

Calendar No. 158

110TH CONGRESS }
1st Session

SENATE

{ REPORT
110-67

PASSENGER RAIL INVESTMENT AND
IMPROVEMENT ACT OF 2007

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 294



MAY 22, 2007.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

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Mr. INOUE, from the Committee on Commerce, Science, and
Transportation, submitted the following

R E P O R T

[To accompany S. 294]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 294) to reauthorize Amtrak, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

S. 294, the Passenger Rail Investment and Improvement Act of 2007 (PRIIA) would authorize Federal funding for the operation and development of intercity passenger rail service; make improvements to Federal passenger rail transportation policy and activities; enhance passenger rail security; and reauthorize Amtrak for 6 years.

BACKGROUND AND NEEDS

The National Railroad Passenger Corporation, known as Amtrak, was formed as a non-governmental corporation in 1971 through the enactment of the Rail Passenger Service Act of 1970. Amtrak was established as a congressionally-chartered, for-profit corporation to relieve the then financially beleaguered private railroad sector of its common carrier obligations to offer intercity passenger transportation and to preserve and reinvigorate intercity passenger rail service throughout the Nation. Amtrak was initially capitalized with limited Federal funding and second-hand equipment acquired from the private railroads. Some predicted the railroad would oper-

ate without Federal support beginning in 1973, despite inheriting routes and services that were generally unprofitable when operated by the private railroads immediately preceding Amtrak's creation. This stated expectation of Amtrak's self-sufficiency, and even profitability, represented a unique Federal approach towards the financing of one of the Nation's major passenger transportation modes. While the country's highway network, aviation, and public transportation systems have received significant Federal capital and operating funding, Amtrak and intercity passenger rail have not received similar treatment.

More than 35 years later, this approach—and the expectation of self-sufficiency—has proven to be ineffective and unrealistic, and has hindered the development of a world-class national passenger rail system able to fully meet the needs of the Nation in the 21st Century. While intercity passenger rail service patronage steadily declined in the United States following the second World War, recent increases in highway and aviation congestion, rising fuel costs, available rail capacity, and minimal environmental impacts have all made intercity passenger rail service a growing and increasingly important part of the Nation's multi-modal transportation system.

Today, Amtrak serves nearly 25 million riders annually at more than 500 stations in 46 States on approximately 22,000 route miles. Amtrak's ticket revenues were \$1.56 billion in Fiscal Year (FY) 2006—nearly 11 percent above FY 2005 levels—with total revenues slightly exceeding \$2 billion and expenses at roughly \$3 billion. Amtrak directly owns or operates 730 route miles, primarily between Massachusetts and Washington, D.C., on Amtrak's Northeast Corridor (NEC) and in the State of Michigan; several station facilities including Pennsylvania Station in New York, New York, and Chicago Union Station in Chicago, Illinois; and several major maintenance and repair facilities.

In addition to infrastructure, Amtrak owns or leases hundreds of locomotives, thousands of railroad cars, and numerous pieces of maintenance of way equipment, vehicles, and other associated assets. Outside of the NEC, Amtrak operates over tracks owned by freight railroads through access rights provided by law and either owns or contracts for the use of station facilities.

Amtrak's services can be classified into 4 distinct categories:

- **NEC Services.**—Three classes of trains (Regional, Keystone, and high-speed Acela Express) offer service between city pairs along the NEC, serving the densely populated and congested Northeast. Ridership on these services accounted for roughly 38 percent of Amtrak's total ridership, while operations accounted for 53 percent of revenue and 29 percent of operating costs in 2006;
- **Long Distance Services.**—Amtrak's long distance trains generally travel over 750 miles and connect different regions of the country, serving both major cities and sparsely populated rural areas where other transportation options are often limited. Ridership on these services accounted for roughly 15 percent of Amtrak's total ridership, while operations accounted for 26 percent of revenue and 43 percent of operating costs in 2006;
- **Corridor Services.**—Amtrak's corridor services connect intra- or inter-state city pairs within 750 miles of each

other. Amtrak generally receives some financial support from the States for the operational and capital costs of these services. Ridership on these services accounted for roughly 46 percent of Amtrak's total ridership, while operations accounted for 21 percent of revenue and 28 percent of operating costs in 2006;

- **Commuter Services.**—Amtrak is also one of the Nation's largest providers of contract commuter service for State and regional authorities, providing services to rail commuter authorities in California, Maryland, Connecticut, Washington, and Virginia, and serving an additional 61.1 million people per year.

Since Amtrak's inception, Congress has provided Federal funding for Amtrak's operational and capital needs, either directly to Amtrak or through a Department of Transportation (DOT) grant process, which is currently the case. Federal funding is provided through the annual appropriations process from discretionary funds and can vary significantly from year to year, depending on overall budget conditions and political support, as shown below.

FEDERAL CAPITAL AND OPERATING FUNDS FOR AMTRAK:

FY 1997	\$0.8 billion
FY 1998	\$1.7 billion
FY 1999	\$1.7 billion
FY 2000	\$0.6 billion
FY 2001	\$0.5 billion
FY 2002	\$0.8 billion
FY 2003	\$1.0 billion
FY 2004	\$1.2 billion
FY 2005	\$1.2 billion
FY 2006	\$1.3 billion
FY 2007	\$1.3 billion

Amtrak's most recent authorization, the Amtrak Reform and Accountability Act of 1997 (Reform Act) reauthorized Amtrak for 5 years, providing a total of \$5.3 billion for FYs 1998-2002 and requiring Amtrak to achieve operational self sufficiency ("operational self sufficiency" was defined to mean that Amtrak's operating costs, excluding depreciation, would not be funded with Federal funds) by December 2002—a goal that the Corporation did not meet. During these years, limited Federal funding, failed Amtrak revenue initiatives, and an unwillingness by the railroad to exit services perceived as essential to its public mission led to the failure to dramatically reduce the Corporation's reliance on Federal operating subsidies as called for by the Reform Act. Therefore, in order to survive with the available revenues and Federal monies, Amtrak curtailed or deferred many needed capital investments and took on additional private debt financing to fund its basic system needs. While most of Amtrak's existing \$3.5 billion long-term debt stems from equipment capital leases, a portion of this total debt was acquired during these years to preserve operations and now must be paid back as part of a debt servicing cost that averages \$300 million annually.

Limited continuous capital investment in both rolling stock and infrastructure from the period of the last authorization created a

serious deferred maintenance problem. Poor train performance and reliability due to equipment and infrastructure deficiencies undermined Amtrak's operations and revenue potential. Amtrak's subsidy per passenger during the Reform Act's authorization period did decline from about \$80 in 1998 to about \$22 in 2001, much of this gain was due to Amtrak's heavy borrowing and liquidation of assets to generate cash. In 2002, the final year of the Reform Act, Amtrak received a Federal loan and an emergency appropriation to avoid bankruptcy, and its subsidy jumped to nearly \$40 per passenger. Increases in the per passenger subsidy were similarly observed over the next 2 years, reaching nearly \$44 in 2003 and \$48 in 2004.

Under current management, Amtrak has undertaken significant efforts to reduce costs, restructure services, rebuild equipment, and return infrastructure to a "state-of-good-repair". (Amtrak has termed the process of returning the railroad's infrastructure and equipment to a reliable and productive state, a "state-of-good-repair.") Management reforms have led to reduced operating costs, the termination of unproductive business lines, increased ridership and revenue, and improved train performance for NEC services. In FY 2006, Amtrak reduced its net loss by \$110 million as compared to FY 2005. Headcount at the Corporation has dropped by roughly 6,000 employees over the past several years, while the number of daily trains has risen from 265 in 2002 to 300 today. After being plagued by mechanical problems for several years, the performance of the Acela Express, Amtrak's flagship fleet of high-speed trains finally rebounded from roughly 70 percent on-time operations in FY 2005 to nearly 80 percent in FY 2006.

Significant challenges and funding needs remain. Amtrak and the DOT Inspector General (IG) identified roughly \$5 billion in deferred maintenance and capital backlog projects needed to return the NEC to a state-of-good-repair. On-time performance across Amtrak's system remained low at 66 percent in FY 2006, with long-distance routes only operating on-time 28 percent of the time, largely due to congestion on the freight railroad-owned lines over which Amtrak operates outside the NEC. The Corporation and its operating unions remain deadlocked in longstanding contract negotiations. Additionally, the Administration continues to recommend inadequate funding for Amtrak through its annual budget proposal.

Responding to calls for reforms and improved and expanded service, Amtrak's Board of Directors developed strategic reform initiatives (Board Plan or Plan) in April 2005 to guide the future actions of the Corporation. Accompanying this Plan was a request for \$1.82 billion in Federal funding to support FY 2006 capital investment programs and national operations. The Board Plan would set forth several internal efforts to improve the railroad while also calling upon Congress to adequately fund the system and enact changes in statute to facilitate the achievement of certain goals. The 4 fundamental objectives of the Board Plan are:

- Development of passenger rail corridors utilizing a Federal/State matching approach common to all other modes (generally 80/20). States, not Amtrak, would lead the development of the corridors, a number of which have already been federally designated, and Amtrak and others may competitively bid to provide the service;

- Return of the NEC infrastructure to a state-of-good-repair and operational reliability, with phased in financial responsibility for capital and operating costs assumed on a proportionate basis by all users, including Amtrak and freight and commuter railroads;
- Establishment of phased in financial performance thresholds for Amtrak's existing 15 long distance trains and any future similar proposed service; and
- Creation of markets for competition, private commercial participation and industrial reforms in various rail functions. This includes competition among operators, including Amtrak, for new corridor routes.

Since the introduction of this plan, Amtrak has continued to improve its physical state and launched new efforts to improve customer service. In the first quarter of FY 2007, ridership was up 4 percent, and ticket revenues were up 10 percent from the first quarter of FY 2006. Amtrak also continued to reduce its long term debt from nearly \$4 billion in FY 2002 to under \$3.5 billion today, all while improving the safety of its operations through a recent 40 percent reduction in the Corporation's employee injury rate. During the balance of FY 2007 and FY 2008, Amtrak intends to build upon operational improvements made over the last year and a half and focus additional efforts on improving operations and revenues and minimizing costs.

For FY 2008, Amtrak has requested \$1.53 billion in Federal operating and capital funding, representing an increase of \$230 million over amount appropriated for FY 2007. In addition, Amtrak proposed that Congress provide \$100 million in matching funds to States and communities for strategic intercity passenger rail investment needs and \$50 million for Americans with Disabilities Act (ADA) station compliance efforts. Taken together, Amtrak's total FY 2008 intercity passenger rail-related Federal funding request is \$1.68 billion. Out of this total, Amtrak is requesting \$485 million in FY 2008 to support existing operations, which represents a \$10 million reduction in operating support from the FY 2007 enacted level. This amount continues the Corporation's recent trend of generating additional operating revenues to cover a growing portion of its expenses, with a resulting reduction in Federal operating funding requirements. The ratio of Federal operating support versus total Amtrak expenses has continued to drop over the past few years, from over 20 percent in FY 2005, when new cost containment and revenue generation initiatives began, to a projected 18.5 percent in FY 2008. These initiatives helped Amtrak achieve \$61.3 million in operational savings in FY 2006 and are budgeted to produce an additional \$61 million for FY 2007. Amtrak projects an additional \$80 million in savings in FY 2008, which will equal a total reduction of \$200 million in recurring annual losses in just 3 years.

Amtrak is requesting an additional \$285 million for debt service payments in FY 2008. These funds are largely needed to pay interest and principal payments related to rail equipment leases. As is the case throughout the freight rail and transit industries, railroads often purchase passenger rail equipment, such as locomotives and cars, then sell and lease them back through a third party (usually a financial institution). Such arrangements can free up addi-

tional capital for investment purposes, improve debt-to-equity ratio, and reduce depreciation and interest costs. Thus, the debt that Amtrak pays can be considered an operating cost associated with the Corporation's capital fleet. Since FY 2003, Amtrak has taken on no additional debt.

Over the past several years, Federal funding levels more closely matched to Amtrak's capital and operating needs have helped to eliminate some of the backlog of deferred maintenance and capital projects, leading to a renewal of some Corporation assets to service and reliability levels not seen over the past 20 years. The effects of this work on Amtrak's revenues and ridership have been predictably positive.

Several improvements have flowed from the state-of-good-repair process. The core car fleet, including the "Amfleet" and "Horizon" equipment used in the Northeast and Midwest corridor services and the "Superliner" equipment used in long-distance services, has undergone significant mechanical overhauls, reducing equipment-related failures and delays. Currently, almost 70 percent of Amtrak's passenger car fleet and 85 percent of its locomotives will be in a state-of-good-repair by the end of FY 2007, with the balance of the fleet scheduled for overdue overhauls in FY 2008 and FY 2009. Other recent state-of-good-repair projects completed or underway include:

- Initiating replacement of the Thames River bridge in Connecticut.
- Significant track replacement, including improving below-track drainage, replacing wood with concrete ties, and replacing worn or jointed rail with continuous welded rail.
- Renewal of 61 miles of electric catenary hardware.
- Replacement of unreliable, 1930s-era transmission cable in the Baltimore tunnels.
- Completion of freight and commuter projects in Rhode Island and Massachusetts.
- The advancement of the Penn Station tunnels fire and life safety program, including a new ventilation plant and completion of the floodgates in each tunnel.

Continuing such progress is dependent on reliable and adequate Federal funding in FY 2008 and the following years. Amtrak has requested \$760 million in Federal capital funding for FY 2008, which would allow Amtrak to continue the state-of-good-repair effort and upgrade or replace obsolete infrastructure and other assets. This figure includes a request of \$407 million for infrastructure investment, \$182 million for equipment overhaul, and \$87 million for improvements to stations and facilities. Additionally, Amtrak is requesting \$21 million for an initial "seed" purchase of diesel multiple unit (DMU) cars for use on lower density corridors. DMUs are anticipated to be more efficient to operate than traditional passenger trains on certain routes, and their use could allow Amtrak to free up underutilized equipment for State corridor growth. Amtrak's request also includes high-return business initiative investments, such as a new electronic ticketing system and conversions of Superliner diner and lounge cars into diner-lounge cars, which will deliver near-term benefits to the operating bottom line.

Over the past decade, States have increasingly taken the initiative in meeting the growing demand for intercity passenger rail, as the Federal government has provided only limited funding for the development of new or improved services. In its FY 2008 funding request, Amtrak calls for the establishment of a \$100 million Federal capital matching program to support State passenger rail investments, suggesting that such a program could substantially expand States' abilities to meet the growing demand for passenger rail corridor services. Amtrak also believes that such strategic public investments in passenger rail corridors would provide additional benefits to the freight rail industry, over whose tracks most Amtrak routes operate. Additionally, Amtrak proposes supporting this program through its own initiatives to advance corridor development, including the joint development of future fleet equipment specifications; DMU procurement to serve as a test-case for low density services; the transitioning of decision-making and some funding responsibility for corridor routes from Amtrak to States; and organizational changes that will enhance service to State customers.

Concerns remain that insufficient time and funding are likely to prevent full compliance with the ADA specifications at all station stops by the 2010 deadline for passenger rail station compliance. Amtrak estimates that the cost of ADA compliance is approximately \$250 million for all Amtrak stations, including those owned by others but used by Amtrak. The outcome of a pending Federal Railroad Administration (FRA) rulemaking regarding station platforms likely will affect the time required to comply with the ADA requirements and could significantly increase the costs. Amtrak requested a placeholder figure for ADA funding in FY 2008 of \$50 million above its base grant request to cover some of the anticipated compliance costs. Amtrak also requested an extension of at least five years to meet the statutory compliance obligation after promulgation of final regulations by FRA.

SUMMARY OF PROVISIONS

To address the challenges facing Amtrak and to promote the expansion and improvement of intercity passenger rail service, PRIIA would authorize stable and predictable funding for long-term investments and improvements to intercity passenger rail service and set forth strict guidelines for improvements to Amtrak's long distance and corridor routes to reduce Amtrak's operating subsidy. PRIIA incorporates features from the Board Plan, DOT's reauthorization proposal, recommendations by the DOT IG, and previous Senate reauthorization proposals.

PRIIA is a 6-year reauthorization bill covering FY 2007 through FY 2012, that would authorize sufficient capital and operating funds to continue Amtrak's current service, upgrade equipment, and return the NEC to a state-of-good-repair. Over the life of the bill, Amtrak's operating subsidy would be reduced by 40 percent through cost cutting, restructuring, and reform while capital funding to Amtrak and the States for intercity passenger rail projects would be increased.

FUNDING SUMMARY
(dollars in millions)

	2007	2008	2009	2010	2011	2012	Total	Avg. Annual
Amtrak 5-Year Plan Operating Subsidy Request	580	601	642	683	724	765	3,995	666
PRIIA Operating Subsidy Authorizations	580	590	600	575	535	455	3,335	556
PRIIA Amtrak Capital Authorizations	788	810	821	821	821	821	4,893	816
State Grants Authorizations	25	100	250	300	350	400	1,425	238
Amtrak Debt Repayment Authorizations	278	282	289.8	207.8	270	297.3	1,725	287
Total	1,671	1,782	1,961	2,004	1,976	1,973	11,378	1,896

The authorization levels for PRIIA are based, in part, on future operating and capital spending estimates developed by Amtrak and the DOT IG. The DOT's own Amtrak reauthorization proposal did not recommend specific funding amounts, but rather recommended "such sums as necessary" for the Corporation and related intercity passenger rail programs. Specifically, the amounts for capital include authorizations for the NEC and other corridors, long distance trains, and Amtrak's system.

Through the operational reforms and flexibilities provided in the bill, Amtrak is expected to achieve operational efficiencies that will result in cost reductions and revenue increases that will result in a forty percent reduction (in real terms) in its Federal operating subsidy over the 6-year term of the bill. This reduction is reflected in the authorized funding levels. Sources of savings include: restructuring and streamlining long-distance train service; increased productivity; and outsourcing and streamlining of food service and station operations. Amtrak revenues should increase due to increased State contributions for corridor service and increased passenger revenue due to service enhancements.

Amtrak Reforms and Operational Improvements

PRIIA would require several major Amtrak reform initiatives designed to increase financial and operation transparency and accountability, reduce Federal operating subsidies, and improve train performance and customer service.

The bill would require Amtrak to develop a new financial and cost accounting system for Amtrak operations and a 5 year financial plan that is consistent with the authorized funding levels in the bill. Amtrak's current accounting system is limited by both data quality and analysis depth, which hinders the development of accurate business plans and service models. This requirement will ensure increased transparency and better data inputs and analysis on which to base sound business decisions.

To address Amtrak's staggering debt load, which currently consumes a significant portion of the Corporation's revenues and Federal assistance, the bill would direct the Treasury Secretary, in consultation with the DOT Secretary and Amtrak, to enter into negotiations to restructure Amtrak's debt within 1 year after enactment of the Act. If such a restructuring results in significant savings to Amtrak or the Federal government, the Treasury Secretary

may assume the restructured debt, with the full faith and credit backing of the United States. If no restructuring is possible, Amtrak remains solely responsible for the debt without any Federal guarantee, as is the case currently. This approach provides an incentive for creditors to renegotiate and restructure current agreements in a way favorable to Amtrak in exchange for certainty of repayment. Reductions in principal and interest costs to Amtrak achieved through such a restructuring should lower Amtrak's need for Federal operating assistance, thus saving the public money.

PRIIA expands the current Amtrak Board of Directors by adding an additional member and the Amtrak President, bringing the total number of members to 10. Further, the bill seeks to establish a professional Board with the expertise to effectively lead the Corporation by requiring members to have a background in rail, transportation, or business. Additionally, the bill modifies the procedure for congressional consultation with regards to member appointments and ensures that the Board has bipartisan representation. These steps should help to hasten the Senate confirmation process for Board members and ensure a full Board.

To track and enhance customer service, train performance, and reliability, PRIIA would require the FRA and Amtrak, in consultation with the Surface Transportation Board (STB) and the freight railroads on whose track Amtrak operates, to jointly develop metrics and standards for measuring the performance and service quality of intercity train operations. Such metrics and standards shall address cost recovery, on-time performance, ridership per train mile, on board and station services, and the connectivity of routes. The bill would further direct FRA to collect metric data and publish quarterly reports on train performance and service quality.

PRIIA also would direct FRA to retain an independent consultant to develop and recommend objective methodologies for route and service decisions. The methodologies shall give consideration to cost recovery and on-time performance of existing routes, connections with other routes, transportation needs of communities not served by other public transportation, and the methodologies used by rail service providers in other countries. Amtrak shall consider adoption of the methodologies recommended by the consultant. Amtrak often faces requests from the public and its representatives to begin new service, alter existing routes, or change frequencies. This effort is expected to provide Amtrak with new options to consider when making decisions about when, where, and how often to run trains and provide the public with a better understanding of the considerations impacting such decisions.

States wishing to directly, or through another rail carrier, operate intercity passenger rail corridor service may seek use of Amtrak equipment, facilities, and reservation systems. If Amtrak and a State fail to reach an agreement governing such use, PRIIA would direct STB to determine reasonable terms of use and would allow STB to direct Amtrak to make such assets available under such terms, so long as such use is essential to the planned service and will not impair or degrade Amtrak's other operations.

Northeast Corridor and Short-Distance Routes

The NEC is Amtrak's flagship asset. The Corporation operates the majority of its passenger trains on this line, and the NEC provides Amtrak with the bulk of its patronage and revenue. However,

the NEC, as Amtrak's main capital asset, also has the greatest capital needs and poses the largest set of future challenges to the Corporation. The intensity of current intercity and commuter operations coupled with years of deferred maintenance and limited capital spending has significantly impaired operations. In particular, although Amtrak's ownership and dispatching control of the NEC ensures significantly better on-time performance as compared to the majority of Amtrak's long-distance trains, persistent problems with infrastructure, equipment, and trackage consistently lower expected NEC train performance.

To address these issues, PRIIA would require Amtrak to develop a capital spending plan to return the NEC to a state-of-good-repair by the end of 2011. Some of the capital funds authorized in the bill are available to carry out the plan at a 100 percent Federal share. The bill also would establish an advisory commission to provide advice and oversight of the NEC's operations and infrastructure and to plan for the Corridor's future needs. The commission membership would represent Amtrak, FRA, and the 13 States along the NEC. Additionally, to address historical differences in the fees paid to Amtrak for NEC access by various northeastern commuter authorities and to ensure that Amtrak is charging adequate fees to cover the associated costs, the commission would be required to develop a proposal for determining the proper cost allocations and access fees for NEC passenger and commuter trains. If Amtrak and the States fail to develop or implement a proposal for determining such costs and assigning commensurate fees, PRIIA would authorize STB to impose restructured fees for the users of the NEC.

For other short distance corridor services, Amtrak and the States, in consultation with FRA, would be required to develop uniform cost allocation methods to assign costs and determine compensation levels from States for the services Amtrak provides. Currently, States pay widely varying amounts to Amtrak to cover capital and operating costs associated with these services. PRIIA would require Amtrak and all States in which short distance trains are operated to settle on a cost allocation formula that would eliminate this discrepancy, allowing all States to pay like amounts for like services. If Amtrak and the States do not develop or implement the proposed formula, STB would be authorized to impose restructured compensation rates.

Long-Distance Trains

Amtrak's 15 long-distance trains serve 41 States connecting major regional population centers across the Nation. These trains serve several travel markets simultaneously, providing basic public transportation in rural regions of the country where other options are limited, serving leisure travelers and tourists, and providing intercity corridor service between city pairs along a given route. Long distance trains come in various sizes and configurations depending on the markets served, with trains featuring a mix of sleeping accommodations, coaches, dining cars, and baggage equipment. All of the long-distance trains incur operating losses and require significant Federal operating subsidies. The long-distance services also routinely suffer significant delays for a number of reasons, including delays caused by freight train interference as they traverse freight railroad owned trackage, which affect Amtrak's reliability and the revenue potential for these services.

While some have called for the wholesale elimination of these trains, PRIIA would require that significant steps be taken to try to improve or restructure these services to reduce costs and enhance service while continuing to provide basic long-distance service, where appropriate, to meet the mobility needs of rural communities that may not have access to other transportation alternatives. The bill would require Amtrak to rate the performance of its long-distance routes and establish performance improvement plans for all long-distance trains, beginning with the 5 lowest ranked routes. As Amtrak develops these plans, it must consider restructuring these routes, improving on board services, changing amenities such as sleeper car service and food service, seeking revenue contributions from States or other sources, and changing train frequencies. Amtrak also would be directed to consider the feasibility of restructuring long-distance trains into a series of interconnected corridors. Such interconnected corridors could provide better frequencies and operate at times that are more convenient to passengers on the route. Because Amtrak's long distance trains generally operate night and day, a number of communities along the route receive service only at inconvenient times such as the middle of the night. If Amtrak fails to implement a plan for a specific route in accordance with the timetable set in the bill or if the plan does not lead to the achievement of the stated objectives, FRA would have the authority to withhold Federal operating support for that route.

In an additional effort to improve service, the bill would establish a competitive bid program, administered by FRA, allowing freight railroads to bid to operate a limited number of long-distance trains over their current routes. This program would introduce competition in an attempt to reduce operating costs and improve service and would offer an opportunity to observe passenger train performance over freight railroads when the host railroad is entirely in charge of the provision of service. Operating subsidies for any operators under this program would be capped at the amount provided in the previous year. Any Amtrak employee adversely affected by the cessation of the operation of a route would either be relocated to other positions within Amtrak, provided financial incentives in exchange for the voluntary termination of his or her employment, or paid termination payments guaranteed under existing collective bargaining agreements.

To address on-time performance and service issues impacting intercity passenger trains operating over freight railroad trackage, the bill would direct FRA to issue a quarterly on-time service report. If for a particular route, a passenger train's on-time performance record falls below 80 percent for 2 consecutive quarters or fails to meet other requirements set by FRA, STB may investigate the causes and make recommendations to Amtrak or a freight railroad of how to reduce delays. Additionally, STB would automatically undertake such an investigation if petitioned by Amtrak, a freight railroad that hosts Amtrak trains, or a State or other entity that funds Amtrak operations. If STB determines that delays to passenger trains are the result of freight railroads not providing priority access to Amtrak, as currently required under law, STB would be authorized to take appropriate action to enforce Amtrak's priority access rights.

