

Mr. Speaker, I reserve the balance of my time.

Ms. SLAUGHTER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I thank the gentleman from New York [Mr. SOLOMON] for yielding me the customary 30 minutes.

Mr. Speaker, as Thomas Jefferson notes in the very first section of Jefferson's Manual, the minority in any legislative body looks to the rules of that body as its best and often only defense against the potential tyranny of the majority.

Therefore, we look with skepticism on any special rule that would seek to bypass the rules protection of the rights of all Members. Under rule XI, clause 4(b), a two-thirds vote is required to consider a rule on the same day that the Committee on Rules reports it. This provision is designed to afford all Members a day to examine the language of the rule on the underlying legislation before voting on them.

Martial law procedures allow a rule to be considered on the same day as it is reported with a majority rather than a two-thirds vote.

□ 1230

While protections of Members' rights are important and should not be lightly weighed, it is unfortunately common at the end of a session to suspend temporarily in limited cases some of these protections.

This rule, as amended by unanimous consent Monday morning, would waive the 1-day layover requirement for a rule providing for consideration of specified bills if reported before November 15. This would expand the martial law provisions currently in effect by extending them through Friday and adding the temporary ISTEPA bill to the appropriations bills and continuing resolutions that are currently eligible for this expedited procedure. The rule would also allow the consideration of bills under the suspension of the rules through November 15 with at least 1 hour notice to Members and upon consultation with the minority leader.

Today we are 43 days into the 1998 fiscal year, and we have 3 more appropriations bills yet to pass. We need to expeditiously complete the work we should have finished before October 1. Martial law provisions for overdue appropriations bills have become a regrettable, but a traditional feature of the last day of the session.

Mr. Speaker, I yield back the balance of my time.

Mr. SOLOMON. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution, as amended.

The previous question was ordered.

The SPEAKER pro tempore (Mr. PETRI). The question is on the resolution, as amended.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Ms. SLAUGHTER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 5 of rule I, further proceedings on this resolution are postponed until later today.

PROVIDING FOR CONSIDERATION OF S. 738, AMTRAK REFORM AND ACCOUNTABILITY ACT OF 1997

Mr. SOLOMON. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 319 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 319

Resolved, That upon the adoption of this resolution it shall be in order without intervention of any point of order to consider in the House the bill (S. 738) to reform the statutes relating to Amtrak, to authorize appropriations for Amtrak, and for other purposes. The bill shall be considered as read for amendment. The amendment printed in the report of the Committee on Rules accompanying this resolution shall be considered as adopted. All points of order against the bill, as amended, are waived. The previous question shall be considered as ordered on the bill, as amended, to final passage without intervening motion except: (1) one hour of debate on the bill, as amended, which shall be equally divided and controlled by the chairman and ranking minority member of the Committee on Transportation and Infrastructure; and (2) one motion to commit with or without instructions.

The SPEAKER pro tempore. The gentleman from New York [Mr. SOLOMON] is recognized for 1 hour.

Mr. SOLOMON. Mr. Speaker, for the purposes of debate only, again I yield one-half hour to the gentlewoman from New York [Ms. SLAUGHTER], pending which I yield myself such time as I may consume. Again, during consideration of the resolution, all time yielded is for debate purposes only.

Mr. Speaker, House Resolution 319 provides for the consideration of S. 738, Amtrak reform and authorization, which shall be considered as read. The resolution provides that the amendment now printed in the Committee on Rules report shall be considered as adopted, and that all points of order against the bill as amended are waived.

House Resolution 319 also provides for 1 hour of debate, equally divided and controlled between the chairman and ranking minority member of the Committee on Transportation and Infrastructure, and finally, the resolution provides 1 motion to commit with or without instructions.

Mr. Speaker, this rule allows the House to consider the Senate bill reforming Amtrak and authorizing appropriations for Amtrak, with the inclusion of an additional amendment in the nature of a substitute that had been suggested by the chairman of the Committee on Transportation and Infrastructure, the gentleman from Pennsylvania [Mr. SHUSTER].

The addition to the Senate bill reflects essentially the same reforms

that were endorsed by the House last year by a rather overwhelming vote of 406 to just 4 negative votes. This amendment that we have self-enacted in the rule has bipartisan support and is crucial to achieving real reform of Amtrak.

Under this bill, the House would accept the labor and liability provisions worked out in the Senate bill. Also, the provisions in the amendment crafted by the gentleman from Pennsylvania [Mr. SHUSTER], which have no Senate counterpart, include, and this is very important, include: the restructuring of Amtrak's board of directors toward a more business-oriented, private sector board; reforming Amtrak's capital structure; and increasing the flexibility of Amtrak's route structure.

We all know that these real reforms must be made to keep Amtrak viable; indeed, to keep it out of bankruptcy. Mr. Speaker, it is vitally important that Amtrak be maintained. Amtrak is important to our entire Nation, but especially important to the Northeast which the gentlewoman from Rochester, NY [Ms. SLAUGHTER] represents and the Hudson Valley area that I represent. Thousands of my constituents rely on Amtrak service to get to work every day and to visit friends and family on weekends and holidays.

Mr. Speaker, we need to move this bill through Congress as quickly as we possibly can. Amtrak's ability to provide nationwide service at the present level is seriously threatened. It cannot continue unless we pass this legislation.

For years, there has been underinvestment in Amtrak's equipment and in their facilities, which has led to declining service quality and reduced reliability. But passage of Amtrak reform legislation will give Amtrak the much-needed boost of capital funds that will allow it to upgrade its equipment and gain independence from the Federal Government, and those are 2 very, very key issues: gain independence from the Federal Government and to upgrade its equipment, which is in dire need right now for the safety of its passengers.

Mr. Speaker, I urge my colleagues to support the rule so that we may proceed with general debate and consideration of the merits of this very important legislation.

Mr. Speaker, I reserve the balance of my time.

Ms. SLAUGHTER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I thank my colleague, the gentleman from New York [Mr. SOLOMON], for yielding me the customary half-hour.

