, "Amtrak Reform and Privatization Act of 1995")
- o Eliminate the mandatory reallocation of gas tax revenues from mass transit to Amtrak, which would generate up to \$1,019,000,000 in direct spending per year with no corresponding off-sets. Amtrak's funding problems cannot be meaningfully addressed by increasing the national debt, or by imposing additional funding shortfalls on local transit agencies. Moreover, yet another Federal allocation of fuel tax receipts to a particular mode further reduces the ability of States and localities to implement unified transportation approaches which best serve their needs.
- o Permit Amtrak to participate in the electric power industry only in a manner consistent with existing Federal and State laws and regulations. The electricity-related provisions in S. 1318 would establish special treatment of Amtrak with respect to other consumers and retail sellers of electricity. The bill's provisions would undermine Federal and State efforts to reach comprehensive resolution of contentious issues in electric power industry restructuring, including stranded costs incurred by utilities and establishment of mechanisms to give all consumers fair opportunities to obtain the least-expensive supplies of electricity. As Federal and many State authorities are pursuing electric power industry restructuring to reduce prices, it will be important to respect State laws which govern and implement changes in the retail marketing areas of electric utilities, since these laws have and will be established to protect the interests of electricity consumers and producers.
- o Delete the proposed borrowing authority for Amtrak. Authority for Amtrak borrowing already exists. Moreover, almost all borrowing by Amtrak would require Federal subsidies for repayment. OMB and CBO scoring conventions would therefore call for scoring the subsidy rate of such loans at, or approaching,

100 percent.

- o Avoid the imposition of arbitrary caps on punitive damage amounts.

**Pay-As-You-Go Scoring**

S.1318 would increase direct spending. It is therefore subject to the pay-as-you-go requirements of the Omnibus Budget Reconciliation Act of 1990. OMB's preliminary scoring estimates for this bill are presented in the table below. Final scoring of this legislation may deviate from these estimates.

**Pay-As-You-Go Estimates**  
**( \$ millions )**

	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>1996-2000</u>
outlays	\$1,019	\$530	\$598	\$736	\$771	\$3,700

**RESPONSE TO  
LEGISLATIVE REFERRAL MEMORANDUM**

**LRM NO: 2794  
FILE NO: 150**

If your response to this request for views is simple (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet.

If the response is simple and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:

- (1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
- (2) sending us a memo or letter.

Please include the LRM number shown above, and the subject shown below.

**TO: James BROWN 305-3473**  
**Office of Management and Budget**  
**Fax Number: 305-3109**  
**Branch-Wide Line (to reach legislative assistant): 305-3484**

**FROM:** 10/16/95 (Date)  
Elena Kapan (for Jeff Connaughton) (Name)  
White House Council's Office (Agency)  
456-7594 (Telephone)

**SUBJECT: Proposed Statement of Administration Policy RE: S1318, Congressional Draft Bill, S—, Amtrak Authorization, as ordered reported by the Senate Commerce, Science, and Transportation Committee**

The following is the response of our agency to your request for views on the above-captioned subject:

- Concur**
- No Objection**
- No Comment**
- See proposed edits on pages \_\_\_\_\_**
- Other: \_\_\_\_\_**
- FAX RETURN of \_\_\_\_\_ pages, attached to this response sheet**



## U. S. Department of Justice

Office of Legal Counsel

Office of the  
Assistant Attorney General

Washington, D.C. 20530

October 11, 1995

**MEMORANDUM FOR ABNER J. MIKVA,  
COUNSEL TO THE PRESIDENT**From: Walter Dellinger   
Assistant Attorney General

We have recently received a draft Statement of Administration Policy ("SAP") on H.R. 1788, the Amtrak Reform and Privatization Act of 1995. The proposed SAP would place the Administration on record as opposing H.R. 1788's provision to establish a new body to govern Amtrak, the Emergency Reform Board, in place of the current board of directors. In addition, the proposed SAP would state the administration's support for the current board of Amtrak. Because we have determined that Amtrak's Board of Directors, as currently composed, is unconstitutional and because the proposal in H.R. 1788 would correct the constitutional infirmity, we object to the proposed SAP and recommend that the Administration support H.R. 1788 insofar as it remedies the constitutional defect in the composition of Amtrak's governing body.

When Congress established Amtrak, it intended to create a private corporation, *i.e.*, one that is not part of the federal government. Consequently, Congress did not take care to hue to the structural requirements that the Constitution imposes on components of the federal government. In the last term, however, the Supreme Court ruled that, at least for purposes of individual constitutional rights, Congress had not succeeded in its attempt to establish Amtrak as an entity outside the federal government. Instead, the Court held that Amtrak is "by its very nature, what the Constitution regards as the Government" and concluded that "[i]t surely cannot be that government, state or federal, is able to evade the most solemn obligations imposed in the Constitution by simply resorting to the corporate form." Lebron v. National Passenger Railroad Corporation, 115 S. Ct. 961, 971, 973 (1995). Among the applicable constitutional obligations is the Appointments Clause. See U.S. Const. art. II, § 2, cl. 2; *cf. Silver v. United States Postal Service*, 951 F.2d 1033 (9th Cir. 1991) (applying the Appointments Clause to the United States Postal Service).

We have previously discussed in detail the various ways that Amtrak's current board violates the Appointments Clause and so will not reprise that discussion here. It may, however, be helpful to offer a summary of the infirmities in the board's composition. First two of the nine board members are appointed by the President alone, without Senate confirmation, and he is confined to selecting from a short list of nominees submitted by local

and regional commuter authorities. Two other board members are selected by the holders of Amtrak preferred stock, which is not a valid repository for the constitutional appointment power. One board member is appointed by the President and confirmed by the Senate, but the President is constrained to make his nomination from a list submitted by various interest groups. Another member must be chosen by the President from an unconstitutionally small universe of candidates, governors of states with an interest in rail transportation. Another board member is appointed by the President and confirmed by the Senate, but the President's nominee must satisfy a constitutionally suspect qualification requirement. The eighth member of the board is the President of Amtrak, who sits ex officio. Because the President of Amtrak is selected by an invalidly constituted board, the President of Amtrak's appointment is of extremely doubtful validity. Only the Secretary of Transportation, who also sits ex officio, clearly is validly appointed under the Appointments Clause.

These provisions impinge upon one of the President's most significant powers, the constitutional power of appointment. The Constitution vests this power in the President in order to protect the executive branch against congressional encroachments and to give the President control over and accountability for the executive branch. The President therefore has an overarching institutional interest with implications well beyond this SAP in protecting his constitutional appointment power against infringement.

With respect to the specific case of Amtrak, if Amtrak takes any action that is adverse to any party, the defects in the composition of Amtrak's board, including the appointment of its president, are apt to become the subject of litigation. Our assessment is that the litigation risk is high. The likely result of a judicial determination that Amtrak's board of directors violates the Appointments Clause would be that its actions would be invalidated. A number of recent decisions on the de facto officer doctrine lead us to be very skeptical that we could successfully resort to that doctrine in an attempt to uphold actions undertaken by Amtrak as it is presently constituted. See, e.g., FEC v. NRA Political Victory Fund, 6 F.3d 821 (D.C. Cir. 1993), aff'd, 115 S. Ct. 537 (1995). If Amtrak continues under the present board, it risks having a court undo whatever work Amtrak does toward the end of financial reform and privatization. For constitutional, institutional, and practical reasons, we believe that the administration should not oppose legislation that would correct the defects in Amtrak's current board and fully restore the President's appointment power.

If the administration rejects our recommendation to withhold opposition to legislation that immediately corrects the constitutional violations that inhere in Amtrak's board, we suggest that, at a minimum, the administration propose as an alternative the immediate enactment of legislation that would provide that henceforth those appointed to Amtrak's board be appointed in conformity with the Appointments Clause. In the event of a judicial determination that the current board is unconstitutionally composed, there would be a mechanism in place for appointing successors to those members whose appointments might be found unconstitutional. Otherwise, the result of such a ruling would be to leave Amtrak without authority to undertake any significant action until legislation providing for a valid board could be enacted.



U.S. Department of Justice  
Office of Legal Counsel

Office of the  
Assistant Attorney General

Elena -

This is a draft  
as I await comments  
from Doug Heller,  
who I am asking  
to assess the  
litigation risk.

Walter



U. S. Department of Justice

Office of Legal Counsel

Office of the  
Assistant Attorney General

Washington, D. C. 20530

**DRAFT**

October 6, 1995

**MEMORANDUM FOR ABNER J. MIKVA,  
COUNSEL TO THE PRESIDENT**

From: Walter Dellinger  
Assistant Attorney General

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power. One board member is appointed by the President and confirmed by the Senate, but the President is constrained to make his nomination from a list submitted by various interest groups. Another member must be chosen by the President from an unconstitutionally small universe of candidates, governors of states with an interest in rail transportation. Another board member is appointed by the President and confirmed by the Senate, but the President's nominee must satisfy a constitutionally suspect qualification requirement. The eighth member of the board is the President of Amtrak, who sits ex officio. Because the President of Amtrak is selected by an invalidly constituted board, the President of Amtrak's appointment is of extremely doubtful validity. Only the Secretary of Transportation, who also sits ex officio, clearly is validly appointed under the Appointments Clause.

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Amhali

also to JT?

Telecon w/ Neil K.

Status of Amtrak

2 pp expln. to Walter

Think we shouldn't object to bill fixing current bd.

Altern: provision re valid appointment of successors to current bd.  
replace §. provisions w/ J.

GET IT TODAY.

~~Financial list. for w.~~  
~~How to report - expenses.~~

~~Linsington~~  
~~65210~~  
~~7723~~

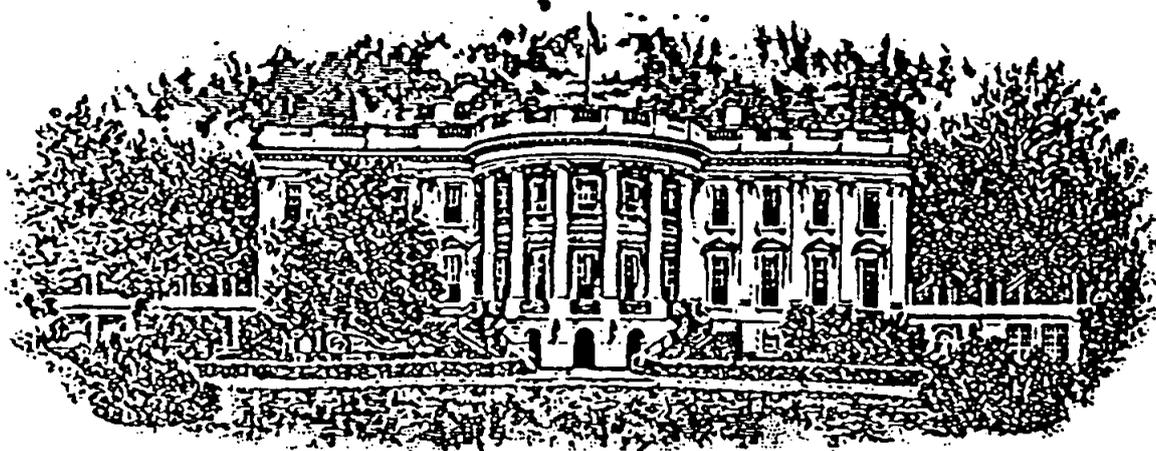
Amtrak

Kathy  
Jennifer  
06350

Call from Tanno - OCC taking  
Schuster view.  
read on where this is  
where with coming down  
how to resolve

Neal - 814-3713

# The White House



## COUNSEL'S OFFICE

### FACSIMILE TRANSMISSION COVER SHEET

**DATE:** 10/12/95

**TO:** Tanno' Liber

**FACSIMILE NUMBER:** 366-7127

**TELEPHONE NUMBER:** \_\_\_\_\_

**FROM:** Elena Kopcu

**TELEPHONE NUMBER:** 456-7594

**PAGES (WITH COVER):** 3

**COMMENTS:** Call when you have a chance. I have sent a copy to Jennifer O'Connor as well.

### PLEASE DELIVER AS SOON AS POSSIBLE

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**DRAFT  
September 28, 1995  
(House)**

**H.R. 1788 - Amtrak Reform and Privatization Act of 1995  
(Molinari (R) New York and Shuster (R) Pennsylvania)**

The Administration supports House passage of H.R. 1788, with the amendments outlined below.