State Capital Grants Program

In an effort to encourage the development of new and improved intercity passenger rail services, PRIIA would create a new State Capital Grant program for intercity passenger rail capital projects as proposed by the States, Amtrak, and the Administration and based on the New Starts transit capital program administered by the Federal Transit Administration (FTA). The program would authorize grants to a State, or a group of States, to pay for the capital costs of facilities and equipment necessary to provide new or improved intercity passenger rail. The Federal match would be 80 percent. The DOT Secretary would award grants for projects based on economic performance, expected ridership, and other factors.

Rail Security

PRIIA, as reported, includes the rail security provisions of S. 184, the Surface Transportation and Rail Security Act of 2007 (STARS Act), that were passed by the Senate as part of S. 4, the “Improving America’s Security by Implementing Unfinished Recommendations of the 9/11 Commission Act of 2007” on March 13, 2007. S.184 was reported by the Senate Committee on Commerce, Science, and Transportation on February 15, 2007. The provisions would require the Transportation Security Administration (TSA) and the Department of Homeland Security (DHS) to undertake a comprehensive railroad security risk assessment, develop new grant programs to fund passenger and freight rail security improvements and research, and authorize security and safety improvements for Amtrak’s NEC tunnels.

LEGISLATIVE HISTORY

S. 294 was introduced on January 16, 2007, by Senator Lautenberg and co sponsored by Senators Lott, Inouye, Stevens, Kerry, Hutchison, Dorgan, Snowe, Boxer, Specter, Pryor, Burr, Carper, Durbin, Biden, Kennedy, Clinton, Schumer, Menendez, and Cardin, and was referred to the Senate Committee on Commerce, Science, and Transportation. A hearing on the reauthorization of Amtrak was held by the Senate Committee on Commerce, Science, and Transportation Subcommittee on Surface Transportation and Merchant Marine Infrastructure, Safety, and Security on February 27, 2007. On April 25, 2007, the Committee met in open executive session and ordered S. 294 reported favorably, as amended, with two amendments.

ESTIMATED COSTS

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

S. 294—Passenger Rail Investment and Improvement Act of 2007

Summary: CBO estimates that implementing S. 294 would cost \$10.1 billion over the 2008–2017 period. S. 294 authorizes the appropriation of about \$ 8.9 billion over the 2008–2012 period for grants to Amtrak to cover operating expenses, capital projects, debt repayment, and security improvements. The legislation also would

authorize the appropriation of about \$1.8 billion over the 2008–2012 period to the Department of Transportation (DOT) for new grant programs for certain projects completed by state railroad entities, to enable Amtrak and participating states to share railroad equipment, for grants to improve rail security, and for assessments and research of rail operations. The bill would require Customs and Border Protection (CBP) to expand its operations at its leased rail facility in Vancouver, Canada. In addition to those amounts specifically authorized to be appropriated, S. 294 would impose additional costs on the Department of Homeland Security (DHS) and certain agencies within DOT by requiring them to oversee Amtrak operations, to assess rail operations and rail security, and to submit reports to the Congress.

S. 294 would affect direct spending by authorizing the Surface Transportation Board (STB) to assess penalties on freight railroads for damages they cause by delaying Amtrak trains and to provide those penalties to Amtrak. CBO expects that the net impact on the budget would be insignificant because the STB would spend whatever it collects for damages. The bill also would authorize the Department of the Treasury to repay Amtrak debt—without further appropriation—if the department chooses to negotiate with Amtrak's creditors to restructure the debt. CBO does not expect that the Treasury would seek to restructure and repay Amtrak's debt. If, however, the Treasury did repay Amtrak's debt, that provision would increase direct spending by more than \$2 billion over the next several years.

CBO estimates that the other civil penalties authorized in the bill would have a negligible effect on revenues.

S. 294 contains intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) because it would require rail and motor carriers to comply with reporting requirements and certain security procedures. The bill also would preempt certain state laws. The aggregate cost to public entities for complying with those mandates is uncertain and would depend on future regulations. Because of the small number of entities involved, however, CBO estimates that those costs would not exceed the annual threshold established by UMRA for intergovernmental mandates (\$66 million in 2007, adjusted annually for inflation). Other provisions of the bill would benefit states by authorizing about \$2.4 billion in new grants to improve rail service and security. Any costs those entities would incur to comply with conditions of federal assistance would be incurred voluntarily.

S. 294 contains several private-sector mandates as defined in UMRA because it would require Amtrak and other rail carriers to comply with reporting requirements and certain security procedures. The bill also would impose additional requirements on Amtrak related to the performance of routes and meeting certain passenger needs. The cost to the private sector for complying with those mandates is uncertain and would depend on future regulations. CBO cannot determine whether the aggregate cost of mandates in the bill would exceed the annual threshold established by UMRA for private-sector mandates (\$131 million in 2007, adjusted annually for inflation). Other provisions of the bill would authorize grants for Amtrak. Any costs that Amtrak would incur to comply with conditions of federal assistance would be incurred voluntarily.

Estimated cost to the Federal government: The estimated budgetary impact of S. 294 is shown in the following table. The costs of this legislation fall within budget function 400 (transportation).

Basis of estimate: For this estimate, CBO assumes that S. 294 will be enacted near the end of fiscal year 2007 and that the authorized and necessary amounts will be appropriated each year beginning in fiscal year 2008. S. 294 also would authorize the appropriation of \$1.7 billion in 2007 for Amtrak and other activities related to rail transportation; however, those amounts are not included in this cost estimate. (For this estimate, CBO assumes that no further appropriations will be provided in 2007 for Amtrak.) Estimates of spending are based on historical spending patterns of existing and similar programs.

S. 294 would authorize the appropriation of \$10.8 billion over the 2008–2012 period. That amount includes funds for grants to Amtrak for capital, operating, security, and debt expenses, grants to rail operators for security, grants to states for rail operations, and funds to support customs operations at the Vancouver rail station in Canada. In addition, CBO estimates that complying with the bill's requirements for DHS and certain agencies within DOT would cost \$38 million over the 2008–2012 period, subject to the availability of appropriated funds.

	By fiscal year, in millions of dollars—				
	2008	2009	2010	2011	2012
Grants to Amtrak:					
Authorization Level	1,867	1,870	1,834	1,760	1,566
Estimated Outlays	1,867	1,870	1,834	1,760	1,566
Grants for Rail Security:					
Authorization Level	133	133	133	0	0
Estimated Outlays	83	118	133	50	15
Grants to States for Rail Projects:					
Authorization Level	100	246	274	369	406
Estimated Outlays	22	72	139	205	277
Other Authorized Programs:					
Authorization Level	20	9	9	6	6
Estimated Outlays	11	11	10	8	7
Oversight, Reporting, and Assessments:					
Estimated Authorization Level	15	8	6	5	6
Estimated Outlays	7	14	6	5	6
Total Changes:					
Estimated Authorization Level	2,135	2,266	2,256	2,140	1,984
Estimated Outlays	1,990	2,085	2,122	2,028	1,871

Spending subject to appropriation

Amtrak. S. 294 would authorize the appropriation of about \$8.9 billion for grants to Amtrak over the 2008–2012 period. This total includes \$2.7 billion for operating expenses, \$4.1 billion for capital projects, and \$1.5 billion for the repayment of the principal and interest on its debt. The bill also includes \$599 million to improve the safety of tunnels in Maryland, New York, and the District of Columbia, and to upgrade security throughout the Amtrak system. Currently, DOT makes appropriations immediately available to Amtrak for such expenses. Assuming appropriation of the specified amounts, CBO estimates that those grants to Amtrak would cost \$8.9 billion over the 2008–2012 period.

Grants for Rail Security. The bill would authorize the appropriation of \$399 million over the 2008–2010 period for grants to rail carriers for improving security. That amount includes \$300 million to upgrade the security of the national freight and passenger rail system by improving emergency communications, securing capital assets, and training employees. The bill also would authorize the appropriation of \$99 million over the 2008–2010 period for grants to research and develop methods to improve the security of freight and intercity rail transportation. CBO estimates implementing those provisions would cost \$399 million over the 2008–2012 period.

Grants to States for Rail Projects. S. 294 would authorize DOT to make grants to states for capital projects that would improve intercity rail service. For those grants, the bill would authorize the appropriation of \$1.4 billion over the 2008–2012 period. Assuming appropriation of the specified amounts, CBO estimates those grants would cost \$715 million over the 2008–2012 period and about \$700 million after 2012.

Other Authorized Programs. Other provisions of the bill would authorize the appropriation of \$50 million over the 2008–2012 period, including:

- \$30 million for DOT to improve models for understanding railroad transportation and to study how railroad transportation could be improved;
- \$5 million for the Federal Railroad Administration, Amtrak, and interested states to form a committee to develop standards for certain rail equipment. The bill would allow Amtrak and participating states to enter into agreements or establish a corporation for acquiring such equipment;
- \$9 million for DHS to develop a program to encourage the use of wireless tracking systems for rail cars that are transporting certain hazardous materials; and
- \$6 million for CBP to implement a program to prescreen individuals traveling by rail between Vancouver, Canada, and Seattle, Washington.

Assuming appropriation of those specified amounts, CBO estimates that implementing those provisions would cost \$11 million in 2008 and \$50 million over the 2008–2012 period.

Oversight, Reporting, and Assessments. S. 294 would require DHS and certain agencies within DOT to oversee Amtrak operations, assess the nation's rail infrastructure, the safety and security of rail operations, and the performance of Amtrak, and to complete several reports to the Congress on Amtrak's operations and rail security. The bill also would require those departments to review plans for security and infrastructure improvements submitted by states and rail carriers to increase the public awareness of rail security issues. The bill would authorize the appropriation of \$5 million to DHS in 2008 to complete a risk assessment of freight and passenger rail transportation and require the department to prepare subsequent annual updates to that assessment.

Based on information from DOT and DHS, CBO estimates that implementing those provisions would cost \$7 million 2008 and \$38 million over the 2008–2012 period.

Direct spending and revenues

The bill would authorize the Treasury to repay Amtrak debt. S. 294 would authorize the Surface Transportation Board to assess penalties on freight railroads that cause damages to Amtrak operations and to provide those amounts to Amtrak. However, CBO expects that the impact of those provisions on direct spending would be insignificant.

Repayment of Amtrak Debt. S. 294 would authorize the Department of the Treasury to negotiate with Amtrak's creditors to restructure Amtrak's long-term debt with the goal of reducing costs to Amtrak and the government. Treasury's authority to initiate such negotiations would expire on October 1, 2008. The bill also would direct the Treasury—without further appropriation—to repay whatever debt the department is able to restructure if the government and Amtrak would realize savings.

Based on information from Amtrak and the Departments of Transportation and Treasury, CBO does not expect that the Secretary of the Treasury would opt to negotiate with Amtrak's creditors, and as a result, would not repay any of Amtrak's debt under this bill. Thus, CBO does not estimate that this provision would affect direct spending. As of March 31, 2007, Amtrak held about \$3.4 billion in long-term debt. Of this total, almost \$900 million is held in an escrow account for repayment, leaving about \$2.5 billion available for restructuring under S. 294. If the Treasury did negotiate with Amtrak's creditors and restructure and repay this debt, CBO estimates that the repayment would increase direct spending by more than \$2 billion over the next several years.

Freight Railroad Damages. S. 294 would direct the STB to investigate Amtrak's failure to meet certain performance measures and determine when the performance failure is due to a freight rail carrier's refusal to provide Amtrak preference over its tracks. The bill would authorize the STB to charge damages to freight rail carriers for refusing to give Amtrak such preference, and the bill would direct STB to provide those penalties to Amtrak. Collecting the penalties and providing them to Amtrak would affect direct spending and revenues, but CBO estimates that the net impact on the federal deficit would be insignificant. CBO estimates that such penalties would total less than \$500,000.

S. 294 would establish new civil penalties for violating certain regulations established by DHS and for failing to comply with the requirement to supply DHS with certain security plans. Thus, the federal government might collect additional fines if the bill is enacted. Collections of civil fines are recorded as revenues and deposited in the Treasury; however, CBO expects that any increase in revenues related to those penalties each year would not be significant.

Estimated impact on state, local, and tribal governments: S. 294 contains several intergovernmental mandates as defined in the Unfunded Mandates Reform Act because it would require rail and motor carriers to comply with reporting requirements and certain security procedures. The bill also would preempt certain state laws. The cost to public entities for complying with those mandates is uncertain and would depend on future regulations. Because of the small number of entities involved, however, CBO estimates that those costs would not exceed the annual threshold established by

UMRA for intergovernmental mandates (\$66 million in 2007, adjusted annually for inflation).

Rail worker security training

Through regulations to be established by the Department of Homeland Security, section 410 would require rail carriers to create and submit plans for security training and then complete the training for all front-line workers. Front-line workers are defined in the bill as security personnel, dispatchers, train operators, other onboard employees, maintenance and maintenance-support personnel, bridge tenders, as well as other appropriate employees of rail carriers as defined by the Secretary. CBO estimates that approximately 28,500 public-sector employees would fit that definition.

According to experts from the rail industry, the amount of training required varies depending on the industry sector (passenger vs. freight). It is likely that in either sector, the regulations issued by DHS would require additional training. Further, it is likely that many employees would need to be trained more than once over a five-year period. Therefore, costs to train workers would probably exceed the current costs for security training. Because costs would depend upon the future actions of DHS, for which information is not available, CBO cannot precisely estimate the total cost of this mandate. We expect, however, that the incremental cost likely would be small for public entities.

Whistleblower protection

Section 411 would prohibit rail carriers from discharging or discriminating against any employee who reports a perceived threat to security. Under current law, employees are protected if they report any safety issues, but this bill would grant additional whistleblower protections that would impose an intergovernmental mandate on rail carriers, as defined in UMRA. Because compliance with those broader whistleblower protections likely would involve only a small adjustment in current administrative procedures, CBO estimates that the provision would impose only minimal additional costs on rail carriers.

Other impacts

Title I would authorize about \$1.4 billion over the 2007–2012 period for grants to states to improve intercity rail service. Title II would require certain states with Amtrak routes to agree on a formula for the distribution of capital and operating costs. The federal government—via Amtrak—currently subsidizes those routes, and the bill effectively would increase the price of federal service. The bill would also authorize about \$1 billion over four years for grants to improve the security of both passenger and freight rail, establish a rail security and research program, and upgrade Amtrak tunnels in New York, New Jersey, Baltimore, and Washington, D.C. To the extent that state, local, or tribal governments apply for and receive such grants, those provisions would provide benefits to those entities. Any costs resulting from complying with the conditions of the grants would be incurred voluntarily.

Estimated impact on the private sector: S. 294 contains several private-sector mandates as defined in UMRA because it would re-

quire Amtrak and other rail carriers to comply with reporting requirements and certain security procedures. The bill also would impose additional requirements on Amtrak related to the performance of routes and meeting certain passenger needs. The cost to the private sector for complying with those mandates is uncertain and would depend on future regulations. CBO cannot determine whether the aggregate cost of mandates in the bill would exceed the annual threshold established by UMRA for private-sector mandates (\$131 million in 2007, adjusted annually for inflation). Other provisions of the bill would authorize grants for Amtrak. Any costs that Amtrak would incur to comply with conditions of federal assistance would be incurred voluntarily.

Requirements specific to Amtrak

S. 294 would impose various private-sector mandates, as defined in UMRA, on Amtrak. The bill includes reforms related to financial reporting that would require Amtrak to submit an annual budget and a five-year fiscal plan for Amtrak to the Secretary of Transportation and DOT's Inspector General. Amtrak would also be required to implement a modern financial accounting and reporting system, subject to review by DOT. The bill also would require Amtrak to evaluate the performance of each long-distance passenger rail route annually and complete the improvements necessary to make all existing stations readily accessible to and usable by persons with disabilities. Further, the bill would require that Amtrak:

- Develop new or improve existing metrics and minimum standards for measuring performance and service quality of intercity train operations;
- Develop and implement a plan to improve onboard service within one year after those metrics and minimum standards are established;
- Submit a plan to the Chairman of the National Transportation Safety Board and the Secretary of Transportation for addressing the needs of families of passengers involved in fatal rail accidents involving Amtrak intercity trains; and
- Implement new agreements for usage with various public-sector entities.

According to industry sources, most of the requirements included in the bill already are being met by Amtrak. For those requirements that may require additional effort or changes to current efforts, the cost to make such changes would be small.

Requirements on rail carriers (including Amtrak)

S. 294 would require rail carriers to train certain workers in security procedures, would grant whistleblower protections to their employees, and would place new requirements on carriers that transport high hazard materials.

Rail Worker Security Training. Section 410 would require rail carriers to create and submit plans for security training and then complete the training for all front-line workers. The security training programs must be developed in accordance with the guidance to be issued by DHS under the bill. CBO estimates that approximately 165,000 private-sector employees would fit the definition of front-line workers under the bill.

According to experts from the rail industry, the amount of training required varies depending on the industry sector (passenger vs. freight). It is likely that in either sector, the regulations issued by DHS would require additional training over and above current practice. Further, it is likely that many employees would need to be trained more than once over a five-year period. Therefore, costs to train workers would probably exceed the current costs for security training. Because this mandate depends upon the future actions of DHS, for which information currently is not available, CBO cannot provide an estimate for the cost of this mandate. CBO expects, however, that the additional cost for the private sector could be substantial, depending on the guidelines set forth by DHS.

Whistleblower Protection. Section 411 would prohibit rail carriers from discharging or discriminating against any employee who reports a perceived threat to security. Under current law, employees are protected if they report any safety issues. The granting of additional whistleblower protections would impose a private-sector mandate on rail carriers, as defined in UMRA. Because compliance with these broader whistleblower protections likely would involve only a small adjustment in administrative procedures, however, CBO estimates that the provision would impose only minimal additional costs on rail carriers.

Requirements on Hazmat Carriers. Section 412 would require rail carriers who transport high hazard materials, as defined in the bill, to develop a security risk mitigation plan for such materials. Currently, the Department of Transportation requires rail carriers who transport those hazardous materials to submit a security plan. However, the bill would expand the current requirements on rail carriers to include submitting a list of routes used to transport high hazard materials, addressing temporary shipment suspension options, and assessing risks to high-consequence targets. According to railroad industry sources, rail carriers are already complying with many of the requirements in the bill. Therefore, CBO estimates that the additional cost to comply with the mandate would be minimal.

Previous CBO estimate: On February 28, 2007, CBO transmitted a cost estimate for S. 184, the Surface Transportation and Rail Security Act of 2007, as ordered reported by the Senate Committee on Commerce, Science, and Transportation on February 15, 2007. That bill would authorize \$599 million in grants to Amtrak to secure tunnels and make security upgrades and \$399 million in grants to improve rail security nationwide. It also would require DHS and DOT to complete several reports, some of which would also be required by S. 294. Both bills would require rail carriers to create and submit plans for security training and then to complete such training for all front-line workers and would protect whistleblowers. The differences between the bills are reflected in CBO's cost estimates.

In addition to several mandates on motor carriers and pipeline operators, S. 184 contained many of the same mandates on rail carriers as are contained in S. 294. Because of uncertainty about regulations to be implemented under the bill, CBO could not determine whether the aggregate costs of those mandates on the private sector would exceed UMRA's annual threshold for private-sector mandates.

Estimate prepared by: Federal Costs: Sarah Puro; Impact on State, Local, and Tribal Governments: Elizabeth Cove; Impact on the Private Sector: Fatimot Ladipot.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

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

NUMBER OF PERSONS COVERED

S. 294 is intended to reauthorize Amtrak, expand State investment in passenger rail, enhance Federal and State rail planning efforts, and improve rail and surface transportation security by establishing new Federal programs and modifying existing law. The bill affects DOT, FRA, STB, TSA, and other entities already subject to FRA, STB, TSA rules and regulations, and therefore the number of persons covered should be consistent with the current levels of individuals impacted under existing TSA and DOT regulations.

ECONOMIC IMPACT

S. 294 is not expected to have an adverse impact on the United States economy. It is anticipated that the bill would have positive economic impacts for Amtrak and for other entities and regions that rely on intercity passenger service to provide efficient transportation. For further analysis of the economic impact on the private sector, see page — of the CBO estimate.

PRIVACY

S. 294 would have minimal effect on the privacy rights of individuals.

PAPERWORK

The Committee anticipates a slight increase in paperwork burdens on requirements for private individuals or businesses. In those areas where the bill does require additional paperwork, it is aimed at improving the operations of Amtrak, strengthening rail planning at the Federal and State level, and enhancing the safety and security of transportation infrastructure, assets, and operations.

S. 294 would require a range of plans, reports, communications, budget analyses, agreements, and rulemakings. Under sections 203 and 204, Amtrak and DOT IG would be required to create financial plans and transmit these reports to the Congress. Section 207 would require FRA to obtain an independent analysis of route selection methodology for Amtrak trains and submit this analysis to Congress, Amtrak, and DOT. Under section 209, STB would be required to report on the causes of chronic delays to Amtrak trains when certain criteria have been met or a party has requested an investigation. Sections 209, 213, and 214 would require Amtrak to develop route improvement plans for long-distance trains; an NEC state-of-good-repair plan; an NEC access fee agreement, developed with the NEC states; and security and safety committee reports.

Section 216 would require Amtrak to report to Congress on ADA compliance issues, and section 221 would require a report on improving on-board services.

Under section 401, the DHS Secretary would be required to issue a report containing recommendations and plans to Congress for improving rail security, and under sections 109 and 111, the DHS and DOT Secretaries would be required to develop and issue detailed guidance to the pertinent industry stakeholders. Section 414 would require the DHS and DOT Secretaries to develop a national plan for improved public outreach for rail security, which would entail communication with citizens, although not necessarily in print format.

The paperwork burden on industry or private individuals would stem from plans that would be developed and/or submitted for review to FRA and TSA; these plans would be used to justify new or continued Federal financial support and for strategic security purposes. For example, section 301 would require that States submit State rail plans meeting the criteria set forth under section 302 in order to be eligible for capital grants. Under Section 411, rail carriers would be required to develop and submit security threat mitigation plans which would be updated and resubmitted for review, while section 401 could require certain motor carriers to develop and maintain written route plans. Illustrations of grant requirements are found in sections 103, where the DOT Secretary would have to approve plans submitted by Amtrak before distributing grants for fire and life-safety improvements; in section 106, which would require the DHS Secretary to establish procedures applicants or grant awards; and in section 207, where the DHS Secretary would not be required to award grants until private bus operators submitted a plan for making security improvements.

SECTION-BY-SECTION ANALYSIS

TITLE I—AUTHORIZATIONS

Section 101. Authorization for Amtrak capital and operating expenses and state capital grants.

This section would authorize capital and operating grants to Amtrak for each of the FYs 2007 through 2012. Operating grant authorizations are as follows:

FY 07: \$580 million
 FY 08: \$590 million
 FY 09: \$600 million
 FY 10: \$575 million
 FY 11: \$535 million
 FY 12: \$455 million

This section would authorize capital grants for the national railroad transportation system, for expenses to bring the Northeast Corridor to a state-of-good-repair, and to make grants directly to States for other intercity rail passenger improvements under section 301. Capital grant authorizations are as follows:

Amount authorized	Percent available for States
FY 07: \$813 million	3 percent
FY 08: \$910 million	11 percent

FY 09: \$1.071 billion	23 percent
FY 10: \$1.096 billion	25 percent
FY 11: \$1.191 billion	31 percent
FY 12: \$1.231 billion	33 percent

One half of one percent of the available capital funds would be available to the DOT Secretary to perform project management oversight for Amtrak and State capital projects funded under this section.

Section 102. Authorization for the Federal Railroad Administration.

There would be authorized to be appropriated to FRA such funds as are necessary to implement responsibilities authorized by this Act for FYs 2007 through 2012.

Section 103. Repayment of long term debt and capital leases.

Funds would be authorized to be appropriated to pay interest and principal on Amtrak's long term debt for FYs 2007 through 2012. The average amount authorized per year for interest and principal repayment is \$287.5 million. Funds also would be authorized, to the extent necessary, to exercise early buyout of existing Amtrak debt or capital leases, if advantageous to Amtrak and therefore the taxpayers. Payments made under this section would not alter the existing non-Federal nature of Amtrak's debt. Authorization amounts under this section shall be reduced by the amount of Amtrak's debt service costs reduced through debt restructuring by the Treasury Secretary under section 215.

Section 104. Excess railroad retirement.

Such sums as are necessary would be authorized to be appropriated to the DOT Secretary beginning FY 2007 to pay into the Railroad Retirement Account the portion of Amtrak's Railroad Retirement Tier II Tax which exceeds the Railroad Retirement Tier II annuities paid to Amtrak retirees. The authorization level for Amtrak's operations grant is to be reduced by payments the Secretary makes under this section.

Section 105. Other authorizations.

Five million dollars would be authorized for each of FYs 2007 through 2012 for the rail cooperative research program required under section 305. Another \$5 million would be authorized for FY 2008 to Amtrak and States participating in the Next Generation Corridor Train Equipment Pool Committee established under section 303. Two million in FY 2008 would be authorized for Amtrak's use in conducting the evaluation required under section 216.

TITLE II—AMTRAK REFORM AND OPERATION IMPROVEMENTS

Section 201. National railroad passenger transportation system defined.

The definition of the basic Amtrak route system, which has been obsolete since 1997, would be repealed, and a new "national rail passenger transportation system" would be defined as: Amtrak's Boston Washington NEC; high speed corridors designated by the DOT Secretary once they have been improved for high speed service; long-distance routes (of greater than 750 miles) operated on the

date of enactment of the Act; and short distance routes operated by Amtrak or a non Amtrak recipient of Federal capital assistance under section 301. Amtrak and a State may agree on the operation of an intercity route or service not included in the National Rail Transportation System.

