

NLWJC- Kagan

Counsel - Box 005 - Folder 001

Amtrak [3]

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

LRM NO: 836

FILE NO: 159

3/28/95

LEGISLATIVE REFERRAL MEMORANDUM

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

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 395-4727  
SUBJECT: JUSTICE Views on Draft Bill: Amtrak Authorizations

**DEADLINE: 5:00 Wednesday, March 29, 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 attached preliminary memorandum from Justice expresses constitutional concerns regarding most of the substantive provisions of the draft Amtrak reform bill (see p. 6 for a listing of provisions), absent major changes in the structure of Amtrak's current Board of Directors. A copy of the draft bill is also attached.

DISTRIBUTION LIST:

AGENCIES:

429-National Economic Council - Sonyia Matthews - (202) 456-2174  
226-TRANSPORTATION - Tom Herlihy - (202) 366-4687

EOP:

Bob Damus  
Douglas N. Letter  
Clarissa Cerda  
Steve Aitken  
Bob Litan  
Ken Schwartz  
David Tomquist  
Dan Tangherlini  
Ed Clarke  
Jim Murr  
Michael Deich  
Mike Schmidt

*Told Jukes  
that WH Counsel  
fully shares OLC's  
constitutional concerns  
about appointment of  
the Amtrak board  
in light of the  
LeBron  
ruling.*

*DNL*



# Memorandum



Subject B. 116, The Amtrak Restructuring Act of 1995	Date March 24, 1995
---	------------------------

To  
Office of Legislative Affairs  
Attention: Velma Taylor

From  
Richard L. Shiffrin *RS*  
Deputy Assistant  
Attorney General  
Office of Legal Counsel

The proposed Amtrak Restructuring Act of 1995 raises significant constitutional concerns.<sup>1</sup> The Supreme Court has held that federal officials "who exercise[] significant authority pursuant to the laws of the United States [are] officers of the United States and therefore must be appointed pursuant to the Appointments Clause." Buckley v. Valeo, 424 U.S. 1, 126 (1976) (per curiam). Because the proposed Act would vest significant authority in federal officials who are not appointed conformably with the Appointments Clause, the proposed Act violates the Appointments Clause. See U.S. Const. art. II, § 2, cl. 2.

The Supreme Court recently held that Amtrak is a federal government entity for the purpose of determining whether it has violated an individual's First Amendment rights. See Lebron v. National Railroad Passenger Corp., 115 S.Ct. 961 (Feb. 21, 1995). The Court's opinion in Lebron was careful to define the Court's holding with reference to the specific question presented in the case: "we conclude that [Amtrak] is an agency or instrumentality of the United States for the purpose of individual rights guaranteed against the Government by the Constitution." 115 S.Ct. at 972.<sup>2</sup> It is possible to argue, therefore, that Lebron does not require the conclusion that Amtrak is part of the federal government for the purpose of determining the application

<sup>1</sup> We have been asked only for our views regarding the proposed Act. Therefore, we limit our comments to the authority the proposal would vest in Amtrak. We have not reviewed and do not discuss any pre-existing authority that Amtrak might possess.

<sup>2</sup> See also id. at 967 (question is whether Amtrak "must be regarded as a Government entity for First Amendment purposes"), 974 (holding is that Amtrak "is an agency of the Government, for the purposes of the constitutional obligations of the Government"), at 974-75 ("We hold that [Amtrak] is part of the Government for purposes of the First Amendment.").

of the structural requirements of the Constitution such as the Appointments Clause. Those structural requirements do not create "individual rights guaranteed against the Government by the Constitution" in the sense that provisions such as the first amendment do, and Lebron's wording could be read to imply that Amtrak should not be considered a federal agency for Appointments Clause purposes.<sup>3</sup>

While this argument is not obviously incorrect, on balance we do not think that the courts would accept it as the best reading of Lebron, at least with respect to the applicability of the Appointments Clause to Amtrak. While it is true that the Appointments Clause does not directly create "individual rights," its ultimate purpose, like the first amendment's, is the protection of liberty. As the Court stated in the seminal modern Appointments Clause case, the founders, not content to rely on paper definitions of the rights secured to the people, "viewed the separation of powers as a vital check on Tyranny." Buckley v. Valeo, 424 U.S. 1, 121 (1976). The Appointments Clause protects liberty by diffusing power and designating clear lines of responsibility and is therefore a vital complement to the protections provided by individual-rights guarantees. Through the Appointments Clause, "the Constitution constrains governmental action" just as surely as it does through the first amendment. Lebron's holding that Amtrak's actions are limited by the first amendment because it is "by its very nature, what the Constitution regards as the Government," 115 S.Ct. at 971, implies that its actions are also limited by the requirement of the Appointments Clause that federal officials exercising significant authority do so only if appointed in accordance with the Clause. Therefore, any official of Amtrak who exercises significant authority must be appointed pursuant to the Appointments Clause. Put another way, no statute may vest significant authority in any employee of Amtrak who is not appointed conformably with the Appointments Clause. See generally Buckley, 424 U.S. at 124-41.

---

<sup>3</sup> One sentence in Lebron provides modest affirmative support for this argument; at one point the Court referred to its conclusion as being "[t]hat Government-created and -controlled corporations are (for many purposes at least) part of the Government itself." 115 S.Ct. at 973 (emphasis added). While the words we have emphasized certainly demonstrate that the Lebron Court contemplated the possibility of a corporation being part of government for some purposes and not others, we do not think much can be built on such a passing comment in the present context. See also id. at 974 (distinguishing an 1824 decision in which the Court held that a state-chartered bank did not enjoy "privileges of the government" such as eleventh amendment immunity).

The Act vests Amtrak's officers with significant authority. Section 10 authorizes Amtrak to provide "intercity rail passenger service . . . throughout the United States." Section 10 also authorizes Amtrak to "adjust its route structure as it deems appropriate." Section 11 gives Amtrak authority to "negotiate new employee protective arrangements," and section 6 empowers Amtrak to negotiate with its unions and enter into an agreement regarding "contracting out work." Negotiating and entering into contracts on behalf of a federal government agency with the employees of a federal agency is manifestly significant authority and any federal official who exercises such authority must be an officer of the United States. Section 13 authorizes Amtrak to construct an electrification system between Boston, Massachusetts, and New Haven, Connecticut. Section 13 also grants Amtrak complete discretion with respect to this project. Therefore, we think that this represents an exercise of significant authority. Finally, section 15 authorizes Amtrak to make such capital improvements in the Northeast Corridor as Amtrak deems necessary. Such broad discretion commits significant authority to Amtrak.

If the officers of Amtrak, who are clearly federal officials pursuant to Lebron, were appointed in conformity with the Appointments Clause of the Constitution, there would be no prohibition on vesting them with the foregoing powers; however, with one clear and another dubious exception, they are not. We turn first to the five board members who are not appointed as principal officers. See U.S. Const. art. II, § 2, cl. 2. (requiring principal officers to be appointed by the President and confirmed by the Senate).<sup>4</sup> The courts have never definitively addressed the question of whether a collective department head<sup>5</sup> may comprise inferior as well as principal officers, cf. Weiss v. United States, 114 S. Ct. 752, 768 (1994) (Souter, J., concurring); Silver v. United States, 951 F.2d 1033 (9th Cir. 1991). We need not resolve that issue here because none of these five board members is validly appointed as an inferior officer.

The Appointments Clause requires that inferior officers be appointed by the President and confirmed by the Senate, unless Congress expressly provides that the appointment is to be made by the President alone, the head of a department, or a court of law. U.S. Const. art. II, § 2, cl. 2. Two of the five non-Senate confirmed board members are nominally appointed by the President

---

<sup>4</sup> The five are the two members appointed by the President alone, the two elected by the preferred stockholders, and the President of Amtrak. See 49 U.S.C. § 24302(a)(1)(B), (D), (E).

<sup>5</sup> The head of Amtrak is its board of directors. See, e.g., Silver, 951 F.2d at 1038-39.

alone. Under the proposed bill, however, these two would be appointed from a list of five names submitted by commuter authorities.<sup>6</sup> The Attorneys General have long held that any requirement that the President make an appointment from a list represents a patent violation of the President's constitutional appointment power. See, e.g., Promotion of Marine Officer, 41 Op. Att'y Gen. 291 (1956); Civil Service Commission, 13 Op. Att'y Gen. 516 (1871). Another two of the five non-Senate confirmed board members are elected by Amtrak's preferred shareholders. 49 U.S.C. § 24302(a)(1)(E). These shares may potentially be held by anyone who wishes to purchase them. Such shareholders need not be the President, a department head, or a court of law and so are not necessarily a valid repository of the constitutional authority to appoint an officer of the United States.<sup>7</sup> The fifth of the members is the President of Amtrak ex officio, who is appointed by the other eight members of the Board. Assuming arguendo that the Board is the head of a department within the meaning of the Appointments Clause, see generally Freytag v. Commissioner, 501 U.S. 868 (1991), and that a collective head of a department may itself appoint members of that collectivity, see generally Silver, 951 F.2d at 1038-41 (leaving this question open), the President of Amtrak is nevertheless not a properly appointed inferior officer. Because no more than two of the eight members are validly appointed, the Board as it is currently composed may not exercise the constitutional appointment power, even though an argument might be made that a validly appointed board could.

---

<sup>6</sup> This is only a slight modification to the current mechanism for choosing the two members who are appointed alone. The statute provides that they are to be appointed from "a list of names consisting of one individual nominated by each commuter authority for which Amtrak Commuter provides commuter rail passenger transportation . . . and one individual nominated by each commuter authority in the region . . . that provides its own commuter rail passenger transportation." 49 U.S.C. § 24302(a)(1)(D).

<sup>7</sup> As it happens, all of Amtrak's preferred stock is held by the United States. See Lebron, slip op. at 11. It is not clear whether that stock is voted by the President or a department head. However, even if the Constitution permits the President or a department head to appoint inferior officers through the mechanism of exercising a shareholder's election rights, this would not save the validity of the Board. If any member of a collectivity is appointed in a constitutionally offensive manner the entire collectivity is invalid. See, e.g., Buckley, 424 U.S. at 141-43; cf. FEC v. NRA Political Victory Fund, 6 F.3d 821 (D.C. Cir. 1993), aff'd, 115 S. Ct. 537 (1994).

Of the four members who are subject to Senate confirmation, only the Secretary of Transportation, who sits ex officio, is clearly appointed in conformity with the Constitution. Cf. Weiss v. United States, 114 S. Ct. 752, 768 (1994); Shoemaker v. United States, 147 U.S. 282 (1893). The remaining three are each chosen in a distinct manner. One must be appointed from a list submitted by various interest groups. See 49 U.S.C. § 24302(a)(1)(C). As discussed above, this mechanism violates the President's constitutional appointment power. See, e.g., Promotion of Marine Officer, 41 Op. Att'y Gen. 291 (1956); Civil Service Commission, 13 Op. Att'y Gen. 516 (1871).

Another must be chosen from among the Governors of states with an interest in rail transportation. Even if this includes all fifty states, it does not leave sufficient "scope for the judgment and will of the person or body in whom the Constitution vests the power of appointment. The parts of the Constitution which confer this power are as valid as those parts from which Congress derives the power to create offices, and one part should not be sacrificed to the other. An office cannot be created except under the conditions that it shall be filled according to the constitutional rule." 13 Op. Att'y Gen. at 520-21.<sup>8</sup>

The final Board member is not appointed from a list or a small, finite universe of individuals; instead, the President may choose anyone for this slot as long as the appointee might be

---

<sup>8</sup> The Constitution does not ordain a magic number of potential appointees such that Congress may not enact any requirement or qualification that limits the field to a smaller number. We do not believe that this observation at all undermines the principle that there exists a constitutionally mandatory scope of discretion that must be accorded to the constitutional repository of the appointment power -- here, as typically, the President. As Attorney General Amos Akerman put it,

But it may be asked, at what point must the contracting process stop? I confess my inability to answer. But the difficulty of drawing a line between such limitations as are, and such as are not, allowed by the Constitution, is no proof that both classes do not exist. In constitutional and legal inquiries, right or wrong is often a question of degree. Yet it is impossible to tell precisely where in the scale right ceases and wrong begins. . . . In the matter now in question, it is not supposable that Congress or the President would require of candidates for office qualifications unattainable by a sufficient number to afford ample room for choice.

13 Op. Att'y Gen. at 525.

said to act "as a representative of business with an interest in rail transportation." 49 U.S.C. § 24302(a)(1)(C)(iii).<sup>9</sup> We do not regard it as necessary to resolve the question of whether Congress may impose such a qualification or whether an officer of the United States may be permitted to represent any interest narrower or more specialized than the public interest of the United States. Even if provisions for filling this seat on the Board are constitutionally permissible, that would bring to only two the number of Board members who are validly appointed. A nine-member Board that comprises seven invalidly appointed members may not receive or exercise significant governmental authority. See Buckley, 424 U.S. at 141-43 (invalidating eight member board on which four of the six voting members were held invalidly appointed but upholding the board's prior actions); cf. FEC v. NRA Political Victory Fund, 6 F.3d 821 (D.C. Cir. 1993) (striking down eight-member board that included two constitutionally objectionable members), aff'd, 115 S. Ct. 537 (1994).

For these reasons, Amtrak's Board of Directors, as presently composed, is invalidly appointed and may not exercise or receive significant executive authority. Therefore, the proposed bill may not constitutionally include the provisions of sections 6, 10, 11, 13, or 15 cited above, unless the bill is amended to provide for a Board of Directors that is appointed in conformity with the Constitution. Whether the bill is amended to delete the provisions granting Amtrak authority or to provide for the Board to be appointed by the President by and with the advice and consent of the Senate, the bill's additional unconstitutional infringement on the President's appointment power, contained in section 8(a) (requiring the President to make an appointment from a list), should be deleted.

---

<sup>9</sup> The requirement that, of the three Senate confirmed Board members other than the Secretary of Transportation, no more than two may be held by members of the same party also represents a significant and, we believe, difficult to justify intrusion on the President's constitutional appointment power. Without endorsing any particular test for reviewing such restrictions, we do not see how requiring a political balance among only a small subset of a board that is not charged with an apparently partisan task can be said to be reasonably advance any legitimate governmental interest.

**A BILL**

**To authorize appropriations for the National Railroad Passenger Corporation, and for other purposes.**

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

**SEC. 1. SHORT TITLE.**

**This Act may be cited as the "Amtrak Restructuring Act of 1995."**

**SEC. 2. FINDINGS.**

**The Congress finds that—**

**(1) intercity rail passenger service is an essential component of the integrated national transportation system, and the National Railroad Passenger Corporation (Amtrak) must provide a quality transportation product in the form of clean, comfortable, and on-time service to achieve its full potential;**

**(2) Amtrak has been forced to significantly cut back its basic system due to cash shortages, and further cutback may be required unless Amtrak is able to reduce its costs and increase its revenues;**

**(3) To ensure Amtrak's long-term viability as a provider of intercity rail passenger service, contributions from all of Amtrak's stakeholders are needed to reduce Amtrak's costs and increase its revenues;**

**(4) Amtrak's management and employees are dedicated to providing the high-quality service that Amtrak's customers deserve but additional capital investment is needed to acquire the modern equipment and efficient facilities that are essential to satisfy the demand for superior intercity rail passenger service, and additional**

**management flexibility is needed to allow Amtrak to adjust quickly to meet demand and changing customer needs;**

**(5) Adequate levels of capital investment from the Federal Government and State governments and innovative partnerships with the private sector will enable Amtrak to provide the world class service American rail passengers deserve and will help reduce operating costs in the long term;**

**(6) Amtrak's management should be held accountable to ensure that all capital investment by the Federal Government and state governments is used effectively to improve the quality of service and the long-term financial health of Amtrak;**

**(7) the Secretary of Transportation, as an ex officio member of Amtrak's Board of Directors, should use this position to evaluate Amtrak's costs and revenue elements to ensure that Amtrak provides excellent service to its customers and that Amtrak uses its Federal investment wisely and efficiently;**

**(8) States, local governments and private parties can and should play an increasingly significant role in supporting cost-efficient intercity rail passenger transportation and in addressing local transportation needs and air quality control;**

**(9) Mandatory Payments reflecting funds paid into the railroad retirement and railroad unemployment systems on Amtrak's behalf in excess of the funds needed to pay retirement and unemployment benefits for Amtrak's employees and their beneficiaries shall not be considered a Federal operating subsidy of Amtrak but rather a subsidy of the railroad retirement and railroad unemployment systems as a whole; and**

**(10). Federal financial assistance to cover operating losses incurred by Amtrak**

should be reduced gradually between the years 1996 and 2001.

### **SEC. 3. FINDINGS, PURPOSE, AND GOALS.**

Section 24101 of title 49, United States Code, is amended--

(1) by revising subsection (a)(6) to read as follows:

"(6) Amtrak should be available to operate commuter rail passenger transportation under contract with commuter authorities to the extent Amtrak is fully reimbursed for the costs incurred in operating such services, including a reasonable return on Amtrak's investment of time and resources.";

(2) by replacing the period at the end of subsection (c) with ", and"; and

(3) by adding at the end of subsection (c) the following:

"(12) manage capital investment in such a way as to provide customers with world class service.".

### **SEC. 4. DEFINITIONS.**

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

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

(2) by renumbering the remaining paragraphs as appropriate.

### **SEC. 5. AUTHORIZATION OF APPROPRIATIONS.**

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

#### **"§24104. AUTHORIZATION OF APPROPRIATIONS.**

"(a) **OPERATING EXPENSES.**--There are authorized to be appropriated to the Secretary to make grants to Amtrak \$300,000,000 for fiscal year 1996 and \$200,000,000 for fiscal year 1997, to be used for operating expenses.

**"(b) CAPITAL INVESTMENT.--**There are authorized to be appropriated to the Secretary to make grants to Amtrak \$230,000,000 for fiscal year 1996 and \$230,000,000 for fiscal year 1997, to be used for capital investment expenditures.

**"(c) INTERCITY RAIL PASSENGER STATION.--**There are authorized to be appropriated to the Secretary to make grants to Amtrak \$40,000,000 for fiscal year 1995 and \$50,000,000 for fiscal year 1996, to be used for engineering, design and construction activities to enable the James A. Farley Post Office in New York, New York, to be used as a train station and commercial center and for necessary improvements and redevelopment of the existing Pennsylvania Station and associated service building in New York, New York. The Secretary is authorized to retain from these funds such amounts as the Secretary shall deem appropriate to undertake the environmental and historic preservation analyses associated with the project.

**"(d) TRANSITION COSTS.--**There are authorized to be appropriated to the Secretary to make grants to Amtrak \$100,000,000 for fiscal year 1996, to be used for transition costs associated with a long-term restructuring of the Corporation.

**"(e) NORTHEAST CORRIDOR IMPROVEMENT PROGRAM.--**There are authorized to be appropriated to the Secretary to make grants to Amtrak \$235,000,000 for fiscal year 1996 and \$200,000,000 for fiscal year 1997, to be used for capital expenditures under section 24909 of this title.

**"(f) MANDATORY PAYMENTS.--(1)** Not more than \$120,000,000 for the fiscal year ending September 30, 1996, and not more than \$120,000,000 for the fiscal year ending September 30, 1997, may be appropriated to the Secretary to pay--

**"(A) tax liabilities under section 3221 of the Internal Revenue Code of 1986 due in such fiscal years in excess of amounts needed to fund benefits for individuals who retire from Amtrak and for their beneficiaries;**

**"(B) obligations of Amtrak under section 8(a) of the Railroad Unemployment Insurance Act (45 U.S.C. 358(a)) due in such fiscal years in excess of its obligations calculated on an experience-rated basis; and**

**"(C) obligations of Amtrak due under section 3321 of the Internal Revenue Code of 1986.**

**"(2) Amounts appropriated under this subsection shall not be considered a United States Government subsidy of Amtrak but rather a subsidy of the railroad retirement system as a whole.**

**"(3) Notwithstanding the payment by the Secretary of certain of Amtrak's obligations under the Internal Revenue Code and the Railroad Unemployment Insurance Act under subsection (f)(1) above, Amtrak remains responsible for meeting its financial obligations under applicable law over and above the amounts paid by the Secretary to the Internal Revenue Service and Railroad Retirement Board on Amtrak's behalf.**

**"(g) ADMINISTRATION OF APPROPRIATIONS.--**

**"(1) Funds for operating expenses appropriated under this section for fiscal years 1996 and 1997 shall be provided to Amtrak upon appropriation when requested by Amtrak. Funds for capital expenses, transition costs and the Northeast Corridor improvement project expenses appropriated under this section for fiscal years 1996 and 1997 shall be provided to Amtrak on a quarterly basis as needed to meet obligations due**

in the coming quarter. The act appropriating funds for capital expenses, transition costs and Northeast Corridor improvement project expenses may restrict the availability of such funds to the third quarter of the fiscal year.

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

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

#### **SEC. 6. EXPANDING THE SCOPE OF COLLECTIVE BARGAINING ON CONTRACTING ACTIVITIES.**

Section 24312(b) of title 49, United States Code, is amended by adding at the end the following new paragraph:

"(3) This subsection does not bar Amtrak and a union representing Amtrak employees from negotiating a collective bargaining agreement that permits Amtrak greater flexibility in contracting out work than permitted under paragraph (1). Paragraph (1) shall not apply to any bargaining unit covered by a contract containing provisions that are inconsistent with paragraph (1)."

#### **SEC. 7. REPORTS AND AUDITS.**

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

(1) in subsection (a)(1) by redesignating subparagraphs (D), (E), (F), (G), and (H) as subparagraphs (E), (F), (G), (H) and (I), and by inserting after paragraph (C) the following:

"(D) the long-term profit or loss;" and

(2) in subsection (b) by redesignating paragraph (2) as (3), and by inserting after paragraph (1) the following:

"(2) Amtrak shall include in the report required under paragraph (1) projections of the anticipated benefits of the projects proposed for funding under Part C of Subtitle V of title 49, United States Code, and a report on the benefits actually realized from all projects previously funded under Part C beginning with funds provided in fiscal year 1995. The report shall include an identification of improvements in the quality of service offered by Amtrak, facility improvements that demonstrate a productivity gain, equipment improvements that lower operating costs, environmental benefits (including air quality and land use benefits), enhancements to local transportation needs, enhancements to mobility of physically and economically disadvantaged persons, any improvement of the revenue-to-cost ratio, any reduced dependence on Federal operating support, and reductions in the need for alternative transportation investments. To the extent practicable, the benefits addressed in each report shall also be expressed as return on invested capital."