H.R. 1788 establishes a framework for developing an entrepreneurial Amtrak capable of anticipating and responding to consumer needs and market realities -- and of operating without Federal subsidies. The bill permits changes to Amtrak's current statutory operating requirements to be negotiated between Amtrak and the unions, which is similar to the negotiated approach originally proposed by the Administration in its Amtrak reform proposal.

Although a significant step forward, H.R. 1788 can be improved. In particular, the Administration will work for amendments to:

- o Delete the provision which would replace the current Amtrak Board of Directors with a new Board. The current Board has proved capable of directing Amtrak during these sensitive times. Replacing the Board would only cause confusion and delay Amtrak's ongoing reform efforts.
- o Guarantee that Amtrak's assets, which represent a substantial Federal investment, continue to be used to provide intercity rail passenger service.
- o Avoid the imposition of arbitrary caps on punitive damage amounts. (The Administration, however, would support judicial determination of punitive damage amounts.)

\*\*\*\*\*

*Talking about  
re-visit  
to*

(The Admin, however, supports eliminating the restrictions on the discretion of the Pres to appoint.)

Telecom  
Dawn Johnson

1. New bill would cause court problem.

So why are we opposing new bill?  
And we can't say anything good.

~~NEA is satisfied.~~

Telecom  
Tanno Lisa

Goal is to end up w/ Senate version

Existing BE plus <sup>indep.</sup> advisory commission.

Take away Clinton → Clinton-Doyle Board  
BE or CT-sponsored Bd.

Hard to get people excited abt  
This - need to lay down numbers.

Need language? Talk to asst secy

Fallback position

No removal of present members of BE. - Draft means to me.

Consider



U.S. DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY

400 Seventh Street  
Washington, DC 20590

OFFICE OF THE ASSISTANT SECRETARY FOR TRANSPORTATION POLICY

Number of Pages including this Page: 40

Date: 10/3/95

TO: *Elena Kagan*

*Tele. 456-7594*

*Fax. 456-1647*

FROM:

**JOHN N. LIEBER**  
**DEPUTY ASSISTANT SECRETARY**  
**FOR TRANSPORTATION POLICY**

(202) 366-4450

FAX: (202) 366-7127

**FAX MESSAGE:**

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EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
Washington, D.C. 20503-0001

LRM NO: 2669

FILE NO: 159

9/29/95

## LEGISLATIVE REFERRAL MEMORANDUM

Total Page(s): \_\_\_\_\_

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TO: Legislative Liaison Officer - See Distribution below:  
FROM: James JUKES *Jim* (for)  
Assistant Director for Legislative Reference  
OMB CONTACT: James BROWN 395-3473  
Legislative Assistant's line (for simple responses): 395-3454  
Daniel TANGHERLINI 395-5707  
SUBJECT: Proposed Statement of Administration Policy RE: HR1755, Amtrak Reform and Privatization Act of 1995

**DEADLINE: 3:00 p.m. ~~Today~~ Wednesday, October 04, 1995**

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President.

Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

**COMMENTS:** A copy of H.R. 1755 as ordered reported by the House Transportation and Infrastructure Committee is also attached. Floor action is likely to occur the week of October 10th, so we expect to finalize this SAP shortly after the deadline for comments. If we do not hear from you by the deadline, we will assume that you have no objection to this SAP.

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 1788  
OFFERED BY MR. SHUSTER**

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

1 **SECTION 1. SHORT TITLE.**

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

4                   **TITLE I—PROCUREMENT**  
5                   **REFORMS**

6 **SEC. 101. CONTRACTING OUT.**

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

9       “(b) **CONTRACTING OUT.**—(1) When Amtrak con-  
10 tracts out work normally performed by an employee in a  
11 bargaining unit covered by a contract between a labor or-  
12 ganization and Amtrak, Amtrak is encouraged to use  
13 other rail carriers for performing such work.

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

1       “(B) If Amtrak enters into a contract as described  
2 in subparagraph (A)—

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

7           “(ii) such operation shall be subject to any op-  
8 erating or safety restrictions and conditions required  
9 by the agreement providing for the use of such fa-  
10 cilities.

11       “(C) This paragraph shall not restrict Amtrak’s au-  
12 thority to enter into contracts for access to or use of  
13 tracks or facilities for the operation of trains.”

14       (b) **EFFECTIVE DATE.**—Subsection (a) shall take ef-  
15 fect 254 days after the date of the enactment of this Act.

16 **SEC. 102. CONTRACTING PRACTICES.**

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

20       “(b) **BELOW-COST COMPETITION.**—(1) Amtrak shall  
21 not submit any bid for the performance of services under  
22 a contract for an amount less than the cost to Amtrak  
23 of performing such services, with respect to any activity  
24 other than the provision of intercity rail passenger trans-  
25 portation, commuter rail passenger transportation, or mail

1 or express transportation. For purposes of this subsection,  
2 the cost to Amtrak of performing services shall be deter-  
3 mined using generally accepted accounting principles for  
4 contracting.

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

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

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

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

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

10              “(ii) for passengers who have had prior move-  
11 ment by rail or will have subsequent movement by  
12 rail; and

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

16       “(B) Subparagraph (A) shall not apply to transpor-  
17 tation funded predominantly by a State or local govern-  
18 ment, or to ticket selling agreements.”.

19       (2) Section 24305(d) of title 49, United States Code,  
20 is amended by adding at the end the following new para-  
21 graph:

22       “(3) Congress encourages Amtrak and motor com-  
23 mon carriers of passengers to use the authority conferred  
24 in section 11342(a) of this title for the purpose of provid-

1 ing improved service to the public and economy of oper-  
2 ation.”.

3 **SEC. 103. FREEDOM OF INFORMATION ACT.**

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

7 **TITLE II—OPERATIONAL**  
8 **REFORMS**

9 **SEC. 201. BASIC SYSTEM.**

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

14 (b) **IMPROVING RAIL PASSENGER TRANSPOR-**  
15 **TATION.**—Section 24702 of title 49, United States Code,  
16 and the item relating thereto in the table of sections of  
17 chapter 247 of such title, are repealed.

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

20 (1) in subsection (a)(1)—

21 (A) by striking “90 days” and inserting in  
22 lieu thereof “180 days”;

23 (B) by striking “a discontinuance under  
24 section 24704 or 24707(a) or (b) of this title”

1 and inserting in lieu thereof "discontinuing  
2 service over a route"; and

3 (C) by inserting "or assume" after "agree  
4 to share";

5 (2) in subsection (a)(2), by striking "section  
6 24704 or 24707(a) or (b) of this title" and inserting  
7 in lieu thereof "paragraph (1)"; and

8 (3) by striking subsection (b).

9 (d) **COST AND PERFORMANCE REVIEW.**—Section  
10 24707 of title 49, United States Code, and the item relat-  
11 ing thereto in the table of sections of chapter 247 of such  
12 title, are repealed.

13 (e) **SPECIAL COMMUTER TRANSPORTATION.**—Section  
14 24708 of title 49, United States Code, and the item relat-  
15 ing thereto in the table of sections of chapter 247 of such  
16 title, are repealed.

17 (f) **CONFORMING AMENDMENT.**—Section  
18 24312(a)(1) of title 49, United States Code, is amended  
19 by striking ", 24701(a),".

20 **SEC. 202. MAIL, EXPRESS, AND AUTO-FERRY TRANSPOR-**  
21 **TATION.**

22 (a) **REPEAL.**—Section 24306 of title 49, United  
23 States Code, and the item relating thereto in the table of  
24 sections of chapter 243 of such title, are repealed.

1 (b) CONFORMING AMENDMENT.—Section 24301 of  
2 title 49, United States Code, is amended by adding at the  
3 end the following new subsection:

4 “(c) NONAPPLICATION OF CERTAIN OTHER LAWS.—  
5 State and local laws and regulations that impair the provi-  
6 sion of mail, express, and auto-ferry transportation do not  
7 apply to Amtrak or a rail carrier providing mail, express,  
8 or auto-ferry transportation.”.

9 **SEC. 203. ROUTE AND SERVICE CRITERIA.**

10 Section 24703 of title 49, United States Code, and  
11 the item relating thereto in the table of sections of chapter  
12 247 of such title, are repealed.

13 **SEC. 204. ADDITIONAL QUALIFYING ROUTES.**

14 Section 24705 of title 49, United States Code, and  
15 the item relating thereto in the table of sections of chapter  
16 247 of such title, are repealed.

17 **SEC. 205. TRANSPORTATION REQUESTED BY STATES, AU-**  
18 **THORITIES, AND OTHER PERSONS.**

19 (a) REPEAL.—Section 24704 of title 49, United  
20 States Code, and the item relating thereto in the table of  
21 sections of chapter 247 of such title, are repealed.

22 (b) EXISTING AGREEMENTS.—Amtrak shall not,  
23 after the date of the enactment of this Act, be required  
24 to provide transportation services pursuant to an agree-

1 ment entered into before such date of enactment under  
2 the section repealed by subsection (a) of this section.

3 (c) STATE, REGIONAL, AND LOCAL COOPERATION.—

4 Section 24101(c)(2) of title 49, United States Code, is  
5 amended by inserting “, separately or in combination,”  
6 after “and the private sector”.

7 (d) CONFORMING AMENDMENT.—Section

8 24312(a)(1) of title 49, United States Code, is amended  
9 by striking “or 24704(b)(2)”.

10 SEC. 208. AMTRAK COMMUTER.

11 (a) REPEAL OF CHAPTER 245.—Chapter 245 of title

12 49, United States Code, and the item relating thereto in  
13 the table of chapters of subtitle V of such title, are re-  
14 pealed.