Subsection (b) would clarify that the 180 day notice period for routes which Amtrak seeks to discontinue does not apply for routes exclusively supported by non Federal sources, including States, regional or local authorities, or other parties that contract with Amtrak to provide intercity passenger rail service. Nothing in this provision is meant to provide third parties with direct statutory access to Amtrak or privately owned rail infrastructure. As is the case today, third parties seeking to initiate intercity passenger rail service would have to contract with Amtrak to operate such service if Amtrak's statutory right of access to private rail infrastructure is to be used.

Subsection (c) would state that Amtrak's general powers to develop and operate non high speed intercity service are unaffected by this bill.

Subsection (d) would state that the provision of law pertaining to the discontinuance of Amtrak routes, 49 U.S.C. 24706, applies to all routes operated by Amtrak regardless of a route's inclusion in the National Railroad Passenger Transportation System. This provision affirms that a route's inclusion in the National Railroad Passenger Transportation System does not protect that route from possible discontinuance. The Committee does not intend for this provision to countervail the amendments made by subsection (b).

Section 202. Amtrak board of directors.

Effective, October 1, 2007, the Amtrak Board would be expanded to 10 members as follows: the DOT Secretary, the President of Amtrak, and 8 individuals with experience in business, finance, or activities related to passenger transportation, who are appointed by the President of the United States, by and with the advice and consent of the Senate, for a term of 5 years or until their successors have been appointed and qualified. The President would be required to consult with Congressional leaders to ensure balanced representation of regions served by Amtrak. Members of Amtrak's Board serving on the date of enactment of the Act would be allowed to continue to serve to the end of their terms.

Section 203. Establishment of improved financial accounting system.

Section 203 would direct Amtrak to implement a modern accounting and reporting system that enables the railroad to: assign revenues and expenses to each of its lines of business and major activities, such as train operations, equipment maintenance, ticketing, and reservations; separate costs of infrastructure and rail operations; analyze ticketing and reservation data on a real time basis; and provide cost accounting data. This section would further require the DOT IG to review the accounting system and ensure it accomplishes the specified purposes. Without improved financial systems and controls, it will be difficult for Amtrak to substantially improve its operations, save money, and increase revenue.

Section 204. Development of 5-year financial plan.

This section would require Amtrak to submit its annual budget for the next fiscal year and a 5-year financial plan to DOT on the first day of the fiscal year or 60 days after enactment of an appropriation for such fiscal year. The budget should specify how Amtrak plans to spend its Federal subsidy that it has received in the appropriations act. This budget would be distinct from the budget request that Amtrak submits to the Administration and Congress. The 5-year plan shall include projected revenues, expenditures, ridership, capital funding requirements, cash flow forecasts, and an assessment of Amtrak's continuing financial stability. The DOT IG shall report to the Congress on the annual budget and the 5-year plan prepared by Amtrak. It is the Committee's expectation that the 5-year plan conform to the authorization levels contained in this legislation and that the out year detail be sufficient for Congress to be able to ascertain if Amtrak will be able to achieve the operating subsidy reductions required by section 101.

Section 205. Establishment of grant process.

Section 205 would require the DOT Secretary to establish substantive and procedural requirements for Amtrak grant requests. It is the Committee's expectation that the requirements developed by the Secretary provide sufficient transparency and controls over Amtrak's use of the Federal appropriation. The requirements should include controls that ensure that Federal funds appropriated for capital projects are not diverted to cover operating costs. After Amtrak submits a complete grant request including a schedule for funding, the Secretary must approve or disapprove it within 30 days. If the request is denied, the Secretary must notify Amtrak of the reasons, and Amtrak must submit a modified request within 15 days. If the Secretary denies the modified request, the Secretary must, within 15 days of its receipt, notify the appropriate House and Senate Committees of the reasons for such disapproval and recommend a process for resolving the outstanding issues. This grant process would provide additional Federal oversight ensuring that funds appropriated for the use of Amtrak are used efficiently and for purposes consistent with this Act. Additionally, the Committee believes that statutory establishment of this process will provide both Amtrak and the Secretary with clear timelines and expectations, which should minimize disputes and result in the timely and predictable transmittal of appropriated funds. The Committee does not intend the grant process to be used by either party as a means to pursue or require initiatives not included in this reauthorization.

Section 206. State-supported routes.

Within 2 years after the date of enactment of the Act, Amtrak, in consultation with the Secretary and the chief executive of each State, would be required to develop a standardized methodology for computing and allocating operating and capital costs of short-distance routes of 750 miles or less. Within 5 years after the date of enactment of the Act, the new methodology must be implemented and ensure equal treatment to all States supporting short-distance service. In the event of a failure to adopt and implement such a methodology, STB would be required to develop and implement an

allocation methodology. Grants to a State described under section 301 would be available to pay capital costs under this section. Currently Federal financial participation for corridor routes varies widely. In some cases the Federal Government supports the full subsidy, in other cases the routes are supported exclusively by State funds. The purpose of this provision is to standardize Federal participation across all corridors.

Section 207. Independent auditor to establish methodologies for Amtrak route and service planning decisions.

This section would direct FRA to retain a consultant to develop and recommend objective methodologies for route and service decisions including expansion or elimination of services. Cost recovery and on-time performance of existing routes, connections with other routes, transportation needs of communities not served by other public transportation services, and the methodologies used by rail service providers in other countries must be considered. The Amtrak Board would be required to consider adoption of the consultant's recommendations. It is the Committee's expectation that the methodologies be based on objective criteria and that the independent consultant shall not have a financial interest or other such conflicts in the outcome of Amtrak's routing decisions.

Section 208. Metrics and standards.

This section would provide that, in consultation with STB and the operating freight railroads, FRA and Amtrak will jointly develop metrics and standards for measuring the performance and service quality of intercity train operations within 180 days after the date of enactment of the Act. These metrics and standards would include cost recovery; on-time performance; ridership per train mile; on board and station services; and the connectivity of routes. This section would require FRA to publish a quarterly report on train performance and service quality. It is the Committee's expectation that the freight railroads be consulted in the development of the metrics and that to the extent practicable, the metrics and standards developed not be inconsistent with measures of on-time performance included in the contracts between the freight railroads and Amtrak.

Section 209. Passenger train performance.

Section 209 would provide that if for any 2 consecutive quarters, the on-time performance of any intercity passenger train averages less than 80 percent, or the service quality fails to meet the standards established under the previous section, STB may investigate the extent to which such failure is due to causes that could reasonably be addressed by the operating freight railroad. Additionally, Amtrak, freight railroads that host Amtrak trains, or states that financially support Amtrak services also would be permitted to petition STB directly for an investigation of Amtrak delays. If the Board determines that the cause is the failure of a freight railroad to provide preference to Amtrak over freight trains, the Board shall enforce that preference under applicable law and may award damages to Amtrak or a State that financially supports Amtrak's services. The section also would amend existing law to allow freight railroads to petition STB for relief if the railroad believes that the

operation of a particular Amtrak route is having a negative impact on its freight operations. Under current law, the railroad may only petition the DOT Secretary. The intent of this section is to provide a forum for both Amtrak and the freight railroads for the adjudication of service disputes, including on-time performance problems. Currently, the Committee understands that the existing process is cumbersome and is almost never used. Meanwhile, the frustration of both Amtrak and the freight railroads that host Amtrak towards one another seems to be increasing, while passenger train performance continues to decline or remain dismal on certain routes. The Committee believes that STB will be able to consider disputes in an efficient and evenhanded manner.

Section 210. Long-distance routes.

Using the metrics and standards developed under section 208, Amtrak would be required annually to evaluate each long-distance route. Further, Amtrak would be required to rank the routes, based upon their performance in 2006, as the best performing third of such routes, the second best performing third, and the worst performing third. Amtrak must develop a performance improvement plan for its long-distance routes and implement it in FY 2008 with respect to the worst-performing routes; in FY 2009 for the second-best performers; and in FY 2010 for the best performing. FRA would monitor the development and implementation of the long-distance route performance plan and may withhold, following notice to Amtrak which has an opportunity to be heard, appropriated funds for operating a route on which reasonable progress in improving performance is not being made. It is the Committee's expectation that the performance improvement plans be the result of thorough evaluations of the long-distance routes and that changes to food service, sleeper service, and other on board amenities be considered. It has been suggested that significant savings may be realized if Amtrak restructured its contracts for food and beverage service. Amtrak also should evaluate the long-distance routes to see if they could be restructured to be a series of inter-connected corridors. It also has been suggested that such inter-connected corridors could provide more frequent service at more convenient times, offering the potential for increased ridership.

Section 211. Alternate passenger rail service program.

Within 1 year after the date of enactment of this Act, FRA would be required to develop a program under which a rail carrier or carriers that own a route over which Amtrak operates may petition FRA to become a passenger rail carrier for that route in lieu of Amtrak. Under the program, the rail carrier and Amtrak would submit a bid to provide service over the entire route, and FRA would award the right to provide such service in accordance with standards it may prescribe. In addition, the operating subsidy provided by FRA would not exceed that which Amtrak received for the route prior to the petition. An entity operating as a rail carrier that has negotiated a contingent lease agreement with a railroad that owns the infrastructure over which Amtrak currently operates may participate in this program in affiliation with the host freight railroad. The first deadline for submission of petitions would be in FY 2008 for alternate operations to commence in FY 2009. This section

would not apply to more than 1 Amtrak route in FYs 2009 and 2010, and two routes beginning in FY 2011 and each fiscal year thereafter. Any contract awarded by FRA under this section would require the operator to meet the metrics and standards under section 208.

Section 212. Employee transition assistance.

For Amtrak employees adversely affected by the cessation of Amtrak as the operator of a long-distance route under section 211, the Secretary would be required to develop a program under which the Secretary may provide up to \$50,000 per employee in benefits in lieu of other termination related payments due from Amtrak. This transition assistance would be similar to compensation provided to Conrail employees during Federal management of that system. If the affected employees do not accept the incentives offered under such program, the Secretary would make grants to Amtrak of funds otherwise appropriated to FRA to permit Amtrak to pay termination related benefits to such employees under existing contractual agreements. Since there will be ample time to plan for the transition of service from Amtrak to a winning bidder other than Amtrak under section 211, it is expected that Amtrak will be able to use the employees on the affected route to back fill positions elsewhere in its system due to the attrition.

Section 213. Northeast Corridor state-of-good-repair plan.

Within 6 months after the date of enactment of the Act, Amtrak, in consultation with the Secretary and the NEC States, would be required to prepare a capital spending plan to return the right of way, including trackage, signals, auxiliary structures and infrastructure, equipment, stations, and facilities of the NEC to a state-of-good-repair by the end of FY 2012. The Secretary would review the plan and annual updates for approval. The Secretary would make capital grants of appropriated funds, as authorized by section 101 of this Act, for up to 100 percent of the capital investments contained in the spending plan. It is the Committee's expectation that the Secretary shall use the grant process established in section 205 to ensure that funds appropriated for the NEC and made available to Amtrak are spent on the Corridor and in a manner consistent with the improvement plan. The bill also would allow the Secretary to withhold up to one half percent of funds appropriated for the NEC to fund project management oversight (PMO). PMO is used in other DOT programs to ensure that funds are effectively spent. The Committee intends that no local or State match be required for projects on the state-of-good-repair plan. Additionally, in the development and execution of the capital spending plan, Amtrak shall have the flexibility to allocate the estimated funds attributed to the state-of-good-repair needs for a particular asset towards the refurbishment, renewal, or replacement of that asset. Amounts made available to Amtrak under this Act for projects contained in the plan would be allowed to be combined with other sources of capital investment to finance improvements that incorporate within them the elements contained in the state-of-good-repair program.

Section 214. Northeast Corridor infrastructure and operations improvements.

Within 6 months after the date of enactment of the Act, the Secretary would be required to establish a NEC Infrastructure and Operations Advisory Commission, which would include representatives of Amtrak, FRA, and each of the States in the NEC, with none of these parties constituting a majority. The Commission then would develop future funding requirement recommendations for capital improvements and scheduling and safety enhancements. Further, within 1 year after the date of enactment of PRIIA, the Commission would develop a proposal for a standardized formula to determine costs and compensation to be paid by the NEC commuter authorities for the use of facilities or services provided to them by Amtrak. If Amtrak and the commuter authorities do not implement the recommended formula, they may go to arbitration or petition STB for a ruling. This provision also would direct the Secretary to establish a NEC Safety and Security Committee.

This section also would require Amtrak and the Rhode Island Department of Transportation (RIDOT) to reach agreement by no later than December 15, 2007, on access terms and other conditions for RIDOT's use of the NEC for additional commuter service in Rhode Island. If Amtrak and RIDOT can not reach agreement on the terms of access, FRA, after consultation with both parties, would resolve any outstanding disagreements impeding the agreement by January 30, 2008. FRA would ensure that the agreement would not allow for the cross-subsidization of intercity passenger rail and commuter passenger rail service.

Section 215. Restructuring long term debt and capital leases.

Between the date of enactment and January 1, 2008, the Treasury Secretary, in consultation with the DOT Secretary and Amtrak, would be authorized to make agreements to restructure Amtrak's debt. The provision would direct the Treasury Secretary to enter into negotiations with the holders of such debt for the purpose of restructuring and assuming, or repaying, the debt on terms significantly more favorable to the United States Government. To the extent Amtrak's principal and interest payments would be reduced as a result of this section, authorizations for such payments under section 103 of this Act are correspondingly reduced. Amtrak may incur no new debt without advance approval of the DOT Secretary.

Section 216. Study of compliance requirements at existing intercity rail stations.

Under this section, Amtrak would be required to evaluate the improvements necessary to make all existing stations it serves readily accessible as required under the ADA. The evaluation would be required to include the estimated cost of such improvements and the earliest date they could be made. The evaluation submitted by Amtrak would be submitted to the House and Senate authorizing Committees and the National Council on Disability by September 30, 2008, along with recommendations for funding such improvements.

Section 217. Incentive pay.

This section would encourage Amtrak to develop an incentive pay program for Amtrak management employees. The Committee believes that incentive pay could be an important tool to increase productivity at Amtrak and reward excellence, innovation, and improvement.

Section 218. Access to Amtrak equipment and services.

Under this section, States wishing to use operators other than Amtrak for the provision of State-supported services would have access to Amtrak equipment, facilities, and reservation systems for the purpose of operating that particular route. If Amtrak and a State fail to reach an agreement governing such use, STB shall determine reasonable terms of use in accordance with section 206 of this Act and direct Amtrak to make such assets available to the State, so long as such use is essential to the planned service and will not impair or degrade Amtrak's other operations.

Section 219. General Amtrak provisions.

This section would repeal the operating self sufficiency requirement imposed on Amtrak in 1997, along with the 2002 "sunset trigger" for failing to meet the requirement. This repeal is technical in nature and is not meant to indicate that Amtrak should not strive to reduce its dependency on Federal funds or improve the efficiency of how it spends Federal funds as elaborated through this bill. Also repealed would be the requirement to redeem Amtrak's outstanding common stock. In addition, the provision would authorize Amtrak to continue leasing vehicles from the General Services Administration. This section also specifies that District of Columbia laws are applicable to Amtrak contracts entered into with the State of Maryland. This provision is necessary to avoid a conflict with Maryland arbitration laws that has prevented the State and Amtrak from concluding contract negotiations related to Maryland-sponsored commuter service on the NEC.

Lastly, the section would authorize the establishment of facilities and procedures to conduct pre-clearance of passengers on Amtrak trains entering the U.S. from Canada. The section would require that a facility first be established in Vancouver, Canada, and other areas as designated by the DOT Secretary. The Committee is aware of significant delays caused to Amtrak trains entering the United States from Canada by customs clearance procedures that occur en-route. The Committee expects this authorization to lead to the establishment of pre-clearance operations in Canada to expedite travel to the United States by Amtrak, where practicable, similar to pre-clearance arrangements now underway for certain airline flights between the two Nations.

Section 220. Private sector funding of passenger trains.

The provision would prompt Amtrak to seek out business with private sector customers (i.e. charters, etc.) in order to decrease its Federal operations grant amounts. The Committee believes that Amtrak should explore such business arrangements and that such partnerships have the potential to reduce costs and improve the level of service.

Section 221. On-board service improvements.

Under this provision, Amtrak would develop and implement a plan to improve on-board service based on the metrics and standards developed under section 208. Amtrak would provide a report to Congress describing how it will improve on board service and provide a timeline for implementing such improvements. Amtrak's on-board service has frequently been the subject of criticism. The Committee believes major improvements can be made to improve the experience of passengers, and suspects such improvements will directly increase the corporation's profits.

Section 222. Amtrak management accountability.

This section would require the DOT IG to complete an overall assessment within 3 years following the date of enactment of this Act and 2 years thereafter of the progress made by Amtrak management and the DOT in implementing the provisions of this Act.

Section 223. Locomotive biodiesel fuel use study.

This section would require FRA to conduct a study on the extent to which Amtrak can use biodiesel fuel to power its locomotive fleet. FRA would be required to consult with the Department of Energy and the Environmental Protection Agency in conducting the study. By April 1, 2008, FRA would be required to report to Congress the results of the study, including findings, conclusions, and recommendations.

TITLE III—INTERCITY PASSENGER RAIL POLICY

Section 301. Capital assistance for intercity passenger rail service.

This provision would establish authority for the DOT Secretary to make capital grants to a State to fund improvements to intercity passenger rail transportation from the funds authorized for capital improvements under section 101. A grant may not exceed 80 percent of the capital cost, but the remaining 20 percent may be funded from amounts appropriated to a department of the Federal Government and eligible to be expended on transportation. The Secretary also would allocate an appropriate portion of grants under this section to States with no intercity rail passenger service (Hawaii, South Dakota, and Wyoming) and to the State of Alaska. Conditions of the grants are: (1) compliance with laws generally governing major Federal projects, (2) a written agreement between the grantee and the owner of any railroad facilities to be used or improved, and (3) a written agreement between any new rail operator and Amtrak labor organizations to protect the rights of Amtrak employees who would otherwise be adversely affected (this does not apply to Amtrak's access to railroad rights of way for projects where train speeds do not exceed 79 miles per hour or to the Alaska Railroad). Although these grants are primarily established for States to fund improvements to intercity passenger rail transportation, these projects may benefit other infrastructure owners or users.

Section 302. State rail plans.

States would be authorized to prepare and maintain a State rail plan in accord with requirements listed in this section. A State rail

plan would be required to designate an authority to approve and carry out the plan and be reviewed by the Secretary. The section also would provide criteria for the purpose and content of the State rail plans, including a long range service and investment program.

Section 303. Next generation corridor train equipment pool.

Amtrak would be required to establish, within 180 days of enactment of this Act, a committee, along with FRA and interested States, to design and develop specifications for a joint procurement of equipment (i.e. passenger cars, locomotives, etc.).

Section 304. Federal rail policy.

Under this section, the organization of FRA would be modified and its responsibilities would be expanded. Under this section FRA would be required to develop a national rail plan; the development of the national rail plan shall not impede ongoing State rail planning, project development, or funding.

Section 305. Rail cooperative research program.

The Secretary would be directed to establish a research program to examine issues relating to intercity, commuter, and freight rail enhancements, including impacts on highway and airport congestion, rail capacity constraints, and development of high speed rail services.

TITLE IV—PASSENGER RAIL SECURITY AND SAFETY

Section 401. Definitions.

This section defines the terms “High Hazard Materials” and “Secretary” for the purposes of this Act.

Section 402. Rail transportation security risk assessments.

This section would require the Secretary of DHS to establish a task force to complete a risk assessment of freight and passenger rail transportation. The DHS Secretary would be required to take into account actions taken or planned by both public and private entities. Based on the findings of the task force, within 1 year after the date of enactment of this Act, the Secretary would be required to develop and report to Congress prioritized recommendations for improving rail security, including recommendations related to: tunnels, bridges, and other rail infrastructure security; explosive, chemical, biological, and radiological detection technologies; surveillance equipment; railroad or railroad shipper employee training; public outreach and security awareness; immediate and long-term costs associated with addressing risks; and public and private sector rail security funding efforts.

The DHS Secretary would be required to include in the recommendations a plan for the Federal government to provide security support at high threat levels of alert; a plan for coordinating existing and planned rail security initiatives undertaken by the public and private sectors; and a contingency plan developed in conjunction with the intercity and commuter passenger railroads to ensure the continued movement of freight and passengers in the event of a terrorist attack. The DHS Secretary would be required to provide Congress with annual assessments and recommenda-

tions concerning the security of the domestic rail system. In developing the risk assessment, recommendations, and plans required under this section, the Secretary shall consult with industry stakeholders and other relevant entities and shall utilize existing risk assessments completed by the DHS or other Federal entities, and, as appropriate, assessments completed by other stakeholders. This section would authorize \$5 million for FY 2008 to carry out this section.

The Committee notes its frustration with the inability of TSA to complete a comprehensive risk assessment of the railroad sector. The Committee believes fulfillment of this section is an absolute priority, so that the results of the assessment may be used to guide the ongoing rail security efforts and the new programs called for in this bill. In completing the assessment required by this section, the Committee does not want TSA to unnecessarily redo existing assessment work, of sufficient quality and relevance, already completed by the agency or other Federal, private or public stakeholders. However, the Committee expects any existing assessments used to be synthesized into a comprehensive and coherent total assessment, not simply compiled into a single document.

Section 403. System-wide Amtrak security upgrades.

This section would authorize the DHS Secretary to make security grants to Amtrak for the general purposes of: protecting underwater/underground assets and systems; protecting high risk/high consequence assets identified through system-wide risk assessments; counter-terrorism training for front line staff; use of visible/unpredictable deterrence; emergency preparedness drills and exercises; and public awareness and preparedness campaigns. Specific grant eligibilities include: securing major tunnel access points in New York, New Jersey, Maryland, and Washington, D.C.; securing Amtrak trains and stations; obtaining a watch list identification system and interoperable communication system; and hiring additional police and security officers.

The Secretary would authorize grants to Amtrak for projects contained in a system-wide security plan approved by the Secretary, and the DOT Secretary would disburse the grant funds to Amtrak through DOT's existing Amtrak grant process. The Secretary would be required to ensure that grants are appropriately distributed to areas outside of the NEC, consistent with the highest security needs of the Amtrak system. This section would authorize \$63.5 million for FY 2008 and \$30 million for FYs 2009 and 2010 to carry out this section.

The Committee expects the DOT Secretary to function as a pass-through for grants awarded under this section to Amtrak, using the quarterly grant process currently used by the DOT to provide Federal funds to Amtrak. The Committee does not expect the DOT to establish any additional grants requirements, and this section does not provide the DOT any additional authority by which to deal or withhold grants made to Amtrak.

Section 404. Fire and life-safety improvements.

This section would authorize the DOT Secretary to make grants to Amtrak for the purpose of making fire and life-safety improvements to Amtrak tunnels on the NEC. This section would authorize

\$100 million in funding for DOT for each of FYs 2008 through 2011 to make fire and life-safety improvements to the New York/New Jersey tunnels; \$10 million for each of FYs 2008 through 2011 for improvements of the Baltimore & Potomac and Union tunnels in Baltimore, Maryland; and \$8 million for each of FYs 2008 through 2011 for improvements of the Washington, D.C., Union Station tunnels. The DOT Secretary would be required to approve plans submitted by Amtrak before distributing grants. In addition, the Secretary may consider the feasibility of seeking a financial contribution from other rail carriers towards the cost of the project. This section also would authorize \$3 million in FY 2008 for preliminary design of a new railroad tunnel in Baltimore, Maryland.

Section 405. Freight and passenger rail security upgrades.

This section would authorize the DHS Secretary to make grants to freight railroads, the Alaska Railroad, hazardous materials shippers, owners of rail cars used to transport hazardous materials, institutions of higher education, State and local governments, and Amtrak, for full or partial reimbursement of costs incurred to prevent or respond to acts of terrorism, sabotage, or other risks. The DHS Secretary would be required to adopt necessary procedures to ensure that grants made under this section are expended in accordance with the purposes of this Act. This section would authorize \$100 million for DHS for each of FYs 2008 through 2010 for the Secretary to carry out this section. Grants to Amtrak would be limited to \$45 million and grants for hazardous material rail security would be limited to \$80 million in total over the authorization period.

The Committee believes the authorization of the program is particularly important because very little of the existing DHS rail security grant funds have been available to intercity passenger rail security and no funds have been made available for freight railroad security.

Section 406. Rail security research and development.

This section would require the DHS Secretary, in conjunction with the DHS Undersecretary for Science and Technology and the Assistant Secretary for TSA, and in consultation with the DOT Secretary, to carry out a research and development program for the purpose of improving freight and intercity passenger rail security. In carrying out this section, the DHS Secretary would be required to coordinate with other research and development initiatives at the DOT. The DHS Secretary would also be allowed to award research and development grants to certain entities described in this section. This section would authorize \$33 million for DHS for each of FYs 2008 through 2011 for the Secretary to carry out this section.

Section 407. Oversight and grant procedures.

This section would authorize the DHS Secretary to enter into contracts to audit and review grants awarded under this Act. The Secretary would be required to prescribe procedures and schedules for the awarding of grants under this Act, including application and qualification procedures. In awarding grants, the DHS Secretary may issue letters of intent (LOI) to recipients of grant

awarded under this bill, as the Secretary may do now for aviation security funding through TSA. The Committee included this LOI authority because of the multi-year nature of some of the capital projects that may be funded through grants under this bill. In such instances, it is important that public and private sector partners in security improvements receive indications from TSA that the agency believes multi-year funding is appropriate. The Committee acknowledges an LOI is not a commitment of future funds by an agency.

Section 408. Amtrak plan to assist families of passengers involved in rail accidents.