**SEC. 8. MISCELLANEOUS REPEALS AND TECHNICAL AMENDMENTS IN  
CHAPTER 243.**

(a) **TECHNICAL AMENDMENT.**--Section 24302(a)(1)(D) of title 49, United States Code, is amended to read as follows:

"(D) Two individuals selected by the President from a list of five names submitted by commuter authorities providing service over rail properties owned by Amtrak."

(b) **AUTHORITY.**--Section 24305(c) of title 49, United States Code, is amended--

(1) by deleting the word "and" at the end of paragraph (5);

(2) by adding a new paragraph (6) as follows:

"(6) consult and cooperate, to the extent feasible, on request of eligible applicants proposing a technology demonstration authorized and financed under a law of the United States, with those applicants; and".

(3) by renumbering existing paragraph (6) as paragraph (7).

(c) **REPEALS.**--Sections 24310 and 24314 of title 49, United States Code, are repealed.

(d) **CONFORMING.**--The remaining sections of Chapter 243 of title 49, United States Code, are renumbered appropriately.

#### **SEC. 9. ELIMINATION OF AMTRAK COMMUTER SERVICE CORPORATION.**

(a) **REPEAL.**--Chapter 245 of title 49, United States Code, and the corresponding item in the analysis of Subtitle V is repealed.

(b) **CONFORMING AMENDMENT.**--Section 24301 of title 49, United States Code, is amended by adding a new subsection (o) at the end thereof, as follows:

"(o) **TAX EXEMPTION FOR CERTAIN COMMUTER AUTHORITIES.**--A commuter authority that could have made a contract with the former Amtrak Commuter Services Corporation to provide commuter rail passenger transportation but which decided to provide its own rail passenger transportation beginning on January 1, 1983, is exempt, effective October 1, 1981, from paying a tax or fee to the same extent Amtrak is exempt."

**SEC. 10. OPERATION OF INTERCITY RAIL PASSENGER SERVICE.**

Chapter 247 of title 49, United States Code, is amended--

(1) by revising the heading of section 24701 to read as follows:

**"§24701. Operation of intercity rail passenger service";**

(2) by amending section 24701(a) to read as follows:

**"(a) BY AMTRAK.—Amtrak is authorized to provide cost-effective intercity rail passenger service on those routes throughout the United States where it can serve an important transportation function and it can, over the long term, cover the full operating costs associated with providing the service either through fares or contributions from state and local governments or other interested parties. Amtrak's decisions regarding the initiation, retention, modification or elimination of intercity rail passenger service shall be made on the basis of available financial resources and any agreement Amtrak enters into with a state or local government or private entity to support rail passenger service should be made with the understanding that Federal funding for operating expenses will decrease over the fiscal years 1996 through 2001.**

(3) by amending section 24702 to read as follows:

**"§24702. Route and Service Changes"**

**"Amtrak shall adjust its route structure as it deems appropriate applying sound business and transportation principles. Prior to implementing a route discontinuance that would remove all service on a route or cut service by more than half, Amtrak shall provide affected states, cities and other interested parties with advance notice of at least ninety days in order to enable any of the affected parties to provide financial support**

for the route that would allow for continued operation. In an emergency, Amtrak may implement a route discontinuance with less than ninety days notice but shall in any event provide as much notice as possible. An emergency shall exist when the Secretary of Transportation determines, on the basis of information and data supplied by Amtrak, that funds available to Amtrak for the fiscal year are not sufficient to meet estimated operating costs and significant harm to the Corporation would result if immediate action is not taken to reduce costs through route reductions and service eliminations."

**SEC. 11. EXPANDING THE SCOPE OF COLLECTIVE BARGAINING ON LABOR PROTECTIVE ARRANGEMENTS.**

Section 24706 of title 49, United States Code, is amended:

(1) by revising the heading of section 24706 to read as follows:

"§24706. Employee Protective Arrangements";

(2) by repealing subsections (a) and (b);

(3) by deleting "(c) EMPLOYEE PROTECTIVE ARRANGEMENTS.--" in subsection (c); and

(4) by deleting paragraph (6) and by inserting in lieu thereof the following new paragraphs (6) and (7):

"(6) For purposes of this section, employees of Amtrak refers to employees occupying positions subject to collective bargaining under the Railway Labor Act, 45 U.S.C. 151 et seq.

"(7) Notwithstanding the other provisions of this section and the implementing protective arrangement established for Amtrak employees

(Appendix C-2 to Basic Agreement between Amtrak and the freight railroads), Amtrak and unions representing Amtrak employees may negotiate new employee protective arrangements for Amtrak employees that differ from the requirements of other portions of this section and from the terms of Appendix C-2. If a new protective arrangement is negotiated, provisions of this section and the terms of Appendix C-2 that are inconsistent with the new protective arrangement shall cease to apply to the bargaining unit covered by the new protective arrangement."

#### **SEC. 12. MISCELLANEOUS REPEALS IN CHAPTER 247**

(a) **REPEALS.**--Sections 24703, 24704, 24705, 24707 and 24708 of title 49, United States Code, are repealed.

(b) **CONFORMING.**--The remaining sections of Chapter 247 of title 49, United States Code, are renumbered appropriately.

#### **SEC. 13. BOSTON-NEW HAVEN ELECTRIFICATION PROJECT.**

(a) **ELECTRIFICATION SYSTEM.**--Section 24902(f) of title 49, United States Code, is amended--

(1) by inserting "(1)" before "Improvements under"; and

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

"(2) Amtrak shall design and construct an electrification system between Boston, Massachusetts, and New Haven, Connecticut. The electrification system shall be designed and constructed to accommodate the installation of a third mainline track between Davisville and Central Falls, Rhode Island, to be used for double-stack freight

service to and from the Port of Davisville. Wherever practicable, Amtrak shall use portal structures and realign existing tracks on undergrade and overgrade bridges to minimize the width of the right-of-way required to add the third track. Amtrak shall take such other steps as may be required to coordinate and facilitate design and construction work."

(b) **AMTRAK REPORT.**--Amtrak shall, not later than 6 months after the date of enactment of this Act, transmit to the Congress a report detailing its electrification design between Davisville and Central Falls, Rhode Island, and describing efforts to comply with section 24902(f)(2) of title 49, United States Code.

**SEC. 14. COMPENSATION FOR TRANSPORTATION OVER THE NORTHEAST CORRIDOR.**

Section 24904(c)(2) of title 49, United States Code, is amended--

(1) by adding after the words "rail freight transportation" in the first sentence "or between intercity rail passenger and commuter rail passenger transportation";

(2) by adding after the words "rail freight carrier" in the second sentence "or a commuter authority"; and

(3) by adding at the end of the second sentence "or commuter authority."

**SEC. 15. NORTHEAST CORRIDOR IMPROVEMENT PROJECT.**

Section 24909 of title 49, United States Code, is amended--

(1) by revising subsection (a) to read as follows:

"(a) **CAPITAL IMPROVEMENTS.**--Amtrak shall make capital improvements for the Northeast Corridor improvement project under this title as necessary to operate

reliable, high-speed rail passenger service, to enhance capacity for intercity and commuter passenger service, and as otherwise may be necessary to ensure continued reliable high-speed service. Amtrak shall also acquire train equipment to be used on the Northeast Corridor, mitigate environmental impacts related to the Northeast Corridor improvement project, and provide adequate parking at, and improve Northeast Corridor rail stations.";

(2) by revising subsection (b) to read as follows:

"(b) RHODE ISLAND THIRD TRACK.--(1) There are authorized to be appropriated to the Secretary to make grants to the State of Rhode Island, \$10,000,000 for the fiscal year ending September 30, 1996, and \$10,000,000 for the fiscal year ending September 30, 1997, to be used to design and construct a third track on the Northeast Corridor between Davisville and Central Falls, Rhode Island.

"(2) The third track shall be designed and constructed with sufficient clearance to accommodate double stack freight cars.

"(3) The funds provided by the Secretary to the State of Rhode Island to design and construct the third track shall be matched by the State of Rhode Island or its designee on a dollar for dollar basis. Notwithstanding other provisions of law, the State of Rhode Island is authorized to use other Federal transportation funds available to the State as the required matching funds.";

(3) by revising subsection (c) to read as follows:

"(c) AVAILABILITY OF AMOUNTS.--Amounts appropriated under this section remain available until expended."; and

(4) by striking subsections (d), (e), (f) and (g).

## **SEC. 16. TAX-EXEMPT FINANCING FOR CERTAIN INTERCITY RAIL**

### **PASSENGER FACILITIES.**

(a) **IN GENERAL.**--Section 142(a) of the Internal Revenue Code of 1986 (relating to exempt facility bonds) is amended--

(1) by striking out "or" at the end of paragraph 11;

(2) by striking out the period at the end of paragraph (12) and inserting in lieu thereof ", or"; and

(3) by adding at the end thereof, the following new paragraph:

"(13) Intercity rail passenger facilities."

### **(b) DEFINITION AND SPECIAL RULES FOR INTERCITY RAIL PASSENGER FACILITIES.--**

(1) **IN GENERAL.**--Section 142 of the Internal Revenue Code of 1986 is amended by adding at the end thereof the following new subsection:

"(k) **INTERCITY RAIL PASSENGER FACILITIES.--**

"(1) For purposes of paragraph (a)(13) of this section, the term 'intercity rail passenger facilities' means any facility (not including rolling stock) for the fixed guideway rail transportation of passengers and their baggage between metropolitan statistical areas (within the meaning of section 143(k)(2)(B) of the Code), but only if such facility will be made available to members of the general public as passengers.

"(2) **ELECTION BY NONGOVERNMENTAL OWNERS.**--A facility shall be treated as described in paragraph (a)(13) of this section, only if any owner of such

facility which is not a governmental unit, irrevocably elects not to claim--

(A) any deduction under section 167 or 168, and

(B) any credit under this subtitle,

with respect to the property to be financed by the net proceeds of the issue.

**"(3) USE OF PROCEEDS.--**A bond issued as part of an issue described in paragraph (a)(13) of this section shall not be considered an exempt facility bond unless any proceeds not used within a 3-year period of the date of the issuance of such bond are used (not later than 6 months after the close of such period) to redeem bonds that are part of such issue.

**(2) USE OF FACILITIES.--**Section 142(c) of the Internal Revenue Code of 1986 (relating to special rules for airports, docks and wharves, mass commuting facilities and high-speed intercity rail facilities) is amended--

(A) by striking out "paragraph (1), (2), (3), or (11) of subsection (a)" each place it appears in paragraphs (1) and (2) thereof and inserting in lieu thereof

"paragraph (1), (2), (3), (11) or (13) of subsection (a)", and

(B) by striking out "AND HIGH-SPEED INTERCITY RAIL FACILITIES in the heading thereof and inserting in lieu thereof "HIGH-SPEED INTERCITY RAIL FACILITIES AND INTERCITY RAIL PASSENGER FACILITIES".

**(3) EXCLUSION FROM VOLUME CAP.--**Section 146(g)(3) of the Internal Revenue Code of 1986 (relating to an exception for certain bonds) is amended--

(A) by striking "or (12)" and by inserting in lieu thereof "(12) or (13)", and by striking "and environmental enhancements of hydroelectric generating facilities"

and by inserting in lieu "environmental enhancements of hydroelectric generating facilities and intercity rail passenger facilities)".

**(4) LIMITATION REMOVED ON USE OF BOND PROCEEDS FOR LAND ACQUISITION.**—Section 147(c)(3) of the Internal Revenue Code of 1986 (relating to limitation on use for land acquisition) is amended by inserting "intercity rail passenger facility" after "mass commuting facility" each place it appears.

**(5) SPECIAL RULE FOR PUBLIC APPROVAL.**—Paragraph (3) of section 147(f) of the 1986 Code (relating to public approval required for private activity bonds) is amended--

(A) by inserting ", intercity rail passenger facilities" after "airport" each place it appears; and

(B) by inserting ", INTERCITY RAIL PASSENGER FACILITIES" after "AIRPORT" in the heading thereof.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to bonds issued after the date of enactment of this Act.

#### **SEC. 17. EFFECTIVE DATE.**

Except as otherwise provided, this Act is effective on the date of enactment.

**SECTION-BY-SECTION ANALYSIS OF  
THE AMTRAK RESTRUCTURING ACT OF 1995**

**Section 1. This section provides that the act may be cited as the "Amtrak Restructuring Act of 1995."**

**Section 2. This section contains a number of proposed Congressional findings relating to the National Railroad Passenger Corporation (Amtrak) and its operation of intercity rail passenger service. This section describes a program for improving rail passenger service to be accomplished through this legislation consistent with internal changes within the Corporation to be accomplished by Amtrak's management and overseen by the Secretary of Transportation, as an ex officio member of the Amtrak Board of Directors. In particular, these findings recognize that intercity rail passenger service is an essential component of the integrated national transportation system. However, in order to achieve the full potential for this service, Amtrak must provide a quality transportation product in the form of clean, comfortable, and on-time service. The findings also note that Amtrak has been forced to significantly cut back its system of intercity rail passenger services in order to operate within the resources it has available and that further cutbacks may be necessary unless Amtrak is able to reduce its costs and increase its revenues. To succeed, Amtrak must work with all of its stakeholders.**

**Amtrak employs a dedicated work force of managers and employees who strive to provide the high level of service that the American public has a right to expect. However, additional resources are needed to provide the necessary tools. As a result of the limited capital funding provided in the late 1980's and early 1990's, Amtrak's**

equipment and facilities in many cases are outdated, inefficient, costly to operate and inadequate to meet the demand for intercity rail service. Additional capital resources are required. The capital funding provided for fiscal year 1995 represents an important first step. The capital resources authorized in this bill will further Amtrak's efforts to improve its equipment and facilities. Capital investment must also come from Amtrak's stakeholders including state and local governments and through innovative partnerships with the private sector.

With the added capital investment comes a responsibility on the part of Amtrak's management to utilize these resources efficiently and effectively so that service quality and the long-term financial health of the company improves.

The Secretary of Transportation is an ex officio member of the Amtrak Board and can and should use this position to ensure that Amtrak provides superior service to its customers and that the Federal funds provided to Amtrak are expended wisely and efficiently.

The findings recognize that the States play a significant role in working with Amtrak to provide cost efficient rail transportation, in addressing local transportation needs, and in facilitating improvements in air quality.

The bill also contains a finding related to the so called "Mandatory Payments", which represent payments Amtrak is required by law to make to the railroad retirement system and railroad unemployment system that are well in excess of amounts needed to fund benefits to Amtrak's employees and their beneficiaries. These payments are declared not to be a Federal operating subsidy of Amtrak but rather a subsidy of the

railroad retirement system as a whole.

Finally, the findings recognize that Federal financial assistance to cover Amtrak's operating losses will be gradually reduced over the period 1996 through 2001.

Section 3. This section contains several amendments to section 24101 of title 49 of the United States Code, in which Congress has established the findings, purpose, and goals relating to Amtrak's operation of rail passenger service.

Finding number 6 would be modified to indicate that Amtrak should make itself available to assist state and local communities in operating commuter rail service but only to the extent that Amtrak is fully reimbursed for the costs incurred in operating such services.

A new goal would be added for Amtrak directing it to manage its capital investment in such a way as to provide its customers with world class service. An important component of Amtrak's future success is improving its responsiveness to its customers.

Section 4. This section repeals several definitions included in section 24102 of title 49, United States Code, that are not longer needed in light of other repeals made by this bill.

Section 5. This section revises section 24104 of title 49, United States Code, which authorizes appropriations to support the various activities undertaken by Amtrak. Subsection (a) authorizes appropriations for operating expenses for fiscal years 1996 and 1997.

Subsection (b) authorizes appropriations for capital investment for fiscal years

1996 and 1997. A thoughtful and judicious expenditure of capital funding is the key to rehabilitating Amtrak's intercity rail passenger services. These authorization levels, along with the funds provided to Amtrak in fiscal year 1995, represent a considerable increase over the capital funding provided in the late 1980's and early 1990's.

Subsection (c) authorizes \$40 million in fiscal year 1995 and \$50 million in fiscal year 1996 to be used by Amtrak to transform the James A. Farley Post Office Building in New York City into an intercity rail passenger terminal. Funds would also be available for necessary improvements and redevelopment of the existing Pennsylvania Station and the associated service building. The availability of the Farley Building provides a rare opportunity to improve intercity and commuter facilities in New York City where an already over-burdened facility is facing continued growth in intercity and commuter traffic.

Subsection (d) authorizes \$100 million in fiscal year 1996 to fund expenses associated with the long-term restructuring of the Corporation. Amtrak's Board of Directors has already initiated the first of a series of actions required to transform Amtrak into a leaner and more customer-focused transportation provider. These funds will be employed to assist in that effort.

Subsection (e) authorizes \$235 million in fiscal year 1996 and \$200 million in fiscal year 1997 for the Northeast Corridor improvement program.

Subsection (f) authorizes appropriations to the Secretary for fiscal years 1996 and 1997 for the purpose of making the so-called "mandatory payments." Under this authorization, the Secretary would make direct payments to the railroad retirement

trust fund and the railroad unemployment insurance account for expenditures in excess of the amounts required to support the retirement and unemployment costs of Amtrak employees. Both of the subject payments are presently based on the number of active employees. Because of the shifting demographics of the rail industry, with Amtrak employment historically stable or growing while freight employment has dropped significantly, Amtrak is, in effect, required to subsidize retirement and unemployment costs of freight railroad employees. The bill provides that these payments are not to be considered a Federal subsidy of Amtrak but rather a subsidy of the railroad retirement system as a whole. The bill also recognizes that while the Secretary is making payments to the Internal Revenue Service and Railroad Retirement Board on Amtrak's behalf up to the amounts authorized and appropriated by Congress, Amtrak remains responsible for meeting its financial obligations under existing law over and above the amounts provided by the Secretary.

Subsection (g) describes how funds will be made available to Amtrak. All of the operating funds would be provided to Amtrak in the first quarter of the fiscal year. Funds for capital expenses, transition costs, and the Northeast corridor improvement project would be provided to Amtrak on a quarterly basis to allow Amtrak to meet obligations coming due in that quarter. The appropriations act providing funds for capital, transition and Northeast Corridor expenses may restrict the availability of those funds to the third quarter of the fiscal year as was done in fiscal years 1994 and 1995. Mandatory payments would be made by the Secretary directly to the Internal Revenue Service and Railroad Retirement Board.

Subsection (g) also provides that appropriated amounts remain available until expended.

Subsection (h) states that funds provided to Amtrak for intercity rail passenger service may not be used to fund operating losses for rail freight services or commuter rail services.

Section 6. This section adds a new paragraph (3) to existing section 24312(b) of title 49, United States Code. Paragraph (1) of section 24312(b) currently prohibits Amtrak from contracting out work normally performed by an employee in a bargaining unit covered by a contract between a labor organization and Amtrak if the contracting out results in the layoff of an employee in the bargaining unit. Existing paragraph (2) provides that paragraph (1) does not apply to food and beverage services provided on Amtrak trains. The new paragraph (3) would permit Amtrak and its unions to negotiate on the issue of allowing Amtrak greater flexibility in contracting out work; the restrictions of paragraph (1) would continue to apply until Amtrak and a union negotiate a collective bargaining agreement that permits Amtrak greater flexibility in contracting out work performed by the bargaining unit covered by the contract.

Section 7. This section amends existing section 24315 of title 49, United States Code, to broaden in several respects the report Amtrak provides to Congress each year. First, existing law requires Amtrak to include in its annual report certain specified information about each route it operates including, among other things, data on ridership, passenger miles, the short-term avoidable profit or loss, and revenues. The amendment proposed by section seven would expand these requirements to require

Amtrak to also include data on the long-term profit or loss for the route for the previous fiscal year.

Section seven would also require Amtrak to include with its annual request for appropriations projections of the anticipated benefits of the projects proposed for funding and a report describing the benefits realized from all projects funded with funds authorized under the Rail Passenger Service Act for the previous year. The report would address, among other things, improvements in the quality of service offered by Amtrak, facility improvements that demonstrate a productivity gain, equipment improvements that lower operating costs, environmental benefits (including air quality and land use), enhancements to local transportation needs, enhancements to the mobility of physically and economically disadvantaged persons, any improvement to the revenue-to-cost ratio, any reduced dependence on Federal operating support, and reductions in the need for alternative transportation investments. To the extent practicable, the benefits addressed in each report are to be expressed as return on invested capital. This section is intended to provide a comprehensive picture of the expected "return on capital investment" for the Administration and Congress jointly to base future funding support.

Section 8. This section contains several technical and miscellaneous repeals in Chapter 243 of title 49, United States Code. First, a technical amendment would be made in section 24302, which describes how commuter authority representatives are selected for the Amtrak Board of Directors. The existing statute was passed in 1981, with options to address several possible outcomes of the transfer of commuter rail

operations from the Consolidated Rail Corporation to other operators. The commuter services were transferred in the early 1980's and, as a result, the unused options can be repealed.

Subsection (b) moves the provision authorizing Amtrak to cooperate with applicants proposing technology demonstration projects from section 24314 to section 24305, which is Amtrak's general authority section, and a more logical location for this authority.

Subsection (c) repeals sections 24310 and 24314 of title 49, United States Code. Section 24310 was enacted in 1988 to deal with the location of a particular gas storage facility adjacent to an Amtrak facility in Florida. The Secretary has issued his finding related to this facility, the provision has no continuing utility, and it can be repealed. Section 24314 authorizes Amtrak to develop and submit to Congress, prior to September 30, 1993, a plan for demonstrating new technologies and authorizes Amtrak to cooperate with other entities in developing new technologies. This plan has been submitted and Amtrak is otherwise authorized to assist in the development of new technologies, and section 24314 can be repealed.