15 (b) CONFORMING AMENDMENTS.—(1) Section

16 24301(f) of title 49, United States Code, is amended to  
17 read as follows:

18 “(f) TAX EXEMPTION FOR CERTAIN COMMUTER AU-

19 THORITIES.—A commuter authority that was eligible to

20 make a contract with Amtrak Commuter to provide com-

21 muter rail passenger transportation but which decided to

22 provide its own rail passenger transportation beginning

23 January 1, 1983, is exempt, effective October 1, 1981,

24 from paying a tax or fee to the same extent Amtrak is

25 exempt.”



1       “(c) **BINDING ARBITRATION FOR COMMUTER DIS-**  
2 **PUTES.**—(1) If the parties to an agreement described in  
3 subsection (a)(6) relating to commuter rail passenger  
4 transportation cannot agree to the terms of such agree-  
5 ment, such parties shall submit the issues in dispute to  
6 binding arbitration.

7       “(2) The parties to a dispute described in paragraph  
8 (1) may agree to use the Interstate Commerce Commis-  
9 sion to arbitrate such dispute, and if requested the Inter-  
10 state Commerce Commission shall perform such func-  
11 tion.”.

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

14       “(d) **MINIMIZING GOVERNMENT SUBSIDIES.**—To  
15 carry out this part, Amtrak is encouraged to make agree-  
16 ments with the private sector and undertake initiatives  
17 that are consistent with good business judgment, that  
18 produce income to minimize Government subsidies, and  
19 that promote the potential privatization of Amtrak’s oper-  
20 ations.”.

21 **SEC. 208. ACCESS TO RECORDS AND ACCOUNTS.**

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

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

1 (2) by adding at the end the following new sub-  
2 section:

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

7 **TITLE III—COLLECTIVE**  
8 **BARGAINING REFORMS**

9 **SEC. 301. RAILWAY LABOR ACT PROCEDURES.**

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

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

18 (B) contracting out by Amtrak of work nor-  
19 mally performed by an employee in a bargaining  
20 unit covered by a contract between Amtrak and a  
21 labor organization representing Amtrak employees,  
22 applicable to employees of Amtrak shall be deemed served  
23 and effective on the date which is 90 days after the date  
24 of the enactment of this Act. Amtrak, and each affected  
25 labor organization representing Amtrak employees, shall

1 promptly supply specific information and proposals with  
2 respect to each such notice. This subsection shall not apply  
3 to issues relating to provisions defining the scope or classi-  
4 fication of work performed by an Amtrak employee.

5 (2) In the case of provisions of a collective bargaining  
6 agreement with respect to which a moratorium is in effect  
7 90 days after the date of the enactment of this Act, para-  
8 graph (1) shall take effect on the expiration of such mora-  
9 torium. For purposes of the application of paragraph (1)  
10 to such provisions, notices shall be deemed served and ef-  
11 fective on the date of such expiration.

12 (b) NATIONAL MEDIATION BOARD EFFORTS.—Ex-  
13 cept as provided in subsection (c), the National Mediation  
14 Board shall complete all efforts, with respect to each dis-  
15 pute described in subsection (a), under section 5 of the  
16 Railway Labor Act (45 U.S.C. 155) not later than 180  
17 days after the date of the enactment of this Act.

18 (c) RAILWAY LABOR ACT ARBITRATION.—The par-  
19 ties to any dispute described in subsection (a) may agree  
20 to submit the dispute to arbitration under section 7 of the  
21 Railway Labor Act (45 U.S.C. 157), and any award re-  
22 sulting therefrom shall be retroactive to the date which  
23 is 180 days after the date of the enactment of this Act.

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

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

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

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

14 (2) No individual shall be selected under paragraph  
15 (1) who is pecuniarily or otherwise interested in any orga-  
16 nization of employees or any railroad. Nothing in this sub-  
17 section shall preclude an individual from being selected for  
18 more than 1 dispute described in subsection (a).

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

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

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

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

15 **SEC. 302. SERVICE DISCONTINUANCE.**

16 (a) **REPEAL.**—(1) Section 24706(c) of title 49, Unit-  
17 ed States Code, is repealed.

18 (2)(A) Any provision of a contract, entered into be-  
19 fore the date of the enactment of this Act between Amtrak  
20 and a labor organization representing Amtrak employees,  
21 relating to—

22 (i) employee protective arrangements and sever-  
23 ance benefits, including all provisions of Appendix C-  
24 2 to the National Railroad Passenger Corporation  
25 Agreement, signed July 5, 1973; or

1 (ii) contracting out by Amtrak of work normally  
2 performed by an employee in a bargaining unit cov-  
3 ered by a contract between Amtrak and a labor or-  
4 ganization representing Amtrak employees,  
5 applicable to employees of Amtrak is extinguished. This  
6 paragraph shall not apply to provisions defining the scope  
7 or classification of work performed by an Amtrak em-  
8 ployee.

9 (B) In the case of provisions of a collective bargaining  
10 agreement with respect to which a moratorium is in effect  
11 90 days after the date of the enactment of this Act, sub-  
12 paragraph (A) shall take effect 164 days after the date  
13 of the expiration of such moratorium.

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

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

19 (b) INTERCITY PASSENGER SERVICE EMPLOYEES.—  
20 Section 1165(a) of the Northeast Rail Service Act of 1981  
21 (45 U.S.C. 1113(a)) is amended—

22 (1) by inserting “(1)” before “After January 1,  
23 1983”;

1           (2) by striking "Amtrak, Amtrak Commuter,  
2           and Conrail" and inserting in lieu thereof "Amtrak  
3           and Conrail";

4           (3) by striking "Such agreement shall ensure"  
5           and all that follows through "submitted to binding  
6           arbitration."; and

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

9           "(2) Notwithstanding any other provision of law,  
10          agreement, or arrangement, with respect to employees in  
11          any class or craft in train or engine service, Conrail shall  
12          have the right to furlough one such employee for each em-  
13          ployee in train or engine service who moves from Amtrak  
14          to Conrail in excess of the cumulative number of such em-  
15          ployees who move from Conrail to Amtrak. Conrail shall  
16          not be obligated to fill any position governed by an agree-  
17          ment concerning crew consist, attrition arrangements, re-  
18          serve boards, or reserve engine service positions, where an  
19          increase in positions is the result of the return of an Am-  
20          trak employee pursuant to an agreement entered into  
21          under paragraph (1). Conrail's collective bargaining agree-  
22          ments with organizations representing its train and engine  
23          service employees shall be deemed to have been amended  
24          to conform to this paragraph. Any dispute or controversy  
25          with respect to the interpretation, application, or enforce-

1 ment of this paragraph which has not been resolved within  
2 90 days after the date of the enactment of this paragraph  
3 may be submitted by either party to an adjustment board  
4 for a final and binding decision under section 3 of the  
5 Railway Labor Act.”.

6 (c) TECHNICAL AMENDMENT.—Section 11347 of  
7 title 49, United States Code, is amended by striking “sec-  
8 tions 24307(c), 24312, and” and inserting in lieu thereof  
9 “section”.

10 **TITLE IV—USE OF RAILROAD**  
11 **FACILITIES**

12 **SEC. 401. LIABILITY LIMITATION.**

13 (a) AMENDMENT.—Chapter 281 of title 49, United  
14 States Code, is amended by adding at the end the follow-  
15 ing new section:

16 “§28103. Limitations on rail passenger transpor-  
17 tation liability

18 “(a) LIMITATIONS.—(1) Notwithstanding any other  
19 statutory or common law or public policy, or the nature  
20 of the conduct giving rise to damages or liability, in a  
21 claim for personal injury, death, or damage to property  
22 arising from or in connection with the provision of rail  
23 passenger transportation, or from or in connection with  
24 any rail passenger transportation operations over or rail  
25 passenger transportation use of right-of-way or facilities

1 owned, leased, or maintained by any high-speed railroad  
2 authority or operator, any commuter authority or opera-  
3 tor, any rail carrier, or any State—

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

6                   “(i) \$250,000; or

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

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

13           “(2) If, in any case wherein death was caused, the  
14 law of the place where the act or omission complained of  
15 occurred provides, or has been construed to provide, for  
16 damages only punitive in nature, the claimant may recover  
17 in a claim limited by this subsection for economic and non-  
18 economic damages and punitive damages, subject to para-  
19 graph (1)(A) and (B).

20           “(3) For purposes of this subsection—

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

23                   “(B) the term ‘claim’ means a claim made, di-  
24 rectly or indirectly—

1           “(i) against Amtrak, any high-speed rail-  
2 road authority or operator, any commuter au-  
3 thority or operator, any rail carrier, or any  
4 State; or

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

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

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

20          “(E) the term ‘punitive damages’ means dam-  
21 ages awarded against any person or entity to punish  
22 or deter such person or entity, or others, from en-  
23 gaging in similar behavior in the future.

24          “(b) INDEMNIFICATION OBLIGATIONS.—Obligations  
25 of any party, however arising, including obligations arising

1 under leases or contracts or pursuant to orders of an ad-  
2 ministrative agency, to indemnify against damages or li-  
3 ability for personal injury, death, or damage to property  
4 described in subsection (a), incurred after the date of the  
5 enactment of the Amtrak Reform and Privatization Act  
6 of 1995, shall be enforceable, notwithstanding any other  
7 statutory or common law or public policy, or the nature  
8 of the conduct giving rise to the damages or liability.

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

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

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

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

## 21 **TITLE V—FINANCIAL REFORMS**

### 22 **SEC. 501. FINANCIAL POWERS.**

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

**Office of General Counsel**

U.S. Department of Transportation

400 Seventh Street, S.W.

Washington, D.C. 20590

Telephone: (202)366-4687

Telefax: (202)366-7153

TO: *Jim Brown*

FROM: *Mary Couter*

*366-9300*

FAX:

Number of pages (including this page)	<i>40 (in 2 parts)</i>
DATE TELEFAX SENT	<i>9/20</i>
TIME TELEFAX SENT	<i>2 pm</i>
DATE COMMENTS /RESPONSE (IF ANY) ARE DUE	

**Remarks:**

*Amtrak bill*

*charges are: ① liability includes scenic RR*

*② interstate compacts*

*We're looking to see if there is anything else.*

1 "§ 24304. Employee stock ownership plans

2 "In issuing stock pursuant to applicable corporate  
3 law, Amtrak is encouraged to include employee stock own-  
4 ership plans."

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

"24304. Employee stock ownership plans."

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

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

16 (3) Amtrak shall redeem any such common stock held  
17 after the expiration of the 2-month period described in  
18 paragraph (1), using procedures set forth in section  
19 24311(a) and (b).

20 (c) ELIMINATION OF LIQUIDATION PREFERENCE  
21 AND VOTING RIGHTS OF PREFERRED STOCK—(1)(A)  
22 Preferred stock of Amtrak held by the Secretary of Trans-  
23 portation shall confer no liquidation preference.

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

1 (2)(A) Preferred stock of Amtrak held by the Sec-  
2 retary of Transportation shall confer no voting rights.