Mr. Speaker, I rise in opposition to this rule. Just days ago, the Senate passed their version of the Amtrak bill without a single dissenting vote. The Senate bill includes consensus language on both the labor and liability issues, the issues that caused the most controversy in the House version of

that measure. But, instead of taking the Senate bill straight to the House floor in its present form, the Committee on Rules self-executes the Shuster substitute that threatens any chance of passing this critical bill before the Congress adjourns.

The self-executing language includes a provision dealing with the board of directors that, if included, will not pass the Senate. By self-executing this provision instead of making it a freestanding substitute amendment, the House will be precluded from voting up or down on the Senate bill.

Mr. Speaker, Amtrak is on the verge of bankruptcy. It desperately needs the funds that were provided in the reconciliation bill passed by the Congress earlier this year. Those funds, as my colleagues know, are contingent on the passage of an Amtrak reform package.

The House bill was abruptly pulled after the defeat of the Quinn amendment. Since that time, the Senate has worked out most of the concerns of the legislation, and if we do not act now, there is little chance that Amtrak reform legislation will be enacted this year.

If this rule passes, we will move to recommit the bill with instructions. The motion to recommit will make in order the Senate-passed bill, which will give the House an opportunity to vote up or down on the Senate version of the bill, and I would like to say again that that bill passed the Senate without a single dissenting vote.

Mr. Speaker, the Senate bill is the bill that the President says that he will sign. If we truly want to save Amtrak, we must give Members the opportunity to vote on this bill as it passed the Senate. I urge a "no" vote on the rule and a "yes" vote on the motion to recommit.

Mr. Speaker, I yield 4 minutes to the gentleman from West Virginia [Mr. WISE].

Mr. WISE. Mr. Speaker, I thank the gentlewoman for yielding, and I also want to thank the gentleman from New York [Mr. SOLOMON] for getting this rule to the floor.

I am going to talk as much about the merits of the bill and the predicament we find ourselves in as about the rule, because that is what is important. The issue is whether or not we want to save Amtrak, and what I was impressed by, by the gentleman from New York [Mr. SOLOMON] in the Committee on Rules meeting, it seems like forever ago but it was just Thursday night, I believe, late Thursday night, but what I was impressed by was his recognition, and I think the recognition of the Committee on Rules, that something has to be done.

I say to my colleagues, the situation is this: If we want to save Amtrak, we have to pass a bill that can immediately be approved by the Senate, or better yet, not go back to the Senate.

Amtrak is in this situation. If we leave this House today or tomorrow or Friday and there has not been Amtrak

reform passed, when we come back and then when we are able finally to get around to Amtrak, which will probably be March or April, there will not be an Amtrak as we know it, and indeed there may not be an Amtrak.

Why do I make that kind of dire prediction? The one thing that all of us have agreed upon through the many debates that have been held on this House floor over the past several years, and particularly in the past 2 months, is that Amtrak has great financial problems. What is necessary for Amtrak is to be able to access the \$2.3 billion worth of capital that this Congress made available to it in the budget package just a couple of months ago, but that capital cannot be accessed until reform legislation passes.

Well, my colleagues will say, fine, why not go ahead and let the House pass whatever kind of reform legislation? The reality of the situation is that the Senate has passed that reform legislation. The Senate did the heavy lifting that the House has not been able to come to closure on.

If we remember, the two main issues, labor and liability reform, the Senate has done that. We fought ourselves to a standstill here on the House floor just a couple of weeks ago over those two issues. The bill was pulled, if we recall, because of the fact that there was not agreement on it. The Senate has taken those issues on and has reached compromises that everyone has signed off on, on the labor and the liability provisions.

Now we get down to the fact that we are going to get out of here in a couple of days, and now comes forward some measures dealing with predominantly the board of directors. And whether or not the House passes its provisions dealing with the board of directors and sends it over to the Senate, the Senate has made quite clear it will not accept those provisions. That means a lengthy, at best, conference. The administration, incidentally, has also made clear it will not accept those provisions.

The reality is, send those provisions over to the Senate and there will not be an Amtrak bill. No Amtrak bill, no access to capital. No Amtrak bill, no ability to go to the banks in the next month to extend its line of credit.

That is the other thing I forgot to mention. We talked about accessing capital that the Congress has already approved. Amtrak in December needs to go back to the major banks to extend its line of credit. If this reform legislation does not pass, the chances are likely it will not.

Now, some have urged passing some kind of resolution, or we all put language, happy talk, in the CONGRESSIONAL RECORD about the fact that Congress loves Amtrak and as soon as it gets back in January or February it will act on this. Do we want to take that to the bank? I do not think so. Amtrak does not want to take it either.

So the reality is, Mr. Speaker, we need to make sure that we pass the legislation that has already been adopted by the Senate. To those who say well, the Senate language, did they cave in to labor or did they cave in to trial lawyers or did they cave in to somebody, this is the Lott-Hutchison bill, Senator TRENT LOTT of Mississippi and Senator KAY BAILEY HUTCHISON of Texas and others, not exactly the arbiters of organized labor or of trial lawyers.

So this is truly a compromise that has been reached at all levels. It is a compromise that people can feel comfortable about. I pledge to my chairman, the gentleman from Pennsylvania [Mr. SHUSTER], as the ranking member of the Subcommittee on Railroads, that I would be happy to work and sign off on whatever hearings he wants to hold when we come back to look at subsequent legislation that does deal with the board of directors.

But I plead with my colleagues, particularly those of us who believe in Amtrak, that we do not leave this Congress this year without enacting the Amtrak reform legislation.

Now, the only way to do that is to effectively pass the Senate bill. We can load this thing up all we want, and it is going right down across the Rotunda into the other body and it is going to sit there. So that is why we are in this predicament.

Mr. Speaker, I am one who often stands on the floor and says, well, we ought not to just take a Senate bill, we ought to of course have our own voice. The fact is, though, in the last Congress, the 104th Congress that ended last year, plus this Congress, we have had this bill on the floor several times. It has been pulled, I believe, four times this year alone.