Section 9. This section repeals Chapter 245 of title 49, United States Code, relating to an Amtrak subsidiary, the Amtrak Commuter Services Corporation (ACS). The provisions included in Chapter 245 were enacted by Congress in 1981 in connection with the transfer of commuter rail services from the Consolidated Rail Corporation (Conrail) to other operators. The creation of ACS was mandated by Congress in order to provide the state and local commuter authorities with the option of selecting a

Northeast Corridorwide entity, ACS, if they did not elect to operate the services being dropped by Conrail themselves. Since all of the commuter authorities decided to operate their own services, ACS serves no useful purpose and the provisions establishing it can be repealed. As a District of Columbia corporation, Amtrak has the authority under the District of Columbia Business Corporation statute to create subsidiaries to the extent it should need to do so. Section 24501(g) relating to a tax exemption for certain commuter authorities is of continuing validity and would be retained and moved to section 24301.

**Section 10.** This section makes major changes to Chapter 247 of title 49, United States Code, which describes the routes operated by Amtrak, how routes and services are added and removed, and Amtrak's operation of services in partnership with the States.

First, the detailed and very restrictive provisions governing Amtrak's route structure and how routes are added or discontinued would be repealed. These include sections 24703, 24705, 24706(a) and (b), and 24707. If Amtrak is to compete effectively with other transportation carriers, it has to have the flexibility to make route and service adjustments to meet demand and the resources available to it. Accordingly, Amtrak would be authorized to provide intercity rail passenger service on a route where it can serve an important transportation function and over the long term cover the full operating costs associated with providing the service. In addition, Amtrak's decisions regarding intercity rail passenger service are to be made on the basis of available financial resources. Finally, route and service decisions have to be made recognizing

that Federal funding for operating expenses will decrease over the fiscal year 1996 through 2001.

In making service discontinuances, Amtrak would be required to consult with the affected States, local governments, and other interested parties at least 90 days prior to implementing the discontinuance. The 90 days could be shortened in an emergency situation if the Secretary of Transportation were convinced based on evidence supplied by Amtrak that providing the full 90 days would be detrimental to the interests of Amtrak. The increased flexibility is also designed to assist Amtrak in reducing its need for Federal operating subsidies. Other provisions that restrict the Corporation's ability to operate in a efficient, business-like manner, such as section 24708 requiring the operation of certain commuter services, would also be repealed.

Statutory provisions establishing a separate class of service operated in cooperation with state and local governments (the so-called "403(b)" services) would be repealed. The continued viability of intercity rail passenger service will depend on State and local support for most of Amtrak's routes. As a result, there is no continuing need for a separate 403(b) program. Amtrak has sufficient authority under existing law and through revised section 24701 to enter into appropriate agreements with other entities to support rail passenger service.

Section 11. This section contains an important provision related to providing Amtrak with increased flexibility to collectively bargain with its employees through their collective bargaining representatives. Two new paragraphs would be added to existing section 24706(c) of title 49, United States Code. Section 24706(c) requires labor

protective arrangements for Amtrak employees who are affected by a discontinuance of Amtrak intercity passenger service. Amtrak entered into a specific protective agreement, approved by the Secretary of Labor, that provides affected Amtrak employees with one year of labor protection for each year of prior service up to a maximum of six years' pay. New paragraph (6) provides that employees of Amtrak, for purposes of section 24706(c), refers only to employees occupying positions subject to collective bargaining under the Railway Labor Act, 45 U.S.C. 151 et seq.; Amtrak senior management employees would not be entitled to labor protection under section 24706(c) and any implementing agreements. New paragraph (7) would permit Amtrak and unions representing Amtrak employees to negotiate new employee protective arrangements; the existing protections would continue to apply until new terms are negotiated.

Section 12. This section contains a series of repeals in chapter 247 that were discussed previously in section 10. These repeals eliminate restrictions on Amtrak's ability to independently manage its route structure and the services it provides.

Section 13. This section requires Amtrak to design and construct the electrification system between Boston and New Haven and to ensure that it accommodates the installation of a third mainline track between Davisville and Central Falls, Rhode Island to be used for double-stack freight service to and from the Port of Davisville. Amtrak would also be required to report to Congress on its electrification design.

Section 14. This section amends section 24904 of title 49, United States Code, to

require Amtrak and the commuter railroads that use the Northeast Corridor to negotiate new compensation agreements governing the amount these users of the corridor pay Amtrak for the right to operate over these lines. While Amtrak is the owner of much of the Northeast Corridor, commuter authorities are the predominate users. Yet, Amtrak bears a far larger percentage of the costs of operating and maintaining this important transportation resource. If the parties are unable to reach agreement on new contracts, an appeal could be made to the Interstate Commerce Commission or its successor. The Department has proposed a successor entity, but will make the needed drafting changes available in a separate proposal.

Section 15. This section provides a new authorization for the Northeast Corridor improvement project replacing the outmoded project-specific authorization included in current law. Amtrak would be authorized to undertake capital improvements as necessary to operate reliable, high-speed rail service, to enhance capacity, and to mitigate environmental concerns and to acquire high-speed equipment.

Section fifteen also provides an authorization for the Secretary to fund jointly with the State of Rhode Island the construction of a third track on the Northeast Corridor between Davisville and Central Falls, Rhode Island. The third track would serve rail freight users and facilitate operation of high-speed rail service on this section of the Northeast Corridor. The third track would be designed and constructed with sufficient clearance to accommodate double stack freight cars. Fifty percent of the cost of the project would be provided by the State of Rhode Island or its designee. In addition, the state would be authorized to satisfy the funding match requirement

**employing other Federal transportation funds available to the State.**

**Section 16. This section authorizes the issuance of tax-exempt bonds to fund intercity rail passenger service improvements. Intercity rail passenger service improvements would be put on equal footing with mass commuting facilities and high-speed rail facilities.**

**Section 17. This section provides that the statutory changes adopted through this bill would become effective upon the date of enactment unless otherwise provided.**



U.S. Department of  
Transportation

The Honorable Alice Rivlin  
Director  
Office of Management and Budget  
Old Executive Office Building  
Seventeenth and Pennsylvania Avenues, N.W.  
Washington, D.C. 20503

Dear Ms. Rivlin:

I write in response to a memorandum from Richard L. Schiffrin, Deputy Assistant Attorney General, Office of Legal Counsel, in the Justice Department concerning the Amtrak Restructuring Act of 1995 which the Department of Transportation is proposing. Mr. Schiffrin's memo asserts that "[b]ecause the proposed Act would vest significant authority in federal officials who are not appointed conformably with the Appointments Clause [of the Constitution], the proposed Act violates the Appointments Clause." We disagree on legal grounds and we are deeply concerned about the policy and budgetary consequences of the Justice Department's position. I urge in the strongest terms that the Justice Department's position be rejected.

Although the Justice Department's memo addresses only the proposed bill to reauthorize Amtrak, the concerns expressed in the Justice Department memo apply as well to Amtrak as it is now constituted.

#### LEGAL ISSUES

The Justice Department's concerns were sparked by a recent case in which the Supreme Court held that Amtrak is part of the Government for the purpose of determining whether it has violated an individual's First Amendment rights. See Lebron v. National Railroad Passenger Corp., 115 S.Ct. 961 (Feb. 21, 1995). The Justice Department proposes to treat Amtrak as part of the Government for purposes of the Appointments Clause, as well, and concludes on that basis that Amtrak's Board of Directors is invalidly appointed and may not exercise or receive significant executive authority.

DOT's view is that Lebron should be limited to its holding that Amtrak is "part of the Government for purposes of the First Amendment" and that there is no constitutional infirmity in the way Amtrak's Board of Directors is appointed. We do not think that Amtrak is a "department" of the Government for purposes of the Appointments Clause, that Amtrak's employees are Government officials, or that Amtrak exercises or has been delegated any Executive Branch authority at all.

The Justice Department concedes that "[i]t is possible to argue, therefore, that Lebron does not require the conclusion that Amtrak is part of the federal government for the purpose of determining the application of the structural requirements of the Constitution such as the Appointments Clause ... and Lebron's wording could be read to imply that Amtrak should not be considered a federal agency for Appointments Clause purposes." We think that is the correct way to read Lebron.

It is useful to remember the context of the Lebron case. Mr. Lebron claimed that Amtrak violated his First Amendment rights by denying him the opportunity to express his political views on a huge billboard in Penn Station in New York. The Court clearly places a very high value on protecting free speech under the First Amendment. In the courts below, Mr. Lebron conceded that Amtrak was not a federal agency, so the issue was not developed by the lower courts in this case. All previous cases before both the Supreme Court and lower courts treated Amtrak as a private company in consonance with the statute which provides that Amtrak "shall be operated and managed as a for-profit corporation," and that Amtrak "is not a department, agency, or instrumentality of the United States Government." 49 U.S.C. §24301(a)(2), (3). Justice O'Connor, dissenting in Lebron, argued forcefully that the question of whether Amtrak was a Government entity was not presented in the petition for certiorari and noted that Amtrak was first apprised of it in Lebron's brief. Justice Scalia, writing for the majority, also went to considerable lengths to distinguish Lebron from prior Supreme Court cases in which the Court clearly considered Amtrak to be a private entity. Those cases involved a taking (National Railroad Passenger Corp. v. Boston & Maine Corp., 503 U.S. (1992)) and a statute allegedly depriving railroads hosting Amtrak of due process under the Fifth Amendment by impairing contractual relations among Amtrak and those railroads or, in the alternative, impairing contractual relations among the United States (on the theory that Amtrak's contracts or even the Rail Passenger Service Act of 1970 itself were contracts of the United States) and the railroads hosting Amtrak (National Railroad Passenger Corp. v. Atchison T. & S. F. R. Co., 470 U.S. 451 (1985)). Both matters involved "individual rights guaranteed against the Government by the Constitution." All of the foregoing suggest very strongly that Lebron is a case that should be limited to its express holding.

Moreover, Justice Scalia did not even hint in dictum that Amtrak's Board might be constitutionally infirm. The Court reviewed the manner in which Amtrak's directors are appointed and how they relate to the executive and the legislature. Surely, that review would have prompted some comment had the Court perceived a problem. The Court recounted an extensive review of assorted Government corporations and clearly viewed Amtrak as within the norm. Had the Court seen a constitutional infirmity, surely it would have given some signal.

In reaching the result in Lebron, Justice Scalia made much of the way Government-controlled and -created corporations are viewed generally, but ignored the distinction between wholly-owned Government corporations and mixed-ownership Government corporations, of which Amtrak is one. Amtrak's funds include substantial private equity capital and, therefore, it is not a "wholly owned" government corporation as are the TVA and the Reconstruction Finance Corp. Amtrak is defined as a "mixed ownership Government corporation," 31 U.S.C. §9101(2)(A), and is thereby subject to federal audit and reporting requirements. This accountability is necessary for Congress to monitor the accomplishment of its announced goal that Amtrak make "the most cost-effective use of employees, facilities, and real estate," and "minimize Federal subsidies." 49 U.S.C. §24301(c)(2), (11). For Appointments Clause purposes, is it appropriate to consider as part of the Government a corporation all of the common stock of which is privately held? We think not.

The Court recites a number of ways in which it views the former Rail Passenger Service Act (now recodified) as "dispositive of Amtrak's status as a Government entity" including:

- o whether it is subject to statutes that impose obligations or confer powers upon Government entities; and
- o all the powers and immunities of Government agencies that it is within the power of Congress to eliminate, including significantly the "ordinarily presumed power of Government agencies authorized to incur obligations to pledge the credit of the United States."

Seen through the Court's prism, Amtrak does not look like a "department" of the Government within the meaning of the Appointments Clause.

The Court might well have added that Amtrak does not receive appropriations directly as Government departments do, but rather is funded through grants and, at one time, loans. The Government deals with Amtrak at arm's length as a private party. Unlike Government departments, Amtrak's receipts are its own to use in its business. A Government department that earns or receives money is required to deposit the funds in the miscellaneous

receipts account at the Treasury unless it has statutory authority to deposit the funds in another account, in which case it may use them only pursuant to an appropriation. Amtrak may borrow money without congressional approval.

It is also significant that Amtrak is not included within the provisions of the Federal Tort Claims Act, which specifically except certain United States agencies from that Act's protection against punitive tort liability (28 U.S.C. §§2671, 2674).

As the Court noted, Amtrak was created to achieve certain of the Government's goals. The governmental functions related to Amtrak, however, are assigned by statute to the Secretary of Transportation or to the Interstate Commerce Commission, and Amtrak pursues those goals by performing functions that have traditionally been private in this country. Amtrak provides intercity rail passenger service, intercity auto ferry service, contract carriage of mail and parcels, and management of rail-related real estate. Virtually all rail passenger service was provided by private entities before Amtrak was formed. Amtrak--like the carriers providing intercity passenger service before it--is a common carrier under the former Interstate Commerce Act (49 U.S.C. 2430(a)(1)), and is subject to the various statutes and regulations specifically governing railroads (the Federal railroad safety laws, the Railway Labor Act, the Railroad Retirement Act, the Railroad Retirement Tax Act, and the Federal Employers' Liability Act, among others). Congress created Amtrak as a private, for-profit company to keep intercity rail passenger service and other functions Amtrak performs private when the private railroads that had been providing rail passenger service were losing so much money on passenger service that they could no longer bear their common carrier obligations. In that respect, Amtrak is like Conrail, which Congress created to take over and operate the remains of seven bankrupt railroads that could not individually be reorganized profitably. The Supreme Court held that Conrail was not an instrumentality of the United States during its period of Federal ownership, despite the President's power to appoint, directly or indirectly, eight of its 15 directors. See Regional Rail Reorganization Act Cases, 419 U.S. 102 (1974). In each case, all governmental functions are or were (until the Government sold its interest in Conrail) performed by Executive Branch agencies and the private functions of running railroads are performed by the private railroad corporations statutorily created for that express purpose.

Congress plainly intended Amtrak to receive Federal financial assistance only for a short transitional period while the company became profitable. The failure of Amtrak to realize that ambition does not change the character of Congress' intention. Moreover, Congress is still trying to wean Amtrak from Federal operating grants (as is the Administration). Many private entities pursue government's goals, but do not perform

*All this is the lump  
argument in labor*

governmental functions (such as taxation, police power or commerce power regulation, etc.). The receipt of federal financial assistance and certain statutorily-conferred advantages does not change private functions into governmental ones. None of Amtrak's functions are inherently governmental.

The absence of governmental functions suggests that the liberty interests the Appointments Clause serves are not implicated at all in Amtrak's operations, and, therefore, there is no reason on their account for the Appointments Clause to apply Amtrak.

Moreover, the Appointments Clause relates naturally enough only to appointment of public officials. The only public officials serving Amtrak are the Secretary of Transportation, who serves on Amtrak's Board, and his statutorily authorized alternates: the Deputy Secretary, the Federal Railroad Administrator, and me. All of us are duly appointed in accord with the Appointments Clause. Amtrak's other directors, its officers, and its employees are not federal employees and should not be made into federal employees. The statute does not give the President the right to remove Amtrak's directors at will. The directors, like the directors of any other private corporation, have a fiduciary duty to Amtrak's shareholders (which includes, but is not limited to, the federal government) to operate and manage the corporation exercising their best business judgment. Their duty is that of corporate directors, not that of government officials. Amtrak's officers serve at the pleasure of the Amtrak Board and salary levels are established by the Board (49 U.S.C. §24303). Amtrak employees are to be treated the same as employees of any other railroad subject to the Railway Labor Act (49 U.S.C. §24301(d)). They are not part of the Civil Service system as are employees of government agencies.

Finally, the Executive is under an obligation to defend the constitutionality of statutes enacted by Congress. The Rail Passenger Service Act was passed more than 25 years ago. The statutory provisions governing appointment of the Board of Directors (now 49 U.S.C. 24302) have had their current form (save for recodification) for about 15 years. The provisions in the current reauthorization proposal aim not to change the composition of the Board, but merely to clean up the language of the provisions in concert with the repeal of the now-useless sections dealing with Amtrak Commuter. Given a legitimate choice to defend the constitutionality of the statute, we are obliged to do so.

#### POLICY AND BUDGETARY CONSEQUENCES

The choice posed by the Justice Department memo goes far beyond legal issues. It is the President's policy to support Amtrak, to wean Amtrak from federal operating assistance over a number of

years, and to provide the capital assistance necessary to support both. Treating Amtrak as a federal agency would undermine that policy.

Amtrak is in such desperate financial condition that its very survival is at issue. The Administration is working closely with Amtrak's Board, which is now wholly comprised of directors appointed, directly or indirectly, by President Clinton, to assure that Amtrak survives and better serves the Amtrak people. The budgetary consequences of applying the Appointments Clause to Amtrak, which are discussed below, are so severe that achievement of these goals would be imperilled.

Moreover, were the Administration to propose to Congress that Amtrak's Board be changed because the Administration has now decided that Amtrak is subject to the Appointments Clause, it is unlikely that any changes that would be made would meet with the Administration's approval. The most likely outcome would be a corporation and a board divorced from Administration influence altogether, making it significantly more difficult to pursue the President's policies.

The budgetary consequences look bleak from any point at which we start. If, because Amtrak is subject to the Appointments Clause, all of Amtrak's employees become federal employees and Amtrak is considered part of the Government, the following adverse consequences may ensue:

- o downsizing Amtrak would become significantly more difficult and expensive;
- o litigation over the applicability of statutes governing federal employees as well as or instead of the Railway Labor Act would be likely;
- o both the federal retirement system and the railroad retirement system might be severely harmed if Amtrak's employees were shifted into the federal retirement system; Amtrak now pays about \$450 million annually into the railroad retirement system; were those payments removed from the system, the railroad retirement system would be severely impaired;
- o disciplining or discharging employees would become more difficult and expensive;
- o labor protection might become a federal liability (GAO estimates that Amtrak's liability for labor protection would range from \$2.1 billion to \$5.2 billion if Amtrak were to cease operations, which is a distinct possibility);

- o Amtrak's torts, and those of its employees, might become federal liabilities (Amtrak pays tens of millions of dollars in tort cases annually); and
- o instead of being free from the remaining Government constraints on changing its routes and services as the Administration proposes, Amtrak might have to comply with the Administrative Procedure Act before making any changes, which would likely doom the company to bankruptcy.

With Amtrak in delicate condition, undergoing a radical transformation sponsored by this Administration, and with congressional response uncertain at best, making the change in paradigm suggested by the Justice Department would be folly.

Sincerely,

Stephen H. Kaplan  
General Counsel



U.S. DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY

400 Seventh St  
Washington, DC

OFFICE OF THE ASSISTANT SECRETARY FOR TRANSPORTATION POLICY

Number of Pages including this Page: 2

Date: \_\_\_\_\_

**TO:** DWG LETTER

**FROM:** JOHN N. LIEBER

~~FRONTIER TRAVEL~~

*Dep.* Assistant Secretary for Transportation Policy

(202) 366-4344 4450

FAX: (202) 366-7127

**FAX MESSAGE:**

AN IMPORTANT ADDITIONAL ARGUMENT  
MORE DETAIL TO FOLLOW.

*John N. Lieber*

Insert to response to Justice Department constitutional concerns re AMTRAK officers:

The Office of Legal Counsel's premise that the Appointments Clause was intended to protect individual liberties clearly contravenes the position recently taken by the Justice Department before the Supreme Court in Ryder v. United States. Ryder is an Appointments Clause challenge to a decision of the Coast Guard Court of Military Review that affirmed a criminal conviction. While the Solicitor General did not dispute that the court's appointments were governed by the Clause and that the appointment of the court's civilian judges violated the Clause, he urged in his brief that the court's decision was nonetheless valid under the well-established doctrine of de facto validity. In support of this position, the Solicitor General argued emphatically that the Appointments Clause "has no direct role in protecting individual rights and liberties." Indeed, if it were, then an affirmance of a criminal conviction by an improperly constituted court would arguably be invalid. Thus, the Office of Legal Counsel's view flatly contradicts an essential underpinning of the Justice Department's position in Ryder.

April 12, 1995

To: Abner Mikva  
James Castello  
Beth Nolan  
Bob Damus

From: Douglas Letter

Re: Status Of Amtrak And Other Government Corporations Regarding  
The Constitutional Appointments Clause

We have all been concerned with the status of Amtrak and other governmental corporations in the wake of the Supreme Court's recent decision in LeBron. OLC has tentatively opined that, since the Supreme Court held that Amtrak is a Federal Government entity for purposes of the First Amendment, it must also be such an entity for other parts of the Constitution, and is thus covered by the Appointments Clause. That Clause governs appointment of Officers of the United States, and requires that principal officers be appointed by the President with the consent of the Senate. By contrast, DOT believes that LeBron can be narrowly read to mean that Amtrak is covered by the First Amendment, but that this conclusion says nothing about whether this entity is also covered by the Appointments Clause.

I think there is a theory under which we could argue that the directors of Amtrak and other government corporations need not be nominated and confirmed pursuant to the Appointments Clause. This theory is not that being suggested by DOT, which, as I understand it, seems to take issue with the language in Justice Scalia's opinion in LeBron about Amtrak being a federal agency. Instead, I propose an argument based on trying to draw a distinction between governmental entities that carry out sovereign functions and those that carry out purely commercial functions. I personally think drawing such a distinction is not good policy, and does not comport with the intent of the Framers. However, I believe that theory is tenable, if we choose for policy reasons to advance it. (I am writing this largely off the top of my head, but am fairly sure that the analysis will hold up if we ask OLC to flesh it out.)

A. The problem for Amtrak arises because, if it is covered by the Appointments Clause, the Amtrak directors are best viewed as principal officers for purposes of that Clause. See the decision in Silver v. USPS, 951 F.2d 1033 (9th Cir. 1991). There, we convinced the Ninth Circuit that the Postal Service Governors were principal officers under the Appointments Clause because they reported to nobody other than the President in running the agency. (I consulted closely with OLC before running this argument in Silver, and it was approved by OLC.) I think the majority in

*No problem  
even if  
in train.*

Silver is correct, and the dissent does not disagree with the conclusion that the officials running the Postal Service must be principal Officers (and are thus collectively the "Head of a Department").