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

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

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

14 (3) No amount shall be includible in Amtrak's gross  
15 income for Federal tax purposes as a result of the applica-  
16 tion of this subsection or subsection (c).

17 (e) STATUS AND APPLICABLE LAWS.—(1) Section  
18 24301(a)(3) of title 49, United States Code, is amended  
19 by inserting “, and shall not be subject to title 31, United  
20 States Code” after “United States Government”.

21 (2) Section 9101(2) of title 31, United States Code,  
22 relating to Government corporations, is amended by strik-  
23 ing subparagraph (A) and redesignating subparagraphs  
24 (B) through (M) as subparagraphs (A) through (L), re-  
25 spectively.

## 1 SEC. 502. DISBURSEMENT OF FEDERAL FUNDS.

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

4 "(d) ADMINISTRATION OF APPROPRIATIONS.—Fed-  
5 eral funds appropriated to Amtrak shall be provided to  
6 Amtrak upon appropriation when requested by Amtrak,  
7 and shall not be includible in Amtrak's gross income for  
8 Federal tax purposes."

## 9 SEC. 503. BOARD OF DIRECTORS.

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

## 12 "§ 24302. Board of Directors

13 "(a) EMERGENCY REFORM BOARD.—

14 "(1) ESTABLISHMENT AND DUTIES.—The  
15 Emergency Reform Board described in paragraph  
16 (2) shall assume the responsibilities of the Board of  
17 Directors of Amtrak 60 days after the date of the  
18 enactment of the Amtrak Reform and Privatization  
19 Act of 1995, or as soon thereafter as such Board is  
20 sufficiently constituted to function as a board of di-  
21 rectors under applicable corporate law. Such Board  
22 shall adopt new bylaws, including procedures for the  
23 selection of members of the Board of Directors  
24 under subsection (c) which provide for employee rep-  
25 resentation.

1           “(2) MEMBERSHIP.—(A) The Emergency Re-  
2 form Board shall consist of 7 members appointed by  
3 the President, by and with the advice and consent  
4 of the Senate.

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

8           “(i) the Speaker of the House of Rep-  
9 resentatives concerning the appointment of two  
10 members;

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

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

17           “(iv) the minority leader of the Senate con-  
18 cerning the appointment of one member.

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

21           “(i) have technical qualification, profes-  
22 sional standing, and demonstrated expertise in  
23 the fields of intercity common carrier transpor-  
24 tation and corporate management; and

1           “(ii) are not employees of Amtrak, employ-  
2           ees of the United States, or representatives of  
3           rail labor or rail management.

4           “(b) DIRECTOR GENERAL.—If the Emergency Re-  
5           form Board described in subsection (a)(2) is not suffi-  
6           ciently constituted to function as a board of directors  
7           under applicable corporate law before the expiration of 60  
8           days after the date of the enactment of the Amtrak Re-  
9           form and Privatization Act of 1995, the special court es-  
10          tablished under section 209(b) of the Regional Rail Reor-  
11          ganization Act of 1973 (45 U.S.C. 719(b)) shall appoint  
12          a Director General, who shall exercise all powers of the  
13          Board of Directors of Amtrak until the Emergency Re-  
14          form Board assumes such powers.

15          “(c) BOARD OF DIRECTORS.—Four years after the  
16          establishment of the Emergency Reform Board under sub-  
17          section (a), a Board of Directors shall be selected pursu-  
18          ant to bylaws adopted by the Emergency Reform Board,  
19          and the Emergency Reform Board shall be dissolved.”.

20          “(b) EFFECT ON AUTHORIZATIONS.—If the Emer-  
21          gency Reform Board has not assumed the responsibilities  
22          of the Board of Directors of Amtrak before March 15,  
23          1996, all provisions authorizing appropriations under the  
24          amendments made by section 701 of this Act for a fiscal  
25          year after fiscal year 1996 shall cease to be effective.

1 SEC. 504. REPORTS AND AUDITS.

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

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

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

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

11 SEC. 505. OFFICERS' PAY.

12 Section 24303(b) of title 49, United States Code, is  
13 amended by inserting "The preceding sentence shall cease  
14 to be effective on the expiration of a fiscal year during  
15 which no Federal operating assistance is provided to Am-  
16 trak." after "with comparable responsibility."

17 SEC. 506. EXEMPTION FROM TAXES.

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

20 (1) by inserting ", and any passenger or other  
21 customer of Amtrak or such subsidiary," after "sub-  
22 sidiary of Amtrak";

23 (2) by striking "or fee imposed" and all that  
24 follows through "levied on it" and inserting in lieu  
25 thereof ", fee, head charge, or other charge, imposed  
26 or levied by a State, political subdivision, or local

1 taxing authority, directly or indirectly on Amtrak or  
2 on persons traveling in intercity rail passenger  
3 transportation or on mail or express transportation  
4 provided by Amtrak or a rail carrier subsidiary of  
5 Amtrak, or on the carriage of such persons, mail, or  
6 express, or on the sale of any such transportation  
7 or on the gross receipts derived therefrom"; and

8 (3) by amending the last sentence thereof to  
9 read as follows: "In the case of a tax or fee that  
10 Amtrak was required to pay as of September 10,  
11 1982, Amtrak is not exempt from such tax or fee if  
12 it was assessed before April 1, 1995."

## 13 **TITLE VI—MISCELLANEOUS**

### 14 **SEC. 601. TEMPORARY RAIL ADVISORY COUNCIL.**

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

19 (b) **DUTIES.**—The Council shall—

20 (1) evaluate Amtrak's performance;

21 (2) prepare an analysis and critique of Am-  
22 trak's business plan;

23 (3) suggest strategies for further cost contain-  
24 ment and productivity improvements, including  
25 strategies with the potential for further reduction in

1 Federal operating subsidies and the eventual partial  
2 or complete privatization of Amtrak's operations:  
3 and

4 (4) recommend appropriate methods for adop-  
5 tion of uniform cost and accounting procedures  
6 throughout the Amtrak system, based on generally  
7 accepted accounting principles.

8 (c) MEMBERSHIP.—(1) The Council shall consist of  
9 7 members appointed as follows:

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

12 (B) One individual to be appointed by the mi-  
13 nority leader of the House of Representatives.

14 (C) Two individuals to be appointed by the ma-  
15 jority leader of the Senate.

16 (D) One individual to be appointed by the mi-  
17 nority leader of the Senate.

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

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

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

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

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

7 (d) TRAVEL EXPENSES.—Each member of the Coun-  
8 cil shall serve without pay, but shall receive travel ex-  
9 penses, including per diem in lieu of subsistence, in ac-  
10 cordance with sections 5702 and 5703 of title 5, United  
11 States Code.

12 (e) ADMINISTRATIVE SUPPORT.—The Secretary of  
13 Transportation shall provide to the Council such adminis-  
14 trative support as the Council requires to carry out this  
15 section.

16 (f) ACCESS TO INFORMATION.—Amtrak shall make  
17 available to the Council all information the Council re-  
18 quires to carry out this section. The Council shall establish  
19 appropriate procedures to ensure against the public disclo-  
20 sure of any information obtained under this subsection  
21 which is a trade secret or commercial or financial informa-  
22 tion that is privileged or confidential.

23 (g) REPORTS.—(1) Within 120 days after the date  
24 of the enactment of this Act, the Council shall transmit

1 to the Amtrak board of directors and the Congress an in-  
2 terim report on its findings and recommendations.

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

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

11 **SEC. 602. PRINCIPAL OFFICE AND PLACE OF BUSINESS.**

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

14 (1) by striking the first sentence;

15 (2) by striking "District of Columbia" and in-  
16 serting in lieu thereof "State in which its principal  
17 office and place of business is located"; and

18 (3) by inserting "For purposes of this sub-  
19 section, the term 'State' includes the District of Co-  
20 lumbia. Notwithstanding section 3 of the District of  
21 Columbia Business Corporation Act, Amtrak, if its  
22 principal office and place of business is located in  
23 the District of Columbia, shall be considered orga-  
24 nized under the provisions of such Act." after "in a  
25 civil action."

1 **SEC. 603. STATUS AND APPLICABLE LAWS.**

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

4 (1) in subsection (a)(1), by striking "rail car-  
5 rier under section 10102" and inserting in lieu  
6 thereof "railroad carrier under section 20102(2) and  
7 chapters 261 and 281"; and

8 (2) by amending subsection (c) to read as fol-  
9 lows:

10 "(c) APPLICATION OF SUBTITLE IV.—Subtitle IV of  
11 this title shall not apply to Amtrak, except for sections  
12 11303, 11342(a), 11504(a) and (d), and 11707. Notwith-  
13 standing the preceding sentence, Amtrak shall continue to  
14 be considered an employer under the Railroad Retirement  
15 Act of 1974, the Railroad Unemployment Insurance Act,  
16 and the Railroad Retirement Tax Act."

17 **SEC. 604. WASTE DISPOSAL**

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

21 **SEC. 605. ASSISTANCE FOR UPGRADING FACILITIES.**

22 Section 24310 of title 49, United States Code, and  
23 the item relating thereto in the table of sections of chapter  
24 243 of such title, are repealed.

1 SEC. 606. RAIL SAFETY SYSTEM PROGRAM.

2 Section 24313 of title 49, United States Code, and  
3 the item relating thereto in the table of sections of chapter  
4 243 of such title, are repealed.

5 SEC. 607. DEMONSTRATION OF NEW TECHNOLOGY.

6 Section 24314 of title 49, United States Code, and  
7 the item relating thereto in the table of sections of chapter  
8 243 of such title, are repealed.

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

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

14 (b) CONFORMING AMENDMENT.—Section  
15 24902(a)(1)(A) of title 49, United States Code, is amend-  
16 ed by striking “and 40 minutes”.

17 SEC. 609. BOSTON-NEW HAVEN ELECTRIFICATION  
18 PROJECT.

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

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

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

25 “(2) Amtrak shall design and construct the elec-  
26 trification system between Boston, Massachusetts, and

1 New Haven, Connecticut, to accommodate the installation  
2 of a third mainline track between Davisville and Central  
3 Falls, Rhode Island, to be used for double-stack freight  
4 service to and from the Port of Davisville. Amtrak shall  
5 also make clearance improvements on the existing main  
6 line tracks to permit double stack service on this line, if  
7 funds to defray the costs of clearance improvements be-  
8 yond Amtrak's own requirements for electrified passenger  
9 service are provided by public or private entities other  
10 than Amtrak. Wherever practicable, Amtrak shall use por-  
11 tal structures and realign existing tracks on undergrade  
12 and overgrade bridges to minimize the width of the right-  
13 of-way required to add the third track. Amtrak shall take  
14 such other steps as may be required to coordinate and fa-  
15 cilitate design and construction work. The Secretary of  
16 Transportation may provide appropriate support to Am-  
17 trak for carrying out this paragraph."