□ 1245

So we in the House have not been able to reach the compromises necessary. The compromises reached in the Senate language do the heavy lifting that needs to be done today, in this session of Congress.

In terms of the board of directors, that is a much knottier question. That gets to who appoints the board and what is their role. I would urge that that be held off for subsequent legislation, which I am pledged to work on with the majority in the next Congress.

But by passing the reform legislation, the Senate bill today, then we can immediately send this bill to the President. It does not even go back for a conference. We can send this bill to the President, and when the Amtrak reform legislation has passed, they can access the capital for capital investment, particularly modernizing the Northeast corridor, making sure the high-speed rail is installed. That is the one section that turns a profit. They can get to the banks right away. They can get their line of credit.

But let us not kid ourselves. Vote for any other thing but the Senate language which will be in the motion to

recommit, and we will vote to not save Amtrak. I wish I could say that there was some other way, but there is not.

The position we are going to find ourselves in is that there will be a period of time for debate when this rule is approved, presuming it is approved. There will be a period of time for debate. The first motion will be the Oberstar motion to recommit.

I urge my colleagues to recognize that that motion is the only way we can save Amtrak, because what that motion does is to strip out the House language, add it onto the Senate bill, and simply adopts the Senate-passed legislation. That is the key vote, the Oberstar motion to recommit.

I want to say once again, particularly to my colleagues on the other side of the aisle, this is not done in any way to confront the majority. This recommitment motion is what I would consider the necessary measure to save Amtrak, particularly fiscally.

But my pledge is, then, on the other issues that have been raised in the House bill, to immediately begin working with the majority on whatever hearings they want to have, whatever markups; we will work with them, whatever negotiations they want, because Amtrak will not be finished at this point.

Those on the other side and those on this side who say Amtrak needs to be revisited, they are correct. But at least let us, for the first time in many years, get Amtrak in a situation where it can truly go to the banks in December with reform, newly passed reform legislation.

Let us at least let Amtrak get to the banks in December with newly passed reform legislation that guarantees it the access to capital, that permits it to get the line of credit. That is the most important thing that we can do for Amtrak, and then begin making the investments.

Let me just say something about the board of directors. I am happy to work on changing the makeup of the board of directors next year. The worst thing I think we can do today, at a time when Amtrak has such fiscal instability, the worst thing we could do is try to enact legislation that radically alters a board of directors that has to go to negotiate for a line of credit in the next few weeks. Let that process take place, if it must take place, let it take place next year.

Chairman SOLOMON made a good observation in the Committee on Rules. This Congress goes out in the next couple of days. It will not come back effectively in January, except for the State of the Union Message. There will be some working time during February. The earliest we are looking at being able to bring Amtrak legislation back up if we do not pass it today is March. My guess is that it will probably be after that.

So therefore, once again, I urge my colleagues, I plead with my colleagues, to adopt the Oberstar recommitment mo-

tion, because that will adopt the Senate bill and permit this legislation immediately to go to the President.

In reality, there is no other way to save Amtrak. We are not going to be here much longer. The only way to save Amtrak is to approve the Senate bill and vote for the Oberstar motion to recommit. I urge my colleagues to take this very, very necessary and vital step.

Ms. SLAUGHTER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, if this rule is adopted, and I would like to restate what the gentleman said, if this rule is adopted, the first vote during consideration of the bill will be on the Oberstar motion to adopt the Senate bill, and that truly is the vote that will save Amtrak.

Mr. Speaker, I yield back the balance of my time.

Mr. SOLOMON. I yield myself such time as I may consume, Mr. Speaker.

Mr. Speaker, I would say to my friend, the gentlewoman from New York [Ms. SLAUGHTER], that the gentleman from Pennsylvania [Mr. SHUSTER], the chairman of the committee, is on his way here. If she did need additional time, we would let her take some of her time back, because now I will have two speakers. So I would just inform her of that.

Ms. SLAUGHTER. Mr. Speaker, I ask unanimous consent to reclaim my time.

The SPEAKER pro tempore (Mr. PETRI). Is there objection to the request of the gentlewoman from New York?

There was no objection.

Mr. SOLOMON. Mr. Speaker, I yield 4 minutes to the gentleman from Delaware [Mr. CASTLE], the former Governor.

Mr. CASTLE. Mr. Speaker, let me thank the distinguished chairman of the Committee on Rules. I have run over here, so I am a little out of breath, but I am delighted to be able to be here. I did hear some of the debate. I know the gentleman from Pennsylvania [Mr. SHUSTER] is also on his way.

I think it is very important that we focus on the problems of Amtrak. I am not going to get into the debate of the nitty-gritty of what has happened in the Senate, where it is now versus where the House might go under the Committee on Transportation and Infrastructure.

But before we leave in the next 24 or 48 hours, I hope that each and every one of us will understand that the future of rail passenger transportation in the United States of America is at hand. If we are not able to resolve the problems which exist now, we run the distinct risk of potential failure of Amtrak and the end of rail service as we know it now, or at least a worsening of the problem. I do not know, frankly, if it would go into bankruptcy. We hear these things.

I have looked at the Senate version of this. I have spent the last couple of

days reading this carefully. I have made some discoveries which I think should enlighten us in the House. One is that they have an Amtrak reform council, which I believe is acceptable to virtually everybody involved in this, which would give large control to the House and to the Senate as sort of a super board overlooking the board of directors which would help decide the direction of Amtrak. And, most importantly, we would have access to all the information which is needed. It would provide us the information we need to make the very, very important decisions in the financing and the future of Amtrak. That is crucial. We are about to yield \$2.3 billion in capital improvements as well as operating expenses. We need to have that information. The Amtrak reform council does that. I think it is important that we focus on that.

In addition, I think some of the suggestions which are being made by the gentleman from Pennsylvania [Mr. SHUSTER] are very sound suggestions and ones we should also look at. I hope we would be able to sit down with the Senate and perhaps resolve some of the differences that exist there.