Thus, the OLC view, accepted by the Ninth Circuit, is that the officials who run a federal agency with nobody above them except the President, are principal officers for purposes of the Appointments Clause. (My memory is that the Supreme Court did not decide this issue in Freytag, 501 US -- the case involving the validity of appointment of assistants to Tax Court judges -- but hinted that principal officers might only be those who head cabinet type departments. It is hard to see where this line would be drawn since it would possibly not include entities such as the CIA and EPA.) If correct, this view would seem to mean that the Amtrak directors must be principal officers, and thus must be appointed by the President with the approval of the Senate. Many of them are not so appointed. In addition, there are constraints upon the President's appointment power in the Amtrak statute, and OLC has doubts about the validity of some of these provisions.

I note that it might be possible to argue that directors of government corporations are not principal officers because they are not actually the equivalent of Department Heads since they are beholden to the shareholders. I have perused the Amtrak statute and do not find this to be true, even though that may be the common model in the private sector. I did not find any provision allowing the shareholders to remove the Amtrak directors, or to override their decisions in running the corporation. Thus, I do not see a basis to argue that the Amtrak directors are not principal officers on this ground.

B. It is not clear to me at this point how far beyond Amtrak the problem would extend if there is an Appointments Clause violation by the Amtrak statute. I checked 12 other government corporations quickly, and found that many of them by statute provide for appointment of directors by the President with the approval of the Senate. I determined though that the Rural Telephone Bank Board (7 USC 945), the Pennsylvania Avenue Development Corp (40 USC 872), the Federal Prison Industries Corp (18 USC 4121), the Federal National Mortgage Association (12 USC 1723), and COMSAT (47 USC 701) have directors who are **not** appointed by the President with Senate confirmation. (It is likely that COMSAT, and possibly also FNMA, would not be considered a federal agency under the LeBron analysis.)

In any event, my quick sampling reveals that this Appointments Clause problem is not limited to Amtrak. (I have not checked yet, but am almost certain this problem would arise for the Federal Open Market Committee, as well as the Federal Reserve Banks, although it is not clear that they would be federal entities under the LeBron test.)

C. DOT has raised the possible position that an entity like Amtrak can be a federal agency for purposes of the First Amendment, but not the Appointments Clause. I do not think this position can be defended. I do not see how we can say that an entity identified by the Supreme Court as a federal agency can be covered by some parts of the Constitution and not others. The only possible analogies I have been able to think of do not seem apt.

The first is that, as you probably recall, the Supreme Court struggled mightily in a series of cases (see Duncan v. Louisiana) to incorporate selectively only some parts of the Bill of Rights as covering the states through the 14th Amendment. Thus, the Court seemed to say that only parts of the Constitution covered the states. However, the Court was actually determining which parts of the Bill of Rights were included within the relevant language of the due process aspect of the 14th Amendment; it was not saying that only some parts of the Constitution applied while others did not.

The second is that the Supreme Court has in many cases had a very difficult time determining which parts of the Constitution protect aliens while they are on US territory. See Verdugo Urquidez. The Court has determined that some protections of the Constitution do apply in deportation and certain exclusion proceedings, while other important ones do not. However, I do not think these cases, arising in the special context of aliens -- over whom Congress has been said to exercise plenary authority -- are of any use outside that peculiar arena.

I can think of no valid theory under which only some parts of the Constitution would apply to Amtrak. Thus, we must analyze the Appointments Clause to see if it imposes requirements for Amtrak.

D. In Buckley v. Valeo, 424 U.S. around page 125, the Supreme Court said that, if a federal official is carrying out "significant authority" under the laws of the United States, he/she must be appointed pursuant to Appointments Clause procedures. Somewhat significantly, later in the opinion, I believe that the Court said that, if the functions being performed are sufficiently removed from the administration and enforcement of federal law, the person need not be considered an Officer of the United States.

I am not aware of any Supreme Court or appellate court case law discussing in a meaningful way what the Court meant precisely in Buckley. There, as I recall, the Court focused on the powers held by the Federal Elections Commission to regulate conduct, bring enforcement actions, and conduct investigations, and highlighted the ability to institute enforcement proceedings in court. These all seem to be functions that are best described as sovereign in nature.

In light of Buckley, OLC has said, and some district courts

have agreed, that the Civil Rights Commission directors are not Officers of the United States since they can only make recommendations. Hence, they do not exercise sufficiently significant authority under the laws of the United States.

In this instance, Amtrak does far more of significance than does the Civil Rights Commission. Amtrak's directors make decisions about where and how a major passenger railroad will run. Unlike the Civil Rights Commission, Amtrak thus makes numerous decisions each day that have a direct effect on millions of private citizens, thousands of businesses, and many millions of dollars.

Even though Amtrak exercises significant authority under the laws of the United States, its authority is different in kind from that of the FEC focused upon by the Court in Buckley; Amtrak's authority is of a commercial type, involved in running a railroad. From my skimming the relevant statutory scheme, with one exception -- eminent domain power -- Amtrak does not appear to exercise any authority that would be thought of generally as sovereign or governmental. Amtrak's operations are not subject to state taxation (see 45 USC 546(b)), and they preempt state and local laws (see 45 USC 546(c), (h), and (l)). However, those powers are mandated by Congress in the statute; they do not appear to be given to Amtrak to exercise in its discretion.

The eminent domain power is certainly governmental in nature. However, I believe I have read that Congress gave some private railroads eminent domain power in the last century. And there is case law saying that Congress can legitimately delegate its eminent domain power to private organizations. See Thatcher v. Tennessee Gas, 180 F.2d at 647 (5th Cir. 1950); Missouri v. Union Electric, 42 F.2d at 698 (C.D. Mo. 1930). Therefore, this power by itself would not seem to mean that Amtrak carries out sovereign/governmental authority, as opposed to merely running a commercial enterprise.

If we wish to do so, we can argue-- focusing closely on what was involved in Buckley -- that the Appointments Clause covers government officials exercising governmental authority, not running commercial enterprises. A somewhat similar argument was accepted by Judge Harold Greene in Melcher v. FOMC, 644 F. Supp. at 520-24 (1986). (Although I helped develop our winning theory in that case, I think it was wrong, and Judge Greene mistakenly accepted it; on appeal, the D.C. Circuit ducked the issue by ruling that the plaintiff Member of Congress could not bring his suit challenging the activities of the Federal Open Market Committee.)

Melcher involved a claim that the FOMC was acting illegally in helping to implement monetary policy because only some of its members were appointed properly under the Appointments Clause. We argued, and Judge Greene accepted, that the types of functions of the FOMC had initially been performed, beginning in 1791, by the

First Bank of the United States, and had also been carried out by the Second Bank of the United States. Only a minority of the directors of those Banks were appointed by the President with Senate approval. Therefore, we argued that history showed that the functions performed by the FOMC could be carried out by Officers of the United States and by private persons together.

The district court ruling in Melcher is not truly on point here. We are not arguing that Amtrak's operations can be carried out by a mix of Officers and private persons; the Supreme Court has told us in LeBron that Amtrak is a federal agency. Had the Court there adopted the view that Amtrak was covered by the First Amendment not because it is a federal entity but because it is a mixed private/governmental enterprise, the Melcher reasoning might have been more helpful.

Nevertheless, there is considerable precedent for drawing critical distinctions between the sovereign and commercial activities of governments. For example, the Supreme Court, I believe, has said in cases such as United States Trust and Merrion v. Jicarilla Apache Tribe, that governments can bargain away their commercial rights, but cannot contract away their sovereign rights and responsibilities. See Bowen v. Public Agencies Opposed to Social Security Entrapment. And, in the Foreign Sovereign Immunities Act, Congress has determined that foreign governments are immune from liability in our courts for their sovereign acts, but are liable for their commercial ones.

Consequently, there is some logic to saying that Amtrak carries out only commercial functions (or, in the case of its eminent domain power, authority that can be commercial), but does not regulate, investigate, or bring enforcement litigation involving private persons, and its officials are therefore not covered by the Appointments Clause.

*this then  
what  
mean  
about for  
other  
purposes?*

I think this argument is mistaken because of the Framers' intent in that Clause. The Federalist Papers show that the Framers had two objects in mind: to ensure that honest and competent persons would be operating the government, and to bring accountability. See the discussion in Freytag. On the latter point, the Framers wanted the voters to know whom to blame -- the President -- if an Executive Branch official functioned poorly or corruptly. (In light of the constitutional amendment limiting Presidents to two terms, one could argue that the point of the Appointments Clause has been significantly undermined since a second term President need not care what the voters think.)

The accountability purpose should thus apply whenever government officials are exercising power in a way that has an impact on private persons and their conduct. Unlike the Civil Rights Commission, Amtrak certainly has a substantial effect on private persons. Accordingly, the citizenry should have a right to

know whom to blame and punish at the polls if Amtrak exercises its power unwisely. For this purpose, it makes no difference whether Amtrak is operating in a commercial or governmental way.

In sum, I think it is not good policy to argue that Amtrak's officials are not exercising the type of power that would bring them within the Appointments Clause. But given the fact that there are many areas in which Congress and the courts have drawn a line between commercial and sovereign conduct carried out by governmental entities, I think we could make such an argument if we choose to do so.



U.S. DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY

400 Seventh Street  
Washington, DC 20

OFFICE OF THE ASSISTANT SECRETARY FOR TRANSPORTATION POLICY

Number of Pages including this Page: 7

Date: 4/13/95

**TO:** Doug Letter  
Fax # 456-1647  
Tele 456-7901

**FROM:** John Lieber  
Fax # 366-7127  
Tele 366-4450

**FAX MESSAGE:**

Attached letter for 4:00 p.m. meeting today.



U.S. Department of  
Transportation

General Counsel

400 Seventh St., S.W.  
Washington, D.C. 20590

April 13, 1995

The Honorable Walter Dellinger  
Assistant Attorney General  
Office of Legal Counsel  
Department of Justice  
Washington, D.C. 20530

Dear Mr. Dellinger:

I am writing in regard to the March 24, 1995 memorandum prepared by the staff of the Justice Department's Office of Legal Counsel (OLC) that suggests that the governance statute of the National Railroad Passenger Corporation, Amtrak, may be in violation of the Appointments Clause of the U.S. Constitution. As you may know, the Administration has transmitted to Congress amendments to the Amtrak legislation. The Amtrak Restructuring Act of 1995 was prepared by this Department and would, among other things, make minor changes to the structure of Amtrak's Board of Directors. However, the Act would not change the nature of Amtrak, its Board, or its operations.

During the normal interagency review of proposed legislation, a staff level memorandum from OLC was issued that expressed the view that Amtrak's makeup in certain respects has been unconstitutional since its inception. The rationale for this conclusion is that since Amtrak is subject to the First Amendment under the holding of a recent Supreme Court decision, Lebron v. National Railroad Passenger Corporation, 115 S. Ct. 961 (February 21, 1995), it is therefore a federal entity that is also subject to the Appointments Clause. Because some of Amtrak's Board of Directors, as well as its Chief Executive Officer, are not appointed consistent with the requirements of the Appointments Clause, the memorandum concludes that Amtrak's corporate structure is presently unconstitutional. Significantly, the staff memorandum concedes that "[i]t is possible to argue . . . that Lebron does not require the conclusion that Amtrak is a part of the federal government for the purposes of determining the application of the structural requirements of the Constitution such as the Appointments Clause . . . and Lebron's wording could be read to imply that Amtrak should not be considered a federal agency for Appointments Clause purposes." In fact, we believe that this is the correct reading of Lebron. In light of the uncertainty expressed in OLC's memorandum, we believe that OLC's conclusion is premature, and should not unnecessarily trigger the reorganization of Amtrak's Board and a variety of other policy impacts.

- 2 -

The staff memorandum is based on a broad reading of Lebron, which involved the applicability of the First Amendment to Amtrak, a corporation created by Act of Congress and specifically declared not to be an agency, instrumentality, entity or authority of the United States government. Acknowledging that it was reviewing Amtrak's status for the first time, the Court concluded that Amtrak was "an agency or instrumentality of the United States for the purpose of individual rights guaranteed against the Government by the Constitution." *Id.* at 972. Although the Lebron decision did not reach the issue, the OLC memorandum assumes that the Appointments Clause of the Constitution is also a provision guaranteeing individual rights, and from this the memorandum concludes that Amtrak must be unlawfully constituted.

Even though the Administration has cleared the new Amtrak legislation, we continue to be concerned about the conclusions reached in the OLC memorandum. Specifically, we believe that the logic of the memorandum is in some respects incorrect, and that in any event the memorandum gives the Lebron holding a far wider reach than may ultimately prove to be merited or necessary. For the reasons discussed below, we urge that the memorandum should not be the official position of OLC, since its conclusions are premature and would require a restructuring of Amtrak that could threaten its viability.

It is clear under the Lebron decision that when basic individual rights such as Freedom of Speech are at issue, Amtrak is subject to the same Constitutional restrictions that are imposed on the federal government. However, we do not agree with the memorandum's conclusion that such individual rights are necessarily created by the Appointments Clause, or that the clause must be applied as a result of the Lebron decision, for several reasons.

First, the memorandum's conclusion that the Appointments Clause creates individual rights contradicts the position that the Solicitor General is now taking on behalf of this Department before the Supreme Court in Ryder v. United States, No. 94-431, cert. granted, 115 S. Ct. 713 (January 6, 1995). In Ryder, a member of the Coast Guard seeks review of his court-martial conviction on the ground that two members of the Coast Guard Court of Military Review were not appointed to their positions in accord with the Appointments Clause. In its brief to the Court the United States urges that the purpose of the clause is to "ensure that appointments are made in a politically accountable fashion." Brief for the United States at 23, quoting Freytag v. Commissioner, 501 U.S. 878, 884 (1991). The United States does not take the position that the two judges were lawfully appointed. Rather, the government contends that the constitutional defect in their appointment should not serve to vacate Ryder's conviction because "[t]he purpose of the Appointments Clause is not principally to safeguard individual rights and liberties." Brief for the United States at 12 (emphasis supplied). Thus,

- 3 -

consistent with the government's approach in Ryder, the better view is that the Appointments Clause does not create individual rights.

Second, the Lebron opinion in no way hints at the expansive reading suggested by the memorandum. To the contrary, the Court's specific holding in Lebron -- rendered in the precise context of a discussion of Amtrak's corporate form -- is only that Amtrak is "a government entity for purposes of determining the constitutional rights of citizens affected by its actions," *id.* at 971, and that "it is an agency or instrumentality of the United States for the purpose of individual rights guaranteed against the Government by the Constitution." *Id.* at 972 (emphasis supplied). Significantly, Justice Scalia's opinion in Lebron in fact discusses the very aspects of Amtrak's corporate structure that have prompted the concerns expressed in the memorandum. The decision, however, fails to flag, let alone discuss, any of the constitutional issues addressed in the OLC memorandum. Indeed, the fact that some Amtrak directors are appointed without the advice and consent of the Senate, and that the fact that its CEO is appointed by the Board of Directors, are discussed twice in the course of the decision -- once in the very context of listing what factors contribute to the determination of whether Amtrak is subject to the First Amendment. *See* 115 S. Ct. at 967-68, 973. During the course of its decision the Court also analogizes Amtrak to the New Panama Canal Company, noting that as to that federal corporation "the Secretary of War, as the holder of the stock, elect[ed] the Railroad's 13 directors." *Id.* at 969. Obviously, this arrangement would present the same constitutional problems as those attributed to Amtrak by the memorandum, yet nowhere in the Lebron decision is there even a hint that these corporate structures are in any way constitutionally suspect.

The First Amendment rights at issue in Lebron derive from the Bill of Rights, which protects the citizenry from unacceptable governmental actions that infringe on individual liberties. By contrast, the Appointments Clause addresses the structure of our government. While the clause may have a general impact on individual rights, that is not its specific focus. Moreover, treating the clause as one protective of individual liberties invites similar treatment for every other provision of the Constitution. We believe that this approach is unnecessarily broad, and that it is certainly possible that Lebron will in the future be limited to its precise holding. In any event, we do not believe that it is necessary or prudent at this time to expand the Lebron rationale beyond "individual rights . . . guaranteed by the Constitution" so as to subject Amtrak to all of the provisions set forth in the Constitution.

There is therefore a logical basis to conclude that the Lebron holding does not necessarily undermine the corporate structure of Amtrak or Congress' ability to maintain the present structure while at the same time acknowledging Amtrak's governmental status for purposes of the protection of individual rights. While we do not yet know how Lebron will be applied in the future,

- 4 -

we do know that the Court was very careful in fashioning a narrow holding. Certainly that holding says nothing about the Appointments Clause, nor does it say that Amtrak is a governmental entity subject to all of the other provisions of the Constitution.

Thus, we believe that it is premature to conclude that Amtrak's corporate structure is necessarily constitutionally infirm. Indeed, Lebron appears to be the first time the Court has applied the First Amendment to a statutory "nongovernmental" entity. Unless and until there is future litigation regarding the scope and applicability of the Lebron holding, we believe Amtrak is entitled to the benefit of the doubt as to the Appointments Clause issue.

We do not believe that the memorandum's reliance on Buckley v. Valeo, 424 U.S. 1 (1976), compels the conclusion that Amtrak is subject to the Appointments Clause. Buckley held that the Federal Election Commission, as then constituted, was unlawful because its members were not appointed according to the Appointments Clause. In reaching that conclusion the Court held that the Appointments Clause applies to (1) every executive or administrative officer, (2) serving pursuant to Federal law, and (3) exercising significant authority over federal government actions. It has been held that unless all three parts of the Buckley test are met, there is no violation of the Appointments Clause. Seattle Master Builders v. Pacific N.W. Electric Power, 756 F.2d 1359, 1365 (9th Cir. 1986), cert. denied, 479 U.S. 1059 (1987).

The memorandum, however, fails to account for the third element of the Buckley test: providing passenger rail services is not inherently a governmental function.<sup>1</sup> Amtrak was created as a for-profit corporation under the laws of the District of Columbia to operate intercity rail passenger service that other private railroads could no longer operate profitably. 49 U.S.C. § 24301(a)(2). It is a common carrier under the Interstate Commerce Act (49 U.S.C. § 24301(a)(1)), and it is subject to the various statutes and regulations specifically governing railroads. It charges passenger fares, pays bills, employs workers, and contracts for goods and services just like any other

1/ The Lebron decision notes that "Amtrak was created by a special statute, explicitly for the furtherance of federal governmental goals." 115 S. Ct. at 973. That goal is to "avert the threatened extinction of passenger trains in the United States." Id. at 966. The fact that there is a public goal behind the establishment of Amtrak does not, however, mean that Amtrak necessarily performs a governmental function. As the Supreme Court has noted, "[t]he fact [t]hat a private entity performs a function which serves the public does not make its acts [governmental] action." San Francisco Arts & Athletics v. Olympic Committee, 483 U.S. 522, 544 (1987), quoting Rendell-Baker v. Kohn, 477 U.S. 830, 842 (1982).

- 5 -

railroad. Federal government involvement in Amtrak is aimed solely at restoring rail passenger operations in this country to profitable private ownership.<sup>2</sup> Thus, in this context, Buckley in fact indicates that the Appointments Clause should not be applicable to Amtrak. This would, in turn, mean that the narrow reading of Lebron, discussed above, is the proper one.

Such an outcome is also consistent with the fact that Amtrak was organized to be privately owned. Of the many types of organizations used by the Federal Government, Amtrak is one of the very few that is a mix of public and private ownership. All of Amtrak's common stock is privately held, while the federal government holds all of Amtrak's preferred stock. This type of organization was specifically adopted by Congress because of its desire that ultimately Amtrak is to be turned over completely to private ownership. Whatever validity the reasoning in the staff memorandum may have for other types of government enterprises, it clearly does not fit the type of public-private organization represented by Amtrak.<sup>3</sup> ]

Because there are strong competing legal arguments as to the applicability of the Appointments Clause to Amtrak -- a fact that the OLC memorandum acknowledges -- and given the novelty of the issue, policy considerations become even more important in determining the proper course to follow. To apply the Appointments Clause to Amtrak potentially (and we believe unnecessarily) raises a host of complicated issues involving aspects of Amtrak's operations that are at the moment settled, such as the status of its employees, the nongovernmental character of its contracts, and its exemption from a variety of federal statutes. A different resolution of these issues could significantly increase federal government liabilities and outlays for Amtrak, and could slow movement toward needed Amtrak restructuring.

---

<sup>2/</sup> The fact that Amtrak has never made a profit, and may never make a profit, is irrelevant, because the powers given it by Congress were designed with profit-making as a goal. Congress created Amtrak as a private, for-profit company to keep within the private sector intercity rail passenger service and other functions that Amtrak performs, even though the private railroads that had been providing rail passenger service at the time were losing so much money on passenger service that they could no longer uphold their common carrier obligations.

<sup>3/</sup> The special nature of mixed public-private enterprises, and the need to maintain an organizational structure that would facilitate their ultimate devolution to the private sector, has been recognized. See Report on Government Corporations to the Office of Management and Budget by the National Academy of Public Administration (August 1981), Volume I, page 26.

- 6 -

If adopted, the OLC memorandum would also undermine Presidential policy with regard to the U.S. passenger rail system. The Administration's policy has been to provide sufficient capital assistance to support Amtrak, and at the same time to wean it from federal operating assistance. Concluding that Amtrak is a federal agency for all purposes would undermine that policy in light of Amtrak's difficult financial condition. This is, in part, simply a matter of perception: at a time when some congressional members are supporting enormous reductions in, or abolition of, Amtrak funding, it would be harmful for the Administration to be calling Amtrak's corporate legitimacy into question.

Moreover, it would be pointless for the Administration to propose to Congress that Amtrak's Board must be changed because the Administration has now decided that Amtrak is subject to the Appointments Clause: the present Congress is most unlikely to support subjecting Amtrak to closer Presidential -- and governmental -- control. The more likely outcome of a legislative focus on the issue would be a corporation and a board of directors divorced from Administration influence (and perhaps governmental funding) altogether -- which would reduce both the President's influence over Amtrak's policy and the likelihood that Amtrak will remain a viable transportation entity.