18 **SEC. 610. AMERICANS WITH DISABILITIES ACT OF 1990.**

19 (a) **APPLICATION TO AMTRAK**—Amtrak shall not be  
20 subject to any requirement under section 242(a)(1) and  
21 (3) and (e)(2) of the Americans With Disabilities Act of  
22 1990 (42 U.S.C. 12162(a)(1) and (3) and (e)(2)) until  
23 January 1, 1998.

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

1 (1) by striking subsection (b); and

2 (2) by redesignating subsection (c) as sub-  
3 section (b).

4 **SEC. 611. DEFINITIONS.**

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

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

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

10 (3) by inserting after paragraph (6), as so re-  
11 designated by paragraph (2) of this section, the fol-  
12 lowing new paragraph:

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

16 (4) in paragraph (6), as so redesignated by  
17 paragraph (2) of this section, by inserting “, includ-  
18 ing a unit of State or local government,” after  
19 “means a person”; and

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

22 **SEC. 612. NORTHEAST CORRIDOR COST DISPUTE.**

23 Section 1163 of the Northeast Rail Service Act of  
24 1981 (45 U.S.C. 1111) is repealed.

1 SEC. 813. INSPECTOR GENERAL ACT OF 1978 AMENDMENT.

2 (a) AMENDMENT.—Section 8G(a)(2) of the Inspector  
3 General Act of 1978 (5 U.S.C. App.) is amended by strik-  
4 ing "Amtrak,".

5 (b) AMTRAK NOT FEDERAL ENTITY.—Amtrak shall  
6 not be considered a Federal entity for purposes of the In-  
7 spector General Act of 1978.

8 SEC. 814. CONSOLIDATED RAIL CORPORATION.

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

12 SEC. 815. INTERSTATE RAIL COMPACTS.

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

18 (1) retaining an existing service or commencing  
19 a new service;

20 (2) assembling rights-of-way; and

21 (3) performing capital improvements, includ-  
22 ing—

23 (A) the construction and rehabilitation of  
24 maintenance facilities and intermodal passenger  
25 facilities;

26 (B) the purchase of locomotives; and

1 (C) operational improvements, including  
2 communications, signals, and other systems.

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

6 (1) accept contributions from a unit of State or  
7 local government or a person;

8 (2) use any Federal or State funds made avail-  
9 able for intercity passenger rail service (except funds  
10 made available for the National Railroad Passenger  
11 Corporation);

12 (3) on such terms and conditions as the States  
13 consider advisable—

14 (A) borrow money on a short-term basis  
15 and issue notes for the borrowing; and

16 (B) issue bonds; and

17 (4) obtain financing by other means permitted  
18 under Federal or State law.

19 **SEC. 616. CONFORMING AMENDMENT.**

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

1 **TITLE VII—AUTHORIZATION OF**  
2 **APPROPRIATIONS**

3 **SEC. 701. AUTHORIZATION OF APPROPRIATIONS.**

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

6 “(a) **IN GENERAL.**—There are authorized to be ap-  
7 propriated to the Secretary of Transportation—

8 “(1) \$772,000,000 for fiscal year 1995;

9 “(2) \$712,000,000 for fiscal year 1996;

10 “(3) \$712,000,000 for fiscal year 1997;

11 “(4) \$712,000,000 for fiscal year 1998; and

12 “(5) \$403,000,000 for fiscal year 1999,

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

16 (b) **ADDITIONAL AUTHORIZATIONS.**—Section  
17 24104(b) of title 49, United States Code, is amended to  
18 read as follows:

19 “(b) **ADDITIONAL AUTHORIZATIONS.**—(1) In addi-  
20 tion to amounts appropriated under subsection (a), there  
21 are authorized to be appropriated to the Secretary of  
22 Transportation—

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

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

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

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

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

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

5           “(2) In addition to amounts appropriated under sub-  
6 section (a), there are authorized to be appropriated to the  
7 Secretary of Transportation—

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

9           “(B) \$10,000,000 for fiscal year 1996;

10           “(C) \$10,000,000 for fiscal year 1997;

11           “(D) \$10,000,000 for fiscal year 1998; and

12           “(E) \$10,000,000 for fiscal year 1999,

13 for the benefit of Amtrak to be used for engineering, de-  
14 sign, and construction activities to enable the James A.  
15 Farley Post Office in New York, New York, to be used  
16 as a train station and commercial center and for necessary  
17 improvements and redevelopment of the existing Penn-  
18 sylvania Station and associated service building in New  
19 York, New York.”.

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

1 (d) GUARANTEE OF OBLIGATIONS.—There are au-  
2 thorized to be appropriated to the Secretary of Transpor-  
3 tation—

4 (1) \$50,000,000 for fiscal year 1996;

5 (2) \$50,000,000 for fiscal year 1997;

6 (3) \$50,000,000 for fiscal year 1998; and

7 (4) \$50,000,000 for fiscal year 1999,

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

11 (e) CONDITIONS FOR GUARANTEE OF OBLIGA-  
12 TIONS.—Section 511(i) of the Railroad Revitalization and  
13 Regulatory Reform Act of 1976 (45 U.S.C. 831(i)) is  
14 amended by adding at the end the following new para-  
15 graph:

16 “(4) The Secretary shall not require, as a condition  
17 for guarantee of an obligation under this section, that all  
18 preexisting secured obligations of an obligor be subordi-  
19 nated to the rights of the Secretary in the event of a de-  
20 fault.”.

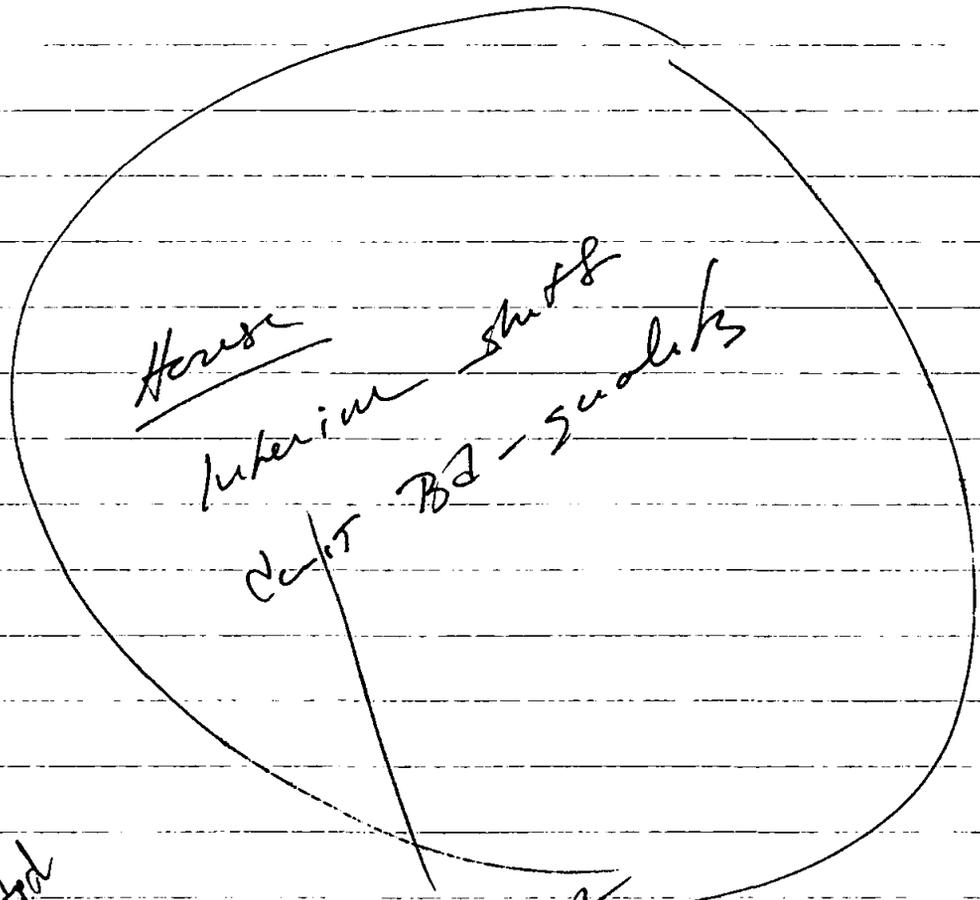
Principal or inferior -

If former, CT NOT OK.

If latter, CT OK

No intermediacy between Bd + Pres.

Also, signif. functions.



Senate

Pres. Bd.

Council - non-advis  
but properly  
constituted

At least have  
someone already  
confirmed?  
Senate?

Intro

Try to figure out where OLC is on newest versions of Reauth bill.

Try to figure out whether there's a conflict b/w what OLC thinks / and what agency + WH want.

And try to figure out, if there is such a problem, whether there's a way to address it + make it disappear.

Assume  
time



forward  
looking

Then: Richard - OLC's current position  
John - any chance of amendment?

What's going to be happening?  
When is this going?

PS - What about trying to privatize?  
Wouldn't that be the best course?

## House

Provisions - 21802 Emergency Return RR to assume next words of  
BoD

To adopt new bylaws, incl. proc for selection  
of mbrs of BoD

7 mbrs - by 7 w/ arc of Senate  
consultation requirement  
2 qualifications

If ERB isn't sufficiently constituted to function as  
BoD, special Ct shall apppt a Director Gen'l

4 yrs later, BoD shall be relected pursuant to  
bylaws adopted by ERB

Temporary Rail Advisory Council

4 by Congress (diff parts); 1 by Pres.

2 qualifs

evaluate; analyze; suggest strat; recommend methods

Questions: 1. Re ERB

Should be OK?

consultation req. as Senate.

2 qualifs, as Senate.

2. Re Director Gen'l

Interior Office? If so, can't Cong do this? give appmt

\* or thing not be privatized  
so appointments of. doesn't  
apply at all.  
In some ways, The best of  
all worlds.

power to Ct?

### 3. Re new Board

No telling how will be appointed  
ERB could <sup>say, e.g., by Pres. or by Congress.</sup> ~~be appointed by Pres. or by Congress.~~  
But some bylaws would be OK. (e.g. by Pres) \*  
If this is } or, this should be unripe for review?  
Kor

Altern arg: ERB is Head of Dept, which has  
been delegated the auth to appoint interior officers.

To be right - Head of Dept ~~need~~ may be  
interior officer. But this has been left open  
by the Ct.   
And interior DPs may be  
appointed by other interior off.

See Weiss.

### 4. Re TRAC.

Clearly impermiss if Appointments of applies.

But this seems a wholly advisory body,  
existing to serve Corp alone & not performing  
any Exec functions.

Combo is encroachment?

## Senate

- Provisions: 601 Indep commission - Amtrak Reform Council
- evaluate port + report to Cong
  - analyze A's business plan
  - suggest ways to improve
  - curricula privatization
    - develop + submit to Cong either an action plan or a liquidation plan
- 502 - This depends on whether senate is triggered:  
ARC to review A's progress + determine whether it will continue to need funding - submit to Cong.  
Further approps depending on findings of ARC.

Composition - 8 by Pres w/ arc of senate  
2 qualifications  
consultation requirement

Questions: Any objections?

- to consultation requirement?
- to 2 qualifications?

All seems innocuous.