I think, for example, giving up some of the voting rights of the stock owned by the Government is something which may make some sense with respect to how we run Amtrak. When we look at the actual board and look at the difference between the Senate and House proposals, it is not that overwhelming.

My view is this: We should have the best people possible on that board who are not politically motivated or answering to anybody who can run Amtrak. If I had my druthers, frankly, I would go out and pick the seven best managers of businesses I could find and put them on that board and let them run it. But I would hope we could come up with something that would allow us to have the best board possible.

The bottom line is, I hope we do not get in a position of passing a bill or recommitting a bill over the objections of the chairman of the Committee on Transportation and Infrastructure without resolution of this with the Senate. I would hope in the next 24 hours we could sit down with the Senate and the House together and try to work out some compromise on which everybody can agree, so we can thwart and avoid the problem of an impasse here in Congress in which we do not go forward with Amtrak.

We could wait perhaps, and perhaps there would not be economic failure, but if that happens, when the waiting game begins in Congress, it tends to go on and on. This is the moment, I think, for us to all act.

I would hope that all parties involved in this could pay close attention to the details involved, we could resolve it, we could go forward and make Amtrak a better passenger rail carrier, and we could indeed be able to, at some point a decade or two later, look at this as a dark period in the life of passenger rail

traffic but understand that we have now fixed it and we now have made America's passenger rail service the best in the world, not just in this country.

We are not going to do it unless we sit down and talk to one another. I think we should continue to move forward, and I am glad the rule is moving forward, but I think we should work towards a final resolution of this.

Ms. SLAUGHTER. Mr. Speaker, I yield such time as he may consume to the gentleman from West Virginia [Mr. WISE].

Mr. WISE. Mr. Speaker, I include for the RECORD a letter dated November 12, 1997, from Rodney E. Slater, Secretary of Transportation.

The letter referred to is as follows:

DEPARTMENT OF TRANSPORTATION,
THE SECRETARY OF TRANSPORTATION,
Washington, DC, November 12, 1997.

Hon. NEWT GINGRICH,
Speaker of the House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: The House of Representatives is scheduled to consider a substitute amendment to S. 738, the "Amtrak Reform and Accountability Act of 1997." I am writing to urge strongly that the House of Representatives approve the motion to be offered by Representative Oberstar to recommend the bill, thus enabling passage of the Senate Amtrak reform legislation.

Legislation has passed the Senate to reform Amtrak, thus enabling it to serve better as a national passenger rail system. That bill, S. 738, would afford Amtrak the ability to undertake significant reforms with its workforce and position Amtrak to address better future liability issues. The Senate bill represents many weeks of negotiations and is a compromise that passed unanimously. If adopted without change, it will free up \$2.3 billion in capital funding that Amtrak desperately needs to improve its equipment and infrastructure throughout the nation.

Instead, an amendment has been included in the Rule accompanying the Amtrak bill dealing with the Board of Directors that could have grave implications for the future of Amtrak. The proposed amendment is intended to substantially change the manner in which the Amtrak Board is appointed. This approach is unnecessary and will present serious problems as Amtrak approaches its most critical and uncertain time. Perhaps more importantly, House action making controversial changes to the Senate-passed bill is likely to delay final passage, thus delaying the release of the \$2.3 billion and casting doubts on Amtrak's financial future.

Concerns have been raised in recent days about the constitutionality of the Amtrak Board. Let me assure you that if the House adopts the Senate-passed version of S. 738 the President will sign this bill. This Administration intends to implement the Senate-passed Amtrak bill in a manner that is consistent with the Constitution.

Amtrak needs reform to become the national passenger rail system that this nation needs and deserves. At stake is the ability of Congress to pass legislation that will help ensure Amtrak's long-term financial stability. I urge the House to oppose changes to S. 738 and that it act to send this bill, without change, to the President for his signature.

Sincerely,

RODNEY E. SLATER.

Mr. WISE. Mr. Speaker, I have just been handed a letter from Secretary

Slater, Secretary of the U.S. Department of Transportation, writing about the legislative situation today and strongly urging the House of Representatives to approve the recommittal motion to be offered by our ranking member, the gentleman from Minnesota [Mr. OBERSTAR].

He notes that the Senate bill that will be in the recommittal motion and has passed the Senate unanimously, the Lott-Hutchison bill, represents many weeks of negotiations and is a compromise that passed unanimously. If adopted without change, it will free up to \$2.2 billion in capital funding, not operation and maintenance but capital funding, that Amtrak desperately needs to improve its equipment and infrastructure throughout the Nation.

He also says that if the House adopts the Senate-passed version of Senate bill 738, the President will sign this bill. The administration intends to implement the Senate-passed Amtrak bill in a manner that is consistent with the Constitution. He is adding his voice and that of the administration to the urging that the House adopt the Senate language in the Oberstar recommittal motion.

Mr. Speaker, I think it should be noted that the Senate-passed language, as I have noted previously, contains significant labor and liability reforms. The contracting-out provisions that have proved so nettlesome in this body, the labor protection provisions, particularly dealing with the up to the possible 6 years of labor protection, although in reality I believe it averaged out about to \$1,000 per severed employee in the past 2 years, those provisions have all been compromised and have become the subject of collective bargaining.

On the liability provisions, for the first time there is a global cap of \$200 million on liability related to passengers, Amtrak passengers. They were able also to reach agreement on the troublesome area of both punitive damages and indemnification.

They did what Congress here with the House has constantly ground to a halt on, and that is not because people have not tried. Chairman Shuster has been very active in trying, and our side, as well. But they were able to accomplish this and then passed it unanimously. We ought to take advantage of their labors and their accomplishments.

We also ought to note that it is not easy over here. This bill has been pulled four times alone from this floor because we were not able to reach agreement on these very, very difficult issues. Now we have a bill before us on which all the parties have signed off, labor, management, on the liability issues, a wide range of groups, they have signed off on it. We can pass that bill today and we can have it on its way to the President, and Amtrak then has passed the reform legislation that is so vital to it.