More broadly, it should be noted that there are numerous governmental and quasi-governmental corporations that have been created by Congress to fulfill a variety of governmental objectives. Some are wholly-owned governmental corporations, some (such as Amtrak) are mixed governmental and privately owned, and others are wholly privately owned. The Lebron decision discusses several of these corporations, such as COMSAT, the Legal Services Corporation and the Corporation for Public Broadcasting, but does not address their corporate structure in light of the Appointments Clause. Other government corporations include the Federal Deposit Insurance Corporation, the Federal Home Loan Banks, the National Credit Union Administration, the Regional Banks for Cooperatives, Howard University, Gallaudet University, the National Park Foundation, the Student Loan Marketing Association, and the Production Credit Associations. The foregoing is not an exhaustive list. To declare that Amtrak is a federal entity requiring application of the Appointments Clause potentially raises the same issue for the numerous other governmental corporations already existing.

Finally, it also bears reference that the Administration and the Congress are working hard to shrink the size of the Federal Government. The Federal Government seeks to turn much of its operations over to State and local government, and to private industry. This principle has been borne out in the Department's efforts to facilitate and encourage state and local governments to enter into financial partnerships with Amtrak -- an effort

-7-

reflected in the Administration's proposed legislation. Significant elements in Congress are discussing a more aggressive "privatization" approach. The course suggested by the memorandum -- conceding that Amtrak is already a federal entity -- would frustrate either approach.

For all these reasons, we urge that the conclusions reached in the OLC staff memorandum should not become the official position of OLC, and certainly not of the Administration. I would be pleased to meet with you to discuss this matter further.

Sincerely,



Stephen H. Kaplan

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

13-Apr-1995 05:25pm

TO:            James Castello  
TO:            Abner J. Mikva  
  
FROM:          Douglas N. Letter  
                Office of the Counsel

SUBJECT:      Amtrak memo

Ab and James: At the conclusion of the Amtrak meeting, Jennifer O'Connor asked if she could get copies of all the "paper" on the Amtrak matter to give to Harold Ickes. I told her that the only paper I knew of was the OLC bill comment, the DOT response letter, and the informal memo I had done for the two of you. She asked if she could get a copy of my informal memo to give to Harold. I told her I would ask you. I personally don't care if it goes to him. Please let me know. Thank you.

*Doug:  
no objection  
Ab*



**U.S. Department of  
Transportation**

Office of the Secretary  
of Transportation

April 28, 1995

**NOTE**

TO: Douglas Letter  
Associate Counsel to the  
President

FROM: John N. Lieber *John N. Lieber*  
Deputy Assistant Secretary  
for Transportation Policy

---

Attached are three proposed bills on AMTRAK -- one submitted by DOT, another by Senator Exon and a third -- and probably most significant -- developed by other House Committee staff. Also, enclosed is a draft side-by-side comparison of their respective positions. Other versions will be sent along in due course.

Attachment



THE SECRETARY OF TRANSPORTATION  
WASHINGTON, D.C. 20590

*File Amtrak*

April 6, 1995

IDENTICAL LETTER TO:  
THE HONORABLE NEWT GINGRICH  
SPEAKER OF THE HOUSE OF  
REPRESENTATIVES  
WASHINGTON, D.C. 20515

The Honorable Albert Gore, Jr.  
President of the Senate  
Washington, D.C. 20510

Dear Mr. President:

Enclosed for introduction and referral to the appropriate committee is a bill entitled the

**"Amtrak Restructuring Act of 1995."**

The Clinton Administration strongly supports intercity rail passenger service as an important element of our Nation's transportation system. As evidence of that commitment, the Administration has proposed \$1.035 billion in Federal financial support for Amtrak in fiscal year 1996 and expects that this financial support will total in excess of \$3.5 billion through the end of the decade.

At the same time, it is clear that the Federal Government cannot afford to continue the past trend of increasing operating subsidies for Amtrak. In that context, this Administration is committed to support efforts by Amtrak to provide improved service, while reducing its costs and achieving financial stability.

To accomplish that goal, Amtrak must be transformed into a cost-effective provider of quality transportation services. The Administration seeks to empower Amtrak to implement measures that will cut operating subsidy requirements in the short run, and improve efficiency and revenue generating capability in the long run, so that the Federal operating subsidy will be gradually reduced over the next five years.

Part of the solution to Amtrak's current difficulties comes from elimination of antiquated equipment and facilities that are difficult and expensive to maintain and are prone to break down. The Administration proposes to provide capital investment to address many of these shortcomings. But a more serious obstacle to Amtrak's ability to perform as a commercially driven, private sector company are various operational, financial, and managerial restrictions imposed on it by current Federal law. Provisions in the enclosed bill would eliminate or modify these restrictions.

A third part of the prescription for a "new" Amtrak is a larger role for the States and localities in determining what Amtrak service continues, and in providing financial assistance to support the service from which they benefit. This bill proposes shifting

financial responsibility to the States, leaving them the option of continuing it. Concurrently, the Department has begun a dialogue with Congress about increased flexibility in use of Federal infrastructure funding that could assist States and localities in supporting Amtrak service.

I would appreciate early consideration of the enclosed bill by Congress.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, it has no objection to the submission of this proposal for consideration by Congress, and its enactment would be in accord with the program of the President.

Sincerely,



Federico Peña

Enclosures:

**Bill (The Amtrak Restructuring Act of 1995)**  
**Section-by-Section Analysis of the Bill**

A BILL

To authorize appropriations for the National Railroad Passenger Corporation, and for other purposes.

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

**SEC. 1. SHORT TITLE.**

This Act may be cited as the "Amtrak Restructuring Act of 1995."

**SEC. 2. FINDINGS.**

The Congress finds that--

(1) **intercity rail passenger service is an essential component of the integrated national transportation system, and the National Railroad Passenger Corporation (Amtrak) must provide a quality transportation product in the form of clean, comfortable, and on-time service to achieve its full potential;**

(2) **Amtrak has been forced to significantly cut back its basic system due to cash shortages, and further cutback may be required unless Amtrak is able to reduce its costs and increase its revenues;**

(3) **To ensure Amtrak's long-term viability as a provider of intercity rail passenger service, contributions from all of Amtrak's stakeholders are needed to reduce Amtrak's costs and increase its revenues;**

(4) **Amtrak's management and employees are dedicated to providing the high-quality service that Amtrak's customers deserve but additional capital investment is needed to acquire the modern equipment and efficient facilities that are essential to satisfy the demand for superior intercity rail passenger service, and additional**

management flexibility is needed to allow Amtrak to adjust quickly to meet demand and changing customer needs;

(5) Adequate levels of capital investment from the Federal Government and State governments and innovative partnerships with the private sector will enable Amtrak to provide the world class service American rail passengers deserve and will help reduce operating costs in the long term;

(6) Amtrak's management should be held accountable to ensure that all capital investment by the Federal Government and state governments is used effectively to improve the quality of service and the long-term financial health of Amtrak;

(7) the Secretary of Transportation, as an ex officio member of Amtrak's Board of Directors, should use this position to evaluate Amtrak's costs and revenue elements to ensure that Amtrak provides excellent service to its customers and that Amtrak uses its Federal investment wisely and efficiently;

(8) States, local governments and private parties can and should play an increasingly significant role in supporting cost-efficient intercity rail passenger transportation and in addressing local transportation needs and air quality control;

(9) Mandatory Payments reflecting funds paid into the railroad retirement and railroad unemployment systems on Amtrak's behalf in excess of the funds needed to pay retirement and unemployment benefits for Amtrak's employees and their beneficiaries shall not be considered a Federal operating subsidy of Amtrak but rather a subsidy of the railroad retirement and railroad unemployment systems as a whole; and

(10). Federal financial assistance to cover operating losses incurred by Amtrak

should be reduced gradually between the years 1996 and 2001.

### **SEC. 3. FINDINGS, PURPOSE, AND GOALS.**

Section 24101 of title 49, United States Code, is amended--

(1) by revising subsection (a)(6) to read as follows:

"(6) Amtrak should be available to operate commuter rail passenger transportation under contract with commuter authorities to the extent Amtrak is fully reimbursed for the costs incurred in operating such services, including a reasonable return on Amtrak's investment of time and resources.";

(2) by replacing the period at the end of subsection (c) with ", and"; and

(3) by adding at the end of subsection (c) the following:

"(12) manage capital investment in such a way as to provide customers with world class service.".

### **SEC. 4. DEFINITIONS.**

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

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

(2) by renumbering the remaining paragraphs as appropriate.

### **SEC. 5. AUTHORIZATION OF APPROPRIATIONS.**

(a) **AUTHORIZATIONS.**--Section 24104 of title 49, United States Code, is amended to read as follows:

#### **"§24104. AUTHORIZATION OF APPROPRIATIONS.**

"(a) **OPERATING EXPENSES.**--There are authorized to be appropriated to the Secretary to make grants to Amtrak \$300,000,000 for fiscal year 1996 and \$200,000,000

for fiscal year 1997, to be used for operating expenses.

**"(b) CAPITAL INVESTMENT.--**There are authorized to be appropriated to the Secretary to make grants to Amtrak \$230,000,000 for fiscal year 1996 and \$230,000,000 for fiscal year 1997, to be used for capital investment expenditures.

**"(c) INTERCITY RAIL PASSENGER STATION.--**There are authorized to be appropriated to the Secretary to make grants to Amtrak \$40,000,000 for fiscal year 1995 and \$50,000,000 for fiscal year 1996, to be used for engineering, design and construction activities to enable the James A. Farley Post Office in New York, New York, to be used as a train station and commercial center and for necessary improvements and redevelopment of the existing Pennsylvania Station and associated service building in New York, New York. The Secretary is authorized to retain from these funds such amounts as the Secretary shall deem appropriate to undertake the environmental and historic preservation analyses associated with the project.

**"(d) TRANSITION COSTS.--**There are authorized to be appropriated to the Secretary to make grants to Amtrak \$100,000,000 for fiscal year 1996, to be used for transition costs associated with a long-term restructuring of the Corporation.

**"(e) NORTHEAST CORRIDOR IMPROVEMENT PROGRAM.--**There are authorized to be appropriated to the Secretary to make grants to Amtrak \$235,000,000 for fiscal year 1996 and \$200,000,000 for fiscal year 1997, to be used for capital expenditures under section 24909 of this title.

**"(f) MANDATORY PAYMENTS.--**(1) Not more than \$120,000,000 for the fiscal year ending September 30, 1996, and not more than \$120,000,000 for the fiscal year

ending September 30, 1997, may be appropriated to the Secretary to pay--

"(A) tax liabilities under section 3221 of the Internal Revenue Code of 1986 due in such fiscal years in excess of amounts needed to fund benefits for individuals who retire from Amtrak and for their beneficiaries; and

"(B) obligations of Amtrak under section 8(a) of the Railroad Unemployment Insurance Act (45 U.S.C. 358(a)) due in such fiscal years in excess of its obligations calculated on an experience-rated basis.

"(2) Amounts appropriated under this subsection shall not be considered a United States Government subsidy of Amtrak but rather a subsidy of the railroad retirement system as a whole.

"(3) Notwithstanding the payment by the Secretary of certain of Amtrak's obligations under the Internal Revenue Code and the Railroad Unemployment Insurance Act under subsection (f)(1) above, Amtrak remains responsible for meeting its financial obligations under applicable law over and above the amounts paid by the Secretary to the Internal Revenue Service and Railroad Retirement Board on Amtrak's behalf.

"(g) **AVAILABILITY OF APPROPRIATIONS.**--Amounts appropriated under this section remain available until expended.

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

(b) **CONFORMING AMENDMENT.**--Section 24304(d) of title 49, United States Code, is amended by deleting "24104(d)" and by inserting in lieu thereof "24104".

**SEC. 6. EXPANDING THE SCOPE OF COLLECTIVE BARGAINING ON CONTRACTING ACTIVITIES.**

Section 24312(b) of title 49, United States Code, is amended by adding at the end the following new paragraph:

"(3) This subsection does not bar Amtrak and a union representing Amtrak employees from negotiating a collective bargaining agreement that permits Amtrak greater flexibility in contracting out work than permitted under paragraph (1). Paragraph (1) shall not apply to any bargaining unit covered by a contract containing provisions that are inconsistent with paragraph (1)."

**SEC. 7. REPORTS AND AUDITS.**

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

(1) in subsection (a)(1) by redesignating subparagraphs (D), (E), (F), (G), and (H) as subparagraphs (E), (F), (G), (H) and (I), and by inserting after paragraph (C) the following:

"(D) the long-term profit or loss;" and

(2) in subsection (b) by redesignating paragraph (2) as (3), and by inserting after paragraph (1) the following:

"(2) Amtrak shall include in the report required under paragraph (1) projections of the anticipated benefits of the projects proposed for funding under Part C of Subtitle V of title 49, United States Code, and a report on the benefits actually realized from all projects previously funded under Part C beginning with funds provided in fiscal year 1995. The report shall include an identification of improvements in the quality of

service offered by Amtrak, facility improvements that demonstrate a productivity gain, equipment improvements that lower operating costs, environmental benefits (including air quality and land use benefits), enhancements to local transportation needs, enhancements to mobility of physically and economically disadvantaged persons, any improvement of the revenue-to-cost ratio, any reduced dependence on Federal operating support, and reductions in the need for alternative transportation investments. To the extent practicable, the benefits addressed in each report shall also be expressed as return on invested capital."

**SEC. 8. MISCELLANEOUS REPEALS AND TECHNICAL AMENDMENTS IN  
CHAPTER 243.**

(a) **TECHNICAL AMENDMENT.**--Section 24302(a)(1)(D) of title 49, United States Code, is amended to read as follows:

"(D) Two individuals selected by the President from a list of five names submitted by commuter authorities providing service over rail properties owned by Amtrak."

(b) **AUTHORITY.**--Section 24305(c) of title 49, United States Code, is amended--

(1) by deleting the word "and" at the end of paragraph (5);

(2) by adding a new paragraph (6) as follows:

"(6) consult and cooperate, to the extent feasible, on request of eligible applicants proposing a technology demonstration authorized and financed under a law of the United States, with those applicants; and"

(3) by renumbering existing paragraph (6) as paragraph (7).

(c) **LABOR STANDARDS.**--Section 24312(a) of title 49, United States Code, is amended by deleting ", 24701(a) or 24704(b)(2)" and inserting in lieu thereof "or 24701(a)".

(d) **REPEALS.**--Sections 24310 and 24314 of title 49, United States Code, are repealed.

(e) **CONFORMING.**--The remaining sections of Chapter 243 of title 49, United States Code, are renumbered appropriately.

#### **SEC. 9. ELIMINATION OF AMTRAK COMMUTER SERVICE CORPORATION.**

Chapter 245 of title 49, United States Code, and the corresponding item in the analysis of Subtitle V is repealed except that section 24501(g) is transferred to section 24301 as new subsection (o) at the end thereof.

#### **SEC. 10. OPERATION OF INTERCITY RAIL PASSENGER SERVICE.**

Chapter 247 of title 49, United States Code, is amended--

(1) by revising the heading of section 24701 to read as follows:

**"§24701. Operation of intercity rail passenger service";**

(2) by amending section 24701(a) to read as follows:

**"(a) BY AMTRAK.--Amtrak is authorized to provide cost-effective intercity rail passenger service on those routes throughout the United States where it can serve an important transportation function and it can, over the long term, cover the full operating costs associated with providing the service either through fares or contributions from state and local governments or other interested parties. Amtrak's decisions regarding the initiation, retention, modification or elimination of intercity rail**

passenger service shall be made on the basis of available financial resources and any agreement Amtrak enters into with a state or local government or private entity to support rail passenger service should be made with the understanding that Federal funding for operating expenses will decrease over the fiscal years 1996 through 2001.

(3) by amending section 24702 to read as follows:

**"§24702. Route and Service Changes"**

"Amtrak shall adjust its route structure as it deems appropriate applying sound business and transportation principles. Prior to implementing a route discontinuance that would remove all service on a route or cut service by more than half, Amtrak shall provide affected states, cities and other interested parties with advance notice of at least ninety days in order to enable any of the affected parties to provide financial support for the route that would allow for continued operation. In an emergency, Amtrak may implement a route discontinuance with less than ninety days notice but shall in any event provide as much notice as possible. An emergency shall exist when the Secretary of Transportation determines, on the basis of information and data supplied by Amtrak, that funds available to Amtrak for the fiscal year are not sufficient to meet estimated operating costs and significant harm to the Corporation would result if immediate action is not taken to reduce costs through route reductions and service eliminations."

**SEC. 11. EXPANDING THE SCOPE OF COLLECTIVE BARGAINING ON LABOR PROTECTIVE ARRANGEMENTS.**

Section 24706 of title 49, United States Code, is amended:

(1) by revising the heading of section 24706 to read as follows:

"§24706. Employee Protective Arrangements";

(2) by repealing subsections (a) and (b);

(3) by deleting "(c) EMPLOYEE PROTECTIVE ARRANGEMENTS.--" in subsection (c); and

(4) by deleting paragraph (6) and by inserting in lieu thereof the following new paragraphs (6) and (7):

"(6) For purposes of this section, employees of Amtrak refers to employees occupying positions subject to collective bargaining under the Railway Labor Act, 45 U.S.C. 151 et seq.

"(7) Notwithstanding the other provisions of this section and the implementing protective arrangement established for Amtrak employees (Appendix C-2 to Basic Agreement between Amtrak and the freight railroads), Amtrak and unions representing Amtrak employees may negotiate new employee protective arrangements for Amtrak employees that differ from the requirements of other portions of this section and from the terms of Appendix C-2. If a new protective arrangement is negotiated, provisions of this section and the terms of Appendix C-2 that are inconsistent with the new protective arrangement shall cease to apply to the bargaining unit covered by the new protective arrangement."

**SEC. 12. MISCELLANEOUS REPEALS IN CHAPTER 247**

(a) **REPEALS.**--Sections 24703, 24704, 24705, 24707 and 24708 of title 49, United States Code, are repealed.

(b) **CONFORMING.**--The remaining sections of Chapter 247 of title 49, United States Code, are renumbered appropriately.

**SEC. 13. BOSTON-NEW HAVEN ELECTRIFICATION PROJECT.**

(a) **ELECTRIFICATION SYSTEM.**--Section 24902(f) of title 49, United States Code, is amended--

(1) by inserting "(1)" before "Improvements under"; and

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

"(2) Amtrak shall design and construct an electrification system between Boston, Massachusetts, and New Haven, Connecticut. The electrification system shall be designed and constructed to accommodate the installation of a third mainline track between Davisville and Central Falls, Rhode Island, to be used for double-stack freight service to and from the Port of Davisville. Wherever practicable, Amtrak shall use portal structures and realign existing tracks on undergrade and overgrade bridges to minimize the width of the right-of-way required to add the third track. Amtrak shall take such other steps as may be required to coordinate and facilitate design and construction work."

(b) **AMTRAK REPORT.**--Amtrak shall, not later than 6 months after the date of enactment of this Act, transmit to the Congress a report detailing its electrification design between Davisville and Central Falls, Rhode Island, and describing efforts to comply with section 24902(f)(2) of title 49, United States Code.

**SEC. 14. COMPENSATION FOR TRANSPORTATION OVER THE NORTHEAST  
CORRIDOR.**

**(a) COMPENSATION FOR TRANSPORTATION OVER CERTAIN RIGHTS OF WAY AND FACILITIES.**--Section 24904(c)(2) of title 49, United States Code, is amended--

(1) by adding after the words "rail freight transportation" in the first sentence "or between intercity rail passenger and commuter rail passenger transportation";

(2) by adding after the words "rail freight carrier" in the second sentence "or a commuter authority"; and

(3) by adding at the end of the second sentence "or commuter authority."

**(b) NORTHEAST CORRIDOR COST DISPUTE.**--Section 1163 of the Northeast Rail Service Act of 1981 (45 U.S.C. 1111) is repealed.

#### **SEC. 15. NORTHEAST CORRIDOR IMPROVEMENT PROJECT.**

Section 24909 of title 49, United States Code, is amended--

(1) by revising subsection (a) to read as follows:

**"(a) CAPITAL IMPROVEMENTS.**--Amtrak shall make capital improvements for the Northeast Corridor improvement project under this title as necessary to operate reliable, high-speed rail passenger service, to enhance capacity for intercity and commuter passenger service, and as otherwise may be necessary to ensure continued reliable high-speed service. Amtrak shall also acquire train equipment to be used on the Northeast Corridor, mitigate environmental impacts related to the Northeast Corridor improvement project, and provide adequate parking at, and improve Northeast Corridor rail stations.";

(2) by revising subsection (b) to read as follows:

"(b) RHODE ISLAND THIRD TRACK.--(1) There are authorized to be appropriated to the Secretary to make grants to the State of Rhode Island, \$10,000,000 for the fiscal year ending September 30, 1996, and \$10,000,000 for the fiscal year ending September 30, 1997, to be used to design and construct a third track on the Northeast Corridor between Davisville and Central Falls, Rhode Island.

-(2) The third track shall be designed and constructed with sufficient clearance to accommodate double stack freight cars.

"(3) The funds provided by the Secretary to the State of Rhode Island to design and construct the third track shall be matched by the State of Rhode Island or its designee on a dollar for dollar basis. Notwithstanding other provisions of law, the State of Rhode Island is authorized to use other Federal transportation funds available to the State as the required matching funds.";

(3) by revising subsection (c) to read as follows:

"(c) AVAILABILITY OF AMOUNTS.--Amounts appropriated under this section remain available until expended."; and

(4) by striking subsections (d), (e), (f) and (g).

#### **SEC. 16. EFFECTIVE DATE.**

**Except as otherwise provided, this Act is effective on the date of enactment.**

**SECTION-BY-SECTION ANALYSIS OF  
THE AMTRAK RESTRUCTURING ACT OF 1995**

Section 1. This section provides that the act may be cited as the "Amtrak Restructuring Act of 1995."

Section 2. This section contains a number of proposed Congressional findings relating to the National Railroad Passenger Corporation (Amtrak) and its operation of intercity rail passenger service. This section describes a program for improving rail passenger service to be accomplished through this legislation consistent with internal changes within the Corporation to be accomplished by Amtrak's management and overseen by the Secretary of Transportation, as an ex officio member of the Amtrak Board of Directors. In particular, these findings recognize that intercity rail passenger service is an essential component of the integrated national transportation system. However, in order to achieve the full potential for this service, Amtrak must provide a quality transportation product in the form of clean, comfortable, and on-time service. The findings also note that Amtrak has been forced to significantly cut back its system of intercity rail passenger services in order to operate within the resources it has available and that further cutbacks may be necessary unless Amtrak is able to reduce its costs and increase its revenues. To succeed, Amtrak must work with all of its stakeholders.