This section would require Amtrak, not later than 6 months after the date of enactment of this Act, to submit to the Chairman of the National Transportation Safety Board, the DOT Secretary and the DHS Secretary, a plan for addressing the needs of families of passengers involved in any rail passenger accident involving an Amtrak intercity train and resulting in loss of life. This section would authorize \$500,000 for FY 2008 for the DOT Secretary to carry out this new section.

Section 409. Northern border rail passenger report.

This section would require the DHS Secretary, in consultation with the DOT Secretary, heads of other appropriate Federal departments and agencies, and Amtrak, within 180 days of the date of enactment of the Act, to submit a report to Congress that contains: a description of the current system for screening passengers and baggage on rail service between the U.S. and Canada; an assessment of the current program to provide pre-clearance of airline passengers between the U.S. and Canada; an assessment of the current program to provide pre-clearance of freight railroad traffic between the U.S. and Canada; information on progress by the DHS and other Federal agencies towards finalizing a bilateral protocol with Canada that would provide for pre-clearance of passengers on trains operating between the U.S. and Canada; a description of legislative, regulatory, budgetary, or policy barriers to providing pre-screened passenger lists for such passengers; a description of the Canadian position with respect to pre-clearance; a draft of any changes to Federal law necessary to allow for pre-screening; and a feasibility analysis of reinstating in-transit inspections onboard international Amtrak trains. The Committee expects this report and the work undertaken to prepare it by the relevant agencies to inform the development of pre-clearance facilities and procedures under section 219.

Section 410. Rail worker security training program.

This section would require that, not later than one year after the date of enactment of this Act, the DHS and DOT Secretaries work with law enforcement officials, as well as terrorism and rail experts, to develop and issue detailed guidance for a railroad worker security training program to prepare front-line workers for potential threat conditions. This section also would require railroad carriers to adopt a worker security training program in accordance with the guidance and submit it to the DHS Secretary for approval. Within one year after the Secretary reviews rail carriers' training

programs, railroad carriers would be required to complete the training of all front-line workers consistent with the approved program.

Section 411. Whistleblower protection program.

This section would preclude rail carriers from discharging, or otherwise discriminating against, a railroad employee because the employee, or the employee's representative, provided, caused to be provided, or is about to provide, to the employer or the Federal government information relating to a reasonably perceived threat to security; provided, caused to be provided, or is about to provide testimony before a Federal or State proceeding; or refused to violate or assist in violation of any law or regulation related to rail security. Additionally, a new process for employees to report railroad security problems, deficiencies, or vulnerabilities would be required to be established under this section. The process shall ensure the confidentiality of employees reporting under this section and bars retaliation against employees that provide information under this section.

Section 412. High hazard material security threat mitigation plans.

This section would direct the Secretaries of DHS and DOT to require rail carriers transporting a high hazard material to develop security threat mitigation plans, including alternative routing and temporary shipments suspension options, and to address assessed risks to high-consequence targets. These threat mitigation plans would be implemented when the threat levels of the Homeland Security Advisory System are high or severe or specific intelligence of probable or imminent threat exists toward high-consequence rail targets or infrastructure. Within 60 days of enactment of this Act, a list of routes used to transport high hazard materials would be required to be submitted to the DHS Secretary. Within 180 days after receiving the notice of high-consequence targets on such routes by the Secretary, each rail carrier would be required to develop and submit a high hazard material security threat mitigation plan to the DHS Secretary. Any revisions must be submitted to the Secretary within 30 days of the revisions being made. The DHS Secretary, with the assistance of the DOT Secretary would be directed to review and transmit comments on the plans to the railroad carrier. A railroad carrier must respond to those comments within 30 days. The plans would be required to be updated by the railroad carrier every 2 years. This section also defines the following terms: "high-consequence target," "catastrophic impact zone," and "rail carrier."

Section 413. Enforcement authority.

This section would amend current law to clarify the DHS Secretary's legal authority for initiating an administrative enforcement proceeding for violations of transportation security regulations and requirements relating to modes of transportation other than aviation. Presently, the TSA can enforce aviation security-related regulations and requirements administratively, but ambiguity exists regarding such administrative enforcement authority for non-aviation related enforcement actions. This provision would extend the exist-

ing aviation enforcement authority to the Secretary for non-aviation transportation modes.

Section 414. Rail security enhancements.

This section would allow police officers employed by a railroad to be deputized to help a second railroad in carrying out enforcement duties on the second railroad. Additionally, the provisions would require the DOT Secretary to write and distribute to States model railroad police commissioning laws to help prevent the problems posed by “scam railroads.” Scam railroads are companies that are organized as railroads in order to obtain police powers but are not actually engaged in the railroad business.

Section 415. Public awareness.

This section would require, within 90 days of enactment of this Act, the DHS Secretary, in consultation with the DOT Secretary, to develop a national plan for improved public outreach and awareness of measures that the general public, railroad passengers, and railroad employees can take to increase railroad system security. Not later than 9 months after the date of enactment of this Act, the DHS Secretary would be directed to implement this plan.

Section 416. Railroad high hazard material tracking.

This section would require, within 6 months of enactment of this Act, the DHS Secretary to develop a program to encourage the equipping of rail cars transporting high hazard materials with communications technology that provides information concerning car position, depressurization, and the release of hazardous materials. This section would authorize \$3 million in funding for FYs 2008 through 2010 for the Secretary to carry out this section.

Section. 417. Certain reports submitted to Senate Committee on Homeland Security and Governmental Affairs.

This section specifies that certain reports required by under this title shall be additionally submitted the Senate Committee on Homeland Security and Governmental Affairs.

Section 418. Authorization of appropriations.

This section would authorize \$205 million in funding for FY 2008 and \$166 million for FYs 2009 to 2010 for the DHS Secretary for this title. This section also would authorize \$121 million for FY 2008 and \$118 million for FYs 2009 to 2011 for the DOT Secretary to carry out the DOT’s responsibilities under this Act.

CHANGES IN EXISTING LAW

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

AMTRAK REFORM AND ACCOUNTABILITY ACT OF 1997

[SEC. 204. SUNSET TRIGGER.]

[49 U.S.C. 24101 note]

[(a) IN GENERAL.—If at any time more than 2 years after the date of enactment of this Act and implementation of the financial plan referred to in section 24104(d) of title 49, United States Code, as amended by section 201 of this Act, the Amtrak Reform Council finds that—

[(1) Amtrak's business performance will prevent it from meeting the financial goals set forth in section 24104(d) of title 49, United States Code, as amended by section 201 of this Act; or

[(2) Amtrak will require operating grant funds after the fifth anniversary of the date of enactment of this Act, then the Council shall immediately notify the President, the Committee on Commerce, Science, and Transportation of the United States Senate, and the Committee on Transportation and Infrastructure of the United States House of Representatives.

[(b) FACTORS CONSIDERED.—In making a finding under subsection (a), the Council shall take into account—

[(1) Amtrak's performance;

[(2) the findings of the independent assessment conducted under section 202;

[(3) the level of Federal funds made available for carrying out the financial plan referred to in section 24104(d) of title 49, United States Code, as amended by section 201 of this Act; and

[(4) Acts of God, national emergencies, and other events beyond the reasonable control of Amtrak.

[(c) ACTION PLAN.—Within 90 days after the Council makes a finding under subsection (a)—

[(1) it shall develop and submit to the Congress an action plan for a restructured and rationalized national intercity rail passenger system; and

[(2) Amtrak shall develop and submit to the Congress an action plan for the complete liquidation of Amtrak, after having the plan reviewed by the Inspector General of the Department of Transportation and the General Accounting Office for accuracy and reasonableness.

[SEC. 205. SENATE PROCEDURE FOR CONSIDERATION OF RESTRUCTURING AND LIQUIDATION PLANS.]

[49 U.S.C. 24101 note]

[(a) IN GENERAL.—If, within 90 days (not counting any day on which either House is not in session) after a restructuring plan is submitted to the House of Representatives and the Senate by the Amtrak Reform Council under section 204 of this Act, an implementing Act with respect to a restructuring plan (without regard to whether it is the plan submitted) has not been passed by the Congress, then a liquidation disapproval resolution shall be introduced in the Senate by the Majority Leader of the Senate, for himself and the Minority Leader of the Senate, or by Members of the Senate designated by the Majority Leader and Minority Leader of the Senate. The liquidation disapproval resolution shall be held at the desk at the request of the Presiding Officer.

[(b) CONSIDERATION IN THE SENATE.—

[(1) REFERRAL AND REPORTING.—A liquidation disapproval resolution introduced in the Senate shall be placed directly and immediately on the Calendar.

[(2) IMPLEMENTING RESOLUTION FROM HOUSE.—When the Senate receives from the House of Representatives a liquidation disapproval resolution, the resolution shall not be referred to committee and shall be placed on the Calendar.

[(3) CONSIDERATION OF SINGLE LIQUIDATION DISAPPROVAL RESOLUTION.—After the Senate has proceeded to the consideration of a liquidation disapproval resolution under this subsection, then no other liquidation disapproval resolution originating in that same House shall be subject to the procedures set forth in this section.

[(4) AMENDMENTS.—No amendment to the resolution is in order except an amendment that is relevant to liquidation of Amtrak. Consideration of the resolution for amendment shall not exceed one hour excluding time for recorded votes and quorum calls. No amendment shall be subject to further amendment, except for perfecting amendments.

[(5) MOTION NONDEBATABLE.—A motion to proceed to consideration of a liquidation disapproval resolution under this subsection shall not be debatable. It shall not be in order to move to reconsider the vote by which the motion to proceed was adopted or rejected, although subsequent motions to proceed may be made under this paragraph.

[(6) LIMIT ON CONSIDERATION.—

[(A) After no more than 20 hours of consideration of a liquidation disapproval resolution, the Senate shall proceed, without intervening action or debate (except as permitted under paragraph (9)), to vote on the final disposition thereof to the exclusion of all amendments not then pending and to the exclusion of all motions, except a motion to reconsider or table.

[(B) The time for debate on the liquidation disapproval resolution shall be equally divided between the Majority Leader and the Minority Leader or their designees.

[(7) DEBATE OF AMENDMENTS.—Debate on any amendment to a liquidation disapproval resolution shall be limited to one hour, equally divided and controlled by the Senator proposing the amendment and the majority manager, unless the majority manager is in favor of the amendment, in which case the minority manager shall be in control of the time in opposition.

[(8) NO MOTION TO RECOMMIT.—A motion to recommit a liquidation disapproval resolution shall not be in order.

[(9) DISPOSITION OF SENATE RESOLUTION.—If the Senate has read for the third time a liquidation disapproval resolution that originated in the Senate, then it shall be in order at any time thereafter to move to proceed to the consideration of a liquidation disapproval resolution for the same special message received from the House of Representatives and placed on the Calendar pursuant to paragraph (2), strike all after the enacting clause, substitute the text of the Senate liquidation disapproval resolution, agree to the Senate amendment, and vote on final disposition of the House liquidation disapproval resolution, all without any intervening action or debate.

[(10) CONSIDERATION OF HOUSE MESSAGE.—Consideration in the Senate of all motions, amendments, or appeals necessary to dispose of a message from the House of Representatives on a liquidation disapproval resolution shall be limited to not more than 4 hours. Debate on each motion or amendment shall be limited to 30 minutes. Debate on any appeal or point of order that is submitted in connection with the disposition of the House message shall be limited to 20 minutes. Any time for debate shall be equally divided and controlled by the proponent and the majority manager, unless the majority manager is a proponent of the motion, amendment, appeal, or point of order, in which case the minority manager shall be in control of the time in opposition.]

[(c) CONSIDERATION IN CONFERENCE.—

[(1) CONVENING OF CONFERENCE.—In the case of disagreement between the two Houses of Congress with respect to a liquidation disapproval resolution passed by both Houses, conferees should be promptly appointed and a conference promptly convened, if necessary.]

[(2) SENATE CONSIDERATION.—Consideration in the Senate of the conference report and any amendments in disagreement on a liquidation disapproval resolution shall be limited to not more than 4 hours equally divided and controlled by the Majority Leader and the Minority Leader or their designees. A motion to recommit the conference report is not in order.]

[(d) DEFINITIONS.—For purposes of this section—

[(1) LIQUIDATION DISAPPROVAL RESOLUTION.—The term “liquidation disapproval resolution” means only a resolution of either House of Congress which is introduced as provided in subsection (a) with respect to the liquidation of Amtrak.]

[(2) RESTRUCTURING PLAN.—The term “restructuring plan” means a plan to provide for a restructured and rationalized national intercity rail passenger transportation system.]

[(e) RULES OF SENATE.—This section is enacted by the Congress—

[(1) as an exercise of the rulemaking power of the Senate, and as such they are deemed a part of the rules of the Senate, but applicable only with respect to the procedure to be followed in the Senate in the case of a liquidation disapproval resolution; and they supersede other rules only to the extent that they are inconsistent therewith; and

[(2) with full recognition of the constitutional right of the Senate to change the rules (so far as relating to the procedure of the Senate) at any time, in the same manner and to the same extent as in the case of any other rule of the Senate.]]

TITLE 49, UNITED STATES CODE

SUBTITLE I. DEPARTMENT OF TRANSPORTATION

CHAPTER 1. ORGANIZATION

§ 103. Federal Railroad Administration

(a) *IN GENERAL.*—The Federal Railroad Administration is an administration in the Department of Transportation. [To carry out all railroad safety laws of the United States, the Administration is di-

vided on a geographical basis into at least 8 safety offices. The Secretary of Transportation is responsible for all acts taken under those laws and for ensuring that the laws are uniformly administered and enforced among the safety offices.】

(b) *ADMINISTRATOR*.—The head of the Administration is the Administrator who is appointed by the President, by and with the advice and consent of the Senate. The Administrator reports directly to the Secretary.

(c) *SAFETY*.—*To carry out all railroad safety laws of the United States, the Administration is divided on a geographical basis into at least 8 safety offices. The Secretary of Transportation is responsible for all acts taken under those laws and for ensuring that the laws are uniformly administered and enforced among the safety offices.*

【(c)】 (d) *POWERS AND DUTIES*.—The Administrator shall carry out—

(1) duties and powers related to railroad safety vested in the Secretary by section 20134(c) and chapters 203-211 of this title, and chapter 213 of this title in carrying out chapters 203-211; [and]

(2) *the duties and powers related to railroad policy and development under subsection (e); and*

【(2)】 (3) additional duties and powers prescribed by the Secretary.

【(d)】 (e) *TRANSFERS OF DUTY*.—A duty or power specified by subsection (c)(1) of this section may be transferred to another part of the Department only when specifically provided by law or a reorganization plan submitted under chapter 9 of title 5. A decision of the Administrator in carrying out those duties or powers and involving notice and hearing required by law is administratively final.

【(e)】 (f) *CONTRACTS, GRANTS, LEASES, COOPERATIVE AGREEMENTS, AND SIMILAR TRANSACTIONS*.—Subject to the provisions of subtitle I of title 40 and title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.), the Secretary of Transportation may make, enter into, and perform such contracts, grants, leases, cooperative agreements, and other similar transactions with Federal or other public agencies (including State and local governments) and private organizations and persons, and make such payments, by way of advance or reimbursement, as the Secretary may determine to be necessary or appropriate to carry out functions of the Federal Railroad Administration. 【The authority of the Secretary granted by this subsection shall be carried out by the Administrator. Notwithstanding any other provision of this chapter, no authority to enter into contracts or to make payments under this subsection shall be effective, except as provided for in appropriations Acts.】

(g) *ADDITIONAL DUTIES OF THE ADMINISTRATOR*.—*The Administrator shall—*

(1) *provide assistance to States in developing State rail plans prepared under chapter 225 and review all State rail plans submitted under that section;*

(2) *develop a long range national rail plan that is consistent with approved State rail plans and the rail needs of the Nation, as determined by the Secretary in order to promote an inte-*

grated, cohesive, efficient, and optimized national rail system for the movement of goods and people;

(3) develop a preliminary national rail plan within a year after the date of enactment of the Passenger Rail Investment and Improvement Act of 2005;

(4) develop and enhance partnerships with the freight and passenger railroad industry, States, and the public concerning rail development;

(5) support rail intermodal development and high-speed rail development, including high speed rail planning;

(6) ensure that programs and initiatives developed under this section benefit the public and work toward achieving regional and national transportation goals; and

(7) facilitate and coordinate efforts to assist freight and passenger rail carriers, transit agencies and authorities, municipalities, and States in passenger-freight service integration on shared rights of way by providing neutral assistance at the joint request of affected rail service providers and infrastructure owners relating to operations and capacity analysis, capital requirements, operating costs, and other research and planning related to corridors shared by passenger or commuter rail service and freight rail operations.

(h) PERFORMANCE GOALS AND REPORTS.—

(1) PERFORMANCE GOALS.—In conjunction with the objectives established and activities undertaken under section 103(e) of this title, the Administrator shall develop a schedule for achieving specific, measurable performance goals.

(2) RESOURCE NEEDS.—The strategy and annual plans shall include estimates of the funds and staff resources needed to accomplish each goal and the additional duties required under section 103(e).

(3) SUBMISSION WITH PRESIDENT'S BUDGET.—Beginning with fiscal year 2009 and each fiscal year thereafter, the Secretary shall submit to Congress, at the same time as the President's budget submission, the Administration's performance goals and schedule developed under paragraph (1), including an assessment of the progress of the Administration toward achieving its performance goals.

* * * * *

§ 114. Transportation Security Administration

(a) **IN GENERAL.**—The Transportation Security Administration shall be an administration of the Department of Transportation.

(b) **UNDER SECRETARY.**—

(1) **APPOINTMENT.**—The head of the Administration shall be the Under Secretary of Transportation for Security. The Under Secretary shall be appointed by the President, by and with the advice and consent of the Senate.

(2) **QUALIFICATIONS.**—The Under Secretary must—

(A) be a citizen of the United States; and

(B) have experience in a field directly related to transportation or security.

(3) **TERM.**—The term of office of an individual appointed as the Under Secretary shall be 5 years.

(c) LIMITATION ON OWNERSHIP OF STOCKS AND BONDS.—The Under Secretary may not own stock in or bonds of a transportation or security enterprise or an enterprise that makes equipment that could be used for security purposes.

(d) FUNCTIONS.—The Under Secretary shall be responsible for security in all modes of transportation, including—

- (1) carrying out chapter 449, relating to civil aviation security, and related research and development activities; and
- (2) security responsibilities over other modes of transportation that are exercised by the Department of Transportation.

(e) SCREENING OPERATIONS.—The Under Secretary shall—

- (1) be responsible for day-to-day Federal security screening operations for passenger air transportation and intrastate air transportation under sections 44901 and 44935;
- (2) develop standards for the hiring and retention of security screening personnel;
- (3) train and test security screening personnel; and
- (4) be responsible for hiring and training personnel to provide security screening at all airports in the United States where screening is required under section 44901, in consultation with the Secretary of Transportation and the heads of other appropriate Federal agencies and departments.

(f) ADDITIONAL DUTIES AND POWERS.—In addition to carrying out the functions specified in subsections (d) and (e), the Under Secretary shall—

- (1) receive, assess, and distribute intelligence information related to transportation security;
- (2) assess threats to transportation;
- (3) develop policies, strategies, and plans for dealing with threats to transportation security;
- (4) make other plans related to transportation security, including coordinating countermeasures with appropriate departments, agencies, and instrumentalities of the United States Government;
- (5) serve as the primary liaison for transportation security to the intelligence and law enforcement communities;
- (6) on a day-to-day basis, manage and provide operational guidance to the field security resources of the Administration, including Federal Security Managers as provided by section 44933;
- (7) enforce security-related regulations and requirements;
- (8) identify and undertake research and development activities necessary to enhance transportation security;
- (9) inspect, maintain, and test security facilities, equipment, and systems;
- (10) ensure the adequacy of security measures for the transportation of cargo;
- (11) oversee the implementation, and ensure the adequacy, of security measures at airports and other transportation facilities;
- (12) require background checks for airport security screening personnel, individuals with access to secure areas of airports, and other transportation security personnel;

(13) work in conjunction with the Administrator of the Federal Aviation Administration with respect to any actions or activities that may affect aviation safety or air carrier operations;

(14) work with the International Civil Aviation Organization and appropriate aeronautic authorities of foreign governments under section 44907 to address security concerns on passenger flights by foreign air carriers in foreign air transportation; and

(15) carry out such other duties, and exercise such other powers, relating to transportation security as the Under Secretary considers appropriate, to the extent authorized by law.

(g) NATIONAL EMERGENCY RESPONSIBILITIES.—

(1) IN GENERAL.—Subject to the direction and control of the Secretary, the Under Secretary, during a national emergency, shall have the following responsibilities:

(A) To coordinate domestic transportation, including aviation, rail, and other surface transportation, and maritime transportation (including port security).

(B) To coordinate and oversee the transportation-related responsibilities of other departments and agencies of the Federal Government other than the Department of Defense and the military departments.

(C) To coordinate and provide notice to other departments and agencies of the Federal Government, and appropriate agencies of State and local governments, including departments and agencies for transportation, law enforcement, and border control, about threats to transportation.

(D) To carry out such other duties, and exercise such other powers, relating to transportation during a national emergency as the Secretary shall prescribe.

(2) AUTHORITY OF OTHER DEPARTMENTS AND AGENCIES.—The authority of the Under Secretary under this subsection shall not supersede the authority of any other department or agency of the Federal Government under law with respect to transportation or transportation-related matters, whether or not during a national emergency.

(3) CIRCUMSTANCES.—The Secretary shall prescribe the circumstances constituting a national emergency for purposes of this subsection.

(h) MANAGEMENT OF SECURITY INFORMATION.—In consultation with the Transportation Security Oversight Board, the Under Secretary shall—

(1) enter into memoranda of understanding with Federal agencies or other entities to share or otherwise cross-check as necessary data on individuals identified on Federal agency databases who may pose a risk to transportation or national security;

(2) establish procedures for notifying the Administrator of the Federal Aviation Administration, appropriate State and local law enforcement officials, and airport or airline security officers of the identity of individuals known to pose, or suspected of posing, a risk of air piracy or terrorism or a threat to airline or passenger safety;

(3) in consultation with other appropriate Federal agencies and air carriers, establish policies and procedures requiring air carriers—

(A) to use information from government agencies to identify individuals on passenger lists who may be a threat to civil aviation or national security; and

(B) if such an individual is identified, notify appropriate law enforcement agencies, prevent the individual from boarding an aircraft, or take other appropriate action with respect to that individual; and

(4) consider requiring passenger air carriers to share passenger lists with appropriate Federal agencies for the purpose of identifying individuals who may pose a threat to aviation safety or national security.

(i) VIEW OF NTSB.—In taking any action under this section that could affect safety, the Under Secretary shall give great weight to the timely views of the National Transportation Safety Board.

(j) ACQUISITIONS.—

(1) IN GENERAL.—The Under Secretary is authorized—

(A) to acquire (by purchase, lease, condemnation, or otherwise) such real property, or any interest therein, within and outside the continental United States, as the Under Secretary considers necessary;

(B) to acquire (by purchase, lease, condemnation, or otherwise) and to construct, repair, operate, and maintain such personal property (including office space and patents), or any interest therein, within and outside the continental United States, as the Under Secretary considers necessary;

(C) to lease to others such real and personal property and to provide by contract or otherwise for necessary facilities for the welfare of its employees and to acquire, maintain, and operate equipment for these facilities;

(D) to acquire services, including such personal services as the Secretary determines necessary, and to acquire (by purchase, lease, condemnation, or otherwise) and to construct, repair, operate, and maintain research and testing sites and facilities; and

(E) in cooperation with the Administrator of the Federal Aviation Administration, to utilize the research and development facilities of the Federal Aviation Administration.

(2) TITLE.—Title to any property or interest therein acquired pursuant to this subsection shall be held by the Government of the United States.

(k) TRANSFERS OF FUNDS.—The Under Secretary is authorized to accept transfers of unobligated balances and unexpended balances of funds appropriated to other Federal agencies (as such term is defined in section 551(1) of title 5) to carry out functions transferred, on or after the date of enactment of the Aviation and Transportation Security Act, by law to the Under Secretary.

(l) REGULATIONS.—

(1) IN GENERAL.—The Under Secretary is authorized to issue, rescind, and revise such regulations as are necessary to carry out the functions of the Administration.

(2) EMERGENCY PROCEDURES.—

(A) IN GENERAL.—Notwithstanding any other provision of law or executive order (including an executive order requiring a cost-benefit analysis), if the Under Secretary determines that a regulation or security directive must be issued immediately in order to protect transportation security, the Under Secretary shall issue the regulation or security directive without providing notice or an opportunity for comment and without prior approval of the Secretary.

(B) REVIEW BY TRANSPORTATION SECURITY OVERSIGHT BOARD.—Any regulation or security directive issued under this paragraph shall be subject to review by the Transportation Security Oversight Board established under section 115. Any regulation or security directive issued under this paragraph shall remain effective for a period not to exceed 90 days unless ratified or disapproved by the Board or rescinded by the Under Secretary.

(3) FACTORS TO CONSIDER.—In determining whether to issue, rescind, or revise a regulation under this section, the Under Secretary shall consider, as a factor in the final determination, whether the costs of the regulation are excessive in relation to the enhancement of security the regulation will provide. The Under Secretary may waive requirements for an analysis that estimates the number of lives that will be saved by the regulation and the monetary value of such lives if the Under Secretary determines that it is not feasible to make such an estimate.

(4) AIRWORTHINESS OBJECTIONS BY FAA.—

(A) IN GENERAL.—The Under Secretary shall not take an aviation security action under this title if the Administrator of the Federal Aviation Administration notifies the Under Secretary that the action could adversely affect the airworthiness of an aircraft.

(B) REVIEW BY SECRETARY.—Notwithstanding subparagraph (A), the Under Secretary may take such an action, after receiving a notification concerning the action from the Administrator under subparagraph (A), if the Secretary of Transportation subsequently approves the action.