NB too - can we say This is really an advisory/informational body - a sort of aid to Congress? Is not itself exercising exec power.

*Pub's Domain  
General Counsel  
SMB*

AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 1788  
OFFERED BY MR. SHUSTER

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

1 SECTION 1. SHORT TITLE.

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

4 **TITLE I—PROCUREMENT**  
5 **REFORMS**

6 SEC. 101. CONTRACTING OUT.

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

9 "(b) CONTRACTING OUT.—(1) When Amtrak con-  
10 tracts out work normally performed by an employee in a  
11 bargaining unit covered by a contract between a labor or-  
12 ganization and Amtrak, Amtrak is encouraged to use  
13 other rail carriers for performing such work.

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

1       “(B) If Amtrak enters into a contract as described  
2 in subparagraph (A)—

3               “(i) such contract shall not relieve Amtrak of  
4 any obligation in connection with the use of facilities  
5 of another entity for the operation covered by such  
6 contract: and

7               “(ii) such operation shall be subject to any op-  
8 erating or safety restrictions and conditions required  
9 by the agreement providing for the use of such fa-  
10 cilities.

11       “(C) This paragraph shall not affect contracts for ac-  
12 cess to or use of tracks or facilities for the operation of  
13 trains.”.

14       (b) EFFECTIVE DATE.—Subsection (a) shall take ef-  
15 fect 254 days after the date of the enactment of this Act.

16 **SEC. 102. CONTRACTING PRACTICES.**

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

20       “(b) BELOW-COST COMPETITION.—(1) Amtrak shall  
21 not submit any bid for the performance of services under  
22 a contract for an amount less than the cost to Amtrak  
23 of performing such services, with respect to any activity  
24 other than the provision of intercity rail passenger trans-  
25 portation, commuter rail passenger transportation, or mail

1 or express transportation. For purposes of this subsection,  
2 the cost to Amtrak of performing services shall be deter-  
3 mined using generally accepted accounting principles for  
4 contracting.

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

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

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

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

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

10           “(ii) for passengers who have had prior move-  
11 ment by rail or will have subsequent movement by  
12 rail; and

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

16           “(B) Subparagraph (A) shall not apply to transpor-  
17 tation funded predominantly by a State or local govern-  
18 ment, or to ticket selling agreements.”.

19           (2) Section 24305(d) of title 49, United States Code,  
20 is amended by adding at the end the following new para-  
21 graph:

22           “(3) Congress encourages Amtrak and motor com-  
23 mon carriers of passengers to use the authority conferred  
24 in section 11342(a) of this title for the purpose of provid-

1 ing improved service to the public and economy of oper-  
2 ation.”

3 SEC. 103. FREEDOM OF INFORMATION ACT.

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

7 **TITLE II—OPERATIONAL**  
8 **REFORMS**

9 SEC. 201. BASIC SYSTEM.

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

14 (b) IMPROVING RAIL PASSENGER TRANSPOR-  
15 TATION.—Section 24702 of title 49, United States Code,  
16 and the item relating thereto in the table of sections of  
17 chapter 247 of such title, are repealed.

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

20 (1) in subsection (a)(1)—

21 (A) by striking “90 days” and inserting in  
22 lieu thereof “180 days”;

23 (B) by striking “a discontinuance under  
24 section 24704 or 24707(a) or (b) of this title”

1 and inserting in lieu thereof "discontinuing  
2 service over a route"; and

3 (C) by inserting "or assume" after "agree  
4 to share";

5 (2) in subsection (a)(2), by striking "section  
6 24704 or 24707(a) or (b) of this title" and inserting  
7 in lieu thereof "paragraph (1)"; and

8 (3) by striking subsection (b).

9 (d) COST AND PERFORMANCE REVIEW.—Section  
10 24707 of title 49, United States Code, and the item relat-  
11 ing thereto in the table of sections of chapter 247 of such  
12 title, are repealed.

13 (e) SPECIAL COMMUTER TRANSPORTATION.—Section  
14 24708 of title 49, United States Code, and the item relat-  
15 ing thereto in the table of sections of chapter 247 of such  
16 title, are repealed.

17 (f) CONFORMING AMENDMENT.—Section  
18 24312(a)(1) of title 49, United States Code, is amended  
19 by striking ", 24701(a),".

20 SEC. 202. MAIL, EXPRESS, AND AUTO-FERRY TRANSPOR-  
21 TATION.

22 (a) REPEAL.—Section 24306 of title 49, United  
23 States Code, and the item relating thereto in the table of  
24 sections of chapter 243 of such title, are repealed.

1 (b) CONFORMING AMENDMENT.—Section 24301 of  
2 title 49, United States Code, is amended by adding at the  
3 end the following new subsection:

4 “(c) NONAPPLICATION OF CERTAIN OTHER LAWS.—  
5 State and local laws and regulations that impair the provi-  
6 sion of mail, express, and auto-ferry transportation do not  
7 apply to Amtrak or a rail carrier providing mail, express,  
8 or auto-ferry transportation.”

9 **SEC. 203. ROUTE AND SERVICE CRITERIA**

10 Section 24703 of title 49, United States Code, and  
11 the item relating thereto in the table of sections of chapter  
12 247 of such title, are repealed.

13 **SEC. 204. ADDITIONAL QUALIFYING ROUTES.**

14 Section 24705 of title 49, United States Code, and  
15 the item relating thereto in the table of sections of chapter  
16 247 of such title, are repealed.

17 **SEC. 205. TRANSPORTATION REQUESTED BY STATES, AU-**  
18 **THORITIES, AND OTHER PERSONS.**

19 (a) REPEAL.—Section 24704 of title 49, United  
20 States Code, and the item relating thereto in the table of  
21 sections of chapter 247 of such title, are repealed.

22 (b) EXISTING AGREEMENTS.—Amtrak shall not,  
23 after the date of the enactment of this Act, be required  
24 to provide transportation services pursuant to an agree-

1 ment entered into before such date of enactment under  
 2 the section repealed by subsection (a) of this section.

3 (c) STATE, REGIONAL, AND LOCAL COOPERATION.—

4 Section 24101(e)(2) of title 49, United States Code, is  
 5 amended by inserting “, separately or in combination,”  
 6 after “and the private sector”.

7 (d) CONFORMING AMENDMENT.—Section

8 24312(a)(1) of title 49, United States Code, is amended  
 9 by striking “or 24704(b)(2)”.

10 SEC. 206. AMTRAK COMMUTER.

11 (a) REPEAL OF CHAPTER 245.—Chapter 245 of title  
 12 49, United States Code, and the item relating thereto in  
 13 the table of chapters of subtitle V of such title, are re-  
 14 pealed.

15 (b) CONFORMING AMENDMENTS.—(1) Section  
 16 24301(f) of title 49, United States Code, is amended to  
 17 read as follows:

18 “(f) TAX EXEMPTION FOR CERTAIN COMMUTER AU-  
 19 THORITIES.—A commuter authority that was eligible to  
 20 make a contract with Amtrak Commuter to provide com-  
 21 muter rail passenger transportation but which decided to  
 22 provide its own rail passenger transportation beginning  
 23 January 1, 1983, is exempt, effective October 1, 1981,  
 24 from paying a tax or fee to the same extent Amtrak is  
 25 exempt.”.



1 produce income to minimize Government subsidies, and  
2 that promote the potential privatization of Amtrak's oper-  
3 ations."

4 SEC. 208. ACCESS TO RECORDS AND ACCOUNTS.

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

7 (1) in subsection (e), by inserting "financial or"  
8 after "Comptroller General may conduct"; and

9 (2) by adding at the end the following new sub-  
10 section:

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

15 **TITLE III—COLLECTIVE**  
16 **BARGAINING REFORMS**

17 SEC. 301. RAILWAY LABOR ACT PROCEDURES.

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

22 (1) employee protective arrangements and sev-  
23 erance benefits, including all provisions of Appendix  
24 C-2 to the National Railroad Passenger Corporation  
25 Agreement, signed July 5, 1973; and

1           (2) contracting out by Amtrak of work normally  
2           performed by an employee in a bargaining unit cov-  
3           ered by a contract between Amtrak and a labor or-  
4           ganization representing Amtrak employees.  
5           applicable to employees of Amtrak shall be deemed served  
6           and effective on the date which is 90 days after the date  
7           of the enactment of this Act. Amtrak, and each affected  
8           labor organization representing Amtrak employees, shall  
9           promptly supply specific information and proposals with  
10          respect to each such notice. This subsection shall not apply  
11          to issues relating to provisions defining the scope or classi-  
12          fication of work performed by an Amtrak employee.

13          (b) NATIONAL MEDIATION BOARD EFFORTS.—Ex-  
14          cept as provided in subsection (c), the National Mediation  
15          Board shall complete all efforts, with respect to each dis-  
16          pute described in subsection (a), under section 5 of the  
17          Railway Labor Act (45 U.S.C. 155) not later than 180  
18          days after the date of the enactment of this Act.

19          (c) RAILWAY LABOR ACT ARBITRATION.—The par-  
20          ties to any dispute described in subsection (a) may agree  
21          to submit the dispute to arbitration under section 7 of the  
22          Railway Labor Act (45 U.S.C. 157), and any award re-  
23          sulting therefrom shall be retroactive to the date which  
24          is 180 days after the date of the enactment of this Act.

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

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

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

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

16 (2) No individual shall be selected under paragraph  
17 (1) who is pecuniarily or otherwise interested in any orga-  
18 nization of employees or any railroad. Nothing in this sub-  
19 section shall preclude an individual from being selected for  
20 more than 1 dispute described in subsection (a).

21 (3) The compensation of individuals selected under  
22 paragraph (1) shall be fixed by the National Mediation  
23 Board. The second paragraph of section 10 of the Railway  
24 Labor Act shall apply to the expenses of such individuals

1 as if such individuals were members of a board created  
2 under such section 10.

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

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

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

17 **SEC. 302. SERVICE DISCONTINUANCE.**

18 (a) **REPEAL.**—(1) Section 24706(c) of title 49, Unit-  
19 ed States Code, is repealed.

20 (2) Any provision of a contract, entered into before  
21 the date of the enactment of this Act between Amtrak and  
22 a labor organization representing Amtrak employees, re-  
23 lating to—

24 (A) employee protective arrangements and sev-  
25 erance benefits, including all provisions of Appendix

1 C-2 to the National Railroad Passenger Corporation  
2 Agreement, signed July 5, 1973; or

3 (B) contracting out by Amtrak of work nor-  
4 mally performed by an employee in a bargaining  
5 unit covered by a contract between Amtrak and a  
6 labor organization representing Amtrak employees.

7 applicable to employees of Amtrak is extinguished. This  
8 paragraph shall not apply to provisions defining the scope  
9 or classification of work performed by an Amtrak em-  
10 ployee.

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

13 (4) This subsection shall take effect 254 days after  
14 the date of the enactment of this Act.