Amtrak employs a dedicated work force of managers and employees who strive to provide the high level of service that the American public has a right to expect.

However, additional resources are needed to provide the necessary tools. As a result of the limited capital funding provided in the late 1980's and early 1990's, Amtrak's

equipment and facilities in many cases are outdated, inefficient, costly to operate and inadequate to meet the demand for intercity rail service. Additional capital resources are required. The capital funding provided for fiscal year 1995 represents an important first step. The capital resources authorized in this bill will further Amtrak's efforts to improve its equipment and facilities. Capital investment must also come from Amtrak's stakeholders including state and local governments and through innovative partnerships with the private sector.

With the added capital investment comes a responsibility on the part of Amtrak's management to utilize these resources efficiently and effectively so that service quality and the long-term financial health of the company improves.

The Secretary of Transportation is an ex officio member of the Amtrak Board and can and should use this position to ensure that Amtrak provides superior service to its customers and that the Federal funds provided to Amtrak are expended wisely and efficiently.

The findings recognize that the States play a significant role in working with Amtrak to provide cost efficient rail transportation, in addressing local transportation needs, and in facilitating improvements in air quality.

The bill also contains a finding related to the so called "Mandatory Payments", which represent payments Amtrak is required by law to make to the railroad retirement system and railroad unemployment system that are well in excess of amounts needed to fund benefits to Amtrak's employees and their beneficiaries. These payments are declared not to be a Federal operating subsidy of Amtrak but rather a subsidy of the

railroad retirement system as a whole.

Finally, the findings recognize that Federal financial assistance to cover Amtrak's operating losses should be gradually reduced over the period 1996 through 2001.

**Section 3.** This section contains several amendments to section 24101 of title 49 of the United States Code, in which Congress has established the findings, purpose, and goals relating to Amtrak's operation of rail passenger service.

**Finding number 6** would be modified to indicate that Amtrak should make itself available to assist state and local communities in operating commuter rail service but only to the extent that Amtrak is fully reimbursed for the costs incurred in operating such services.

A new goal would be added for Amtrak directing it to manage its capital investment in such a way as to provide its customers with world class service. An important component of Amtrak's future success is improving its responsiveness to its customers.

**Section 4.** This section repeals several definitions included in section 24102 of title 49, United States Code, that are no longer needed in light of other repeals made by this bill.

**Section 5.** This section revises section 24104 of title 49, United States Code, which authorizes appropriations to support the various activities undertaken by Amtrak. Subsection (a) authorizes appropriations for operating expenses for fiscal years 1996 and 1997.

Subsection (b) authorizes appropriations for capital investment for fiscal years

1996 and 1997. A thoughtful and judicious expenditure of capital funding is the key to rehabilitating Amtrak's intercity rail passenger services. These authorization levels, along with the funds provided to Amtrak in fiscal year 1995, represent a considerable increase over the capital funding provided in the late 1980's and early 1990's.

Subsection (c) authorizes \$40 million in fiscal year 1995 and \$50 million in fiscal year 1996 to be used by Amtrak to transform the James A. Farley Post Office Building in New York City into an intercity rail passenger terminal. Funds would also be available for necessary improvements and redevelopment of the existing Pennsylvania Station and the associated service building. The availability of the Farley Building provides a rare opportunity to improve intercity and commuter facilities in New York City where an already over-burdened facility is facing continued growth in intercity and commuter traffic.

Subsection (d) authorizes \$100 million in fiscal year 1996 to fund expenses associated with the long-term restructuring of the Corporation. Amtrak's Board of Directors has already initiated the first of a series of actions required to transform Amtrak into a leaner and more customer-focused transportation provider. These funds will be employed to assist in that effort.

Subsection (e) authorizes \$235 million in fiscal year 1996 and \$200 million in fiscal year 1997 for the Northeast Corridor improvement program.

Subsection (f) authorizes appropriations to the Secretary for fiscal years 1996 and 1997 for the purpose of making the so-called "mandatory payments." Under this authorization, the Secretary would make direct payments to the railroad retirement

trust fund and the railroad unemployment insurance account for expenditures in excess of the amounts required to support the retirement and unemployment costs of Amtrak employees. Both of the subject payments are presently based on the number of active employees. Because of the shifting demographics of the rail industry, with Amtrak employment historically stable or growing while freight employment has dropped significantly, Amtrak is, in effect, required to subsidize retirement and unemployment costs of freight railroad employees. The bill provides that these payments are not to be considered a Federal subsidy of Amtrak but rather a subsidy of the railroad retirement system as a whole. The bill also recognizes that while the Secretary is making payments to the Internal Revenue Service and Railroad Retirement Board on Amtrak's behalf up to the amounts authorized and appropriated by Congress, Amtrak remains responsible for meeting its financial obligations under existing law over and above the amounts provided by the Secretary.

Subsection (g) provides that appropriated amounts remain available until expended.

Subsection (h) states that funds provided to Amtrak for intercity rail passenger service may not be used to fund operating losses for rail freight services or commuter rail services.

Section 6. This section adds a new paragraph (3) to existing section 24312(b) of title 49, United States Code. Paragraph (1) of section 24312(b) currently prohibits Amtrak from contracting out work normally performed by an employee in a bargaining unit covered by a contract between a labor organization and Amtrak if the contracting

out results in the layoff of an employee in the bargaining unit. Existing paragraph (2) provides that paragraph (1) does not apply to food and beverage services provided on Amtrak trains. The new paragraph (3) would permit Amtrak and its unions to negotiate on the issue of allowing Amtrak greater flexibility in contracting out work; the restrictions of paragraph (1) would continue to apply until Amtrak and a union negotiate a collective bargaining agreement that permits Amtrak greater flexibility in contracting out work performed by the bargaining unit covered by the contract.

**Section 7.** This section amends existing section 24315 of title 49, United States Code, to broaden in several respects the report Amtrak provides to Congress each year. First, existing law requires Amtrak to include in its annual report certain specified information about each route it operates including, among other things, data on ridership, passenger miles, the short-term avoidable profit or loss, and revenues. The amendment proposed by section seven would expand these requirements to require Amtrak to also include data on the long-term profit or loss for the route for the previous fiscal year.

Section seven would also require Amtrak to include with its annual request for appropriations projections of the anticipated benefits of the projects proposed for funding and a report describing the benefits realized from all projects funded with funds authorized under the Rail Passenger Service Act for the previous year. The report would address, among other things, improvements in the quality of service offered by Amtrak, facility improvements that demonstrate a productivity gain, equipment improvements that lower operating costs, environmental benefits (including

air quality and land use), enhancements to local transportation needs, enhancements to the mobility of physically and economically disadvantaged persons, any improvement to the revenue-to-cost ratio, any reduced dependence on Federal operating support, and reductions in the need for alternative transportation investments. To the extent practicable, the benefits addressed in each report are to be expressed as return on invested capital. This section is intended to provide a comprehensive picture of the expected "return on capital investment" for the Administration and Congress jointly to base future funding support.

Section 8. This section contains several technical and miscellaneous repeals in Chapter 243 of title 49, United States Code. First, a technical amendment would be made in section 24302, which describes how commuter authority representatives are selected for the Amtrak Board of Directors. The existing statute was passed in 1981, with options to address several possible outcomes of the transfer of commuter rail operations from the Consolidated Rail Corporation to other operators. The commuter services were transferred in the early 1980's and, as a result, the unused options can be repealed.

Subsection (b) moves the provision authorizing Amtrak to cooperate with applicants proposing technology demonstration projects from section 24314 to section 24305, which is Amtrak's general authority section, and a more logical location for this authority.

Subsection (c) strikes several section references in section 24312(a) that are no longer relevant in light of other repeals made by the legislation.

Subsection (d) repeals sections 24310 and 24314 of title 49, United States Code. Section 24310 was enacted in 1988 to deal with the location of a particular gas storage facility adjacent to an Amtrak facility in Florida. The Secretary has issued his finding related to this facility, the provision has no continuing utility, and it can be repealed. Section 24314 authorizes Amtrak to develop and submit to Congress, prior to September 30, 1993, a plan for demonstrating new technologies and authorizes Amtrak to cooperate with other entities in developing new technologies. This plan has been submitted and Amtrak is otherwise authorized to assist in the development of new technologies, and section 24314 can be repealed.

Section 9. This section repeals Chapter 245 of title 49, United States Code, relating to an Amtrak subsidiary, the Amtrak Commuter Services Corporation (ACS). The provisions included in Chapter 245 were enacted by Congress in 1981 in connection with the transfer of commuter rail services from the Consolidated Rail Corporation (Conrail) to other operators. The creation of ACS was mandated by Congress in order to provide the state and local commuter authorities with the option of selecting a Northeast Corridorwide entity, ACS, if they did not elect to operate the services being dropped by Conrail themselves. Since all of the commuter authorities decided to operate their own services, ACS serves no useful purpose and the provisions establishing it can be repealed. As a District of Columbia corporation, Amtrak has the authority under the District of Columbia Business Corporation statute to create subsidiaries to the extent it should need to do so. Section 24501(g) relating to a tax exemption for certain commuter authorities is of continuing validity and would be retained and moved to

section 24301.

Section 10. This section makes major changes to Chapter 247 of title 49, United States Code, which describes the routes operated by Amtrak, how routes and services are added and removed, and Amtrak's operation of services in partnership with the States.

First, the detailed and very restrictive provisions governing Amtrak's route structure and how routes are added or discontinued would be repealed. These include sections 24703, 24705, 24706(a) and (b), and 24707. If Amtrak is to compete effectively with other transportation carriers, it has to have the flexibility to make route and service adjustments to meet demand and the resources available to it. Accordingly, Amtrak would be authorized to provide intercity rail passenger service on a route where it can serve an important transportation function and over the long term cover the full operating costs associated with providing the service. In addition, Amtrak's decisions regarding intercity rail passenger service are to be made on the basis of available financial resources. Finally, route and service decisions have to be made recognizing that Federal funding for operating expenses will decrease over the fiscal year 1996 through 2001.

In making service discontinuances, Amtrak would be required to consult with the affected States, local governments, and other interested parties at least 90 days prior to implementing the discontinuance. The 90 days could be shortened in an emergency situation if the Secretary of Transportation were convinced based on evidence supplied by Amtrak that providing the full 90 days would be detrimental to the interests of

Amtrak. The increased flexibility is also designed to assist Amtrak in reducing its need for Federal operating subsidies. Other provisions that restrict the Corporation's ability to operate in a efficient, business-like manner, such as section 24708 requiring the operation of certain commuter services, would also be repealed.

Statutory provisions establishing a separate class of service operated in cooperation with state and local governments (the so-called "403(b)" services) would be repealed. The continued viability of intercity rail passenger service will depend on State and local support for most of Amtrak's routes. As a result, there is no continuing need for a separate 403(b) program. Amtrak has sufficient authority under existing law and through revised section 24701 to enter into appropriate agreements with other entities to support rail passenger service.

Section 11. This section contains an important provision related to providing Amtrak with increased flexibility to collectively bargain with its employees through their collective bargaining representatives. Two new paragraphs would be added to existing section 24706(c) of title 49, United States Code. Section 24706(c) requires labor protective arrangements for Amtrak employees who are affected by a discontinuance of Amtrak intercity passenger service. Amtrak entered into a specific protective agreement, approved by the Secretary of Labor, that provides affected Amtrak employees with one year of labor protection for each year of prior service up to a maximum of six years' pay. New paragraph (6) provides that employees of Amtrak, for purposes of section 24706(c), refers only to employees occupying positions subject to collective bargaining under the Railway Labor Act, 45 U.S.C. 151 et seq.; Amtrak

senior management employees would not be entitled to labor protection under section 24706(c) and any implementing agreements. New paragraph (7) would permit Amtrak and unions representing Amtrak employees to negotiate new employee protective arrangements; the existing protections would continue to apply until new terms are negotiated.

**Section 12.** This section contains a series of repeals in chapter 247 that were discussed previously in section 10. These repeals eliminate restrictions on Amtrak's ability to independently manage its route structure and the services it provides.

**Section 13.** This section requires Amtrak to design and construct the electrification system between Boston and New Haven and to ensure that it accommodates the installation of a third mainline track between Davisville and Central Falls, Rhode Island to be used for double-stack freight service to and from the Port of Davisville. Amtrak would also be required to report to Congress on its electrification design.

**Section 14.** This section amends section 24904 of title 49, United States Code, to require Amtrak and the commuter railroads that use the Northeast Corridor to negotiate new compensation agreements governing the amount these users of the corridor pay Amtrak for the right to operate over these lines. While Amtrak is the owner of much of the Northeast Corridor, commuter authorities are the predominate users. Yet, Amtrak bears a far larger percentage of the costs of operating and maintaining this important transportation resource. If the parties are unable to reach agreement on new contracts, an appeal could be made to the Interstate Commerce

Commission (ICC) or its successor. The dispute would be resolved applying the principle that each user of the rail line should be responsible for the costs Amtrak incurs for that user as well as a proportionate share of all other costs of providing transportation over the Northeast Corridor that are incurred for the common benefit of Amtrak and the other users. The Department has proposed a successor entity to the ICC, but will make the needed drafting changes available in a separate proposal.

This section also repeals the ICC's existing authority to resolve Northeast Corridor access disputes found at section 1111 in title 45 of the United States Code.

Section 15. This section provides a new authorization for the Northeast Corridor improvement project replacing the outmoded project-specific authorization included in current law. Amtrak would be authorized to undertake capital improvements as necessary to operate reliable, high-speed rail service, to enhance capacity, and to mitigate environmental concerns and to acquire high-speed equipment.

Section fifteen also provides an authorization for the Secretary to fund jointly with the State of Rhode Island the construction of a third track on the Northeast Corridor between Davisville and Central Falls, Rhode Island. The third track would serve rail freight users and facilitate operation of high-speed rail service on this section of the Northeast Corridor. The third track would be designed and constructed with sufficient clearance to accommodate double stack freight cars. Fifty percent of the cost of the project would be provided by the State of Rhode Island or its designee. In addition, the state would be authorized to satisfy the funding match requirement employing other Federal transportation funds available to the State.

**Section 16. This section provides that the statutory changes adopted through this bill would become effective upon the date of enactment unless otherwise provided.**

*Janno - FYI,*  
*(97P)*

BILL TEXT Report for S.674  
As introduced in the Senate, April 4, 1995

-----  
-----  
S.674 As introduced in the Senate, April 4, 1995  
-----

II

104th CONGRESS  
1st Session

S. 674

Entitled the "Rail Investment Act of 1995".

-----  
IN THE SENATE OF THE UNITED STATES  
April 4 (legislative day, March 27), 1995  
Mr. Exon (for himself, Mr. Dorgan, Mr. Kerry, and Mr. Moynihan) introduced  
the following bill; which was read twice and referred to the Committee on  
Commerce, Science, and Transportation

-----  
A BILL  
Entitled the "Rail Investment Act of 1995".  
=====

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Rail Investment Act of 1995".

TITLE I--RAIL INVESTMENT ACT OF 1995

SEC. 101. SHORT TITLE.

This title may be cited as the "Rail Investment and Efficiency Act of  
1995".

## SEC. 102. FINDINGS.

The Congress finds that--

(1) intercity rail passenger service is an essential component of the integrated national transportation system; however, to achieve its full potential the National Railroad Passenger Corporation (herein also referred to as "Amtrak") must provide a quality transportation product in the form of clean, comfortable, and on time service;

(2) Amtrak's management and employees are dedicated to providing the high quality service that Amtrak's customers deserve; however, additional capital investment is needed to acquire the modern equipment and efficient facilities that are essential to satisfy the demand for superior intercity rail passenger service;

(3) significant levels of Federal capital investment will enable Amtrak to provide the world class service American rail passengers deserve, and will reduce operating costs in the long term;

(4) Amtrak's management should be held accountable to ensure that all capital investment by the Federal Government is effectively used to improve the quality of service and the long-term financial health of Amtrak;

(5) the Secretary of Transportation, as an ex officio member of Amtrak's board of directors, should use this position to evaluate Amtrak's costs and revenue elements to ensure that Amtrak provides excellent service to its customers and that Amtrak uses its Federal investment wisely and efficiently; and

(6) States can play a significant role in providing cost efficient intercity rail passenger transportation and in addressing local transportation needs and air quality control and should be given the maximum flexibility in their use of funds authorized by the Intermodal Surface Transportation Efficiency Act of 1991, in order to provide transportation services to their citizens.

## SEC. 103. WORLD CLASS SERVICE.

Section 24101(c) of title 49, United States Code, is amended by redesignating paragraphs (10) and (11) as (12) and (13), respectively, and inserting after paragraph (9) the following:

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

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

## SEC. 104. RETURN ON INVESTMENT.

Section 24315(b) of title 49, United States Code, is amended by redesignating paragraph (2) as (3), and by inserting after paragraph (1) the following:

"(2) Amtrak shall include in the report required under paragraph (1) projections of the anticipated benefits of the project proposed for funding under this part and a report on the benefits actually realized from all projects previously funded under this part or the Rail Passenger Service Act beginning with funds provided in fiscal year 1995. The report shall include an identification of improvements in the quality of service offered by Amtrak, facility improvements that demonstrate a productivity gain, equipment improvements that lower operating costs, environmental benefits (including air quality and land use benefits), enhancements to local transportation needs, enhancements to mobility of physically and economically disadvantaged persons, any improvement of the revenue-to-cost ratio, any reduced dependence on Federal operating support, and reductions in the need for alternative transportation investments. To the extent practicable, the benefits addressed in each report shall also be expressed as return on invested capital."

#### SEC. 105. STATE REQUESTED RAIL PASSENGER SERVICE.

(a) Financing.--Section 24704(a)(1)(C) of title 49, United States Code, is amended to read as follows:

"(C) include a statement by such State, agency, or person that it agrees to pay in each year of operation of any such service a portion, to be negotiated with the President of Amtrak and mutually agreed upon, of the long-term avoidable losses of operating such service and the associated capital costs."

(b) Comprehensive Review.--The Secretary of Transportation shall conduct a comprehensive review of the program of State-assisted rail passenger services operated by the National Railroad Passenger Corporation under section 24704 of title 49, United States Code, and shall submit a report to the Congress detailing Amtrak's findings with affected section 403(b) States and conclusions, including any recommendations Amtrak may have with respect to the payment for such State-assisted rail passenger service. The report shall address, among other things, how and under what terms and conditions services originated under that section shall be paid for and shall identify any other avenues for initiating and implementing new rail passenger services.

(c) Effective Date.--The amendments made by this section shall apply only with respect to fiscal year 1997 and subsequent fiscal years.

#### SEC. 106. NORTHEAST CORRIDOR IMPROVEMENT PROJECT.

(a) Capital Improvements.--Section 24909(a) of title 49, United States Code, is amended to read as follows:

"(a) Capital Improvements.--The National Railroad Passenger Corporation shall make capital improvements for the Northeast Corridor improvement project under this title as necessary to operate reliable, high-speed rail passenger service, to enhance capacity for intercity and commuter passenger service, and as otherwise may be necessary to ensure continued reliable high-speed service. Such Corporation shall also acquire train equipment to be used on the Northeast Corridor, mitigate environmental impacts related to the Northeast Corridor improvement project, and provide adequate parking at and improve Northeast Corridor rail stations."

(b) Substitution and Deferral No Longer Allowed.--Section 24909 of title 49, United States Code, is amended by striking subsection (e).

#### SEC. 107. AUTHORIZATION OF APPROPRIATIONS.

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

"Sec. 24104. Authorization of appropriations.

"(a) Operating Expenses.--

"(1) Core system.--There are authorized to be appropriated to the Secretary for the benefit of Amtrak for operating expenses \$260,000,000 for fiscal year 1996.

"(2) State requested service.--There are authorized to be appropriated to the Secretary for the benefit of Amtrak for meeting its obligations under section 24704 of this title \$17,000,000 for fiscal year 1996.

"(b) Capital Investment.--There are authorized to be appropriated to the Secretary for the benefit of Amtrak for capital investment expenditures \$365,000,000 for fiscal year 1996.

"(c) Intercity Rail Passenger Station.--There are authorized to be appropriated to the Secretary for the benefit of Amtrak \$40,000,000 for fiscal year 1995 and \$50,000,000 for fiscal year 1996 to be used for engineering, design, and construction activities to enable the James A. Farley Post Office in New York, New York, to be used as a train station and commercial center and for necessary improvements and redevelopment of the existing Pennsylvania Station and associated service building in New York, New York.

"(d) Northeast Corridor Improvement Project.--There are authorized to be appropriated to the Secretary for the benefit of Amtrak for making capital expenditures under section 24909 of this title \$235,000,000 for fiscal year 1996.

"(e) Mandatory Payments.--There are authorized to be appropriated to the Secretary \$120,000,000 for fiscal year 1996 for the payment of--

"(1) tax liabilities under section 3221 of the Internal Revenue Code of 1986 due in such fiscal years in excess of amounts needed to fund benefits for individuals who retire from Amtrak and for their beneficiaries;

"(2) obligations of Amtrak under section 8(a) of the Railroad Unemployment Insurance Act (45 U.S.C. 358(a)) due in such fiscal years in excess of its obligations calculated on an experience-rated basis; and

"(3) obligations of Amtrak due under section 3321 of the Internal Revenue Code of 1986.

"(f) Authorization of Appropriations.--Notwithstanding section 6304 of title 31, United States Code, funds for operating expenses appropriate under this section for fiscal year 1996 shall be provided to Amtrak upon appropriation when requested by Amtrak.

"(g) Exclusion of On-time Performance Payments.--Amounts expended by Amtrak to other railroad entities as payment for the entities, on-time performance shall be excluded from the calculation of the rail entities' income."