(m) PERSONNEL AND SERVICES; COOPERATION BY UNDER SECRETARY.—

(1) AUTHORITY OF UNDER SECRETARY.—In carrying out the functions of the Administration, the Under Secretary shall have the same authority as is provided to the Administrator of the Federal Aviation Administration under subsections (l) and (m) of section 106.

(2) AUTHORITY OF AGENCY HEADS.—The head of a Federal agency shall have the same authority to provide services, supplies, equipment, personnel, and facilities to the Under Secretary as the head has to provide services, supplies, equipment, personnel, and facilities to the Administrator of the Federal Aviation Administration under section 106(m).

(n) PERSONNEL MANAGEMENT SYSTEM.—The personnel management system established by the Administrator of the Federal Aviation Administration under section 40122 shall apply to employees of the Transportation Security Administration, or, subject to the requirements of such section, the Under Secretary may make such

modifications to the personnel management system with respect to such employees as the Under Secretary considers appropriate, such as adopting aspects of other personnel systems of the Department of Transportation.

(o) ACQUISITION MANAGEMENT SYSTEM.—The acquisition management system established by the Administrator of the Federal Aviation Administration under section 40110 shall apply to acquisitions of equipment, supplies, and materials by the Transportation Security Administration, or, subject to the requirements of such section, the Under Secretary may make such modifications to the acquisition management system with respect to such acquisitions of equipment, supplies, and materials as the Under Secretary considers appropriate, such as adopting aspects of other acquisition management systems of the Department of Transportation.

(p) AUTHORITY OF INSPECTOR GENERAL.—The Transportation Security Administration shall be subject to the Inspector General Act of 1978 (5 U.S.C. App.) and other laws relating to the authority of the Inspector General of the Department of Transportation.

(q) LAW ENFORCEMENT POWERS.—

(1) IN GENERAL.—The Under Secretary may designate an employee of the Transportation Security Administration or other Federal agency to serve as a law enforcement officer.

(2) POWERS.—While engaged in official duties of the Administration as required to fulfill the responsibilities under this section, a law enforcement officer designated under paragraph (1) may—

(A) carry a firearm;

(B) make an arrest without a warrant for any offense against the United States committed in the presence of the officer, or for any felony cognizable under the laws of the United States if the officer has probable cause to believe that the person to be arrested has committed or is committing the felony; and

(C) seek and execute warrants for arrest or seizure of evidence issued under the authority of the United States upon probable cause that a violation has been committed.

(3) GUIDELINES ON EXERCISE OF AUTHORITY.—The authority provided by this subsection shall be exercised in accordance with guidelines prescribed by the Under Secretary, in consultation with the Attorney General of the United States, and shall include adherence to the Attorney General's policy on use of deadly force.

(4) REVOCATION OR SUSPENSION OF AUTHORITY.—The powers authorized by this subsection may be rescinded or suspended should the Attorney General determine that the Under Secretary has not complied with the guidelines prescribed in paragraph (3) and conveys the determination in writing to the Secretary of Transportation and the Under Secretary.

(r) AUTHORITY TO EXEMPT.—The Under Secretary may grant an exemption from a regulation prescribed in carrying out this section if the Under Secretary determines that the exemption is in the public interest.

(s) NONDISCLOSURE OF SECURITY ACTIVITIES.—

(1) IN GENERAL.—Notwithstanding section 552 of title 5, the Under Secretary shall prescribe regulations prohibiting the dis-

closure of information obtained or developed in carrying out security under authority of the Aviation and Transportation Security Act (Public Law 107-71) or under chapter 449 of this title if the Under Secretary decides that disclosing the information would—

- (A) be an unwarranted invasion of personal privacy;
 - (B) reveal a trade secret or privileged or confidential commercial or financial information; or
 - (C) be detrimental to the security of transportation.
- (2) AVAILABILITY OF INFORMATION TO CONGRESS.—Paragraph (1) does not authorize information to be withheld from a committee of Congress authorized to have the information.
- (3) LIMITATION ON TRANSFERABILITY OF DUTIES.—Except as otherwise provided by law, the Under Secretary may not transfer a duty or power under this subsection to another department, agency, or instrumentality of the United States.
- (t) TRANSPORTATION SECURITY STRATEGIC PLANNING.—
- (1) IN GENERAL.—The Secretary of Homeland Security shall develop, prepare, implement, and update, as needed—
 - (A) a National Strategy for Transportation Security; and
 - (B) transportation modal security plans.
 - (2) ROLE OF SECRETARY OF TRANSPORTATION.—The Secretary of Homeland Security shall work jointly with the Secretary of Transportation in developing, revising, and updating the documents required by paragraph (1).
 - (3) CONTENTS OF NATIONAL STRATEGY FOR TRANSPORTATION SECURITY.—The National Strategy for Transportation Security shall include the following:
 - (A) An identification and evaluation of the transportation assets in the United States that, in the interests of national security and commerce, must be protected from attack or disruption by terrorist or other hostile forces, including modal security plans for aviation, bridge and tunnel, commuter rail and ferry, highway, maritime, pipeline, rail, mass transit, over-the-road bus, and other public transportation infrastructure assets that could be at risk of such an attack or disruption.
 - (B) The development of risk-based priorities across all transportation modes and realistic deadlines for addressing security needs associated with those assets referred to in subparagraph (A).
 - (C) The most appropriate, practical, and cost-effective means of defending those assets against threats to their security.
 - (D) A forward-looking strategic plan that sets forth the agreed upon roles and missions of Federal, State, regional, and local authorities and establishes mechanisms for encouraging private sector cooperation and participation in the implementation of such plan.
 - (E) A comprehensive delineation of response and recovery responsibilities and issues regarding threatened and executed acts of terrorism within the United States.
 - (F) A prioritization of research and development objectives that support transportation security needs, giving a

higher priority to research and development directed toward protecting vital transportation assets.

(4) SUBMISSIONS OF PLANS TO CONGRESS.—

(A) INITIAL STRATEGY.—The Secretary of Homeland Security shall submit the National Strategy for Transportation Security, including the transportation modal security plans, developed under this subsection to the appropriate congressional committees not later than April 1, 2005.

(B) SUBSEQUENT VERSIONS.—After December 31, 2005, the Secretary of Homeland Security shall submit the National Strategy for Transportation Security, including the transportation modal security plans and any revisions to the National Strategy for Transportation Security and the transportation modal security plans, to appropriate congressional committees not less frequently than April 1 of each even-numbered year.

(C) PERIODIC PROGRESS REPORT.—

(i) REQUIREMENT FOR REPORT.—Each year, in conjunction with the submission of the budget to Congress under section 1105(a) of title 31, United States Code, the Secretary of Homeland Security shall submit to the appropriate congressional committees an assessment of the progress made on implementing the National Strategy for Transportation Security.

(ii) CONTENT.—Each progress report under this subparagraph shall include, at a minimum, recommendations for improving and implementing the National Strategy for Transportation Security and the transportation modal security plans that the Secretary, in consultation with the Secretary of Transportation, considers appropriate.

(D) CLASSIFIED MATERIAL.—Any part of the National Strategy for Transportation Security or the transportation modal security plans that involve information that is properly classified under criteria established by Executive order shall be submitted to the appropriate congressional committees separately in a classified format.

(E) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this subsection, the term “appropriate congressional committees” means the Committee on Transportation and Infrastructure and the Select Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation and the Committee on Homeland Security and Governmental Affairs of the Senate.

(5) PRIORITY STATUS.—

(A) IN GENERAL.—The National Strategy for Transportation Security shall be the governing document for Federal transportation security efforts.

(B) OTHER PLANS AND REPORTS.—The National Strategy for Transportation Security shall include, as an integral part or as an appendix—

(i) the current National Maritime Transportation Security Plan under section 70103 of title 46;

- (ii) the report required by section 44938 of this title;
- (iii) transportation modal security plans required under this section; and
- (iv) any other transportation security plan or report that the Secretary of Homeland Security determines appropriate for inclusion.

(u) *ENFORCEMENT OF REGULATIONS AND ORDERS OF THE SECRETARY OF HOMELAND SECURITY ISSUED UNDER THIS TITLE.—*

(1) *APPLICATION OF SUBSECTION.—*

(A) *IN GENERAL.—This subsection applies to the enforcement of regulations prescribed, and orders issued, by the Secretary of Homeland Security under a provision of this title other than a provision of chapter 449.*

(B) *VIOLATIONS OF CHAPTER 449.—The penalties for violations of regulations prescribed, and orders issued, by the Secretary of Homeland Security under chapter 449 of this title are provided under chapter 463 of this title.*

(C) *NONAPPLICATION TO CERTAIN VIOLATIONS.—*

(i) *Paragraphs (2) through (5) of this subsection do not apply to violations of regulations prescribed, and orders issued, by the Secretary of Homeland Security under a provision of this title—*

(I) *involving the transportation of personnel or shipments of materials by contractors where the Department of Defense has assumed control and responsibility;*

(II) *by a member of the armed forces of the United States when performing official duties; or*

(III) *by a civilian employee of the Department of Defense when performing official duties.*

(ii) *Violations described in subclause (I), (II), or (III) of clause (i) shall be subject to penalties as determined by the Secretary of Defense or the Secretary's designee.*

(2) *CIVIL PENALTY.—*

(A) *IN GENERAL.—A person is liable to the United States Government for a civil penalty of not more than \$10,000 for a violation of a regulation prescribed, or order issued, by the Secretary of Homeland Security under this title.*

(B) *REPEAT VIOLATIONS.—A separate violation occurs under this paragraph for each day the violation continues.*

(3) *ADMINISTRATIVE IMPOSITION OF CIVIL PENALTIES.—*

(A) *IN GENERAL.—The Secretary of Homeland Security may impose a civil penalty for a violation of a regulation prescribed, or order issued, under this title. The Secretary shall give written notice of the finding of a violation and the penalty.*

(B) *SCOPE OF CIVIL ACTION.—In a civil action to collect a civil penalty imposed by the Secretary under this subsection, the court may not re-examine issues of liability or the amount of the penalty.*

(C) *JURISDICTION.—The district courts of the United States have exclusive jurisdiction of civil actions to collect a civil penalty imposed by the Secretary under this subsection if—*

- (i) *the amount in controversy is more than—*

(I) \$400,000, if the violation was committed by a person other than an individual or small business concern; or

(II) \$50,000, if the violation was committed by an individual or small business concern;
 (ii) the action is in rem or another action in rem based on the same violation has been brought; or
 (iii) another action has been brought for an injunction based on the same violation.

(D) MAXIMUM PENALTY.—The maximum penalty the Secretary may impose under this paragraph is—

(i) \$400,000, if the violation was committed by a person other than an individual or small business concern; or

(ii) \$50,000, if the violation was committed by an individual or small business concern.

(4) COMPROMISE AND SETOFF.—

(A) The Secretary may compromise the amount of a civil penalty imposed under this subsection. If the Secretary compromises the amount of a civil penalty under this subparagraph, the Secretary shall—

(i) notify the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Homeland Security of the compromised penalty and explain the rationale therefor; and

(ii) make the explanation available to the public to the extent feasible without compromising security.

(B) The Government may deduct the amount of a civil penalty imposed or compromised under this subsection from amounts it owes the person liable for the penalty.

(5) INVESTIGATIONS AND PROCEEDINGS.—Chapter 461 of this title shall apply to investigations and proceedings brought under this subsection to the same extent that it applies to investigations and proceedings brought with respect to aviation security duties designated to be carried out by the Secretary.

(6) DEFINITIONS.—In this subsection:

(A) PERSON.—The term ‘person’ does not include—

(i) the United States Postal Service; or

(ii) the Department of Defense.

(B) SMALL BUSINESS CONCERN.—The term ‘small business concern’ has the meaning given that term in section 3 of the Small Business Act (15 U.S.C. 632).

(v) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Homeland Security for rail security—

(1) \$205,000,000 for fiscal year 2008;

(2) \$166,000,000 for fiscal year 2009; and

(3) \$166,000,000 for fiscal year 2010.

SUBTITLE V. RAIL PROGRAMS

PART A—SAFETY

CHAPTER 201. GENERAL

§ 20103. General authority

(a) REGULATIONS AND ORDERS.—The Secretary of Transportation, as necessary, shall prescribe regulations and issue orders for every area of railroad ~~【safety】~~ *safety, including security*, supplementing laws and regulations in effect on October 16, 1970. When prescribing a security regulation or issuing a security order that affects the safety of railroad operations, the Secretary of Homeland Security shall consult with the Secretary.

(b) REGULATIONS OF PRACTICE FOR PROCEEDINGS.—The Secretary shall prescribe regulations of practice applicable to each proceeding under this chapter. The regulations shall reflect the varying nature of the proceedings and include time limits for disposition of the proceedings. The time limit for disposition of a proceeding may not be more than 12 months after the date it begins.

(c) CONSIDERATION OF INFORMATION AND STANDARDS.—In prescribing regulations and issuing orders under this section, the Secretary shall consider existing relevant safety information and standards.

(d) WAIVERS.—The Secretary may waive compliance with any part of a regulation prescribed or order issued under this chapter if the waiver is in the public interest and consistent with railroad safety. The Secretary shall make public the reasons for granting the waiver.

(e) HEARINGS.—The Secretary shall conduct a hearing as provided by section 553 of title 5 when prescribing a regulation or issuing an order under this chapter, including a regulation or order establishing, amending, or waiving compliance with a railroad safety regulation prescribed or order issued under this chapter. An opportunity for an oral presentation shall be provided.

(f) TOURIST RAILROAD CARRIERS.—In prescribing regulations that pertain to railroad safety that affect tourist, historic, scenic, or excursion railroad carriers, the Secretary of Transportation shall take into consideration any financial, operational, or other factors that may be unique to such railroad carriers. The Secretary shall submit a report to Congress not later than September 30, 1995, on actions taken under this subsection.

* * * * *

§ 20118. Whistleblower protection for rail security matters

(a) *DISCRIMINATION AGAINST EMPLOYEE.—A railroad carrier engaged in interstate or foreign commerce may not discharge or in any way discriminate against an employee because the employee, whether acting for the employee or as a representative, has—*

(1) *provided, caused to be provided, or is about to provide or cause to be provided, to the employer or the Federal Government information relating to a reasonably perceived threat, in good faith, to security;*

(2) *provided, caused to be provided, or is about to provide or cause to be provided, testimony before Congress or at any Fed-*

eral or State proceeding regarding a reasonably perceived threat, in good faith, to security; or

(3) refused to violate or assist in the violation of any law, rule or regulation related to rail security.

(b) *DISPUTE RESOLUTION.*—A dispute, grievance, or claim arising under this section is subject to resolution under section 3 of the Railway Labor Act (45 U.S.C. 153). In a proceeding by the National Railroad Adjustment Board, a division or delegate of the Board, or another board of adjustment established under section 3 to resolve the dispute, grievance, or claim the proceeding shall be expedited and the dispute, grievance, or claim shall be resolved not later than 180 days after it is filed. If the violation is a form of discrimination that does not involve discharge, suspension, or another action affecting pay, and no other remedy is available under this subsection, the Board, division, delegate, or other board of adjustment may award the employee reasonable damages, including punitive damages, of not more than \$20,000.

(c) *PROCEDURAL REQUIREMENTS.*—Except as provided in subsection (b), the procedure set forth in section 42121(b)(2)(B) of this subtitle, including the burdens of proof, applies to any complaint brought under this section.

(d) *ELECTION OF REMEDIES.*—An employee of a railroad carrier may not seek protection under both this section and another provision of law for the same allegedly unlawful act of the carrier.

(e) *DISCLOSURE OF IDENTITY.*—

(1) Except as provided in paragraph (2) of this subsection, or with the written consent of the employee, the Secretary of Transportation or Secretary of Homeland Security may not disclose the name of an employee of a railroad carrier who has provided information about an alleged violation of this section.

(2) The Secretary shall disclose to the Attorney General the name of an employee described in paragraph (1) of this subsection if the matter is referred to the Attorney General for enforcement.

(f) *PROCESS FOR REPORTING PROBLEMS.*—

(1) *ESTABLISHMENT OF REPORTING PROCESS.*—The Secretary shall establish, and provide information to the public regarding, a process by which any person may submit a report to the Secretary regarding railroad security problems, deficiencies, or vulnerabilities.

(2) *CONFIDENTIALITY.*—The Secretary shall keep confidential the identity of a person who submits a report under paragraph (1) and any such report shall be treated as a record containing protected information to the extent that it does not consist of publicly available information.

(3) *ACKNOWLEDGMENT OF RECEIPT.*—If a report submitted under paragraph (1) identifies the person making the report, the Secretary shall respond promptly to such person and acknowledge receipt of the report.

(4) *STEPS TO ADDRESS PROBLEMS.*—The Secretary shall review and consider the information provided in any report submitted under paragraph (1) and shall take appropriate steps under this title to address any problems or deficiencies identified.

(5) *RETALIATION PROHIBITED.*—No employer may discharge any employee or otherwise discriminate against any employee with respect to the compensation to, or terms, conditions, or privileges of the employment of, such employee because the employee (or a person acting pursuant to a request of the employee) made a report under paragraph (1).

PART B—ASSISTANCE

CHAPTER 225. STATE RAIL PLANS AND HIGH PRIORITY PROJECTS

Sec.

22501. Definitions.

22502. Authority.

22503. Purposes.

22504. Transparency; coordination; review.

22505. Content.

22506. Review.

§22501. Definitions

In this subchapter:

(1) *PRIVATE BENEFIT.*—

(A) *IN GENERAL.*—The term “private benefit”—

(i) means a benefit accrued to a person or private entity, other than the National Railroad Passenger Corporation, that directly improves the economic and competitive condition of that person or entity through improved assets, cost reductions, service improvements, or any other means as defined by the Secretary; and

(ii) shall be determined on a project-by-project basis, based upon an agreement between the parties.

(B) *CONSULTATION.*—The Secretary may seek the advice of the States and rail carriers in further defining this term.

(2) *PUBLIC BENEFIT.*—

(A) *IN GENERAL.*—The term “public benefit”—

(i) means a benefit accrued to the public in the form of enhanced mobility of people or goods, environmental protection or enhancement, congestion mitigation, enhanced trade and economic development, improved air quality or land use, more efficient energy use, enhanced public safety or security, reduction of public expenditures due to improved transportation efficiency or infrastructure preservation, and any other positive community effects as defined by the Secretary; and

(ii) shall be determined on a project-by-project basis, based upon an agreement between the parties.

(B) *CONSULTATION.*—The Secretary may seek the advice of the States and rail carriers in further defining this term.

(3) *STATE.*—The term “State” means any of the 50 States and the District of Columbia.

(4) *STATE RAIL TRANSPORTATION AUTHORITY.*—The term “State rail transportation authority” means the State agency or official responsible under the direction of the Governor of the State or a State law for preparation, maintenance, coordination, and administration of the State rail plan.

§22502. Authority

(a) *IN GENERAL.*—Each State may prepare and maintain a State rail plan in accordance with the provisions of this subchapter.

(b) *REQUIREMENTS.*—For the preparation and periodic revision of a State rail plan, a State shall—

(1) establish or designate a State rail transportation authority to prepare, maintain, coordinate, and administer the plan;

(2) establish or designate a State rail plan approval authority to approve the plan;

(3) submit the State's approved plan to the Secretary of Transportation for review; and

(4) revise and resubmit a State-approved plan no less frequently than once every 5 years for reapproval by the Secretary.

§22503. Purposes

(a) *PURPOSES.*—The purposes of a State rail plan are as follows:

(1) To set forth State policy involving freight and passenger rail transportation, including commuter rail operations, in the State.

(2) To establish the period covered by the State rail plan.

(3) To present priorities and strategies to enhance rail service in the State that benefits the public.

(4) To serve as the basis for Federal and State rail investments within the State.

(b) *COORDINATION.*—A State rail plan shall be coordinated with other State transportation planning goals and programs and set forth rail transportation's role within the State transportation system.

§22504. Transparency; coordination; review

(a) *PREPARATION.*—A State shall provide adequate and reasonable notice and opportunity for comment and other input to the public, rail carriers, commuter and transit authorities operating in, or affected by rail operations within the State, units of local government, and other interested parties in the preparation and review of its State rail plan.

(b) *INTERGOVERNMENTAL COORDINATION.*—A State shall review the freight and passenger rail service activities and initiatives by regional planning agencies, regional transportation authorities, and municipalities within the State, or in the region in which the State is located, while preparing the plan, and shall include any recommendations made by such agencies, authorities, and municipalities as deemed appropriate by the State.

§22505. Content

(a) *IN GENERAL.*—Each State rail plan shall contain the following:

(1) An inventory of the existing overall rail transportation system and rail services and facilities within the State and an analysis of the role of rail transportation within the State's surface transportation system.

(2) A review of all rail lines within the State, including proposed high speed rail corridors and significant rail line segments not currently in service.

(3) *A statement of the State's passenger rail service objectives, including minimum service levels, for rail transportation routes in the State.*

(4) *A general analysis of rail's transportation, economic, and environmental impacts in the State, including congestion mitigation, trade and economic development, air quality, land-use, energy-use, and community impacts.*

(5) *A long-range rail investment program for current and future freight and passenger infrastructure in the State that meets the requirements of subsection (b).*

(6) *A statement of public financing issues for rail projects and service in the State, including a list of current and prospective public capital and operating funding resources, public subsidies, State taxation, and other financial policies relating to rail infrastructure development.*

(7) *An identification of rail infrastructure issues within the State that reflects consultation with all relevant stake holders.*

(8) *A review of major passenger and freight intermodal rail connections and facilities within the State, including seaports, and prioritized options to maximize service integration and efficiency between rail and other modes of transportation within the State.*

(9) *A review of publicly funded projects within the State to improve rail transportation safety and security, including all major projects funded under section 130 of title 23.*

(10) *A performance evaluation of passenger rail services operating in the State, including possible improvements in those services, and a description of strategies to achieve those improvements.*

(11) *A compilation of studies and reports on high-speed rail corridor development within the State not included in a previous plan under this subchapter, and a plan for funding any recommended development of such corridors in the State.*

(12) *A statement that the State is in compliance with the requirements of section 22102.*

(b) LONG-RANGE SERVICE AND INVESTMENT PROGRAM.—

(1) **PROGRAM CONTENT.**—*A long-range rail investment program included in a State rail plan under subsection (a)(5) shall include the following matters:*

(A) *A list of any rail capital projects expected to be undertaken or supported in whole or in part by the State.*

(B) *A detailed funding plan for those projects.*

(2) **PROJECT LIST CONTENT.**—*The list of rail capital projects shall contain—*

(A) *a description of the anticipated public and private benefits of each such project; and*

(B) *a statement of the correlation between—*

(i) *public funding contributions for the projects; and*

(ii) *the public benefits.*

(3) **CONSIDERATIONS FOR PROJECT LIST.**—*In preparing the list of freight and intercity passenger rail capital projects, a State rail transportation authority should take into consideration the following matters:*

(A) *Contributions made by non-Federal and non-State sources through user fees, matching funds, or other private capital involvement.*

(B) *Rail capacity and congestion effects.*

(C) *Effects on highway, aviation, and maritime capacity, congestion, or safety.*

(D) *Regional balance.*

(E) *Environmental impact.*

(F) *Economic and employment impacts.*

(G) *Projected ridership and other service measures for passenger rail projects.*

§22506. Review

The Secretary shall prescribe procedures for States to submit State rail plans for review under this title, including standardized format and data requirements. State rail plans completed before the date of enactment of the Passenger Rail Investment and Improvement Act of 2007 that substantially meet the requirements of this chapter, as determined by the Secretary, shall be deemed by the Secretary to have met the requirements of this chapter.

PART C—PASSENGER TRANSPORTATION

CHAPTER 241. GENERAL

§ 24101. Findings, purpose, and goals

(a) FINDINGS.—

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

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

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

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

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

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

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

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

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

(c) GOALS.—Amtrak shall—

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

(A) increasing fares;

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

(C) reducing losses on food service;

(D) improving its contracts with operating rail carriers;

(E) reducing management costs; and

(F) increasing employee productivity;

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

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

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

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

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

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

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

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

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

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

(d) MINIMIZING GOVERNMENT SUBSIDIES.—To carry out subsection (c)(11) of this section, Amtrak is encouraged to make agreements with the private sector and undertake initiatives that are consistent with good business judgment and designed to maximize its revenues and minimize Government subsidies. Amtrak shall prepare a financial plan to operate within the funding levels authorized by section 24104 of this chapter, including budgetary goals for fiscal years 1998 through 2002. [Commencing no later than the fiscal year following the fifth anniversary of the Amtrak Reform and Accountability Act of 1997, Amtrak shall operate without Federal operating grant funds appropriated for its benefit.]

§ 24102. Definitions

In this part—

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

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

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

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

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

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

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

(5) “national rail passenger transportation system” means—

(A) *the segment of the Northeast Corridor between Boston, Massachusetts and Washington, D.C.;*

(B) *rail corridors that have been designated by the Secretary of Transportation as high-speed corridors (other than corridors described in subparagraph (A)), but only after they have been improved to permit operation of high-speed service;*

(C) *long-distance routes of more than 750 miles between endpoints operated by Amtrak as of the date of enactment of the Passenger Rail Investment and Improvement Act of 2007; and*

(D) *short-distance corridors, or routes of not more than 750 miles between endpoints, operated by—*

(i) Amtrak; or

(ii) another rail carrier that receives funds under chapter 244.

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

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

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

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

§ 24104. Authorization of appropriations

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

- (1) \$ 1,138,000,000 for fiscal year 1998;
- (2) \$ 1,058,000,000 for fiscal year 1999;
- (3) \$ 1,023,000,000 for fiscal year 2000;
- (4) \$ 989,000,000 for fiscal year 2001; and
- (5) \$ 955,000,000 for fiscal year 2002,

for the benefit of Amtrak for capital expenditures under chapters 243, 247, and 249 of this title, operating expenses, and payments described in subsection (c)(1)(A) through (C). [In fiscal years following the fifth anniversary of the enactment of the Amtrak Reform and Accountability Act of 1997 no funds authorized for Amtrak shall be used for operating expenses other than those prescribed for tax liabilities under section 3221 of the Internal Revenue Code of 1986 that are more than the amount needed for benefits of individuals who retire from Amtrak and for their beneficiaries.]