15 (b) INTERCITY PASSENGER SERVICE EMPLOYEES.—  
16 Section 1165(a) of the Northeast Rail Service Act of 1981  
17 (45 U.S.C. 1113(a)) is amended—

18 (1) by inserting “(1)” before “After January 1,  
19 1983”;

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

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

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

3 "(2) Notwithstanding any other provision of law,  
4 agreement, or arrangement, with respect to employees in  
5 any class or craft in train or engine service, Conrail shall  
6 have the right to furlough one such employee for each em-  
7 ployee in train or engine service who moves from Amtrak  
8 to Conrail in excess of the cumulative number of such em-  
9 ployees who move from Conrail to Amtrak. Conrail shall  
10 not be obligated to fill any position governed by an agree-  
11 ment concerning crew consist, attrition arrangements, re-  
12 serve boards, or reserve engine service positions, where an  
13 increase in positions is the result of the return of an Am-  
14 trak employee pursuant to an agreement entered into  
15 under paragraph (1). Conrail's collective bargaining agree-  
16 ments with organizations representing its train and engine  
17 service employees shall be deemed to have been amended  
18 to conform to this paragraph. Any dispute or controversy  
19 with respect to the interpretation, application, or enforce-  
20 ment of this paragraph which has not been resolved within  
21 90 days after the date of the enactment of this paragraph  
22 may be submitted by either party to an adjustment board  
23 for a final and binding decision under section 3 of the  
24 Railway Labor Act."

1 (c) TECHNICAL AMENDMENT.—Section 11347 of  
 2 title 49, United States Code, is amended by striking “sec-  
 3 tions 24307(c), 24312, and” and inserting in lieu thereof  
 4 “section”.

5 **TITLE IV—USE OF RAILROAD**  
 6 **FACILITIES**

7 **SEC. 401. LIABILITY LIMITATION.**

8 (a) AMENDMENT.—Chapter 281 of title 49, United  
 9 States Code, is amended by adding at the end the follow-  
 10 ing new section:

11 **“§ 28103. Limitations on rail passenger transpor-**  
 12 **tation liability**

13 **“(a) LIMITATIONS.—(1) Notwithstanding any other**  
 14 **statutory or common law or public policy, or the nature**  
 15 **of the conduct giving rise to damages or liability, in a**  
 16 **claim for personal injury, death, or damage to property**  
 17 **arising from or in connection with the provision of rail**  
 18 **passenger transportation, or from or in connection with**  
 19 **any operations over or use of right-of-way or facilities**  
 20 **owned, leased, or maintained by Amtrak, or from or in**  
 21 **connection with any rail passenger transportation oper-**  
 22 **ations over or rail passenger transportation use of right-**  
 23 **of-way or facilities owned, leased, or maintained by any**  
 24 **high-speed railroad authority or operator, any commuter**  
 25 **authority or operator, or any rail carrier—**

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

3           “(i) \$250,000; or

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

6           “(B) noneconomic damages awarded to any  
7 claimant for each accident or incident shall not ex-  
8 ceed the claimant's economic loss, if any, by more  
9 than \$250,000.

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

17          “(3) For purposes of this subsection—

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

20           “(B) the term ‘claim’ means a claim made, di-  
21 rectly or indirectly—

22           “(i) against Amtrak, any high-speed rail-  
23 road authority or operator, any commuter au-  
24 thority or operator, or any rail carrier; or

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

6           “(C) the term ‘economic loss’ means any pecu-  
7           niary loss resulting from harm (including the loss of  
8           earnings, medical expense loss, replacement services  
9           loss, loss due to death, burial costs, and loss of busi-  
10          ness or employment opportunities) to the extent re-  
11          covery for such loss is allowed under applicable State  
12          law;

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

16          “(E) the term ‘punitive damages’ means dam-  
17          ages awarded against any person or entity to punish  
18          or deter such person or entity, or others, from en-  
19          gaging in similar behavior in the future.

20          “(b) INDEMNIFICATION OBLIGATIONS.—Obligations  
21          of any party, however arising, including obligations arising  
22          under leases or contracts or pursuant to orders of an ad-  
23          ministrative agency, to indemnify against damages or li-  
24          ability for personal injury, death, or damage to property  
25          described in subsection (a), incurred after the date of the

1 enactment of the Amtrak Reform and Privatization Act  
2 of 1995, shall be enforceable, notwithstanding any other  
3 statutory or common law or public policy, or the nature  
4 of the conduct giving rise to the damages or liability.

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

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

14       “(b) CONFORMING AMENDMENT.—The table of sec-  
15 tions of chapter 281 of title 49, United States Code, is  
16 amended by adding at the end the following new item:

“28103. Limitations on rail passenger transportation liability.”

## 17       **TITLE V—FINANCIAL REFORMS**

### 18       **SEC. 501. FINANCIAL POWERS.**

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

#### 21       “§ 24304. Employee stock ownership plans

22       “‘In issuing stock pursuant to applicable corporate  
23 law, Amtrak is encouraged to include employee stock own-  
24 ership plans.’”

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

"24304. Employee stock ownership plans."

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

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

12 (3) Amtrak shall redeem any such common stock held  
13 after the expiration of the 2-month period described in  
14 paragraph (1), using procedures set forth in section  
15 24311(a) and (b).

16 (c) ELIMINATION OF LIQUIDATION PREFERENCE  
17 AND VOTING RIGHTS OF PREFERRED STOCK.—(1) Pre-  
18 ferred stock of Amtrak held by the Secretary of Transpor-  
19 tation shall confer no liquidation preference or voting  
20 rights.

21 (2) This subsection shall take effect 90 days after the  
22 date of the enactment of this Act.

23 (d) NOTE AND MORTGAGE.—(1) Section 24907 of  
24 title 49, United States Code, and the item relating thereto

1 in the table of sections of chapter 249 of such title. are  
2 repealed.

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

8 (3) No amount shall be includible in Amtrak's gross  
9 income for Federal tax purposes as a result of the applica-  
10 tion of this subsection or subsection (c).

11 (e) STATUS AND APPLICABLE LAWS.—(1) Section  
12 24301(a)(3) of title 49, United States Code, is amended  
13 by inserting “, and shall not be subject to title 31, United  
14 States Code” after “United States Government”.

15 (2) Section 9101(2) of title 31, United States Code,  
16 relating to Government corporations, is amended by strik-  
17 ing subparagraph (A) and redesignating subparagraphs  
18 (B) through (M) as subparagraphs (A) through (L), re-  
19 spectively.

20 **SEC. 502. DISBURSEMENT OF FEDERAL FUNDS.**

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

23 “(d) ADMINISTRATION OF APPROPRIATIONS.—Fed-  
24 eral funds appropriated to Amtrak shall be provided to  
25 Amtrak upon appropriation when requested by Amtrak,

1 and shall not be includible in Amtrak's gross income for  
2 Federal tax purposes."

3 SEC. 503. BOARD OF DIRECTORS.

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

6 "§ 24302. Board of Directors

7 "(a) EMERGENCY REFORM BOARD.—

8 "(1) ESTABLISHMENT AND DUTIES.—The  
9 Emergency Reform Board described in paragraph  
10 (2) shall assume the responsibilities of the Board of  
11 Directors of Amtrak 60 days after the date of the  
12 enactment of the Amtrak Reform and Privatization  
13 Act of 1995, or as soon thereafter as such Board is  
14 sufficiently constituted to function as a board of di-  
15 rectors under applicable corporate law. Such Board  
16 shall adopt new bylaws, including procedures for the  
17 selection of members of the Board of Directors  
18 under subsection (c) which provide for employee rep-  
19 resentation.

20 "(2) MEMBERSHIP.—(A) The Emergency Re-  
21 form Board shall consist of 7 members appointed by  
22 the President, by and with the advice and consent  
23 of the Senate.

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

4           “(i) the Speaker of the House of Rep-  
5 resentatives concerning the appointment of two  
6 members:

7           “(ii) the minority leader of the House of  
8 Representatives concerning the appointment of  
9 one member:

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

13          “(iv) the minority leader of the Senate con-  
14 cerning the appointment of one member.

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

17          “(i) have technical qualification, profes-  
18 sional standing, and demonstrated expertise in  
19 the fields of intercity common carrier transpor-  
20 tation and corporate management; and

21          “(ii) are not employees of Amtrak, employ-  
22 ees of the United States, or representatives of  
23 rail labor or rail management.

24          “(b) DIRECTOR GENERAL.—If the Emergency Re-  
25 form Board described in subsection (a)(2) is not suffi-

1 eiently constituted to function as a board of directors  
2 under applicable corporate law before the expiration of 60  
3 days after the date of the enactment of the Amtrak Re-  
4 form and Privatization Act of 1995, the special court es-  
5 tablished under section 209(b) of the Regional Rail Reor-  
6 ganization Act of 1973 (45 U.S.C. 719(b)) shall appoint  
7 a Director General, who shall exercise all powers of the  
8 Board of Directors of Amtrak until the Emergency Re-  
9 form Board assumes such powers.

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10 "(c) BOARD OF DIRECTORS.—Four years after the  
11 establishment of the Emergency Reform Board under sub-  
12 section (a), a Board of Directors shall be selected pursu-  
13 ant to bylaws adopted by the Emergency Reform Board,  
14 and the Emergency Reform Board shall be dissolved."

15 (b) EFFECT ON AUTHORIZATIONS.—If the Emer-  
16 gency Reform Board has not assumed the responsibilities  
17 of the Board of Directors of Amtrak before March 15,  
18 1996, all provisions authorizing appropriations under the  
19 amendments made by section 701 of this Act for a fiscal  
20 year after fiscal year 1996 shall cease to be effective.

21 **SEC. 504. REPORTS AND AUDITS.**

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

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

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

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

7 **SEC. 505. OFFICERS' PAY.**

8 Section 24303(b) of title 49, United States Code, is  
9 amended by inserting "The preceding sentence shall cease  
10 to be effective on the expiration of a fiscal year during  
11 which no Federal operating assistance is provided to Am-  
12 trak." after "with comparable responsibility."

13 **SEC. 506. EXEMPTION FROM TAXES.**

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

16 (1) by inserting ", and any passenger or other  
17 customer of Amtrak or such subsidiary," after "sub-  
18 sidiary of Amtrak";

19 (2) by striking "or fee imposed" and all that  
20 follows through "levied on it" and inserting in lieu  
21 thereof ", fee, head charge, or other charge, imposed  
22 or levied by a State, political subdivision, or local  
23 taxing authority, directly or indirectly on Amtrak or  
24 on persons traveling in intercity rail passenger  
25 transportation or on mail or express transportation

1 provided by Amtrak or a rail carrier subsidiary of  
2 Amtrak, or on the carriage of such persons, mail, or  
3 express, or on the sale of any such transportation,  
4 or on the gross receipts derived therefrom"; and

5 (3) by amending the last sentence thereof to  
6 read as follows: "In the case of a tax or fee that  
7 Amtrak was required to pay as of September 10,  
8 1982, Amtrak is not exempt from such tax or fee if  
9 it was assessed before April 1, 1995."