#### SEC. 108. LEGALIZATION OF CERTAIN CONVEYANCES.

(a) In General.--Notwithstanding any other provision of law to the contrary but subject to subsection (c), the conveyances described in subsection (b) are hereby validated to the extent that the conveyances would have been legal or valid if the land involved in the conveyances had been held by the Southern Pacific Transportation Company under absolute or free-simple title.

(b) Conveyances.--The conveyances described in this subsection are the conveyances made by the Southern Pacific Transportation Company on or before December 12, 1992, that--

(1) formed part of a railroad right-of-way granted to the Central Pacific Railroad Company of California, or its successors or assigns, by the Federal Government; and

(2) are located within the boundaries of the downtown redevelopment area of the City of Reno, Nevada (as defined and determined by the Secretary of Transportation, in consultation with the appropriate official of the City of Reno, Nevada).

(c) Filing of Instruments.--As soon as practicable after the date of enactment of this Act, the Secretary of Transportation shall file for recordation in the real property records of Washoe County, Nevada, such instruments as are necessary to document the conveyances described in subsection (b) that are validated under subsection (a).

#### SEC. 109. MISSOURI RIVER CORRIDOR DEVELOPMENT PROGRAM.

(a) Feasibility Study.--Within 6 months of the date of enactment of this Act, Amtrak, in consultation with officials of the affected States and private rail carriers, shall develop and submit to the Congress a report addressing the feasibility, efficiency, and effectiveness of instituting rail passenger service between Kansas City, Missouri, and Omaha, Nebraska, as well as potential extensions or connections of service in the States of Iowa, Nebraska, Missouri, Montana, North Dakota, South Dakota, Oklahoma, and Kansas that might enhance the ridership or revenues of Amtrak service. The report shall compare estimated costs and revenues of this service to other existing and planned intercity rail passenger operations and identify the benefits such service might provide in helping Amtrak to provide a balanced system of intercity rail passenger transportation. The report shall identify the capital and operating costs associated with such operations and possible sources of support for these costs, including operation of this service as part of the basic system of intercity rail passenger transportation provided under section 24701 of title 49, United States Code, or operation of this service in cooperation with the affected States under section 24704 of such title.

(b) Eligible Projects.--To the extent of funds appropriated under subsection (d), Amtrak shall carry out a Missouri River Corridor Development Program the purpose of which is to improve intermodal rail station facilities in the Missouri River Corridor used or planned for use in Amtrak service, and to purchase rail passenger equipment to be used in connection with existing or planned Amtrak service in the Missouri River Corridor. In selecting from among eligible projects, Amtrak shall choose projects that will contribute to increased ridership, revenues, or the development of significant intermodal transportation facilities.

(c) Cost Sharing.--Fifty percent of the cost of improvements or capital acquisitions made under subsection (b) shall be paid by a State, local, or regional transportation authority or other responsible party. Amtrak may enter into agreements under which Amtrak will carry out the necessary improvements or capital acquisitions and be reimbursed by the responsible party or parties.

(d) Funding.--There are authorized to be appropriated to the Secretary of Transportation for fiscal year 1996 not more than \$7,000,000, such sums to remain available until expended, for use by, or for the benefit of, Amtrak for making capital expenditures associated with the Missouri River Corridor Development Program in carrying out subsection (b).

(e) Definition.--As used in this title, the term "Missouri River Corridor" means Iowa, Nebraska, Missouri, Montana, North Dakota, South Dakota, Oklahoma, and Kansas.

#### **SEC. 110. EXEMPTIONS FOR NORTHEAST CORRIDOR IMPROVEMENT PROJECT.**

Section 24902 of title 49, United States Code, is amended by adding at the end the following new subsection:

"(m) Applicable Exemptions and Procedures.--For the purpose of any State

or local requirement for permit or other approval for construction of any improvement undertaken by Amtrak as part of the Northeast Corridor Improvement Project, the exemptions and procedures applicable to a project undertaken by the Federal Government or an agency thereof shall apply."

#### SEC. 111. BOSTON-NEW HAVEN ELECTRIFICATION PROJECT.

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

(1) by inserting "(1)" before "Improvements under"; and

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

"(2)(A) Amtrak shall design and construct the electrification system between Boston, Massachusetts, and New Haven, Connecticut, to accommodate the installation of a third mainline track with an overhead clearance of 20'7" between Davisville and the Boston Switch at Central Falls, Rhode Island, to be used for double-stack and tri-level automobile freight service to and from the Port of Davisville. Wherever practicable, Amtrak shall use portal structures with foundations of adequate depth and realign existing tracks on and near undergrade and overgrade bridges to minimize the width of the right-of-way required to add the third track. Amtrak shall take such other steps as may be required to coordinate and facilitate design and construction work.

"(B) Amtrak shall, not later than 6 months after the date of enactment of the Rail Investment Act of 1995, transmit to the Congress a report detailing its electrification design between Davisville and the Boston Switch at Central Falls, Rhode Island, and describing efforts to comply with this paragraph."

#### SEC. 112. CAPITAL AND EQUIPMENT ACQUISITION ACCOUNT.

(a) Amendment.--Chapter 243 of title 49, United States Code, is amended by adding at the end the following new section:

Sec. 24316. Capital and equipment acquisition account.

"(a) Establishment.--Amtrak shall establish a Capital and Equipment Acquisition Account. Amounts in this account shall be used--

"(1) to acquire passenger equipment and locomotives;

"(2) to encourage State and local investment in facilities and equipment used to provide intercity rail passenger transportation; and

"(3) to address other critical capital priorities.

"(b) Deposits.--Amtrak may deposit into the Capital and Equipment Acquisition Account--

"(1) payments received for the use of its equipment or facilities;

"(2) claims recovered by Amtrak;

"(3) amounts from any other source to the extent authorized by Federal law; and

"(4) amounts paid by Amtrak as taxes on the cost of fuel required for its operations."

"(b) Clerical Amendment.--The table of sections for chapter 243 of title 49, United States Code, is amended by adding at the end the following new item:

"24316. Capital and equipment acquisition account."

#### **SEC. 113. BOARD MEMBER.**

Section 24302(a)(1)(E) of title 49, United States Code, is amended by inserting before the period a comma and the following: "one of such members shall be specially qualified to represent the interests of rail passengers and shall be selected from a list of three qualified individuals recommended by the National Association of Railroad Passengers."

#### **SEC. 114. PILOT PROGRAM.**

Amtrak shall implement a program to increase non-Federal revenues through the sale of concessions and use of vending machines on trains and the sale of advertising space on trains and in rail stations. The program should accommodate existing contracting agreements between Amtrak and relevant labor groups.

#### **SEC. 115. COOPERATION WITH STUDY.**

Amtrak shall cooperate with the efforts of the Virginia State Department of Transportation in designing and carrying out a study on the feasibility of reestablishing rail service between Washington, DC, and Bristol, Virginia.

#### **SEC. 116. RAIL AND MOTOR CARRIER PASSENGER SERVICE.**

Notwithstanding any other provision of law Amtrak and motor carriers of passengers are authorized--

(1) to combine or package their respective services and facilities to the public as a means of increasing revenues;

(2) to coordinate schedules, routes, rates, reservations, ticketing to provide for enhanced Intermodal surface transportation.

Such authority shall be subject to the review of the Interstate Commerce

Commission or its successor and such authority may be modified or revoked by the Interstate Commerce Commission or its successor if in the public interest.

#### SEC. 117. CENTRAL ARTERY RAIL LINK.

(a) In General.--Upon completion of the preliminary engineering and design for the rail connection between North Station and South Station in Boston, Massachusetts, Amtrak shall develop a plan for final design and construction of the Central Artery Rail Link to enable intercity and intracity passenger service between North Station and South Station in Boston, Massachusetts. While this plan shall utilize construction efficiencies available to the Central Artery Rail Link based on its physical and schedule compatibility to the Central Artery Tunnel Project, Amtrak is directed to work with the Federal Highway Administration to ensure that the rail link shall have no significant impact on the Central Artery Tunnel Project design and construction schedule. Based upon the findings of the Federal Transit Administration's feasibility study and financial analysis, Amtrak is directed to identify a dedicated source of funding, other than the Federal Highway Trust Fund, within the Department of Transportation for completion of the project.

(b) Authorization of Appropriations.--There are authorized to be appropriated to the Secretary for the benefit of Amtrak \$40,000,000 for fiscal year 1996 and \$40,000,000 for fiscal year 1997 for the engineering, design, and construction of excavation support walls for the Central Artery Tunnel Project to facilitate construction of a rail tunnel under the depressed section of the highway. Amtrak is authorized to contribute no more than 80 percent of the total cost of engineering, design, and construction.

#### SEC. 118. EMERGENCY TRAINING AND RESPONSE.

(a) Task Force.--The National Railroad passenger Corporation, together with representatives from each of the on-board service and operating crafts and unions, shall form a task force to consider recommendations for improving emergency training and performance of on-board service and operating crew members. A representative of the Federal Railroad Administration shall serve on the task force. The task force shall convene its first meeting within 90 days following the date of enactment of this section.

(b) Matters To Be Considered.--The task force formed under subsection (a) shall consider, at a minimum--

(1) whether the Corporation's emergency training and drill program as presently constituted is adequate, and if not, in what ways it can be augmented or improved;

(2) whether medical first-aid training, including cardiopulmonary resuscitation, should be required for all on-board service crew members;

(3) whether the Corporation's requirements with respect to employee responsibilities for passenger evacuation, emergency communications, crew

coordination, and disaster response should be coordinated; and

(4) whether certification of the Corporation's emergency training program and evacuation procedures by the Federal Railroad Administration is warranted.

In considering the matters described in paragraphs (1) through (4), the task force shall address relevant prior recommendations and findings by the National Transportation Safety Board.

(c) Report.--Not later than June 1, 1995, the task force shall report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on its findings in subsection (b), together with a summary of actions implemented to date and recommendations for future action.

## TITLE II--LOCAL RAIL FREIGHT ASSISTANCE

### SEC. 201. AUTHORIZATION OF APPROPRIATIONS.

Section 22108(a) of title 49, United States Code, is amended--

(1) by inserting after paragraph (1)(B) the following:

"(C) \$30,000,000 for each of the fiscal years ending September 30 of 1995, 1996, and 1997."; and

(2) by striking "any period after September 30, 1994," in paragraph (3) and inserting "any period after September 30, 1997,".

### SEC. 202. DISASTER FUNDING FOR RAILROADS.

Section 22101 of title 49, United States Code, is amended by redesignating subsection (d) as (e), and by inserting after subsection (c) the following:

"(d) Disaster Funding for Railroads.--

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

"(A) waive the requirements of this section;

"(B) consider the extent to which the State has available unexpended local rail freight assistance funds or available repaid loans; and

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

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

"(3) Funds provided under this subsection shall remain available until expended."

#### SEC. 203. GRADE-CROSSING ELIGIBILITY.

Section 22101(a) of title 49, United States Code, is amended--

(1) by striking "and" after the semicolon in paragraph (2);

(2) by striking the period at the end of paragraph (3) and inserting a semicolon; and

(3) by adding at the end thereof the following new paragraphs:

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

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

#### SEC. 204. DEDICATED TRUST FUND.

(a) In General.--Chapter 243 of title 49, United States Code, is amended by adding at the end the following new section:

"Sec. 24316. Capital and Equipment Acquisition Account

"(a) Establishment.--Amtrak shall establish a Capital and Equipment Acquisition Account. Amounts in this account shall be used by Amtrak to--

"(1) acquire passenger equipment and locomotives;

"(2) encourage State and local investment in facilities and equipment used to provide intercity rail passenger transportation; and

"(3) address other critical capital priorities.

"(b) Deposits.--Amtrak may deposit into the Capital and Equipment Acquisition Account--

"(1) payments received for the use of its equipment or facilities;

"(2) claims recovered by Amtrak; and

"(3) amounts from any other source to the extent authorized by Federal law."

(b) Clerical Amendment.--The table of sections for such chapter is

amended by adding at the end the following item:

"24316. Capital and equipment acquisition account."

#### **SEC. 205. GRANT RELEASE DATE.**

Section 24104 of title 49, United States Code, is amended by striking the last sentence of subsection (d) and inserting the following: "In each fiscal year in which amounts are authorized under this section, amounts appropriated shall be paid to Amtrak on the first day of the fiscal year."

#### **SEC. 206. REPEAL OF OBSOLETE OR UNNECESSARY PROVISIONS.**

The following provisions of title 49, United States Code, are repealed:

- "(1) The first sentence of section 24302(d).
  - "(2) Section 24305.
  - "(3) Section 24307(b).
  - "(4) Section 24310(b).
  - "(5) Section 24313.
  - "(6) Section 24314.
  - "(7) Section 24315(a)(2).
  - "(8) Chapter 245 except subsections (g) and (h) of section 24501.
  - "(9) Section 24702.
  - "(10) Section 24706(c)(6).
  - "(11) Section 24903.
-

*Janno - FYI, if you haven't  
already seen. (JTP)*

**Amtrak** Government & Public Affairs

60 Massachusetts Avenue, NE Washington, DC 20002

**fax** t r a n s m i t t a l

*Copies to:  
- Kaplan  
- Stzloff  
- Lieber*

to: Hon. MORT DOWNEY

fax #:

from: Tom Downs

date: 4-13-95

re: Shutts DRAFT Bill + Section by Section

pages: 32

**NOTES:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If you do not receive the proper number of pages, or they are not legible please call \_\_\_\_\_  
at telephone number :202) 906-\_\_\_\_\_

F: TB RR AMT95.001

*Shuck/Molina* H.C.

[STAFF DRAFT]

APRIL 5, 1995

104TH CONGRESS  
1ST SESSION

H. R. \_\_\_\_\_

IN THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_ introduced the following bill: which was referred to the Committee  
on \_\_\_\_\_

A BILL

To reform the statutes relating to Amtrak, to authorize appropriations for Amtrak, and for other purposes.

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

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the "Amtrak Reauthoriza-  
5 tion and Reform Act of 1995".

# TITLE I—PROCUREMENT REFORMS

## SEC. 101. CONTRACTING OUT.

Section 24312 of title 49, United States Code, is amended—

(1) by striking “(1)” after “HEALTH AND SAFETY STANDARDS.—”;

(2) by striking subsection (b); and

(3) by striking “(2)” before “Wage rates in a collective” and inserting in lieu thereof “(b) RELATION TO OTHER LAW.—”.

## SEC. 102. BELOW-COST COMPETITION.

Section 24305(b) of title 49, United States Code, is amended to read as follows:

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

“(2) Any aggrieved individual may commence a civil action for violation of paragraph (1). The United States

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

12 **SEC. 102. FREEDOM OF INFORMATION ACT.**

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

16 **TITLE II—OPERATIONAL**  
17 **REFORMS**

18 **SEC. 201. BASIC SYSTEM.**

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

23 (b) **IMPROVING RAIL PASSENGER TRANSPORTATION.**—Section 24702 of title 49, United States Code,  
24

1 and the item relating thereto in the table of sections of  
2 chapter 247 of such title. are repealed.

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

5 (1) in subsection (a)(1)—

6 (A) by striking “a discontinuance under  
7 section 24704 or 24707(a) or (b) of this title”  
8 and inserting in lieu thereof “discontinuing  
9 service over a route”: and

10 (B) by inserting “or assume” after “agree  
11 to share”:

12 (2) in subsection (a)(2), by striking “section  
13 24704 or 24707(a) or (b) of this title” and inserting  
14 in lieu thereof “paragraph (1)”: and

15 (3) by striking subsection (b).

16 (d) COST AND PERFORMANCE REVIEW.—Section  
17 24707 of title 49, United States Code. and the item relat-  
18 ing thereto in the table of sections of chapter 247 of such  
19 title. are repealed.

20 (e) SPECIAL COMPUTER TRANSPORTATION.—Section  
21 24708 of title 49, United States Code. and the item relat-  
22 ing thereto in the table of sections of chapter 247 of such  
23 title. are repealed.

1 (f) CONFORMING AMENDMENT.—Section

2 24312(a)(1) of title 49, United States Code, is amended

3 by striking “. 24701(a).”

4 SEC. 202. MAIL EXPRESS AND AUTO-FERRY TRANSPOR-

5 TATION.

6 Section 24306 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. 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. 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 (2) Subsection (a) of this section shall not affect any  
2 trackage rights held by Amtrak or the Consolidated Rail  
3 Corporation.

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

6 (a) DETERMINATION OF COMPENSATION.—Section  
7 24904(c) of title 49, United States Code, is amended—

8 (1) in paragraph (2)—

9 (A) by striking "Interstate Commerce  
10 Commission" and inserting in lieu thereof "Sec-  
11 retary of Transportation";

12 (B) by striking "between intercity rail pas-  
13 senger and rail freight transportation" and in-  
14 serting in lieu thereof "among intercity rail pas-  
15 senger, commuter rail passenger, and rail  
16 freight transportation"; and

17 (C) by striking "Commission shall assign  
18 to a" and inserting in lieu thereof "Secretary  
19 shall assign to a commuter rail carrier or"; and

20 (2) in paragraph (3), by striking "Commission"  
21 and inserting in lieu thereof "Secretary".

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

24 "(d) MINIMIZING GOVERNMENT SUBSIDIES.—To  
25 carry out this part, Amtrak is encouraged to make agree-

1 ments with the private sector and undertake initiatives  
 2 that are consistent with good business judgment, that  
 3 produce income to minimize Government subsidies, and  
 4 that promote the potential privatization of Amtrak's oper-  
 5 ations."

6 **TITLE III—EMPLOYEE**  
 7 **PROTECTION REFORMS**

8 **SEC. 301. SERVICE DISCONTINUANCE.**

9 (a) **LIMITATIONS.**—Section 24706 of title 49, United  
 10 States Code, is amended—

- 11 (1) by striking subsection (c); and
- 12 (2) by adding at the end the following new sub-  
 13 section:

14 **"(b) EMPLOYEE PROTECTION ARRANGEMENTS.—(1)**  
 15 Notwithstanding any arrangement in effect before the  
 16 date of the enactment of the Amtrak Reauthorization and  
 17 Reform Act of 1995, no employee of Amtrak whose em-  
 18 ployment is terminated as a result of a discontinuance of  
 19 intercity rail passenger transportation shall receive any  
 20 wage continuation or severance benefit in excess of 6  
 21 months pay.

22 **"(2) Notwithstanding any arrangement in effect be-**  
 23 **fore the date of enactment of the Amtrak Reauthorization**  
 24 **and Reform Act of 1995, Amtrak may require an em-**  
 25 **ployee whose position is eliminated as a result of a dis-**

1 continuance of intercity rail passenger transportation to  
2 transfer to any vacant position for which the employee can  
3 be made qualified on any part of Amtrak's system. If such  
4 transfer requires a change in residence or seniority dis-  
5 trict, the employee shall choose—

6           “(A) to transfer to the position and be covered  
7 by the collective bargaining agreement applicable to  
8 the seniority district to which he is transferred; or

9           “(B) to voluntarily furlough himself at his  
10 home location and receive protective benefits not in  
11 excess of the amount authorized under paragraph  
12 (1).

13 For purposes of this paragraph, a transfer shall be consid-  
14 ered to require a change in residence if the new employ-  
15 ment is more than 30 miles from the employee's place of  
16 residence and is farther from that residence than was the  
17 former work location.”.

18           **(b) TIME LIMIT FOR AGREEMENTS.**—If Amtrak and  
19 its employees have not entered into an agreement for the  
20 protection of the interests of such employees to conform  
21 to the amendments made by this section within 6 months  
22 after the date of the enactment of this Act, all authoriza-  
23 tions of appropriations for Amtrak are repealed.

24           **(c) NO EFFECT ON CERTAIN AGREEMENTS.**—The  
25 amendment made by subsection (a) shall not affect the

1 validity of any agreement entered into before the date of  
2 the enactment of this Act under section 11347 or 5333  
3 of this title.

4 (d) CLARIFICATION AMENDMENTS.—(1) The last  
5 sentence of section 11347 of title 49, United States Code.  
6 is amended to read as follows: “No arrangement entered  
7 into under this section after the date of the enactment  
8 of the Amtrak Reauthorization and Reform Act of 1995  
9 shall be required to provide for wage continuation or sever-  
10 ance benefits at a level in excess of that required under  
11 this section before February 5, 1976.”

12 (2) Section 5333(b) of title 49, United States Code.  
13 is amended by adding at the end the following new para-  
14 graph:

15 “(4) No arrangement entered into under this sub-  
16 section after the date of the enactment of the Amtrak Re-  
17 authorization and Reform Act of 1995 shall be required  
18 to provide for wage continuation or severance benefits at  
19 a level in excess of that required under section 11347 of  
20 this title before February 5, 1976.”

21 (e) INTERCITY PASSENGER SERVICE EMPLOYEES.—  
22 Section 1165 of the Northeast Rail Service Act of 1981  
23 (45 U.S.C. 1113) is repealed.

24 (f) TECHNICAL AMENDMENT.—Section 11347 of title  
25 49, United States Code, is amended by striking “sections

1 24307(c), 24312, and" and inserting in lieu thereof "sec-  
2 tion".

3 **TITLE IV—USE OF FACILITIES BY**  
4 **FREIGHT RAILROADS**

5 **SEC. 401. COMPENSATION.**

6 (a) **COMPENSATION ARBITRATION.**—(1) Section  
7 24308(a) of title 49, United States Code, is amended—

8 (A) by amending paragraph (2)(A) to read as  
9 follows:

10 "(2)(A) If the parties cannot agree and if the Sec-  
11 retary of Transportation finds it necessary to carry out  
12 this part—

13 "(i) the Secretary shall order that the facilities  
14 be made available and the services provided to Am-  
15 trak; and

16 "(ii) an arbitrator selected jointly by the parties  
17 shall determine reasonable terms and compensation  
18 for using the facilities and providing the services.";

19 (B) in paragraph (2)(B), by striking "prescrib-  
20 ing reasonable compensation under subparagraph  
21 (A) of this paragraph, the Commission" and insert-  
22 ing in lieu thereof "determining reasonable com-  
23 pensation under subparagraph (A)(ii) of this para-  
24 graph, the arbitrator"; and

F: TB RR AMT95.001

ELC.