Does it close the book on Amtrak legislation? No. The gentleman from

Delaware [Mr. CASTLE], who has been very articulate and active in this, stated it well, the need for continuing negotiations and continuing discussions. Amtrak requires that. Our side stands ready to work with the chairman and with others to make that happen.

Mr. Speaker, I would just urge the Members, once again, to support the Oberstar recommittal motion. It is the only way we can get this bill to the President quickly this week, knowing that if we vote down this recommittal motion and we send the bill to the Senate, when we come back and are able to take up the Amtrak legislation, we will not recognize Amtrak from what it is today. It will be significantly impaired financially, and we will have lost an incredible opportunity that we have been striving to get to for many years.

□ 1300

Ms. SLAUGHTER. Mr. Speaker, I reserve the balance of my time.

Mr. SOLOMON. Mr. Speaker, I yield 5 minutes to the gentleman from Pennsylvania [Mr. SHUSTER], one of the Members that has been a Member of this body longer than we have, and there are not many of them anymore. He is chairman of the Committee on Transportation and Infrastructure that I used to serve on, and he is one of the most respected Members of this body.

(Mr. SHUSTER asked and was given permission to revise and extend his remarks and to include extraneous material.)

Mr. SHUSTER. Mr. Speaker, I thank my good friend the gentleman from New York [Mr. SOLOMON] for yielding me the time.

Mr. Speaker, I am sure it is well-known that from the very beginning my objective has been to save Amtrak, although there are some in this body and the other body who would just as soon see it go into bankruptcy. And to save it, we have said from the beginning that we need to change the labor protection, we need to reform it, we need to reform liability. And there are other things as well which we believe need to be done.

But the labor provisions and the liability provisions are very, very crucial. And, indeed, the Senate has acted. There are provisions in those areas of labor reform and liability reform and contracting out, which is a subset of labor, that are not as strong as many would like them to be, but, nevertheless, they are acceptable. So the biggest stumbling blocks that have been before us are, indeed, now acceptable.

There is, however, at least one additional factor which is of extreme importance. And in a few moments, I will add an entirely new dimension to the extraordinary importance of our dealing with a restructuring of the board. Many of us believe, and of course we respect the other body, but the last time we checked the Constitution, this was a bicameral legislature. This House is not a potted plant. We have an obligation to do what we believe is right as

well, and then work together with the other body in attempting to craft an acceptable compromise.

The one area in which we have great difficulty is in the area of the structure of the board. We believe that for the proposed reforms to be meaningful, to actually be put in place, that we must have a board of directors which is a more independent, more business-oriented board of directors. And so, to that end, that is exactly what we have proposed.

It is, interestingly, ironically essentially what my good friend the gentleman from Minnesota [Mr. OBERSTAR], the ranking Democrat of the committee, proposed in the legislation as it was working its way through the committee. So this is not something that is dropped on us out of the sky. It is something which in the past has had bipartisan support. Nevertheless, we are told that there is opposition to it now.

I point out that our proposal gives the President the ability to appoint the seven members in some consultation with the leaders of the House and the Senate. We think that is reasonable, and we support that. However, and let me emphasize this, there is an entirely new dimension to this entire issue now, and that new dimension, which I have just been made aware of, is that the Justice Department says that the makeup of the board in the Senate bill coming to us is unconstitutional. Let me repeat that. The Justice Department informs us that the makeup of the board as coming to us in the Senate bill is unconstitutional. It violates the appointments clause.

That adds a whole new dimension to this debate. It is no longer a question of whether we simply think our structure of the board is better than the structure of the board proposed by somebody else. It is beyond our control. The Justice Department says it is unconstitutional.

As chairman of the committee, I would be derelict in my duties if I were to bring this bill to the floor recognizing that it has been said by the Justice Department that what I bring to the floor is unconstitutional. Therefore, unless we can get agreement, I shall not bring this bill to the floor. Unless we can get agreement, I will immediately move to hold hearings that deal with the constitutionality to invite the Justice Department to come up and testify. And only when we can satisfy ourselves that whatever we do is constitutional, then we can move ahead to save Amtrak.

So unless we can work this out, I again want to emphasize, No. 1, the Justice Department says the bill as sent to us by the Senate is unconstitutional. No. 2, as chairman of the committee, I will not bring this bill to the floor unless we can work this out in some fashion. And No. 3, also as chairman of the committee, I will move immediately to hold hearings on the constitutionality question so we can clear

it up so we can be back here early next year if we fail to work something out today and tomorrow, so we can be back as early next year as possible to deal with it so that whatever we bring to the floor will be constitutional rather than unconstitutional. I hope and I feel great responsibility to make that very clear to my colleagues.

Mr. Speaker, I include for the RECORD the letter from the Justice Department.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, July 24, 1997.

Hon. JOHN MCCAIN,
Chairman, Committee on Commerce, Science and
Transportation, U.S. Senate, Washington,
DC.

DEAR MR. CHAIRMAN: This letter presents the views of the Department of Justice on the reported bill, S. 738, the "Amtrak Reform and Accountability Act of 1997." We have several concerns about the role of the General Accounting Office ("GAO") in developing a liquidation plan and the proposed competition of the Amtrak board of directors.

Section 204 of the bill could be read to direct Amtrak to incorporate recommendations of the GAO into its liquidation plan. Such a construction would violate the constitutional separation of powers doctrine. Section 411 of the bill would amend 49 U.S.C. §24302(a), which governs the composition of Amtrak's board of directors. Because certain directors would not be appointed in conformity with the Appointments Clause of the Constitution, art. II, §2, cl. 2, it is likely that the statute's vesting of significant authority in the board is unconstitutional.