(b) OPERATING EXPENSES.—

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

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

- (i) \$ 7,500,000 for the fiscal year ending September 30, 1993.
- (ii) \$ 9,500,000 for the fiscal year ending September 30, 1994.

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

(c) MANDATORY PAYMENTS.—

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

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

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

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

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

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

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

(e) AVAILABILITY OF AMOUNTS AND EARLY APPROPRIATIONS.—

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

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

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

* * * * *

CHAPTER 243. AMTRAK

§ 24301. Status and applicable laws

(a) STATUS.—Amtrak—

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

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

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

(b) PRINCIPAL OFFICE AND PLACE OF BUSINESS.—The principal office and place of business of Amtrak are in the District of Columbia. Amtrak is qualified to do business in each State in which Amtrak carries out an activity authorized under this part. Amtrak shall accept service of process by certified mail addressed to the secretary of Amtrak at its principal office and place of business. Amtrak is a citizen only of the District of Columbia when deciding original jurisdiction of the district courts of the United States in a civil action.

(c) APPLICATION OF SUBTITLE IV.—Subtitle IV of this title shall not apply to Amtrak, except for sections 11123, 11301, 11322(a), 11502, and 11706. Notwithstanding the preceding sentence, Amtrak shall continue to be considered an employer under the Railroad Retirement Act of 1974, the Railroad Unemployment Insurance Act, and the Railroad Retirement Tax Act.

(d) APPLICATION OF SAFETY AND EMPLOYEE RELATIONS LAWS AND REGULATIONS.—Laws and regulations governing safety, employee representation for collective bargaining purposes, the handling of disputes between carriers and employees, employee retirement, annuity, and unemployment systems, and other dealings with em-

ployees that apply to a rail carrier subject to part A of subtitle IV of this title apply to Amtrak.

(e) APPLICATION OF CERTAIN ADDITIONAL LAWS.—Section 552 of title 5, this part, and, to the extent consistent with this part, the District of Columbia Business Corporation Act (D.C. Code § 29-301 et seq.) apply to Amtrak. Section 552 of title 5, United States Code, applies to Amtrak for any fiscal year in which Amtrak receives a Federal subsidy.

(f) TAX EXEMPTION FOR CERTAIN COMMUTER AUTHORITIES.—A commuter authority that was eligible to make a contract with Amtrak Commuter to provide commuter rail passenger transportation but which decided to provide its own rail passenger transportation beginning January 1, 1983, is exempt, effective October 1, 1981, from paying a tax or fee to the same extent Amtrak is exempt.

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

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

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

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

(k) EXEMPTION FROM ADDITIONAL TAXES.—

(1) In this subsection—

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

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

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

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

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

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

(1) IN GENERAL.—Amtrak, a rail carrier subsidiary of Amtrak, and any passenger or other customer of Amtrak or such subsidiary, are exempt from a tax, fee, head charge, or other charge, imposed or levied by a State, political subdivision, or

local taxing authority on Amtrak, a rail carrier subsidiary of Amtrak, or on persons traveling in intercity rail passenger transportation or on mail or express transportation provided by Amtrak or such a subsidiary, or on the carriage of such persons, mail, or express, or on the sale of any such transportation, or on the gross receipts derived therefrom after September 30, 1981. In the case of a tax or fee that Amtrak was required to pay as of September 10, 1982, Amtrak is not exempt from such tax or fee if it was assessed before April 1, 1997.

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

(m) WASTE DISPOSAL.—

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

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

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

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

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

(o) *APPLICABILITY OF DISTRICT OF COLUMBIA LAW.*—Any lease or contract entered into between the National Railroad Passenger Corporation and the State of Maryland, or any department or agency of the State of Maryland, after the date of the enactment of this subsection shall be governed by the laws of the District of Columbia.

[§ 24302. Board of directors

[(a) REFORM BOARD.—

[(1) ESTABLISHMENT AND DUTIES.—The Reform Board described in paragraph (2) shall assume the responsibilities of the Board of Directors of Amtrak by March 31, 1998, or as soon thereafter as at least 4 members have been appointed and qualified. The Board appointed under prior law shall be abolished when the Reform Board assumes such responsibilities.]

[(2) MEMBERSHIP.—

[(A)(i) The Reform Board shall consist of 7 voting members appointed by the President, by and with the advice and consent of the Senate, for a term of 5 years.]

[(ii) Notwithstanding clause (i), if the Secretary of Transportation is appointed to the Reform Board, such appointment shall not be subject to the advice and consent of the Senate. If appointed, the Secretary may be represented at Board meetings by his designee.]

[(B) In selecting the individuals described in subparagraph (A) for nominations for appointments to the Reform Board, the President should consult with the Speaker of the House of Representatives, the Minority Leader of the House of Representatives, the Majority Leader of the Senate, and the Minority Leader of the Senate.]

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

[(i) have technical qualifications, professional standing, and demonstrated expertise in the fields of transportation or corporate or financial management;

[(ii) are not representatives of rail labor or rail management; and

[(iii) in the case of 6 of the 7 individuals selected, are not employees of Amtrak or of the United States.]

[(D) The President of Amtrak shall serve as an ex officio, nonvoting member of the Reform Board.]

[(3) CONFIRMATION PROCEDURE IN SENATE.—

[(A) This paragraph is enacted by the Congress—

[(i) as an exercise of the rulemaking power of the Senate, and as such it is deemed a part of the rules of the Senate, but applicable only with respect to the procedure to be followed in the Senate in the case of a motion to discharge; and it supersedes other rules only to the extent that it is inconsistent therewith; and

[(ii) with full recognition of the constitutional right of the Senate to change the rules (so far as relating to the procedure of the Senate) at any time, in the same manner and to the same extent as in the case of any other rule of the Senate.]

[(B) If, by the first day of June on which the Senate is in session after a nomination is submitted to the Senate under this section, the committee to which the nomination was referred has not reported the nomination, then it shall be discharged from further consideration of the nomination and the nomination shall be placed on the Executive Calendar.]

[(C) It shall be in order at any time thereafter to move to proceed to the consideration of the nomination without any intervening action or debate.

[(D) After no more than 10 hours of debate on the nomination, which shall be evenly divided between, and controlled by, the Majority Leader and the Minority Leader, the Senate shall proceed without intervening action to vote on the nomination.

[(b) BOARD OF DIRECTORS.—Five years after the establishment of the Reform Board under subsection (a), a Board of Directors shall be selected—

[(1) if Amtrak has, during the then current fiscal year, received Federal assistance, in accordance with the procedures set forth in subsection (a)(2); or

[(2) if Amtrak has not, during the then current fiscal year, received Federal assistance, pursuant to bylaws adopted by the Reform Board (which shall provide for employee representation), and the Reform Board shall be dissolved.

[(c) AUTHORITY TO RECOMMEND PLAN.—The Reform Board shall have the authority to recommend to the Congress a plan to implement the recommendations of the 1997 Working Group on Inter-City Rail regarding the transfer of Amtrak's infrastructure assets and responsibilities to a new separately governed corporation.]

§ 24302. Board of directors

(a) COMPOSITION AND TERMS.—

(1) *The Board of Directors of Amtrak is composed of the following 10 directors, each of whom must be a citizen of the United States:*

(A) *The Secretary of Transportation.*

(B) *The President of Amtrak, who shall serve ex officio, as a non-voting member.*

(C) *8 individuals appointed by the President of the United States, by and with the advice and consent of the Senate, with general business and financial experience, experience or qualifications in transportation, freight and passenger rail transportation, travel, hospitality, cruise line, and passenger air transportation businesses, or representatives of employees or users of passenger rail transportation or a State government.*

(2) *In selecting individuals described in paragraph (1) for nominations for appointments to the Board, the President shall consult with the Speaker of the House of Representatives, the minority leader of the House of Representatives, the majority leader of the Senate, and the minority leader of the Senate and try to provide adequate and balanced representation of the major geographic regions of the United States served by Amtrak.*

(3) *An individual appointed under paragraph (1)(C) of this subsection serves for 5 years or until the individual's successor is appointed and qualified. Not more than 5 individuals appointed under paragraph (1)(C) may be members of the same political party.*

(4) *The Board shall elect a chairman and a vice chairman from among its membership. The vice chairman shall serve as chairman in the absence of the chairman.*

(5) *The Secretary may be represented at board meetings by the Secretary's designee.*

(6) *The voting privileges of the President can be changed by a unanimous decision of the Board.*

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

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

(d) *QUORUM.—A majority of the members serving shall constitute a quorum for doing business.*

(e) *BYLAWS.—The Board may adopt and amend bylaws governing the operation of Amtrak. The bylaws shall be consistent with this part and the articles of incorporation.*

* * * * *

§ 24308. Use of facilities and providing services to Amtrak

(a) **GENERAL AUTHORITY.—**

(1) Amtrak may make an agreement with a rail carrier or regional transportation authority to use facilities of, and have services provided by, the carrier or authority under terms on which the parties agree. The terms shall include a penalty for untimely performance.

(2)(A) If the parties cannot agree and if the [Interstate Commerce Commission] *Surface Transportation Board* finds it necessary to carry out this part, the [Commission] *Board* shall—

(i) order that the facilities be made available and the services provided to Amtrak; and

(ii) prescribe reasonable terms and compensation for using the facilities and providing the services.

(B) When prescribing reasonable compensation under subparagraph (A) of this paragraph, the [Commission] *Board* shall consider quality of service as a major factor when determining whether, and the extent to which, the amount of compensation shall be greater than the incremental costs of using the facilities and providing the services.

(C) The [Commission] *Board* shall decide the dispute not later than 90 days after Amtrak submits the dispute to the [Commission] *Board*.

(3) Amtrak's right to use the facilities or have the services provided is conditioned on payment of the compensation. If the compensation is not paid promptly, the rail carrier or authority

entitled to it may bring an action against Amtrak to recover the amount owed.

(4) Amtrak shall seek immediate and appropriate legal remedies to enforce its contract rights when track maintenance on a route over which Amtrak operates falls below the contractual standard.

(b) OPERATING DURING EMERGENCIES.—To facilitate operation by Amtrak during an emergency, the **Board**, on application by Amtrak, shall require a rail carrier to provide facilities immediately during the emergency. The **Board** then shall promptly prescribe reasonable terms, including indemnification of the carrier by Amtrak against personal injury risk to which the carrier may be exposed. The rail carrier shall provide the facilities for the duration of the emergency.

(c) PREFERENCE OVER FREIGHT TRANSPORTATION.—Except in an emergency, intercity and commuter rail passenger transportation provided by or for Amtrak has preference over freight transportation in using a rail line, junction, or crossing unless the **Secretary of Transportation Board** orders otherwise under this subsection. A rail carrier affected by this subsection may apply to the **Secretary Board** for relief. If the **Secretary Board**, after an opportunity for a hearing under section 553 of title 5, decides that preference for intercity and commuter rail passenger transportation materially will lessen the quality of freight transportation provided to shippers, the **Secretary Board** shall establish the rights of the carrier and Amtrak on reasonable terms.

(d) ACCELERATED SPEEDS.—If a rail carrier refuses to allow accelerated speeds on trains operated by or for Amtrak, Amtrak may apply to the **Secretary Board** for an order requiring the carrier to allow the accelerated speeds. The **Secretary Board** shall decide whether accelerated speeds are unsafe or impracticable and which improvements would be required to make accelerated speeds safe and practicable. After an opportunity for a hearing, the **Secretary Board** shall establish the maximum allowable speeds of Amtrak trains on terms the **Secretary Board** decides are reasonable.

(e) ADDITIONAL TRAINS.—

(1) When a rail carrier does not agree to provide, or allow Amtrak to provide, for the operation of additional trains over a rail line of the carrier, Amtrak may apply to the **Secretary Board** for an order requiring the carrier to provide or allow for the operation of the requested trains. After a hearing on the record, the **Secretary Board** may order the carrier, within 60 days, to provide or allow for the operation of the requested trains on a schedule based on legally permissible operating times. However, if the **Secretary Board** decides not to hold a hearing, the **Secretary Board**, not later than 30 days after receiving the application, shall publish in the Federal Register the reasons for the decision not to hold the hearing.

(2) The **Secretary Board** shall consider—

(A) when conducting a hearing, whether an order would impair unreasonably freight transportation of the rail carrier, with the carrier having the burden of demonstrating that the additional trains will impair the freight transportation; and

(B) when establishing scheduled running times, the statutory goal of Amtrak to implement schedules that attain a system-wide average speed of at least 60 miles an hour that can be adhered to with a high degree of reliability and passenger comfort.

(3) Unless the parties have an agreement that establishes the compensation Amtrak will pay the carrier for additional trains provided under an order under this subsection, the [Commission] Board shall decide the dispute under subsection (a) of this section.

(f) *PASSENGER TRAIN PERFORMANCE AND OTHER STANDARDS.*—

(1) *INVESTIGATION OF SUBSTANDARD PERFORMANCE.*—*If the on-time performance of any intercity passenger train averages less than 80 percent for any 2 consecutive calendar quarters, or the service quality of intercity passenger train operations for which minimum standards are established under section 208 of the Passenger Rail Investment and Improvement Act of 2007 fails to meet those standards for 2 consecutive calendar quarters, the Surface Transportation Board may initiate an investigation, or upon the filing of a complaint by Amtrak, an intercity passenger rail operator, a host freight railroad over which Amtrak operates, or an entity for which Amtrak operates intercity passenger rail service, the Board shall initiate an investigation to determine whether, and to what extent, delays or failure to achieve minimum standards are due to causes that could reasonably be addressed by a rail carrier over tracks of which the intercity passenger train operates or reasonably addressed by Amtrak or other intercity passenger rail operator. In making its determination or carrying out such an investigation, the Board shall obtain information from all parties involved and identify reasonable measures and make recommendations to improve the service, quality, and on-time performance of the train.*

(2) *PROBLEMS CAUSED BY HOST RAIL CARRIER.*—*If the Board determines that delays or failures to achieve minimum standards investigated under paragraph (1) are attributable to a rail carrier's failure to provide preference to Amtrak over freight transportation as required under subsection (c), the Board may award damages against the host rail carrier, including prescribing such other relief to Amtrak as it determines to be reasonable and appropriate pursuant to paragraph (3) of this subsection.*

(3) *DAMAGES AND RELIEF.*—*In awarding damages and prescribing other relief under this subsection the Board shall consider such factors as—*

(A) the extent to which Amtrak suffers financial loss as a result of host rail carrier delays or failure to achieve minimum standards; and

(B) what reasonable measures would adequately deter future actions which may reasonably be expected to be likely to result in delays to Amtrak on the route involved.

(4) *USE OF DAMAGES.*—*The Board shall, as it deems appropriate, remit the damages awarded under this subsection to Amtrak or to an entity for which Amtrak operates intercity passenger rail service. Such damages shall be used for capital or operating expenditures on the routes over which delays or fail-*

ures to achieve minimum standards were the result of a rail carrier's failure to provide preference to Amtrak over freight transportation as determined in accordance with paragraph (2).

* * * * *

§24310. Management accountability

(a) IN GENERAL.—Three years after the date of enactment of the Passenger Rail Investment and Improvement Act of 2007, and two years thereafter, the Inspector General of the Department of Transportation shall complete an overall assessment of the progress made by Amtrak management and the Department of Transportation in implementing the provisions of that Act.

(b) ASSESSMENT.—The management assessment undertaken by the Inspector General may include a review of—

- (1) effectiveness improving annual financial planning;*
- (2) effectiveness in implementing improved financial accounting;*
- (3) efforts to implement minimum train performance standards;*
- (4) progress maximizing revenues and minimizing Federal subsidies; and*
- (5) any other aspect of Amtrak operations the Inspector General finds appropriate to review.*

* * * * *

§24316. Plans to address needs of families of passengers involved in rail passenger accidents

(a) SUBMISSION OF PLAN.—Not later than 6 months after the date of the enactment of the Surface Transportation and Rail Security Act of 2007 Amtrak shall submit to the Chairman of the National Transportation Safety Board, the Secretary of Transportation, and the Secretary of Homeland Security a plan for addressing the needs of the families of passengers involved in any rail passenger accident involving an Amtrak intercity train and resulting in a loss of life.

(b) CONTENTS OF PLANS.—The plan to be submitted by Amtrak under subsection (a) shall include, at a minimum, the following:

- (1) A process by which Amtrak will maintain and provide to the National Transportation Safety Board and the Secretary of Transportation, immediately upon request, a list (which is based on the best available information at the time of the request) of the names of the passengers aboard the train (whether or not such names have been verified), and will periodically update the list. The plan shall include a procedure, with respect to unreserved trains and passengers not holding reservations on other trains, for Amtrak to use reasonable efforts to ascertain the number and names of passengers aboard a train involved in an accident.*
- (2) A plan for creating and publicizing a reliable, toll-free telephone number within 4 hours after such an accident occurs, and for providing staff, to handle calls from the families of the passengers.*
- (3) A process for notifying the families of the passengers, before providing any public notice of the names of the passengers, by suitably trained individuals.*

(4) A process for providing the notice described in paragraph (2) to the family of a passenger as soon as Amtrak has verified that the passenger was aboard the train (whether or not the names of all of the passengers have been verified).

(5) A process by which the family of each passenger will be consulted about the disposition of all remains and personal effects of the passenger within Amtrak's control; that any possession of the passenger within Amtrak's control will be returned to the family unless the possession is needed for the accident investigation or any criminal investigation; and that any unclaimed possession of a passenger within Amtrak's control will be retained by the rail passenger carrier for at least 18 months.

(6) A process by which the treatment of the families of nonrevenue passengers will be the same as the treatment of the families of revenue passengers.

(7) An assurance that Amtrak will provide adequate training to its employees and agents to meet the needs of survivors and family members following an accident.

(c) *USE OF INFORMATION.*—The National Transportation Safety Board, the Secretary of Transportation, and Amtrak may not release any personal information on a list obtained under subsection (b)(1) but may provide information on the list about a passenger to the family of the passenger to the extent that the Board or Amtrak considers appropriate.

(d) *LIMITATION ON LIABILITY.*—Amtrak shall not be liable for damages in any action brought in a Federal or State court arising out of the performance of Amtrak in preparing or providing a passenger list, or in providing information concerning a train reservation, pursuant to a plan submitted by Amtrak under subsection (b), unless such liability was caused by Amtrak's conduct.

(e) *LIMITATION ON STATUTORY CONSTRUCTION.*—Nothing in this section may be construed as limiting the actions that Amtrak may take, or the obligations that Amtrak may have, in providing assistance to the families of passengers involved in a rail passenger accident.

(f) *FUNDING.*—Out of funds appropriated pursuant to section 416(b) of the Surface Transportation and Rail Security Act of 2007, there shall be made available to the Secretary of Transportation for the use of Amtrak \$500,000 for fiscal year 2007 to carry out this section. Amounts made available pursuant to this subsection shall remain available until expended.

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CHAPTER 244—INTERCITY PASSENGER RAIL SERVICE CORRIDOR CAPITAL ASSISTANCE

Sec.

24401. Definitions.

24402. Capital investment grants to support intercity passenger rail service.

24403. Project management oversight.

24404. Use of capital grants to finance first-dollar liability of grant project.

24405. Grant conditions.

§24401. Definitions

In this subchapter:

(1) *APPLICANT.*—The term “applicant” means a State (including the District of Columbia), a group of States, an Interstate

Compact, or a public agency established by one or more States and having responsibility for providing intercity passenger rail service.

(2) **CAPITAL PROJECT.**—*The term “capital project” means a project or program in a State rail plan developed under chapter 225 of this title for—*

(A) *acquiring, constructing, improving, or inspecting equipment, track and track structures, or a facility for use in or for the primary benefit of intercity passenger rail service, expenses incidental to the acquisition or construction (including designing, engineering, location surveying, mapping, environmental studies, and acquiring rights-of-way), payments for the capital portions of rail trackage rights agreements, highway-rail grade crossing improvements related to intercity passenger rail service, security, mitigating environmental impacts, communication and signalization improvements, relocation assistance, acquiring replacement housing sites, and acquiring, constructing, relocating, and rehabilitating replacement housing;*

(B) *rehabilitating, remanufacturing or overhauling rail rolling stock and facilities used primarily in intercity passenger rail service;*

(C) *costs associated with developing State rail plans; and*

(D) *the first-dollar liability costs for insurance related to the provision of intercity passenger rail service under section 24404.*

(3) **INTERCITY PASSENGER RAIL SERVICE.**—*The term “intercity passenger rail service” means transportation services with the primary purpose of passenger transportation between towns, cities and metropolitan areas by rail, including high-speed rail, as defined in section 24102 of title 49, United States Code.*

§24402. Capital investment grants to support intercity passenger rail service

(a) **GENERAL AUTHORITY.**—

(1) *The Secretary of Transportation may make grants under this section to an applicant to assist in financing the capital costs of facilities and equipment necessary to provide or improve intercity passenger rail transportation.*

(2) *The Secretary shall require that a grant under this section be subject to the terms, conditions, requirements, and provisions the Secretary decides are necessary or appropriate for the purposes of this section, including requirements for the disposition of net increases in value of real property resulting from the project assisted under this section and shall prescribe procedures and schedules for the awarding of grants under this title, including application and qualification procedures and a record of decision on applicant eligibility. The Secretary shall issue a final rule establishing such procedures not later than 90 days after the date of enactment of the Passenger Rail Investment and Improvement Act of 2007.*

(b) **PROJECT AS PART OF STATE RAIL PLAN.**—

(1) *The Secretary may not approve a grant for a project under this section unless the Secretary finds that the project is part of a State rail plan developed under chapter 225 of this title,*

or under the plan required by section 203 of the Passenger Rail Investment and Improvement Act of 2007, and that the applicant or recipient has or will have the legal, financial, and technical capacity to carry out the project, satisfactory continuing control over the use of the equipment or facilities, and the capability and willingness to maintain the equipment or facilities.

(2) An applicant shall provide sufficient information upon which the Secretary can make the findings required by this subsection.

(3) If an applicant has not selected the proposed operator of its service competitively, the applicant shall provide written justification to the Secretary showing why the proposed operator is the best, taking into account price and other factors, and that use of the proposed operator will not unnecessarily increase the cost of the project.

(c) **PROJECT SELECTION CRITERIA.**—The Secretary, in selecting the recipients of financial assistance to be provided under subsection (a), shall—

(1) require that each proposed project meet all safety and security requirements that are applicable to the project under law;

(2) give preference to projects with high levels of estimated ridership, increased on-time performance, reduced trip time, additional service frequency to meet anticipated or existing demand, or other significant service enhancements as measured against minimum standards developed under section 208 of the Passenger Rail Investment and Improvement Act of 2007;

(3) encourage intermodal connectivity through projects that provide direct connections between train stations, airports, bus terminals, subway stations, ferry ports, and other modes of transportation;

(4) ensure that each project is compatible with, and is operated in conformance with—

(A) plans developed pursuant to the requirements of section 135 of title 23, United States Code; and

(B) the national rail plan (if it is available); and

(5) favor the following kinds of projects:

(A) Projects that are expected to have a significant favorable impact on air or highway traffic congestion, capacity, or safety.

(B) Projects that also improve freight or commuter rail operations.

(C) Projects that have significant environmental benefits.

(D) Projects that are—

(i) at a stage of preparation that all pre-commencement compliance with environmental protection requirements has already been completed; and

(ii) ready to be commenced.

(E) Projects with positive economic and employment impacts.

(F) Projects that encourage the use of positive train control technologies.

(G) Projects that have commitments of funding from non-Federal Government sources in a total amount that exceeds the minimum amount of the non-Federal contribution required for the project.

(H) Projects that involve donated property interests or services.

(I) Projects that are identified by the Surface Transportation Board as necessary to improve the on time performance and reliability of intercity passenger rail under section 24308(f).

(J) Projects described in section 5302(a)(1)(G) of this title that are designed to support intercity passenger rail service.

(d) **AMTRAK ELIGIBILITY.**—To receive a grant under this section, the National Railroad Passenger Corporation may enter into a cooperative agreement with 1 or more States to carry out 1 or more projects on a State rail plan's ranked list of rail capital projects developed under section 22504(a)(5) of this title.

(e) **LETTERS OF INTENT, FULL FUNDING GRANT AGREEMENTS, AND EARLY SYSTEMS WORK AGREEMENTS.**—

(1)(A) The Secretary may issue a letter of intent to an applicant announcing an intention to obligate, for a major capital project under this section, an amount from future available budget authority specified in law that is not more than the amount stipulated as the financial participation of the Secretary in the project.

(B) At least 30 days before issuing a letter under subparagraph (A) of this paragraph or entering into a full funding grant agreement, the Secretary shall notify in writing the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate and the House and Senate Committees on Appropriations of the proposed letter or agreement. The Secretary shall include with the notification a copy of the proposed letter or agreement as well as the evaluations and ratings for the project.

(C) An obligation or administrative commitment may be made only when amounts are appropriated.

(2)(A) The Secretary may make a full funding grant agreement with an applicant. The agreement shall—

(i) establish the terms of participation by the United States Government in a project under this section;

(ii) establish the maximum amount of Government financial assistance for the project;

(iii) cover the period of time for completing the project, including a period extending beyond the period of an authorization; and

(iv) make timely and efficient management of the project easier according to the law of the United States.

(B) An agreement under this paragraph obligates an amount of available budget authority specified in law and may include a commitment, contingent on amounts to be specified in law in advance for commitments under this paragraph, to obligate an additional amount from future available budget authority specified in law. The agreement shall state that the contingent commitment is not an obligation of the Government and is subject to the availability of appropriations made by Federal law and to Federal laws in force on or enacted after the date of the contingent commitment. Interest and other financing costs of efficiently carrying out a part of the project within a reasonable

time are a cost of carrying out the project under a full funding grant agreement, except that eligible costs may not be more than the cost of the most favorable financing terms reasonably available for the project at the time of borrowing. The applicant shall certify, in a way satisfactory to the Secretary, that the applicant has shown reasonable diligence in seeking the most favorable financing terms.