## 10 **TITLE VI—MISCELLANEOUS**

### 11 **SEC. 601. TEMPORARY RAIL ADVISORY COUNCIL.**

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

16 (b) **DUTIES.**—The Council shall—

17 (1) evaluate Amtrak's performance;

18 (2) prepare an analysis and critique of Am-  
19 trak's business plan;

20 (3) suggest strategies for further cost contain-  
21 ment and productivity improvements, including  
22 strategies with the potential for further reduction in  
23 Federal operating subsidies and the eventual partial  
24 or complete privatization of Amtrak's operations;  
25 and

1 (4) recommend appropriate methods for adop-  
2 tion of uniform cost and accounting procedures  
3 throughout the Amtrak system, based on generally  
4 accepted accounting principles.

5 (c) MEMBERSHIP.—(1) The Council shall consist of  
6 7 members appointed as follows:

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

9 (B) One individual to be appointed by the mi-  
10 nority leader of the House of Representatives.

11 (C) Two individuals to be appointed by the ma-  
12 jority leader of the Senate.

13 (D) One individual to be appointed by the mi-  
14 nority leader of the Senate.

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

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

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

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

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

4 (d) TRAVEL EXPENSES.—Each member of the Coun-  
5 cil shall serve without pay, but shall receive travel ex-  
6 penses, including per diem in lieu of subsistence, in ac-  
7 cordance with sections 5702 and 5703 of title 5, United  
8 States Code.

9 (e) ADMINISTRATIVE SUPPORT.—The Secretary of  
10 Transportation shall provide to the Council such adminis-  
11 trative support as the Council requires to carry out this  
12 section.

13 (f) ACCESS TO INFORMATION.—Amtrak shall make  
14 available to the Council all information the Council re-  
15 quires to carry out this section. The Council shall establish  
16 appropriate procedures to ensure against the public disclo-  
17 sure of any information obtained under this subsection  
18 which is a trade secret or commercial or financial informa-  
19 tion that is privileged or confidential.

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

24 (2) Within 270 days after the date of the enactment  
25 of this Act, the Council shall transmit to the Amtrak

1 board of directors and the Congress a final report on its  
 2 findings and recommendations.

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

*NB - no  
 other power  
 than  
 membership  
 advisory*

7 SEC. 602. PRINCIPAL OFFICE AND PLACE OF BUSINESS.

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

10 (1) by striking the first sentence:

11 (2) by striking “District of Columbia” and in-  
 12 serting in lieu thereof “State in which its principal  
 13 office and place of business is located”; and

14 (3) by inserting “For purposes of this sub-  
 15 section, the term ‘State’ includes the District of Co-  
 16 lumbia. Notwithstanding section 3 of the District of  
 17 Columbia Business Corporation Act, Amtrak, if its  
 18 principal office and place of business is located in  
 19 the District of Columbia, shall be considered orga-  
 20 nized under the provisions of such Act.” after “in a  
 21 civil action.”.

22 SEC. 603. STATUS AND APPLICABLE LAWS.

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

1 (1) in subsection (a)(1), by striking "rail car-  
2 rier under section 10102" and inserting in lieu  
3 thereof "railroad carrier under section 20102(2) and  
4 chapters 261 and 281": and

5 (2) by amending subsection (c) to read as fol-  
6 lows:

7 "(c) APPLICATION OF SUBTITLE IV.—Subtitle IV of  
8 this title shall not apply to Amtrak, except for sections  
9 11303, 11342(a), 11504(a) and (d), and 11707. Notwith-  
10 standing the preceding sentence. Amtrak shall continue to  
11 be considered an employer under the Railroad Retirement  
12 Act of 1974, the Railroad Unemployment Insurance Act,  
13 and the Railroad Retirement Tax Act."

14 **SEC. 604. WASTE DISPOSAL.**

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

18 **SEC. 605. ASSISTANCE FOR UPGRADING FACILITIES.**

19 Section 24310 of title 49, United States Code, and  
20 the item relating thereto in the table of sections of chapter  
21 243 of such title, are repealed.

22 **SEC. 606. RAIL SAFETY SYSTEM PROGRAM.**

23 Section 24313 of title 49, United States Code, and  
24 the item relating thereto in the table of sections of chapter  
25 243 of such title, are repealed.

1 SEC. 607. DEMONSTRATION OF NEW TECHNOLOGY.

2 Section 24314 of title 49, United States Code, and  
3 the item relating thereto in the table of sections of chapter  
4 243 of such title, are repealed.

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

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

10 (b) CONFORMING AMENDMENT.—Section  
11 24902(a)(1)(A) of title 49, United States Code, is amend-  
12 ed by striking “and 40 minutes”.

13 SEC. 609. BOSTON-NEW HAVEN ELECTRIFICATION  
14 PROJECT.

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

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

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

21 “(2) Amtrak shall design and construct the elec-  
22 trification system between Boston, Massachusetts, and  
23 New Haven, Connecticut, to accommodate the installation  
24 of a third mainline track between Davisville and Central  
25 Falls, Rhode Island, to be used for double-stack freight  
26 service to and from the Port of Davisville. Amtrak shall

1 also make clearance improvements on the existing main  
2 line tracks to permit double stack service on this line. if  
3 funds to defray the costs of clearance improvements be-  
4 yond Amtrak's own requirements for electrified passenger  
5 service are provided by public or private entities other  
6 than Amtrak. Wherever practicable, Amtrak shall use por-  
7 tal structures and realign existing tracks on undergrade  
8 and overgrade bridges to minimize the width of the right-  
9 of-way required to add the third track. Amtrak shall take  
10 such other steps as may be required to coordinate and fa-  
11 cilitate design and construction work. The Secretary of  
12 Transportation may provide appropriate support to Am-  
13 trak for carrying out this paragraph."

14 **SEC. 610. AMERICANS WITH DISABILITIES ACT OF 1990.**

15 (a) **APPLICATION TO AMTRAK.**—Amtrak shall not be  
16 subject to any requirement under section 242(a)(1) and  
17 (3) and (e)(2) of the Americans With Disabilities Act of  
18 1990 (42 U.S.C. 12162(a)(1) and (3) and (e)(2)) until  
19 January 1, 1998.

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

22 (1) by striking subsection (b); and

23 (2) by redesignating subsection (c) as sub-  
24 section (b).

1 SEC. 611. DEFINITIONS.

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

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

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

7 (3) by inserting after paragraph (6), as so re-  
8 designated by paragraph (2) of this section, the fol-  
9 lowing new paragraph:

10 "(7) 'rail passenger transportation' means the  
11 interstate, intrastate, or international transportation  
12 of passengers by rail:"

13 (4) in paragraph (6), as so redesignated by  
14 paragraph (2) of this section, by inserting ", includ-  
15 ing a unit of State or local government," after  
16 "means a person"; and

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

19 SEC. 612. NORTHEAST CORRIDOR COST DISPUTE.

20 Section 1163 of the Northeast Rail Service Act of  
21 1981 (45 U.S.C. 1111) is repealed.

22 SEC. 613. INSPECTOR GENERAL ACT OF 1978 AMENDMENT.

23 (a) AMENDMENT.—Section 8G(a)(2) of the Inspector  
24 General Act of 1978 (5 U.S.C. App.) is amended by strik-  
25 ing "Amtrak,"

1 (b) AMTRAK NOT FEDERAL ENTITY.—Amtrak shall  
2 not be considered a Federal entity for purposes of the In-  
3 spector General Act of 1978.

4 SEC. 614. CONSOLIDATED RAIL CORPORATION.

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

8 SEC. 615. INTERSTATE RAIL COMPACTS.

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

14 (1) retaining an existing service or commencing  
15 a new service;

16 (2) assembling rights-of-way; and

17 (3) performing capital improvements, includ-  
18 ing—

19 (A) the construction and rehabilitation of  
20 maintenance facilities;

21 (B) the purchase of locomotives; and

22 (C) operational improvements, including  
23 communications, signals, and other systems.

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

4 (1) accept contributions from a unit of State or  
5 local government or a person;

6 (2) use any Federal or State funds made avail-  
7 able for intercity passenger rail service (except funds  
8 made available for the National Railroad Passenger  
9 Corporation);

10 (3) on such terms and conditions as the States  
11 consider advisable—

12 (A) borrow money on a short-term basis  
13 and issue notes for the borrowing; and

14 (B) issue bonds; and

15 (4) obtain financing by other means permitted  
16 under Federal or State law.

17 **SEC. 616. CONFORMING AMENDMENT.**

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

1 **TITLE VII—AUTHORIZATION OF**  
2 **APPROPRIATIONS**

3 **SEC. 701. AUTHORIZATION OF APPROPRIATIONS.**

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

6 “(a) **IN GENERAL.**—There are authorized to be ap-  
7 propriated to the Secretary of Transportation—

8 “(1) \$772,000,000 for fiscal year 1995;

9 “(2) \$712,000,000 for fiscal year 1996;

10 “(3) \$712,000,000 for fiscal year 1997;

11 “(4) \$712,000,000 for fiscal year 1998; and

12 “(5) \$403,000,000 for fiscal year 1999,

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

16 (b) **ADDITIONAL AUTHORIZATIONS.**—Section  
17 24104(b) of title 49, United States Code, is amended to  
18 read as follows:

19 “(b) **ADDITIONAL AUTHORIZATIONS.**—(1) In addi-  
20 tion to amounts appropriated under subsection (a), there  
21 are authorized to be appropriated to the Secretary of  
22 Transportation—

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

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

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

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

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

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

5           “(2) In addition to amounts appropriated under sub-  
6 section (a), there are authorized to be appropriated to the  
7 Secretary of Transportation—

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

9           “(B) \$10,000,000 for fiscal year 1996;

10           “(C) \$10,000,000 for fiscal year 1997;

11           “(D) \$10,000,000 for fiscal year 1998; and

12           “(E) \$10,000,000 for fiscal year 1999,

13 for the benefit of Amtrak to be used for engineering, de-  
14 sign, and construction activities to enable the James A.  
15 Farley Post Office in New York, New York, to be used  
16 as a train station and commercial center and for necessary  
17 improvements and redevelopment of the existing Penn-  
18 sylvania Station and associated service building in New  
19 York, New York.”.

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

1 (d) GUARANTEE OF OBLIGATIONS.—There are au-  
2 thorized to be appropriated to the Secretary of Transpor-  
3 tation—

4 (1) \$50,000,000 for fiscal year 1996;

5 (2) \$50,000,000 for fiscal year 1997;

6 (3) \$50,000,000 for fiscal year 1998; and

7 (4) \$50,000,000 for fiscal year 1999.

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

11 (e) CONDITIONS FOR GUARANTEE OF OBLIGA-  
12 TIONS.—Section 511(i) of the Railroad Revitalization and  
13 Regulatory Reform Act of 1976 (45 U.S.C. 831(i)) is  
14 amended by adding at the end the following new para-  
15 graph:

16 “(4) The Secretary shall not require, as a condition  
17 for guarantee of an obligation under this section, that all  
18 preexisting secured obligations of an obligor be subordi-  
19 nated to the rights of the Secretary in the event of a de-  
20 fault.”.