1. Section 204: Action Plans

The bill would establish an "Amtrak Reform Council" composed of nine members.¹ Section 204 calls for the development of two action plans if the Council finds that Amtrak business performance will prevent it from meeting the financial goals set forth in section 201, or if it finds that Amtrak will need grant funds more than five years after enactment of the bill. The Council is to construct and submit to Congress an action plan providing for a "rationalized intercity rail passenger system." Amtrak is to develop an action plan for "the complete liquidation of Amtrak." Amtrak must submit its plan to Congress "after having the plan reviewed by the Inspector General of the Department of Transportation and the General Accounting Office for accuracy and reasonableness." Section 204(c). If Congress has not enacted a law to establish a restructured and rationalized rail system within ninety days of receiving the actions plans, the bill directs Amtrak to implement its liquidation plan "after such modification as may be required to reflect the recommendations, if any, of the Inspector General of the Department of Transportation and the General Accounting Office." Section 204(c)(2).

The GAO is an arm of the Congress. See 31 U.S.C. §§702-03 (GAO is independent of the executive departments and headed by Comptroller General; Comptroller General removable by impeachment or by joint resolution of Congress for cause); *Bowsher v. Synar*, 478 U.S. 714 (1986) (Comptroller General is subject to the control of Congress). The constitutional separation of powers doctrine forbids Congress from aggrandizing itself by enacting legislation that confers non-legislative authority on Congress, its agents, its appointees, or anyone subject to its direct control. See, e.g., *id.* If section 204(c)(2) were

read to require Amtrak to adhere to the recommendations of the GAO, the GAO would exercise executive authority. This would violate the anti-aggrandizement principle. See *id.* at 727-34. To avoid the serious constitutional question that such a reading would present, we interpret section 204(c)(2) as directing Amtrak to consider, rather than to adopt, any recommendations made by the GAO regarding the liquidation plan. See *Edmond v. United States*, 117 S. Ct. 1573, 1578 (1997) (Court avoids interpreting act in manner that could be clearly unconstitutional if another reasonable interpretation available); *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490, 500 (1978) (Court will decline to read act so as to give rise to a serious constitutional question).

2. Section 411: Amtrak's Board of Directors

Amtrak is a government-created and government-controlled corporation. See Rail Passenger Service Act of 1970 §101, 84 Stat. 1328; 49 U.S.C. 49 U.S.C. §24302(a). Amtrak's charter sets forth the "public interest 'goals'" that Congress intended for it to pursue, and its structure allows the federal government to exert control "not as a creditor but as a policy maker." *Lebron v. National R.R. Passenger Corp.*, 513 U.S. 374, 399 (1995).

In *Lebron*, the Supreme Court held that Amtrak is a Federal government entity for the purpose of determining whether it has violated an individual's First Amendment rights. *Id.* at 400. While the First Amendment was the only constitutional provision at issue in *Lebron*, the Court did characterize Amtrak as "an agency of the Government, for purposes of the constitutional obligations of Government * * * " *id.* at 399. We see "no principled basis for distinguishing between the status of a federal entity vis-a-vis constitutional obligations relating to individual rights and vis-a-vis the structural obligations that the Construction imposes on federal entities." Memorandum for the General Counsels of the Federal Government, from Walter Dellinger, Assistant Attorney General, Office of Legal Counsel, Re: *The Constitutional Separation of Powers between the President and Congress* at 27 n.71 (May 7, 1996) ("Dellinger Memo"). We therefore believe that under its best reading, *Lebron* implies that any official of Amtrak who exercises significant authority must be appointed pursuant to the Appointments Clause, U.S. Const. art. II, §2. See generally *Buckley v. Valeo*, 424 U.S. 1, 124-26 (1976) (per curiam).

S. 738 would vest significant authority in the Amtrak board. Amtrak is to "operate as a national rail passenger transportation system which provides access to all areas of the country." section 101(a). The Amtrak directors have the authority to make significant discretionary decisions regarding the acquisition "operation and maintenance of equipment and facilities necessary for intercity and commuter rail passenger transportation, the transportation of mail and express, and auto-ferry transportation." 49 U.S.C. §24305(a). Amtrak also "may acquire by eminent domain" property "necessary for intercity rail passenger transportation." *id.* §24311(a). We therefore think it apparent that the bill would vest significant authority in the Amtrak board. As such, the directors must be appointed in conformity with the Appointments Clause.

A. Directors required to be chief executive officers of a State or municipality

Section 411 of the bill would amend 49 U.S.C. §24302(a)(1)(C) to require the President to appoint four members of the Amtrak board with the advice and consent of the Senate. Among these four directors are to be:

one chief executive officer of a State, and one chief executive officer of a municipality,

¹Footnotes at end of article.

selected from among the chief executive officers of State[s] and municipalities with an interest in rail transportation.

Section 411(2).

Limiting the eligible appointees to these chief executive officers does not leave sufficient "scope for the judgment and will of the person or body in whom the Constitution vests the power of appointment." *Civil Service Commission*, 13 Op. Att'y Gen. 516, 520-21. We suggest eliminating the requirement that the nominees be chief executive officers of a State and a municipality. The statute instead might provide for the President to appoint directors with expertise in local government, or to consult with one or more associations of State and local government officials before making these appointments.

B. Directors appointed by the President alone

Three of the directors would be appointed solely by the President. One is to be a representative of a commuter authority, one is to have expertise in finance and accounting principles, and one is to be a representative of the general public.² Section 411(5). While principal officers must be appointed by the President with the advice and consent of the Senate, Congress may provide for the appointment of inferior officers by the President alone, the head of a department, or a court of law. *See Buckley*, 424 U.S. at 132. Accordingly, vesting the authority to make these appointments in the President is permissible if the directors are inferior officers.