(3)(A) The Secretary may make an early systems work agreement with an applicant if a record of decision under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) has been issued on the project and the Secretary finds there is reason to believe—

(i) a full funding grant agreement for the project will be made; and

(ii) the terms of the work agreement will promote ultimate completion of the project more rapidly and at less cost.

(B) A work agreement under this paragraph obligates an amount of available budget authority specified in law and shall provide for reimbursement of preliminary costs of carrying out the project, including land acquisition, timely procurement of system elements for which specifications are decided, and other activities the Secretary decides are appropriate to make efficient, long-term project management easier. A work agreement shall cover the period of time the Secretary considers appropriate. The period may extend beyond the period of current authorization. Interest and other financing costs of efficiently carrying out the work agreement within a reasonable time are a cost of carrying out the agreement, except that eligible costs may not be more than the cost of the most favorable financing terms reasonably available for the project at the time of borrowing. The applicant shall certify, in a way satisfactory to the Secretary, that the applicant has shown reasonable diligence in seeking the most favorable financing terms. If an applicant does not carry out the project for reasons within the control of the applicant, the applicant shall repay all Government payments made under the work agreement plus reasonable interest and penalty charges the Secretary establishes in the agreement.

(4) The total estimated amount of future obligations of the Government and contingent commitments to incur obligations covered by all outstanding letters of intent, full funding grant agreements, and early systems work agreements may be not more than the amount authorized under section 101(c) of Passenger Rail Investment and Improvement Act of 2007, less an amount the Secretary reasonably estimates is necessary for grants under this section not covered by a letter. The total amount covered by new letters and contingent commitments included in full funding grant agreements and early systems work agreements may be not more than a limitation specified in law.

(f) **FEDERAL SHARE OF NET PROJECT COST.**—

(1)(A) Based on engineering studies, studies of economic feasibility, and information on the expected use of equipment or facilities, the Secretary shall estimate the net project cost.

(B) A grant for the project shall not exceed 80 percent of the project net capital cost.

(C) The Secretary shall give priority in allocating future obligations and contingent commitments to incur obligations to grant requests seeking a lower Federal share of the project net capital cost.

(2) Up to an additional 20 percent of the required non-Federal funds may be funded from amounts appropriated to or made available to a department or agency of the Federal Government that are eligible to be expended for transportation.

(3) 50 percent of the average amounts expended by a State or group of States (including the District of Columbia) for capital projects to benefit intercity passenger rail service and operating costs of up to \$5,000,000 per fiscal year of such service in fiscal years 2004, 2005, and 2006 shall be credited towards the matching requirements for grants awarded in fiscal years 2007, 2008, and 2009 under this section. The Secretary may require such information as necessary to verify such expenditures.

(4) 50 percent of the average amounts expended by a State or group of States (including the District of Columbia) in a fiscal year, beginning in fiscal year 2007, for capital projects to benefit intercity passenger rail service or for the operating costs of such service above the average of capital and operating expenditures made for such service in fiscal years 2004, 2005, and 2006 shall be credited towards the matching requirements for grants awarded under this section. The Secretary may require such information as necessary to verify such expenditures.

(g) **UNDERTAKING PROJECTS IN ADVANCE.**—

(1) The Secretary may pay the Federal share of the net capital project cost to an applicant that carries out any part of a project described in this section according to all applicable procedures and requirements if—

(A) the applicant applies for the payment;

(B) the Secretary approves the payment; and

(C) before carrying out the part of the project, the Secretary approves the plans and specifications for the part in the same way as other projects under this section.

(2) The cost of carrying out part of a project includes the amount of interest earned and payable on bonds issued by the applicant to the extent proceeds of the bonds are expended in carrying out the part. However, the amount of interest under this paragraph may not be more than the most favorable interest terms reasonably available for the project at the time of borrowing. The applicant shall certify, in a manner satisfactory to the Secretary, that the applicant has shown reasonable diligence in seeking the most favorable financial terms.

(3) The Secretary shall consider changes in capital project cost indices when determining the estimated cost under paragraph (2) of this subsection.

(h) **2-YEAR AVAILABILITY.**—Funds appropriated under this section shall remain available until expended. If any amount provided as a grant under this section is not obligated or expended for the purposes described in subsection (a) within 2 years after the date on which the State received the grant, such sums shall be returned to

the Secretary for other intercity passenger rail development projects under this section at the discretion of the Secretary.

(i) PUBLIC-PRIVATE PARTNERSHIPS.—

(1) IN GENERAL.—A metropolitan planning organization, State transportation department, or other project sponsor may enter into an agreement with any public, private, or nonprofit entity to cooperatively implement any project funded with a grant under this title.

(2) FORMS OF PARTICIPATION.—Participation by an entity under paragraph (1) may consist of—

(A) ownership or operation of any land, facility, locomotive, rail car, vehicle, or other physical asset associated with the project;

(B) cost-sharing of any project expense;

(C) carrying out administration, construction management, project management, project operation, or any other management or operational duty associated with the project; and

(D) any other form of participation approved by the Secretary.

(3) SUB-ALLOCATION.—A State may allocate funds under this section to any entity described in paragraph (1).

(j) SPECIAL TRANSPORTATION CIRCUMSTANCES.—In carrying out this section, the Secretary shall allocate an appropriate portion of the amounts available under this section to provide grants to States—

(1) in which there is no intercity passenger rail service for the purpose of funding freight rail capital projects that are on a State rail plan developed under chapter 225 of this title that provide public benefits (as defined in chapter 225) as determined by the Secretary; or

(2) in which the rail transportation system is not physically connected to rail systems in the continental United States or may not otherwise qualify for a grant under this section due to the unique characteristics of the geography of that State or other relevant considerations, for the purpose of funding transportation-related capital projects.

(k) SMALL CAPITAL PROJECTS.—The Secretary shall make available \$10,000,000 annually from the amounts authorized under section 101(c) of the Passenger Rail Investment and Improvement Act of 2007 beginning in fiscal year 2008 for grants for capital projects eligible under this section not exceeding \$2,000,000, including costs eligible under section 206(c) of that Act. The Secretary may waive requirements of this section, including State rail plan requirements, as appropriate.

§24403. Project management oversight

(a) PROJECT MANAGEMENT PLAN REQUIREMENTS.—To receive Federal financial assistance for a major capital project under this subchapter, an applicant must prepare and carry out a project management plan approved by the Secretary of Transportation. The plan shall provide for—

(1) adequate recipient staff organization with well-defined reporting relationships, statements of functional responsibilities, job descriptions, and job qualifications;

(2) a budget covering the project management organization, appropriate consultants, property acquisition, utility relocation, systems demonstration staff, audits, and miscellaneous payments the recipient may be prepared to justify;

(3) a construction schedule for the project;

(4) a document control procedure and recordkeeping system;

(5) a change order procedure that includes a documented, systematic approach to handling the construction change orders;

(6) organizational structures, management skills, and staffing levels required throughout the construction phase;

(7) quality control and quality assurance functions, procedures, and responsibilities for construction, system installation, and integration of system components;

(8) material testing policies and procedures;

(9) internal plan implementation and reporting requirements;

(10) criteria and procedures to be used for testing the operational system or its major components;

(11) periodic updates of the plan, especially related to project budget and project schedule, financing, and ridership estimates; and

(12) the recipient's commitment to submit a project budget and project schedule to the Secretary each month.

(b) **SECRETARIAL OVERSIGHT.**—

(1) The Secretary may use no more than 0.5 percent of amounts made available in a fiscal year for capital projects under this subchapter to enter into contracts to oversee the construction of such projects.

(2) The Secretary may use amounts available under paragraph (1) of this subsection to make contracts for safety, procurement, management, and financial compliance reviews and audits of a recipient of amounts under paragraph (1).

(3) The Federal Government shall pay the entire cost of carrying out a contract under this subsection.

(c) **ACCESS TO SITES AND RECORDS.**—Each recipient of assistance under this subchapter shall provide the Secretary and a contractor the Secretary chooses under subsection (c) of this section with access to the construction sites and records of the recipient when reasonably necessary.

§24404. Use of capital grants to finance first-dollar liability of grant project

Notwithstanding the requirements of section 24402 of this subchapter, the Secretary of Transportation may approve the use of capital assistance under this subchapter to fund self-insured retention of risk for the first tier of liability insurance coverage for rail passenger service associated with the capital assistance grant, but the coverage may not exceed \$20,000,000 per occurrence or \$20,000,000 in aggregate per year.

§24405. Grant conditions

(a) **DOMESTIC BUYING PREFERENCE.**—

(1) **REQUIREMENT.**—

(A) **IN GENERAL.**—In carrying out a project funded in whole or in part with a grant under this title, the grant recipient shall purchase only—

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

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

(B) *DE MINIMIS AMOUNT.*—Subparagraph (1) applies only to a purchase in an total amount that is not less than \$1,000,000.

(2) *EXEMPTIONS.*—On application of a recipient, the Secretary may exempt a recipient from the requirements of this subsection if the Secretary decides that, for particular articles, material, or supplies—

(A) *such requirements are inconsistent with the public interest;*

(B) *the cost of imposing the requirements is unreasonable; or*

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

(3) *UNITED STATES DEFINED.*—In this subsection, the term ‘the United States’ means the States, territories, and possessions of the United States and the District of Columbia.

(b) *OPERATORS DEEMED RAIL CARRIERS AND EMPLOYERS FOR CERTAIN PURPOSES.*—A person that conducts rail operations over rail infrastructure constructed or improved with funding provided in whole or in part in a grant made under this title shall be considered a rail carrier as defined in section 10102(5) of this title for purposes of this title and any other statute that adopts the that definition or in which that definition applies, including—

(1) *the Railroad Retirement Act of 1974 (45 U.S.C. 231 et seq.); and*

(2) *the Railway Labor Act (43 U.S.C. 151 et seq.).*

(c) *GRANT CONDITIONS.*—The Secretary shall require as a condition of making any grant under this title for a project that uses rights-of-way owned by a railroad that—

(1) *a written agreement exist between the applicant and the railroad regarding such use and ownership, including—*

(A) *any compensation for such use;*

(B) *assurances regarding the adequacy of infrastructure capacity to accommodate both existing and future freight and passenger operations; and*

(C) *an assurance by the railroad that collective bargaining agreements with the railroad’s employees (including terms regulating the contracting of work) will remain in full force and effect according to their terms for work performed by the railroad on the railroad transportation corridor;*

(D) *an assurance that an applicant complies with liability requirements consistent with section 28103 of this title; and*

(2) *the applicant agrees to comply with—*

(A) the standards of section 24312 of this title, as such section was in effect on September 1, 2003, with respect to the project in the same manner that the National Railroad Passenger Corporation is required to comply with those standards for construction work financed under an agreement made under section 24308(a) of this title; and

(B) the protective arrangements established under section 504 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 836) with respect to employees affected by actions taken in connection with the project to be financed in whole or in part by grants under this subchapter.

(d) **REPLACEMENT OF EXISTING INTERCITY PASSENGER RAIL SERVICE.**—

(1) **COLLECTIVE BARGAINING AGREEMENT FOR INTERCITY PASSENGER RAIL PROJECTS.**—Any entity providing intercity passenger railroad transportation that begins operations after the date of enactment of this Act on a project funded in whole or in part by grants made under this title and replaces intercity rail passenger service that was provided by Amtrak, unless such service was provided solely by Amtrak to another entity, as of such date shall enter into an agreement with the authorized bargaining agent or agents for adversely affected employees of the predecessor provider that—

(A) gives each such qualified employee of the predecessor provider priority in hiring according to the employee's seniority on the predecessor provider for each position with the replacing entity that is in the employee's craft or class and is available within 3 years after the termination of the service being replaced;

(B) establishes a procedure for notifying such an employee of such positions;

(C) establishes a procedure for such an employee to apply for such positions; and

(D) establishes rates of pay, rules, and working conditions.

(2) **IMMEDIATE REPLACEMENT SERVICE.**—

(A) **NEGOTIATIONS.**—If the replacement of preexisting intercity rail passenger service occurs concurrent with or within a reasonable time before the commencement of the replacing entity's rail passenger service, the replacing entity shall give written notice of its plan to replace existing rail passenger service to the authorized collective bargaining agent or agents for the potentially adversely affected employees of the predecessor provider at least 90 days before the date on which it plans to commence service. Within 5 days after the date of receipt of such written notice, negotiations between the replacing entity and the collective bargaining agent or agents for the employees of the predecessor provider shall commence for the purpose of reaching agreement with respect to all matters set forth in subparagraphs (A) through (D) of paragraph (1). The negotiations shall continue for 30 days or until an agreement is reached, whichever is sooner. If at the end of 30 days the parties have not entered into an agreement with respect to all such

matters, the unresolved issues shall be submitted for arbitration in accordance with the procedure set forth in subparagraph (B).

(B) ARBITRATION.—If an agreement has not been entered into with respect to all matters set forth in subparagraphs (A) through (D) of paragraph (1) as described in subparagraph (A) of this paragraph, the parties shall select an arbitrator. If the parties are unable to agree upon the selection of such arbitrator within 5 days, either or both parties shall notify the National Mediation Board, which shall provide a list of seven arbitrators with experience in arbitrating rail labor protection disputes. Within 5 days after such notification, the parties shall alternately strike names from the list until only 1 name remains, and that person shall serve as the neutral arbitrator. Within 45 days after selection of the arbitrator, the arbitrator shall conduct a hearing on the dispute and shall render a decision with respect to the unresolved issues among the matters set forth in subparagraphs (A) through (D) of paragraph (1). This decision shall be final, binding, and conclusive upon the parties. The salary and expenses of the arbitrator shall be borne equally by the parties; all other expenses shall be paid by the party incurring them.

(3) SERVICE COMMENCEMENT.—A replacing entity under this subsection shall commence service only after an agreement is entered into with respect to the matters set forth in subparagraphs (A) through (D) of paragraph (1) or the decision of the arbitrator has been rendered.

(4) SUBSEQUENT REPLACEMENT OF SERVICE.—If the replacement of existing rail passenger service takes place within 3 years after the replacing entity commences intercity passenger rail service, the replacing entity and the collective bargaining agent or agents for the adversely affected employees of the predecessor provider shall enter into an agreement with respect to the matters set forth in subparagraphs (A) through (D) of paragraph (1). If the parties have not entered into an agreement with respect to all such matters within 60 days after the date on which the replacing entity replaces the predecessor provider, the parties shall select an arbitrator using the procedures set forth in paragraph (2)(B), who shall, within 20 days after the commencement of the arbitration, conduct a hearing and decide all unresolved issues. This decision shall be final, binding, and conclusive upon the parties.

(e) INAPPLICABILITY TO CERTAIN RAIL OPERATIONS.— Nothing in this section applies to—

(1) commuter rail passenger transportation (as defined in section 24102(4) of this title) operations of a State or local government authority (as those terms are defined in section 5302(11) and (6), respectively, of this title) eligible to receive financial assistance under section 5307 of this title, or to its contractor performing services in connection with commuter rail passenger operations (as so defined);

(2) the Alaska Railroad or its contractors; or

(3) *the National Railroad Passenger Corporation's access rights to railroad rights of way and facilities under current law.*

* * * * *

§24702. Transportation requested by States, authorities, and other persons

(a) *CONTRACTS FOR TRANSPORTATION.—Amtrak may enter into a contract with a State, a regional or local authority, or another person for Amtrak to operate an intercity rail service or route not included in the national rail passenger transportation system upon such terms as the parties thereto may agree.*

(b) *DISCONTINUANCE.—Upon termination of a contract entered into under this section, or the cessation of financial support under such a contract by either party, Amtrak may discontinue such service or route, notwithstanding any other provision of law.*

* * * * *

§ 24706. Discontinuance

(a) *NOTICE OF DISCONTINUANCE.—*

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

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

(b) *DISCONTINUANCE FOR LACK OF APPROPRIATIONS.—*

(1) *Amtrak may discontinue service under section 24704 or subsection (a)(1) during—*

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

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

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

(c) *APPLICABILITY.—This section applies to all service over routes provided by Amtrak, notwithstanding any provision of section 24701 of this title or any other provision of this title except section 24702(b).*

* * * * *

§24710. Long distance routes

(a) *ANNUAL EVALUATION.—Using the financial and performance metrics developed under section 208 of the Passenger Rail Investment and Improvement Act of 2007, Amtrak shall—*

(1) *evaluate annually the financial and operating performance of each long distance passenger rail route operated by Amtrak; and*

(2) *rank the overall performance of such routes for 2006 and identify each long distance passenger rail route operated by Amtrak in 2006 according to its overall performance as belonging to the best performing third of such routes, the second best performing third of such routes, or the worst performing third of such routes.*

(b) *PERFORMANCE IMPROVEMENT PLAN.*—Amtrak shall develop and publish a performance improvement plan for its long distance passenger rail routes to achieve financial and operating improvements based on the data collected through the application of the financial and performance metrics developed under section 208 of that Act. The plan shall address—

(1) *on-time performance;*

(2) *scheduling, frequency, routes, and stops;*

(3) *the feasibility of restructuring service into connected corridor service;*

(4) *performance-related equipment changes and capital improvements;*

(5) *on-board amenities and service, including food, first class, and sleeping car service;*

(6) *State or other non-Federal financial contributions;*

(7) *improving financial performance; and*

(8) *other aspects of Amtrak's long distance passenger rail routes that affect the financial, competitive, and functional performance of service on Amtrak's long distance passenger rail routes.*

(c) *IMPLEMENTATION.*—Amtrak shall implement the performance improvement plan developed under subsection (b)—

(1) *beginning in fiscal year 2008 for those routes identified as being in the worst performing third under subsection (a)(2);*

(2) *beginning in fiscal year 2009 for those routes identified as being in the second best performing third under subsection (a)(2); and*

(3) *beginning in fiscal year 2010 for those routes identified as being in the best performing third under subsection (a)(2).*

(d) *ENFORCEMENT.*—The Federal Railroad Administration shall monitor the development, implementation, and outcome of improvement plans under this section. If, for any year, it determines that Amtrak is not making reasonable progress in implementing its performance improvement plan or in achieving the expected outcome of the plan for any calendar year, the Federal Railroad Administration—

(1) *shall notify Amtrak, the Inspector General of the Department of Transportation, and appropriate Congressional committees of its determination under this subsection;*

(2) *shall provide an opportunity for a hearing with respect to that determination; and*

(3) *may withhold any appropriated funds otherwise available to Amtrak for the operation of a route or routes on which it is not making progress, other than funds made available for passenger safety or security measures.*

§24711. Alternate passenger rail service program

(a) *IN GENERAL.*—Within 1 year after the date of enactment of the Passenger Rail Investment and Improvement Act of 2007, the Federal Railroad Administration shall initiate a rulemaking proceeding to develop a program under which—

(1) a rail carrier or rail carriers that own infrastructure over which Amtrak operates a passenger rail service route described in subparagraph (B), (C), or (D) of section 24102(5) or in section 24702 of title 49, United States Code, or any entity operating as a rail carrier that has negotiated a contingent agreement to lease necessary rights-of-way from a rail carrier or rail carriers that own the infrastructure on which Amtrak operates such routes, may petition the Federal Railroad Administration to be considered as a passenger rail service provider over that route in lieu of Amtrak;

(2) the Administration would notify Amtrak within 30 days after receiving a petition under paragraph (1) and establish a deadline by which both the petitioner and Amtrak would be required to submit a bid to provide passenger rail service over the route to which the petition relates;

(3) each bid would describe how the bidder would operate the route, what Amtrak passenger equipment would be needed, if any, what sources of non-Federal funding the bidder would use, including any State subsidy, among other things;

(4) the Administration would make a decision and execute a contract within a specified, limited time after that deadline awarding to the winning bidder—

(A) the right and obligation to provide passenger rail service over that route subject to such performance standards as the Administration may require, consistent with the standards developed under section 208 of this Act; and

(B) an operating subsidy—

(i) for the first year at a level not in excess of the level in effect during the fiscal year preceding the fiscal year in which the petition was received, adjusted for inflation;

(ii) for any subsequent years at such level, adjusted for inflation; and

(5) each bid would contain a staffing plan describing the number of employees needed to operate the service, the job assignments and requirements, and the terms of work for prospective and current employees of the bidder for the service outlined in the bid, and such staffing plan would be made available by the winning bidder to the public after the bid award.

(b) *IMPLEMENTATION.*—

(1) *INITIAL PETITIONS.*—Pursuant to any rules or regulations promulgated under subsection (A), the Administration shall establish a deadline for the submission of a petition under subsection (a)—

(A) during fiscal year 2008 for operations commencing in fiscal year 2009; and

(B) during the immediately preceding fiscal year for operations commencing in subsequent fiscal years.

(2) *ROUTE LIMITATIONS.*—The Administration may not make the program available with respect to more than 1 Amtrak pas-

senger rail route for operations beginning in fiscal year 2009 nor to more than 2 such routes for operations beginning in fiscal year 2011 and subsequent fiscal years.

(c) PERFORMANCE STANDARDS; ACCESS TO FACILITIES; EMPLOYEES.—If the Administration awards the right and obligation to provide passenger rail service over a route under the program to a rail carrier or rail carriers—

(1) it shall execute a contract with the rail carrier or rail carriers for rail passenger operations on that route that conditions the operating and subsidy rights upon—

(A) the service provider continuing to provide passenger rail service on the route that is no less frequent, nor over a shorter distance, than Amtrak provided on that route before the award; and

(B) the service provider's compliance with the minimum standards established under section 208 of the Passenger Rail Investment and Improvement Act of 2007 and such additional performance standards as the Administration may establish;

(2) it shall, if the award is made to a rail carrier other than Amtrak, require Amtrak to provide access to its reservation system, stations, and facilities to any rail carrier or rail carriers awarded a contract under this section, in accordance with section 218 of that Act, necessary to carry out the purposes of this section;

(3) the employees of any person used by a rail carrier or rail carriers (as defined in section 10102(5) of this title) in the operation of a route under this section shall be considered an employee of that carrier or carriers and subject to the applicable Federal laws and regulations governing similar crafts or classes of employees of Amtrak, including provisions under section 121 of the Amtrak Reform and Accountability Act of 1997 relating to employees that provide food and beverage service; and

(4) the winning bidder shall provide preference in hiring to qualified Amtrak employees displaced by the award of the bid, consistent with the staffing plan submitted by the bidder.

(d) CESSATION OF SERVICE.—If a rail carrier or rail carriers awarded a route under this section cease to operate the service or fail to fulfill their obligations under the contract required under subsection (c), the Administrator, in collaboration with the Surface Transportation Board shall take any necessary action consistent with this title to enforce the contract and ensure the continued provision of service, including the installment of an interim service provider and re-bidding the contract to operate the service. The entity providing service shall either be Amtrak or a rail carrier defined in section 24711(a)(1).

(e) ADEQUATE RESOURCES.—Before taking any action allowed under this section, the Secretary shall certify that the Administrator has sufficient resources that are adequate to undertake the program established under this section.

* * * * *

CHAPTER 249. NORTHEAST CORRIDOR IMPROVEMENT PROGRAM

§ 24904. General authority

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

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

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

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

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

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

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

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

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

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

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

(2) If the parties do not agree, the Interstate Commerce Commission shall order that the transportation continue over facilities acquired under the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.) and the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 801 et seq.) and shall determine compensation (without allowing cross-subsidization between *commuter rail passenger* and intercity rail passenger and rail freight transportation) for the transpor-

tation not later than 120 days after the dispute is submitted. The Commission shall assign to a rail **freight** carrier obtaining transportation under this subsection the costs Amtrak incurs only for the benefit of the carrier, plus a proportionate share of all other costs of providing transportation under this paragraph incurred for the common benefit of Amtrak and the carrier. The proportionate share shall be based on relative measures of volume of car operations, tonnage, or other factors that reasonably reflect the relative use of rail property covered by this subsection.

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

§ 24905. Coordination board and safety committee

[(a) NORTHEAST CORRIDOR COORDINATION BOARD.—(1) The Northeast Corridor Coordination Board is composed of the following members:

[(A) one individual from each commuter authority (as defined in section 1135(a) of the Omnibus Budget Reconciliation Act of 1981 (45 U.S.C. 1104)) that provides or makes a contract to provide commuter rail passenger transportation over the main line of the Northeast Corridor.

[(B) 2 individuals selected by Amtrak.

[(C) one individual selected by the Consolidated Rail Corporation.

[(2) The Board shall recommend to Amtrak—

[(A) policies that ensure equitable access to the Northeast Corridor, considering the need for equitable access by commuter and intercity rail passenger transportation and the requirements of section 24308(c) of this title; and

[(B) equitable policies for the Northeast Corridor related to—

[(i) dispatching;

[(ii) public information;

[(iii) maintaining equipment and facilities;

[(iv) major capital facility investments; and

[(v) harmonizing equipment acquisitions, rates, and schedules.

[(3) The Board may recommend to the board of directors and President of Amtrak action necessary to resolve differences on providing transportation, except for facilities and transportation matters under section 24308(a) or 24904(a)(5) and (c) of this title.

[(b) NORTHEAST CORRIDOR SAFETY COMMITTEE.—(1) THE NORTHEAST CORRIDOR SAFETY COMMITTEE IS COMPOSED OF MEMBERS APPOINTED BY THE SECRETARY OF TRANSPORTATION. THE MEMBERS SHALL BE REPRESENTATIVES OF—

[(A) the Secretary;

[(B) Amtrak;

[(C) freight carriers operating more than 150,000 train miles a year on the main line of the Northeast Corridor;

[(D) commuter agencies;

[(E) rail passengers;

[(F) rail labor; and

[(G) other individuals and organizations the Secretary decides have a significant interest in rail safety.]