12

1 (C) by amending paragraph (2)(C) to read as  
2 follows:

3 "(C) The Secretary shall issue an order under sub-  
4 paragraph (A)(i), and the arbitrator shall make a deter-  
5 mination under subparagraph (A)(ii), not later than 90  
6 days after Amtrak submits the dispute to the Secretary."

7 (2) Section 24308(e)(3) of title 49, United States  
8 Code, is amended by striking "Commission shall decide  
9 the dispute" and inserting in lieu thereof "dispute shall  
10 be decided".

11 (b) OPERATING DURING EMERGENCIES.—Section  
12 24308(b) of title 49, United States Code, is amended by  
13 striking "Commission" both places it appears and insert-  
14 ing in lieu thereof "Secretary of Transportation".

15 (c) CONFORMING AMENDMENT.—Section 10362(b)  
16 of title 49, United States Code, is amended by striking  
17 paragraph (5) and redesignating paragraphs (6) through  
18 (8) as paragraphs (5) through (7), respectively.

19 SEC. 402. LIABILITY LITIGATION.

20 (a) AMENDMENT.—Chapter 291 of title 49, United  
21 States Code, is amended by adding at the end the follow-  
22 ing new section:

1 "§28103. Limit on rail passenger transportation li-  
2 ability

3 "(a) LIMITATIONS.—Notwithstanding any other law  
4 or public policy, in claims for personal injury, death, or  
5 damage to property arising in connection with the provi-  
6 sion of intercity rail passenger transportation or com-  
7 muter rail passenger transportation, or in connection with  
8 any operations over, or use of, right-of-way or facilities  
9 owned or maintained by Amtrak—

10 "(1) no punitive or exemplary damages may be  
11 awarded to any claimant by a court, administrative  
12 agency, or arbitrator.

13 "(2) damages awarded to any claimant shall  
14 not exceed the actual and anticipated pecuniary  
15 losses of the claimant by more than \$300,000 for  
16 each accident or incident; and

17 "(3) the total amount which may be awarded  
18 shall not exceed \$300,000,000 for each accident or  
19 incident.

20 "(b) INDEMNIFICATION OBLIGATIONS.—Obligations  
21 of any party to indemnify against damages or liability for  
22 personal injury, death, or damage to property, arising  
23 after the date of the enactment of the Amtrak Reauthor-  
24 ization and Reform Act of 1995, in connection with the  
25 provision of intercity rail passenger transportation or com-

1 inter rail passenger transportation shall be enforceable.  
2 notwithstanding any other law or public policy.

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

8 (b) CONFORMING AMENDMENT.—The table of sec-  
9 tions of chapter 291 of title 49, United States Code, is  
10 amended by adding at the end the following new item:

"29103. Limit on rail passenger transportation liability."

## 11 TITLE V—FINANCIAL REFORMS

### 12 SEC. 501. FINANCIAL POWERS.

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

#### 15 "§24304. Capitalization

16 "Amtrak may issue bonds and nonvoting certificates  
17 of indebtedness."

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

22 (2) Section 29103 of title 49, United States Code,  
23 shall not apply to any rail carrier holding common stock  
24 of Amtrak after the expiration of 2 months after the date  
25 of the enactment of this Act.

1 (c) SURRENDER OF PREFERRED STOCK.—The Sec-  
2 retary of Transportation shall surrender all rights held in  
3 connection with the issuance of the preferred stock of Am-  
4 trak.

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.

12 (e) STATUS AND APPLICABLE LAWS.—Section  
13 24801(a)(3) of title 49, United States Code, is amended  
14 by inserting “. and shall not be subject to title 31, United  
15 States Code” after “United States Government”.

16 SEC. 502. DISBURSEMENT OF FEDERAL FUNDS.

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

19 “(d) ADMINISTRATION OF APPROPRIATIONS.—Not-  
20 withstanding section 6304 of title 31, United States Code,  
21 funds appropriated pursuant to this section shall be pro-  
22 vided to Amtrak upon appropriation when requested by  
23 Amtrak”.

**1 SEC. 503. BOARD OF DIRECTORS.**

2 Section 24302 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. 504. REPORTS AND AUDITS.**

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

8 (1) by striking subsections (a), (c), and (d):

9 (2) by redesignating subsections (b), (e), (f),  
10 and (g) as subsections (a), (b), (c), and (d), respec-  
11 tively; and

12 (3) in subsection (b), as so redesignated by  
13 paragraph (2) of this section, by striking "or (e)".

**14 SEC. 505. OFFICERS PAY.**

15 Section 24303(b) of title 49, United States Code, is  
16 amended by striking the second sentence thereof.

**17 TITLE VI—MISCELLANEOUS****18 SEC. 601. TEMPORARY RAIL ADVISORY COUNCIL.**

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

23 (b) **DUTIES.**—The Council shall—

24 (1) evaluate Amtrak's performance;

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

1 (3) suggest strategies for further cost contain-  
2 ment and productivity improvements, including  
3 strategies with the potential for further reduction in  
4 Federal operating subsidies and the eventual partial  
5 or complete privatization of Amtrak's operations:  
6 and

7 (4) evaluate the need for adoption of uniform  
8 cost and accounting procedures throughout the Am-  
9 trak system, based on generally accepted accounting  
10 principles.

11 (c) ~~MEMBERSHIP~~.—(1) The Council shall consist of  
12 7 members appointed as follows:

13 (A) Two individuals to be appointed by the  
14 Speaker of the House of Representatives, in con-  
15 sultation with the minority leader of the House of  
16 Representatives.

17 (B) Two individuals to be appointed by the ma-  
18 jority leader of the Senate, in consultation with the  
19 minority leader of the Senate.

20 (C) Two individuals appointed by the President.

21 (D) One individual appointed by the Amtrak  
22 board of directors.

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

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

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

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

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

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

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

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

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

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

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

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

16 (1) by striking the first sentence; and

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

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

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

23 (1) in subsection (a)(1), by striking "rail car-  
24 rier under section 10102" and inserting in lieu

F: TB RR ADIT95.001

ELC.

20

1 thereof "railroad carrier under section 20102(2)";

2 and

3 (2) by amending subsection (c) to read as fol-

4 lows:

5 "(c) APPLICATION OF SUBTITLE IV.—Subtitle IV of

6 this title shall not apply to Amtrak, except for section

7 11707."

8 **SEC. 604. WASTE DISPOSAL.**

9 Section 24301(m)(1)(A) of title 49, United States

10 Code, is amended by striking "1996" and inserting in lieu

11 thereof "2001".

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

13 Section 24310 of title 49, United States Code, and

14 the item relating thereto in the table of sections of chapter

15 243 of such title, are repealed.

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

17 Section 24313 of title 49, United States Code, and

18 the item relating thereto in the table of sections of chapter

19 243 of such title, are repealed.

20 **SEC. 607. DEMONSTRATION OF NEW TECHNOLOGY.**

21 Section 24314 of title 49, United States Code, and

22 the item relating thereto in the table of sections of chapter

23 243 of such title, are repealed.

1 SEC. 608. PROGRAM MASTER PLAN FOR BOSTON-NEW YORK

2 MAIN LINE.

3 Section 24908 of title 49, United States Code, and  
4 the item relating thereto in the table of sections of chapter  
5 249 of such title, are repealed.

6 SEC. 609. BOSTON-NEW HAVEN ELECTRIFICATION  
7 PROJECT.

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

10 (1) by inserting "(1)" before "Improvements  
11 under"; and

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

14 "(2) Amtrak shall design and construct the elec-  
15 trification system between Boston, Massachusetts, and  
16 New Haven, Connecticut, to accommodate the installation  
17 of a third mainline track between Davisville and Central  
18 Falls, Rhode Island, to be used for double-stack freight  
19 service to and from the Port of Davisville. Wherever prac-  
20 ticable, Amtrak shall use portal structures and realign ex-  
21 isting tracks on undergrade and overgrade bridges to min-  
22 imize the width of the right-of-way required to add the  
23 third track. Amtrak shall take such other steps as may  
24 be required to coordinate and facilitate design and con-  
25 struction work."

1 SEC. 610. AMERICANS WITH DISABILITIES ACT OF 1990.

2 (a) APPLICATION TO ANTRAK.—Antrak shall not be  
3 subject to any requirement under section 242(e)(2) of the  
4 Americans With Disabilities Act of 1990 (42 U.S.C.  
5 12162(e)(2)) until October 15, 2001.

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

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

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

11 SEC. 611. DEFINITIONS.

12 Section 24102 of title 49, United States Code, is  
13 amended by striking paragraphs (2), (3), and (11), and  
14 redesignating paragraphs (4) through (10) as paragraphs  
15 (2) through (8), respectively.

16 TITLE VII—AUTHORIZATION OF  
17 APPROPRIATIONS

18 SEC. 701. AUTHORIZATION OF APPROPRIATIONS.

19 (a) CAPITAL ACQUISITION.—Section 24104(a)(1) of  
20 title 49, United States Code, is amended to read as fol-  
21 lows: “(1)(A) There are authorized to be appropriated to  
22 the Secretary of Transportation—

23 “(i) \$\_\_\_\_\_ for fiscal year 1995:

24 “(ii) \$\_\_\_\_\_ for fiscal year 1996:

25 “(iii) \$\_\_\_\_\_ for fiscal year 1997:

26 “(iv) \$\_\_\_\_\_ for fiscal year 1998; and

1           “(r) \$ \_\_\_\_\_ for fiscal year 1999,  
2 for the benefit of Amtrak to make capital expenditures  
3 under chapters 243 and 247 of this title.

4           “(B) There are authorized to be appropriated to the  
5 Secretary of Transportation—

6           “(i) \$40,000,000 for fiscal year 1995; and

7           “(ii) \$ \_\_\_\_\_ for the period encompassing  
8 fiscal years 1996 through 1999.

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

16           (b) NORTHEAST CORRIDOR DEVELOPMENT.—Sec-  
17 tion 24104(a)(2) of title 49, United States Code, is  
18 amended to read as follows:

19           “(2) There are authorized to be appropriated to the  
20 Secretary of Transportation—

21           “(A) \$ \_\_\_\_\_ for fiscal year 1995:

22           “(B) \$ \_\_\_\_\_ for fiscal year 1996:

23           “(C) \$ \_\_\_\_\_ for fiscal year 1997:

24           “(D) \$ \_\_\_\_\_ for fiscal year 1998; and

25           “(E) \$ \_\_\_\_\_ for fiscal year 1999.

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

3 (c) OPERATING EXPENSES.—Section 24104(b) of  
4 title 49, United States Code, is amended to read as fol-  
5 lows:

6 "(b) OPERATING EXPENSES.—There are authorized  
7 to be appropriated to the Secretary of Transportation—

8 "(1) \$ \_\_\_\_\_ for fiscal year 1995:

9 "(2) \$ \_\_\_\_\_ for fiscal year 1996:

10 "(3) \$ \_\_\_\_\_ for fiscal year 1997:

11 "(4) \$ \_\_\_\_\_ for fiscal year 1998: and

12 "(5) \$ \_\_\_\_\_ for fiscal year 1999,

13 for the benefit of Amtrak for operating expenses."

14 (d) MANDATORY PAYMENTS.—Section 24104(c) of  
15 title 49, United States Code, is amended—

16 (1) by striking paragraph (2); and

17 (2) by striking "Not more than" and all that  
18 follows through "to the Secretary" and inserting in  
19 lieu thereof "There are authorized to be appro-  
20 priated to the Secretary of Transportation—

21 "(A) \$ \_\_\_\_\_ for fiscal year 1995:

22 "(B) \$ \_\_\_\_\_ for fiscal year 1996:

23 "(C) \$ \_\_\_\_\_ for fiscal year 1997:

24 "(D) \$ \_\_\_\_\_ for fiscal year 1998: and

25 "(E) \$ \_\_\_\_\_ for fiscal year 1999.

1           “(2) Amounts appropriated pursuant to paragraph  
2 (1) shall be used”.

3           (e) CONFORMING AMENDMENTS.—(1) Section  
4 24104(a)(3) of title 49, United States Code, is repealed.

5           (2) Section 24909 of title 49, United States Code,  
6 and the item relating thereto in the table of sections of  
7 chapter 249 of such title, are repealed.

8           (f) GUARANTEE OF OBLIGATIONS.—There are au-  
9 thorized to be appropriated to the Secretary of Transpor-  
10 tation—

11           (1) \$ \_\_\_\_\_ for fiscal year 1995;

12           (2) \$ \_\_\_\_\_ for fiscal year 1996;

13           (3) \$ \_\_\_\_\_ for fiscal year 1997;

14           (4) \$ \_\_\_\_\_ for fiscal year 1998; and

15           (5) \$ \_\_\_\_\_ for fiscal year 1999.

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

# SUMMARY OF AMTRAK REAUTHORIZATION DISCUSSION DRAFT

April 5, 1995

## Section 1. Short Title

Self-explanatory.

## TITLE II: PROCUREMENT REFORMS

### Section 101. Contracting Out

Amends 49 U.S.C. 24312 to remove current ban on contracting out of non-food-service work if the contract has an adverse effect on one or more employees in a bargaining unit. [Note: alternative language recently submitted by rail labor not reflected here; still under consideration.]

### Section 102. Below-Cost Competition

Subparagraph (1) amends 49 U.S.C. 24305(b) to prohibit bidding by Amtrak for any service contract (e.g., commuter rail operations, dispatching, support) other than providing intercity rail service, when the bid is less than Amtrak's actual costs.

Subparagraph (2) provides for judicial remedies by aggrieved private-sector bidders affected by below-cost Amtrak bidding.

### Section 103. Freedom of Information Act

Removes Amtrak from coverage of FOIA; as a corporation, Amtrak would not be subject to the Act without a special provision to the contrary. This reflects an overall design to avoid having Amtrak be treated legally as a federal agency, and to avoid use of FOIA as an industrial-intelligence tool to obtain sensitive information from, for example, competing bids.

## TITLE II: OPERATIONAL REFORMS

### Section 201. Basic System

Subsection (a) repeals current statutory mandate to operate a specified "basic system" of routes, in 49 U.S.C. 24701.

Subsection (b) repeals the requirement for a detailed, statutorily mandated operational plan for Amtrak, 49 U.S.C. 24702.

Subsection (c) makes conforming changes in 49 U.S.C. 24706 related to later provisions of the bill.

Subsection (d) repeals the current statutory requirement in 49 U.S.C. 24707 that Amtrak prepare various financial reviews and reports.

Subsection (e) repeals the mandate in 49 U.S.C. 24708 to operate certain commuter services (known as "Section 403(d) trains" in existence as of 1981).

Subsection (f) eliminates a cross-reference to conform to the changes above.

#### Section 202. Mail, Express and Auto-Ferry Transportation.

Repeals the current presumed monopoly of Amtrak over auto-plus-passenger service, and the related requirement for ICC permission for a non-Amtrak entity to enter the market (49 U.S.C. 24396).

#### Section 203. Route and Service Criteria

Repeals the current statutory criteria for evaluating routes and service, and the requirement for Congressional approval in changes to the criteria (49 U.S.C. 24703).

#### Section 204. Additional Qualifying Routes

Repeals mandates related to recommended but delayed or unimplemented route changes related to the Amtrak Improvement Act of 1978 (49 U.S.C. 24705).

#### Section 205. Transportation Requested by States, Authorities, and Other Persons.

Subsection (a) repeals the current matching-formula arrangement (49 U.S.C. 24704) for state-assisted trains ("Section 403(b) service") to be funded from state and Amtrak sources. Instead, Amtrak will be encouraged to follow the policy, already in effect in practice, of negotiating individualized arrangements with states.

Subsection (b) frees Amtrak from any state-assisted train service agreements in effect at the time of enactment.

#### Section 206. Amtrak Commuter.

Repeals current law (49 U.S.C. 24501 through 24506) authorizing a never-established Amtrak subsidiary, "Amtrak Commuter."

Subsection (b) makes certain conforming amendments to preserve tax exemptions and trackage rights already in place.

### Section 207. Commuter Cost Sharing on the Northeast Corridor.

Subsection (a) replaces the Interstate Commerce Commission with the Secretary of Transportation as the arbiter of compensation disputes between Amtrak, the owner of the Northeast Corridor, and commuter and freight users of Corridor facilities. (49 U.S.C. 24904).

Subsection (b) adds partial or complete privatization to the statutory statement of Amtrak's long-term statutory goals (49 U.S.C. 24101).

### TITLE III: EMPLOYEE PROTECTION REFORMS

#### Section 301. Service Discontinuance.

Subsection (a) repeals the current mandatory labor protection requirements that impose on Amtrak the obligation to pay wage-continuation benefits of one year of pay for each year of service, up to a maximum of 6 years. The current arrangements also mandate that an employee whose work location is moved farther than 30 miles from his present residence may elect to treat the transfer as a termination for purposes of severance and wage-continuation benefits.

Subsection (b) substitutes a new labor protection provision that allows for employee transfers without regard to the "30-mile rule," and sets a wage-continuation and severance benefit ceiling of 6 months pay. Amtrak labor and management are given 6 months to negotiate new agreements reflecting these changes in the law.

Subsections (c) and (d) confirm that the freight-railroad labor protection (49 U.S.C. 11347) and transit labor protection (49 U.S.C. 5333(b)) mandates—which are explicitly linked to Amtrak's level of labor protection under current law—will be reduced from the current 6-year level to the 4-year level prevailing before Amtrak was used to boost the other mandated benefits by cross-reference.

Subsection (e) repeals the "flowback" labor protection arrangements under the Northeast Rail Service Act under which Conrail employees may switch employers (Amtrak or Conrail) as frequently as once every 6 months.

Subsection (f) makes technical changes to the rail freight labor protection statute.

[Note: The text of this labor protection provision is unchanged from the original draft. Within the last 2 days, we have received suggested alternative language from rail labor. This proposal is still being evaluated.]

## **TITLE IV: USE OF FACILITIES BY FREIGHT RAILROADS**

### **Section 401. Compensation**

Subsection (a) amends 49 U.S.C. 24308 to provide for an arbitration process to replace the current role of the ICC as the adjudicator of compensation disputes over Amtrak payments to freight railroads for the use of the freight carriers' facilities.

Subsection (b) replaces the ICC with the Secretary of Transportation to determine the need for emergency priority for Amtrak trains on freight railroads' tracks.

Subsection (c) makes conforming changes to the ICC statute.

### **Section 402. Liability Limitation**

This provision establishes a new liability limitation for accidents involving any form of passenger rail transportation—Amtrak, commuter, or high-speed rail. The new provision limits total liability per accident to \$300 million, prohibits punitive or exemplary damages, and caps the noneconomic ("pain and suffering") damages of an individual claimant at \$300,000 per person.

The new provision also confirms the binding effect of contractual indemnity arrangements under which one rail carrier may agree to allocate financial responsibility for accident liability (within the caps above) without having the agreement disallowed by a court or government agency.

The new provision clarifies that the caps above do not apply to employee injuries governed by the present Federal Employers Liability Act, for compensation for worker injuries.

## **TITLE V: FINANCIAL REFORMS**

### **Section 501. Financial Powers**

Subsection (a) amends the current stock provision of the Amtrak statute (49 U.S.C. 24304) to require redemption of all Amtrak common stock. (The only such stock outstanding—which has no market value—is owned by the few freight railroads who accepted such stock in 1971 as payment for equipment contributed to Amtrak's start-up. The other option, which most railroads took, was a tax credit.)

Subsection (b) creates the incentive that any railroad not turning in its common stock for redemption would not get the benefit of the liability limitations outlined above in Title IV.

Subsection (c) directs the Secretary of Transportation to surrender all preferred stock now held in Amtrak. (DOT is the only preferred shareholder.)

Subsection (d) repeals the provision (49 U.S.C. 24907) giving DOT a 999-year lien and mortgage on the Northeast Corridor assets of Amtrak, and relinquishes all federal claims against the Corridor.

Subsection (e) specifies that Amtrak, as a corporation, not subject to the requirements of the Anti-Deficiency Act and may therefore enter into long-term financial arrangements.

#### Section 502. Disbursement of Federal Funds

Amends 49 U.S.C. 24104 to provide for immediate disbursement of Amtrak appropriated funds to Amtrak at the beginning of the fiscal year, not in quarterly installments.

#### Section 503. Board of Directors

Repeals the current provision (49 U.S.C. 24302) specifying composition of the board and the qualifications, terms, and Presidential appointment of Amtrak's directors. The effect is to allow present directors to continue to serve until Amtrak arranges for future board selection in accordance with the District of Columbia Corporations Act.

#### Section 504. Reports and Audits

Amends 40 U.S.C. 24315 to eliminate various Amtrak reports to Congress, while retaining access to Amtrak records and information through the General Accounting Office.

#### Section 505. Officers Pay.

Repeals the current specification of a limit on Amtrak officers' pay, and allows the board of directors discretion to fix such pay.

### TITLE VI: MISCELLANEOUS

#### Section 601. Temporary Rail Advisory Council.

Establishes a Temporary Rail Advisory Council (TRAC), to be appointed within 30 days of enactment. The TRAC is to conduct an expert review of Amtrak's operational and financial practices and make recommendations to Congress on improvements. The TRAC is to consist of 7 members, 2 appointed by the Speaker, 2 appointed by the Majority Leader of the Senate, 2 appointed by the President, and 1 appointed by the Amtrak board of

**Section 609. Boston-New York Electrification Project**

Amends 49 U.S.C. 24902 to require that Amtrak provide on a no-prejudice basis for later installation of a third track to accommodate freight traffic on the segment of the New Haven-Boston corridor that is used by freight trains.

**Section 610. Americans with Disabilities Act.**

Postpones the current deadline for retrofit of Amtrak equipment (but not new-car procurement) under the ADA from 1996 to 2001.

**Section 611. Definitions.**

Repeals obsolete definitions to conform to changes in earlier sections.

**TITLE VII: AUTHORIZATION OF APPROPRIATIONS****Section 701. Authorization of Appropriations**

Provides for as yet unspecified funding levels for FY 1995 through FY 1999 for capital, Northeast Corridor Improvement Project, operating expenses, and mandatory payments of railroad retirement and railroad unemployment taxes.

Subsection (f) authorizes loan guarantees to Amtrak for facilities improvements under the existing program established by Section 511 of the Railroad Revitalization and Regulatory Reform ("4R") Act of 1976.