"The line between 'inferior' and 'principal' officers is one that is far from clear," *Morrison v. Olson*, 487 U.S. 654, 671 (1988), and "[t]he nature of each government position must be assessed on its own merits." *Silver v. United States Postal Serv.*, 951 F.2d 1033, 1040 (9th Cir. 1991). "Inferior" does not mean "petty or unimportant." *See United States Attorneys—Suggested Appointment Power of the Attorney General*, 2 Op. O.L.C. 58, 58-59 (1978). "Generally speaking, the term 'inferior officer' connotes a relationship with some higher ranking officer or officers below the President . . ." *Edmond*, 117 S. Ct. at 1580. As such, the work of an inferior officer will usually be "directed and supervised at some level by others who were appointed by presidential nomination with the advice and consent of the Senate." *Id.* at 1581. Accordingly, "an officer responsible only to the President for the exercise of significant discretion in decision making is probably a principal officer." Dellinger Memo at 30. "[A]n officer who is subject to control and removal by an officer other than the President should be deemed presumptively inferior." *Id.*

We think it unlikely that these three directorships can be characterized as inferior offices. The Amtrak board exercises broad authority over nationwide rail service. *See* 49 U.S.C. §24302(f) (board may adopt bylaws governing the operation of Amtrak). The board appoints the President of Amtrak, as well as all other officers of the corporation. *Id.* §24303(a) and (b). Finally, the members of the Amtrak board are directly responsible to the President and to no other Executive officer. We therefore recommend that section 411 be amended to provide for the appointment of these directors by the President with the advice and consent of the Senate.

C. Amtrak's president

The president of Amtrak serves as a director on the Amtrak board. 49 U.S.C. 24302(a)(1)(B). The Amtrak president is appointed by the board, and serves as its chairman. 49 U.S.C. 24303 (a). Because a majority of the directors who would appoint the Amtrak president would not themselves be appointed in conformity with the Appointments Clause, the president's appointment does not comply with the Appointments Clause.³

Thank you for the opportunity to present our views. Please contact us if we may be of further assistance. The Office of Management and Budget has advised us that from the standpoint of the Administration's program, it has no objection to submission of this letter.

Sincerely,

ANDREW FOIS,
Assistant Attorney General.

FOOTNOTES

¹The Council will be composed of the Secretary of Transportation, two individuals appointed by the President, two individuals appointed by the Majority Leader of the Senate, one member appointed by the Minority Leader of the Senate, two individuals appointed by the Speaker of the House, and one individual appointed by the Minority Leader of the House. Section 203.

²We do not think that these more general qualifications limit the class of potential nominees as significantly as does the requirement that two directors be chief executive officers of a State and of a municipality.

³We do not address any other constitutional issues that might be raised by this appointment.

Ms. SLAUGHTER. Mr. Speaker, I yield the remainder of my time to the gentleman from West Virginia [Mr. WISE].

Mr. WISE. Mr. Speaker, let me respond very quickly to the statements of the gentleman from Pennsylvania [Mr. SHUSTER], the distinguished chairman.

First of all, in terms of the constitutionality, the letter that I have from Secretary Slater contests that. And, of course, the proper place for that is to be discussed over months. But the reality is that the Amtrak board, which if it were to continue under the Senate language, has been in existence for a long time for many, many years. All of a sudden we are now hearing concerns about the unconstitutionality of it.

At any rate, that is something that can be resolved at a more leisurely pace over the next months, but should not be something that can be taken up on the floor today or tomorrow. And it also should be noted that, in the Senate legislation, there is a reform board that has some teeth in it as well, an oversight panel that is appointed that goes, I believe, partly to addressing the concerns of the chairman.

The second is that I am interested because it was the chairman that I believe was just a couple weeks ago repeating my words in debate 2 years ago, and he was talking about the need to pass this legislation immediately. Well, now I am reciting the words of the chairman, because it is important to pass this legislation immediately and also to recognize that it is not a finished product and that the legislation that we pass today is the basic reform of Amtrak, and then we can come back and deal with the issues of the board as well.

I am concerned about one statement I heard, which is, if we do not reach agreement today on this board matter, the bill gets pulled. If the bill gets pulled, I think we have got a significantly different Amtrak when we get back. And I would sure hate for us to worry about angels dancing on the heads of pins when we have a chance to pass a significant legislation that lets

Amtrak access the capital that this Congress voted for to give Amtrak the ability to do.

I would urge support of the Oberstar recommittal motion, pass the basic legislation now, and come back later in the next few months and work on the very genuine concerns of the chairman, the gentleman from Pennsylvania [Mr. SHUSTER].

Mr. SOLOMON. Mr. Speaker, I am prepared to close if the gentlewoman from New York [Ms. SLAUGHTER] would like to yield back her time.

Ms. SLAUGHTER. Mr. Speaker, I yield back the balance of my time.

Mr. SOLOMON. Mr. Speaker, I yield myself such time as I may consume. I will be as brief as I can.

But let me just say that what has happened to the railroad system in this country is so, so sad. I sort of grew up, beginning back in 1930, and we had a good railroad system in this country. And then something happened to it. Today, we are the greatest Nation in the world, and yet we have the worst railroad system in the world of any industrialized nation in the world. Something happened.

I guess back in the Eisenhower days, they began to develop the national road system, which is now administered by each individual State with all the interstate highways that we have. But yet, we never did anything to try to solve the problems of the railroads. I do not know what the answer is. Sometimes I wonder, you know, the States on behalf of the Federal Government own the beds of all the interstate highways throughout this country, and maybe the States on behalf of the Federal Government ought to own the railroad beds and then let the free enterprise system work. I do not know what the answer is, but it is a shame, because we need a viable railroad system in this country, and we need Amtrak.

My good friend, the gentleman from West Virginia [Mr. WISE], who left the floor, he is noted for a Member that does his homework. He certainly articulates his position. Unfortunately, I just have to agree with him, we agree that we must, must save Amtrak. But I do not believe that the legislation before us, the Senate legislation, can pass. It cannot satisfy members of the Committee on Transportation and Infrastructure. It cannot satisfy the Members of this body.

Consequently, if we pass the amendment that the gentleman from Pennsylvania [Mr. SHUSTER] is proposing to the Senate bill, I think there is ample time over in the Senate to take up the measure, since both Houses really will be in a position of treading water from now until the time we adjourn, just waiting for these four appropriations bills to be adopted so that we can go home.