[(2) The Secretary shall consult with the Committee about safety improvements on the Northeast Corridor main line. The Committee shall meet at least once every 2 years to consider safety matters on the main line.]

[(3) At the beginning of the first session of each Congress, the Secretary shall submit a report to Congress on the status of efforts to improve safety on the Northeast Corridor main line. The report shall include the safety recommendations of the Committee and the comments of the Secretary on those recommendations.]

[(4) The Committee shall cease to exist on January 1, 1999, or on another date the Secretary decides is appropriate. The Secretary shall notify Congress in writing of a decision to terminate the Committee on another date.]

§24905. Northeast Corridor Infrastructure and Operations Advisory Commission; Safety and Security Committee.

(a) *NORTHEAST CORRIDOR INFRASTRUCTURE AND OPERATIONS ADVISORY COMMISSION.*—

(1) *Within 180 days after the date of enactment of the Passenger Rail Investment and Improvement Act of 2007, the Secretary of Transportation shall establish a Northeast Corridor Infrastructure and Operations Advisory Commission (hereinafter referred to in this section as the ‘Commission’) to promote mutual cooperation and planning pertaining to the rail operations and related activities of the Northeast Corridor. The Commission shall be made up of—*

(A) members representing the National Railroad Passenger Corporation;

(B) members representing the Secretary of Transportation and the Federal Railroad Administration;

(C) 1 member from each of the States (including the District of Columbia) that constitute the Northeast Corridor as defined in section 24102, designated by, and serving at the pleasure of, the chief executive officer thereof; and

(D) non-voting representatives of freight railroad carriers using the Northeast Corridor selected by the Secretary.

(2) The Secretary shall ensure that the membership belonging to any of the groups enumerated under subparagraph (1) shall not constitute a majority of the commission’s memberships.

(3) The commission shall establish a schedule and location for convening meetings, but shall meet no less than four times per fiscal year, and the commission shall develop rules and procedures to govern the commission’s proceedings.

(4) A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(5) Members shall serve without pay but shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

(6) The Chairman of the Commission shall be elected by the members.

(7) The Commission may appoint and fix the pay of such personnel as it considers appropriate.

(8) Upon request of the Commission, the head of any department or agency of the United States may detail, on a reimbursable basis, any of the personnel of that department or agency to the Commission to assist it in carrying out its duties under this section.

(9) Upon the request of the Commission, the Administrator of General Services shall provide to the Commission, on a reimbursable basis, the administrative support services necessary for the Commission to carry out its responsibilities under this section.

(10) The commission shall consult with other entities as appropriate.

(b) *GENERAL RECOMMENDATIONS.*—The Commission shall develop recommendations concerning Northeast Corridor rail infrastructure and operations including proposals addressing, as appropriate—

(1) short-term and long term capital investment needs beyond the state-of-good-repair under section 213;

(2) future funding requirements for capital improvements and maintenance;

(3) operational improvements of intercity passenger rail, commuter rail, and freight rail services;

(4) opportunities for additional non-rail uses of the Northeast Corridor;

(5) scheduling and dispatching;

(6) safety and security enhancements;

(7) equipment design;

(8) marketing of rail services; and

(9) future capacity requirements.

(c) *ACCESS COSTS.*—

(1) *DEVELOPMENT OF FORMULA.*—Within 1 year after verification of Amtrak's new financial accounting system pursuant to section 203(b) of the Passenger Rail Investment and Improvement Act of 2007, the Commission shall—

(A) develop a standardized formula for determining and allocating costs, revenues, and compensation for Northeast Corridor commuter rail passenger transportation, as defined in section 24102 of this title, that use National Railroad Passenger Corporation facilities or services or that provide such facilities or services to the National Railroad Passenger Corporation that ensure that—

(i) there is no cross-subsidization of commuter rail passenger, intercity rail passenger, or freight rail transportation; and

(ii) each service is assigned the costs incurred only for the benefit of that service, and a proportionate share, based upon factors that reasonably reflect relative use, of costs incurred for the common benefit of more than 1 service;

(B) develop a proposed timetable for implementing the formula before the end of the 6th year following the date of enactment of that Act;

(C) transmit the proposed timetable to the Surface Transportation Board; and

(D) at the request of a Commission member, petition the Surface Transportation Board to appoint a mediator to as-

sist the Commission members through non-binding mediation to reach an agreement under this section.

(2) **IMPLEMENTATION.**—*The National Railroad Passenger Corporation and the commuter authorities providing commuter rail passenger transportation on the Northeast Corridor shall implement new agreements for usage of facilities or services based on the formula proposed in paragraph (1) in accordance with the timetable established therein. If the entities fail to implement such new agreements in accordance with the timetable, the Commission shall petition the Surface Transportation Board to determine the appropriate compensation amounts for such services in accordance with section 24904(c) of this title. The Surface Transportation Board shall enforce its determination on the party or parties involved.*

(d) **TRANSMISSION OF RECOMMENDATIONS.**—*The commission shall annually transmit the recommendations developed under subsection (b) and the formula and timetable developed under subsection (c)(1) to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.*

(e) **NORTHEAST CORRIDOR SAFETY AND SECURITY COMMITTEE.**—

(1) **IN GENERAL.**—*The Secretary shall establish a Northeast Corridor Safety and Security Committee composed of members appointed by the Secretary. The members shall be representatives of—*

(A) *the Secretary;*

(B) *Amtrak;*

(C) *freight carriers operating more than 150,000 train miles a year on the main line of the Northeast Corridor;*

(D) *commuter agencies;*

(E) *rail passengers;*

(F) *rail labor;*

(G) *the Transportation Security Administration; and*

(H) *other individuals and organizations the Secretary decides have a significant interest in rail safety or security.*

(2) **FUNCTION; MEETINGS.**—*The Secretary shall consult with the Committee about safety and security improvements on the Northeast Corridor main line. The Committee shall meet at least once every 2 years to consider safety matters on the main line.*

(3) **REPORT.**—*At the beginning of the first session of each Congress, the Secretary shall submit a report to the Commission and to Congress on the status of efforts to improve safety and security on the Northeast Corridor main line. The report shall include the safety recommendations of the Committee and the comments of the Secretary on those recommendations.*

* * * * *

§24910. Rail cooperative research program

(a) **IN GENERAL.**—*The Secretary shall establish and carry out a rail cooperative research program. The program shall—*

(1) *address, among other matters, intercity rail passenger and freight rail services, including existing rail passenger and freight technologies and speeds, incrementally enhanced rail*

systems and infrastructure, and new high-speed wheel-on-rail systems and rail security;

(2) address ways to expand the transportation of international trade traffic by rail, enhance the efficiency of intermodal interchange at ports and other intermodal terminals, and increase capacity and availability of rail service for seasonal freight needs;

(3) consider research on the interconnectedness of commuter rail, passenger rail, freight rail, and other rail networks; and

(4) give consideration to regional concerns regarding rail passenger and freight transportation, including meeting research needs common to designated high-speed corridors, long-distance rail services, and regional intercity rail corridors, projects, and entities.

(b) CONTENT.—The program to be carried out under this section shall include research designed—

(1) to identify the unique aspects and attributes of rail passenger and freight service;

(2) to develop more accurate models for evaluating the impact of rail passenger and freight service, including the effects on highway and airport and airway congestion, environmental quality, and energy consumption;

(3) to develop a better understanding of modal choice as it affects rail passenger and freight transportation, including development of better models to predict utilization;

(4) to recommend priorities for technology demonstration and development;

(5) to meet additional priorities as determined by the advisory board established under subsection (c), including any recommendations made by the National Research Council;

(6) to explore improvements in management, financing, and institutional structures;

(7) to address rail capacity constraints that affect passenger and freight rail service through a wide variety of options, ranging from operating improvements to dedicated new infrastructure, taking into account the impact of such options on operations;

(8) to improve maintenance, operations, customer service, or other aspects of intercity rail passenger and freight service;

(9) to recommend objective methodologies for determining intercity passenger rail routes and services, including the establishment of new routes, the elimination of existing routes, and the contraction or expansion of services or frequencies over such routes;

(10) to review the impact of equipment and operational safety standards on the further development of high speed passenger rail operations connected to or integrated with non-high speed freight or passenger rail operations; and

(11) to recommend any legislative or regulatory changes necessary to foster further development and implementation of high speed passenger rail operations while ensuring the safety of such operations that are connected to or integrated with non-high speed freight or passenger rail operations.

(c) ADVISORY BOARD.—

(1) *ESTABLISHMENT.*—*In consultation with the heads of appropriate Federal departments and agencies, the Secretary shall establish an advisory board to recommend research, technology, and technology transfer activities related to rail passenger and freight transportation.*

(2) *MEMBERSHIP.*—*The advisory board shall include—*

(A) *representatives of State transportation agencies;*

(B) *transportation and environmental economists, scientists, and engineers; and*

(C) *representatives of Amtrak, the Alaska Railroad, freight railroads, transit operating agencies, intercity rail passenger agencies, railway labor organizations, and environmental organizations.*

(d) *NATIONAL ACADEMY OF SCIENCES.*—*The Secretary may make grants to, and enter into cooperative agreements with, the National Academy of Sciences to carry out such activities relating to the research, technology, and technology transfer activities described in subsection (b) as the Secretary deems appropriate.*

PART E—MISCELLANEOUS

CHAPTER 281. LAW ENFORCEMENT

§ 28101. Rail police officers

Under regulations prescribed by the Secretary of Transportation, a rail police officer who is employed by a rail carrier and certified or commissioned as a police officer under the laws of a State may enforce the laws of any jurisdiction in which [the rail carrier] *any rail carrier* owns property, to the extent of the authority of a police officer certified or commissioned under the laws of that jurisdiction, to protect—

(1) employees, passengers, or patrons of [the rail carrier] *any rail carrier*;

(2) property, equipment, and facilities owned, leased, operated, or maintained by [the rail carrier] *any rail carrier*;

(3) property moving in interstate or foreign commerce in the possession of [the rail carrier] *any rail carrier*; and

(4) personnel, equipment, and material moving by rail that are vital to the national defense.

SUBTITLE VII. AVIATION PROGRAMS

PART A—AIR COMMERCE AND SAFETY

CHAPTER 463. PENALTIES

§ 46301. Civil penalties

(a) *GENERAL PENALTY.*—

(1) A person is liable to the United States Government for a civil penalty of not more than \$25,000 (or \$1,100 if the person is an individual or small business concern) for violating—

(A) chapter 401 (except sections 40103(a) and (d), 40105, 40116, and 40117), chapter 411, chapter 413 (except sections 41307 and 41310(b)-(f)), chapter 415 (except sections 41502, 41505, and 41507-41509), chapter 417 (except sections 41703, 41704, 41710, 41713, and 41714), chapter 419,

subchapter II or III of chapter 421, chapter 441 (except section 44109), 44502(b) or (c), chapter 447 (except sections 44717 and 44719-44723), chapter 449 (except sections 44902, 44903(d), 44904, 44907(a)-(d)(1)(A) and (d)(1)(C)-(f), and 44908), section 47107(b) (including any assurance made under such section), or section 47133 of this title;

(B) a regulation prescribed or order issued under any provision to which clause (A) of this paragraph applies;

(C) any term of a certificate or permit issued under section 41102, 41103, or 41302 of this title; or

(D) a regulation of the United States Postal Service under this part.

(2) A separate violation occurs under this subsection for each day the violation (other than a violation of section 41719) continues or, if applicable, for each flight involving the violation (other than a violation of section 41719).

(3) PENALTY FOR DIVERSION OF AVIATION REVENUES.—The amount of a civil penalty assessed under this section for a violation of section 47107(b) of this title (or any assurance made under such section) or section 47133 of this title may be increased above the otherwise applicable maximum amount under this section to an amount not to exceed 3 times the amount of revenues that are used in violation of such section.

(4) AVIATION SECURITY VIOLATIONS.—Notwithstanding paragraph (1) of this subsection, the maximum civil penalty for violating chapter 449 [or another requirement under this title administered by the Under Secretary of Transportation for Security] shall be \$10,000; except that the maximum civil penalty shall be \$25,000 in the case of a person operating an aircraft for the transportation of passengers or property for compensation (except an individual serving as an airman).

(5) PENALTIES APPLICABLE TO INDIVIDUALS AND SMALL BUSINESS CONCERNS.—

(A) An individual (except an airman serving as an airman) or small business concern is liable to the Government for a civil penalty of not more than \$10,000 for violating—

(i) chapter 401 (except sections 40103(a) and (d), 40105, 40106(b), 40116, and 40117), section 44502 (b) or (c), chapter 447 (except sections 44717-44723), or chapter 449 (except sections 44902, 44903(d), 44904, and 44907-44909) of this title; or

(ii) a regulation prescribed or order issued under any provision to which clause (i) applies.

(B) A civil penalty of not more than \$10,000 may be imposed for each violation under paragraph (1) committed by an individual or small business concern related to—

(i) the transportation of hazardous material;

(ii) the registration or recordation under chapter 441 of an aircraft not used to provide air transportation;

(iii) a violation of section 44718(d), relating to the limitation on construction or establishment of landfills;

(iv) a violation of section 44725, relating to the safe disposal of life-limited aircraft parts; or

(v) a violation of section 40127 or section 41705, relating to discrimination.

(C) Notwithstanding paragraph (1), the maximum civil penalty for a violation of section 41719 committed by an individual or small business concern shall be \$5,000 instead of \$1,000.

(D) Notwithstanding paragraph (1), the maximum civil penalty for a violation of section 41712 (including a regulation prescribed or order issued under such section) or any other regulation prescribed by the Secretary by an individual or small business concern that is intended to afford consumer protection to commercial air transportation passengers shall be \$2,500 for each violation.

(b) SMOKE ALARM DEVICE PENALTY.—

(1) A passenger may not tamper with, disable, or destroy a smoke alarm device located in a lavatory on an aircraft providing air transportation or intrastate air transportation.

(2) An individual violating this subsection is liable to the Government for a civil penalty of not more than \$2,000.

(c) PROCEDURAL REQUIREMENTS.—

(1) The Secretary of Transportation may impose a civil penalty for the following violations only after notice and an opportunity for a hearing:

(A) a violation of subsection (b) of this section or chapter 411, chapter 413 (except sections 41307 and 41310(b)-(f)), chapter 415 (except sections 41502, 41505, and 41507-41509), chapter 417 (except sections 41703, 41704, 41710, 41713, and 41714), chapter 419, subchapter II of chapter 421, or section 44909 of this title.

(B) a violation of a regulation prescribed or order issued under any provision to which clause (A) of this paragraph applies.

(C) a violation of any term of a certificate or permit issued under section 41102, 41103, or 41302 of this title.

(D) a violation under subsection (a)(1) of this section related to the transportation of hazardous material.

(2) The Secretary shall give written notice of the finding of a violation and the civil penalty under paragraph (1) of this subsection.

(d) ADMINISTRATIVE IMPOSITION OF PENALTIES.—

(1) In this subsection—

(A) “flight engineer” means an individual who holds a flight engineer certificate issued under part 63 of title 14, Code of Federal Regulations.

(B) “mechanic” means an individual who holds a mechanic certificate issued under part 65 of title 14, Code of Federal Regulations.

(C) “pilot” means an individual who holds a pilot certificate issued under part 61 of title 14, Code of Federal Regulations.

(D) “repairman” means an individual who holds a repairman certificate issued under part 65 of title 14, Code of Federal Regulations.

(2) The Administrator of the Federal Aviation Administration may impose a civil penalty for a violation of chapter 401

(except sections 40103(a) and (d), 40105, 40106(b), 40116, and 40117), chapter 441 (except section 44109), section 44502(b) or (c), chapter 447 (except sections 44717 and 44719-44723) or section 46301(b), 46302 (for a violation relating to section 46504), 46318, or 47107(b) (as further defined by the Secretary under section 47107(l) and including any assurance made under section 47107(b)) of this title or a regulation prescribed or order issued under any of those provisions. The Secretary of Homeland Security may impose a civil penalty for a violation of chapter 449 (except sections 44902, 44903(d), 44907(a)-(d)(1)(A), 44907(d)(1)(C)-(f), 44908, and 44909), 46302 (except for a violation relating to section 46504), 46303, or a regulation prescribed or order issued under such chapter 449. The Secretary of Homeland Security or Administrator shall give written notice of the finding of a violation and the penalty.

(3) In a civil action to collect a civil penalty imposed by the Secretary of Homeland Security or Administrator under this subsection, the issues of liability and the amount of the penalty may not be reexamined.

(4) Notwithstanding paragraph (2) of this subsection, the district courts of the United States have exclusive jurisdiction of a civil action involving a penalty the Secretary of Homeland Security or Administrator initiates if—

(A) the amount in controversy is more than—

(i) \$50,000 if the violation was committed by any person before the date of enactment of the Vision 100—Century of Aviation Reauthorization Act [enacted Dec. 12, 2003];

(ii) \$400,000 if the violation was committed by a person other than an individual or small business concern on or after that date; or

(iii) \$50,000 if the violation was committed by an individual or small business concern on or after that date;

(B) the action is in rem or another action in rem based on the same violation has been brought;

(C) the action involves an aircraft subject to a lien that has been seized by the Government; or

(D) another action has been brought for an injunction based on the same violation.

(5)(A) The Administrator may issue an order imposing a penalty under this subsection against an individual acting as a pilot, flight engineer, mechanic, or repairman only after advising the individual of the charges or any reason the Administrator relied on for the proposed penalty and providing the individual an opportunity to answer the charges and be heard about why the order shall not be issued.

(B) An individual acting as a pilot, flight engineer, mechanic, or repairman may appeal an order imposing a penalty under this subsection to the National Transportation Safety Board. After notice and an opportunity for a hearing on the record, the Board shall affirm, modify, or reverse the order. The Board may modify a civil penalty imposed to a suspension or revocation of a certificate.

(C) When conducting a hearing under this paragraph, the Board is not bound by findings of fact of the Administrator but is bound by all validly adopted interpretations of laws and regulations the Administrator carries out and of written agency policy guidance available to the public related to sanctions to be imposed under this section unless the Board finds an interpretation is arbitrary, capricious, or otherwise not according to law.

(D) When an individual files an appeal with the Board under this paragraph, the order of the Administrator is stayed.

(6) An individual substantially affected by an order of the Board under paragraph (5) of this subsection, or the Administrator when the Administrator decides that an order of the Board under paragraph (5) will have a significant adverse impact on carrying out this part, may obtain judicial review of the order under section 46110 of this title. The Administrator shall be made a party to the judicial review proceedings. Findings of fact of the Board are conclusive if supported by substantial evidence.

(7) (A) The Administrator may impose a penalty on a person (except an individual acting as a pilot, flight engineer, mechanic, or repairman) only after notice and an opportunity for a hearing on the record.

(B) In an appeal from a decision of an administrative law judge as the result of a hearing under subparagraph (A) of this paragraph, the Administrator shall consider only whether—

- (i) each finding of fact is supported by a preponderance of reliable, probative, and substantial evidence;
- (ii) each conclusion of law is made according to applicable law, precedent, and public policy; and
- (iii) the judge committed a prejudicial error that supports the appeal.

(C) Except for good cause, a civil action involving a penalty under this paragraph may not be initiated later than 2 years after the violation occurs.

(D) In the case of a violation of section 47107(b) of this title or any assurance made under such section—

- (i) a civil penalty shall not be assessed against an individual;
- (ii) a civil penalty may be compromised as provided under subsection (f); and
- (iii) judicial review of any order assessing a civil penalty may be obtained only pursuant to section 46110 of this title.

(8) The maximum civil penalty the Under Secretary, Administrator, or Board may impose under this subsection is—

- (A) \$50,000 if the violation was committed by any person before the date of enactment of the Vision 100--Century of Aviation Reauthorization Act [enacted Dec. 12, 2003];
- (B) \$400,000 if the violation was committed by a person other than an individual or small business concern on or after that date; or
- (C) \$50,000 if the violation was committed by an individual or small business concern on or after that date.

(9) This subsection applies only to a violation occurring after August 25, 1992.

(e) **PENALTY CONSIDERATIONS.**—In determining the amount of a civil penalty under subsection (a)(3) of this section related to transportation of hazardous material, the Secretary shall consider—

(1) the nature, circumstances, extent, and gravity of the violation;

(2) with respect to the violator, the degree of culpability, any history of prior violations, the ability to pay, and any effect on the ability to continue doing business; and

(3) other matters that justice requires.

(f) **COMPROMISE AND SETOFF.**—

(1) (A) The Secretary may compromise the amount of a civil penalty imposed for violating—

(i) chapter 401 (except sections 40103(a) and (d), 40105, 40116, and 40117), chapter 441 (except section 44109), section 44502(b) or (c), chapter 447 (except 44717 and 44719-44723), or chapter 449 (except sections 44902, 44903(d), 44904, 44907(a)-(d)(1)(A) and (d)(1)(C)-(f), 44908, and 44909) of this title; or

(ii) a regulation prescribed or order issued under any provision to which clause (i) of this subparagraph applies.

(B) The Postal Service may compromise the amount of a civil penalty imposed under subsection (a)(1)(D) of this section.

(2) The Government may deduct the amount of a civil penalty imposed or compromised under this subsection from amounts it owes the person liable for the penalty.

(g) **JUDICIAL REVIEW.**—An order of the Secretary or the Administrator imposing a civil penalty may be reviewed judicially only under section 46110 of this title.

(h) **NONAPPLICATION.**—(1) This section does not apply to the following when performing official duties: (A) a member of the armed forces of the United States. (B) a civilian employee of the Department of Defense subject to the Uniform Code of Military Justice. (2) The appropriate military authority is responsible for taking necessary disciplinary action and submitting to the Secretary (or the Under Secretary of Transportation for Security with respect to security duties and powers designated to be carried out by the Under Secretary or the Administrator with respect to aviation safety duties and powers designated to be carried out by the Administrator) a timely report on action taken.

(i) **SMALL BUSINESS CONCERN DEFINED.**—In this section, the term “small business concern” has the meaning given that term in section 3 of the Small Business Act (15 U.S.C. 632).

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CHAPTER 261. HIGH-SPEED RAIL ASSISTANCE

§26106. Rail infrastructure bonds

(a) **DESIGNATION.**—*The Secretary may designate bonds for purposes of section 54 of the Internal Revenue Code of 1986 if—*

(1) the bonds are to be issued by—

(A) a State, if the entire railroad passenger transportation corridor containing the infrastructure project to be financed is within the State;

(B) 1 or more of the States that have entered into an agreement or an interstate compact consented to by Congress under section 410(a) of Public Law 105–134 (49 U.S.C. 24101 note);

(C) an agreement or an interstate compact described in subparagraph (B); or

(D) Amtrak, for capital projects under its 5-year plan;

(2) the bonds are for the purpose of financing projects that make a substantial contribution to providing the infrastructure and equipment required to complete or improve a rail transportation corridor (including projects for the acquisition, financing, or refinancing of equipment and other capital improvements, including the introduction of new high-speed technologies such as magnetic levitation systems, track or signal improvements, the elimination of grade crossings, development of intermodal facilities, improvement of train speeds or safety, or both, and station rehabilitation or construction), but only if the Secretary determines that the projects are part of a viable and comprehensive rail transportation corridor design for intercity passenger service included in a State rail plan under chapter 225 (except for bonds issued under paragraph (1)(D)); and

(3) for a railroad passenger transportation corridor not operated by Amtrak that includes the use of rights-of-way owned by a freight railroad, a written agreement exists between the applicant and the freight railroad regarding such use and ownership, including compensation for such use and assurances regarding the adequacy of infrastructure capacity to accommodate both existing and future freight and passenger operations, and including an assurance by the freight railroad that collective bargaining agreements with the freight railroad's employees (including terms regulating the contracting of work) shall remain in full force and effect according to their terms for work performed by the freight railroad on such railroad passenger transportation corridor.

(b) **BOND AMOUNT LIMITATION.**—

(1) **IN GENERAL.**—The amount of bonds designated under this section may not exceed in the case of section 54 bonds, \$1,300,000,000 for each of the fiscal years 2006 through 2015.

(2) **CARRYOVER OF UNUSED LIMITATION.**—If for any fiscal year the limitation amount under paragraph (1) exceeds the amount of section 54 bonds issued during such year, the limitation amount under paragraph (1) for the following fiscal year (through fiscal year 2019) shall be increased by the amount of such excess.

(c) **PROJECT SELECTION CRITERIA.**—The Secretary shall give preference to the designation under this section of bonds for projects selected using the criteria in chapter 244.

(d) **TIMELY DISPOSITION OF APPLICATION.**—The Secretary shall grant or deny a requested designation within 9 months after receipt of an application.

(e) **REFINANCING RULES.**—Bonds designated by the Secretary under subsection (a) may be issued for refinancing projects only if the indebtedness being refinanced (including any obligation directly or indirectly refinanced by such indebtedness) was originally incurred by the issuer—

- (1) *after the date of the enactment of this section;*
- (2) *for a term of not more than 3 years;*
- (3) *to finance projects described in subsection (a)(2); and*
- (4) *in anticipation of being refinanced with proceeds of a bond designated under subsection (a).*

(f) *APPLICATION OF CONDITIONS.—Any entity providing railroad transportation (within the meaning of section 20102) that begins operations after the date of the enactment of this section and that uses property acquired pursuant to this section (except as provided in subsection (a)(2)(B)), shall be subject to the conditions under section 24405.*

(g) *ISSUANCE OF REGULATIONS.—Not later than 6 months after the date of the enactment of the Passenger Rail Investment and Improvement Act of 2005, the Secretary shall issue regulations for carrying out this section.*

(h) *SECTION 54 BOND DEFINED.—In this section, the term ‘section 54 bond’ means a bond designated by the Secretary under subsection (a) for purposes of section 54 of the Internal Revenue Code of 1986 (relating to credit to holders of qualified rail infrastructure bonds).*