That is why I was sad to see us not be able to take the vote on the two-thirds rule that we just debated a few minutes ago, because once we had done that, then we could take up the Amtrak bill,

and we could send it over to the Senate, and it would give them an extra 5 or 6 hours to deal with this matter. But, unfortunately, that cannot happen now because all the votes are going to be delayed until 5.

So, again, I would just say that we must, must make sure that we are going to go away from here this week-end with the Amtrak legislation taken care of, because Amtrak, in my opinion, will not be solvent. The gentleman from West Virginia [Mr. WISE] repeated my remarks up in the Committee on Rules Sunday, in which I said there would be no meaningful legislation taken up during the month of January. We will be off most of the month of January, coming back for only a day or two. And then much of the month of February is taken up with the work period over the Presidential recess period.

So I just hope we can pass this rule and we can pass the legislation that will follow it so that we can pass and get legislation dealing with the solvency of Amtrak into the law before we go home this weekend.

Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Ms. SLAUGHTER. Mr. Speaker, on that, I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 5 of rule I, further proceedings on this motion will be postponed until later today.

CONTINUATION OF EMERGENCY REGARDING WEAPONS OF MASS DESTRUCTION—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 105-169)

The SPEAKER pro tempore [Mr. PETRI] laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on International Relations and ordered to be printed:

To the Congress of the United States:

On November 14, 1994, in light of the dangers of the proliferation of nuclear, biological, and chemical weapons ("weapons of mass destruction"—(WMD)) and of the means of delivering such weapons, I issued Executive Order 12938, and declared a national emergency under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*). Under section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), the national emergency terminates on the anniversary date of its declaration, unless I publish in the *Federal Register* and transmit to the Congress a notice of its continuation.

The proliferation of weapons of mass destruction continues to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. Therefore, I am advising the Congress that the national emergency declared on November 14, 1994, and extended on November 14, 1995 and November 14, 1996, must continue in effect beyond November 14, 1997. Accordingly, I have extended the national emergency declared in Executive Order 12938 and have sent the attached notice of extension to the *Federal Register* for publication.

The following report is made pursuant to section 204(c) of the International Emergency Economic Powers Act (50 U.S.C. 1703(c)) section 401(c) of the National Emergencies Act (50 U.S.C. 1641(c)), regarding activities taken and money spent pursuant to the emergency declaration. Additional information on nuclear, missile, and/or chemical and biological weapons (CBW) nonproliferation efforts is contained in the most recent annual Report on the Proliferation of Missiles and Essential Components of Nuclear, Biological and Chemical Weapons, provided to the Congress pursuant to section 1097 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102-190), also known as the "Nonproliferation Report," and the most recent annual report provided to the Congress pursuant to section 308 of the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (Public Law 102-182), also known as the "CBW Report."

CHEMICAL AND BIOLOGICAL WEAPONS

The three export control regulations issued under the Enhanced Proliferation Control Initiative (EPCI) remained fully in force and continue to be applied in order to control the export of items with potential use in chemical or biological weapons or unmanned delivery systems for weapons of mass destruction.

Chemical weapons continue to pose a very serious threat to our security and that of countries friendly to us. On April 29, 1997, the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (the "Chemical Weapons Convention" or (CWC)) entered into force with 87 of the CWC's 165 signatories as original States Parties. The United States was among their number, having deposited its instrument of ratification on April 25. As of November 5, 104 countries had become States Parties.

Russia did not complete its legislative approval process in time to be among the original CWC States Parties. In our March meeting in Helsinki, President Yeltsin did, however, assure me of his understanding of the importance of the CWC to Russia's own security. On October 31, 1997, the Russian Duma (lower house) approved ratification of the CWC. On November 5, 1997, the Russian Federation Council unani-

mously approved the CWC and the Russian government deposited its instrument of ratification. Russia's ratification makes it possible for Russia to join the United States in playing a leadership role in ensuring that all of the Convention's benefits are realized.

Given Russia's financial situation during this difficult period of transition to a market economy, serious concerns have been raised about the high costs of environmentally sound destruction of the large stocks of chemical weapons Russia inherited from the former Soviet Union. Through the Cooperative Threat Reduction Program, we are working with Russia to help address these complex problems, and we will continue to do so now that Russia has ratified the CWC.

The Organization for the Prohibition of Chemical Weapons (OPCW) has been established to achieve the object and purpose of the CWC, to ensure the implementation of its provisions and provide a forum for consultation and cooperation among States Parties. The executive organ of the OPCW, the Executive Council, has met five times since May to oversee decisions related to *inter alia* data declarations, inspections, and organizational issues. The United States plays an active role in ensuring effective implementation of the Convention.

The CWC is an ambitious undertaking by the world community to ban an entire class of weapons of mass destruction. Its members have committed themselves to totally eliminating chemical weapons stocks and production facilities, prohibiting chemical weapons-related activities, banning assistance for such activities and restricting trade with non-Parties in certain relevant chemicals. Destruction of U.S. chemical weapons stocks is moving forward. Other CWC States Parties have now taken on a similar task, and we are working hard with the other members of the CWC to make membership in this treaty universal.

The United States is determined to ensure full implementation of the concrete measures in the CWC that will raise the costs and the risks for any state or terrorist attempting to engage in chemical weapons-related activities. The CWC's declaration requirements will improve our knowledge of possible chemical weapons activities, whether conducted by countries or terrorists. Its inspection provisions provide for access to declared and undeclared facilities and locations, thus making clandestine chemical weapons production and stockpiling more difficult, more risky, and more expensive.

Countries that refuse to join the CWC will be politically isolated and banned from trading with States Parties in certain key chemicals. The relevant Treaty provision is specifically designed to penalize in a concrete way countries that refuse to join the rest of the world in eliminating the threat of chemical weapons.

The United States also continues to play a leading role in the international