

LEGISLATIVE HEARING ON THE
COMMITTEE PRINT “COMPETITION FOR
INTERCITY PASSENGER RAIL IN AMERICA”

(112-42)

HEARING
BEFORE THE
COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

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JUNE 22, 2011
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**U.S. House of Representatives
Committee on Transportation and Infrastructure**

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Washington, DC 20515

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June 21, 2011

SUMMARY OF SUBJECT MATTER

To: Members of the Committee on Transportation and Infrastructure

From: Majority Staff on the Subcommittee on Railroads, Pipelines, and Hazardous Materials

Subject: A Legislative Hearing on the Draft Bill, "Competition for Intercity Passenger Rail in America"

I. Purpose of Hearing

On Wednesday, June 22, 2011, at 11:00 a.m. in 2167 Rayburn House Office Building, the Committee on Transportation and Infrastructure will hold a Legislative Hearing on the draft bill, "Competition for Intercity Passenger Rail in America," which is co-sponsored by Committee Chairman John L. Mica and Rep. Bill Shuster, Chairman of the Subcommittee on Railroads, Pipelines, and Hazardous Materials. This legislative hearing is being held at the request of Committee Ranking Member Nick J. Rahall and Rep. Corrine Brown, Ranking Member of the Subcommittee on Railroads, Pipelines, and Hazardous Materials.

II. Background

Since January, the Committee and Subcommittee on Railroads, Pipelines, and Hazardous Materials have held hearings and roundtables to explore the best means of improving the nation's intercity passenger rail system. The Committee's first hearing of the session was a full Committee field hearing in New York on January 27 entitled "Developing True High-Speed Rail in the Northeast Corridor: Stop Sitting on our Federal Assets." The six hearing witnesses spoke on the importance of high-speed rail for the Northeast Corridor and the need for competition and public-private partnerships to help achieve that goal. Directly following the hearing, the Committee held a robust roundtable discussion with a diverse, large group of participants.

Building on the information developed from the January hearing and roundtable, the Subcommittee held a hearing in March 11 on “Finding Ways to Encourage and Increase Private Sector Participation in Passenger Rail Service.” The Subcommittee explored ways to make intercity passenger rail more effective and affordable by allowing competition in providing these services.

The full Committee held a second Northeast Corridor focused hearing on May 26, entitled, “Opening the Northeast Corridor to Private Competition for the Development of High-Speed Rail.” The Committee discussed alternatives that would bring high-speed rail to the Northeast Corridor through partnering with the private sector, including financial assistance, development opportunities, and open competition.

On June 15, 2011, Chairman John L. Mica and Subcommittee on Railroads, Pipelines, and Hazardous Materials Chairman Bill Shuster sponsored a public roll-out and discussion of their draft bill that sets a new direction for high-speed and intercity passenger rail, the “Competition for Intercity Passenger Rail in America Act of 2011.” This legislative hearing will focus on that draft bill and ways to reach the goal of improving high-speed and intercity passenger rail for the nation.

II. Northeast Corridor Competition Initiative

Title I of the draft bill includes the Northeast Corridor Competition Initiative, which establishes a new structure and method to achieve high-speed and intercity passenger rail on the Northeast Corridor (NEC). The NEC is one of the most valuable transportation assets in the United States, providing the only continuous physical link, along with I-95, between the major population centers of Washington, DC, Baltimore, Philadelphia, New York City, and Boston. The Northeast mega-region is the most densely populated area in the United States, with 18 percent of the nation’s population living in just 2 percent of its land area. Taken as a whole, the NEC region would be the sixth largest economy in the world with a GDP of \$2.59 trillion, and a population equal to the United Kingdom.

The NEC region represents the nation’s best opportunity for real high-speed rail with four of the ten most populous metro regions in the nation – New York, Philadelphia, Washington, DC, and Boston – and 18 percent of the nation’s population living in just 2 percent of its land area. Congestion in other transportation modes is crippling, with 70% of all chronically delayed flights in the U.S. emanating from the New York area airspace and over 60% of NEC urban road miles considered heavily congested. The NEC region also has the necessary transit connectivity to make high-speed rail a success. All major NEC cities have fixed rail and commuter rail service, with five of the largest NEC cities accounting for 80% of the nation’s total rail transit ridership.

Amtrak, the government-subsidized, intercity passenger rail provider, which controls nearly the entire NEC, has proven itself a poor steward of taxpayer dollars. Despite major capital improvement projects on the NEC costing taxpayers nearly \$6 billion, with nearly \$1 billion in cost overruns, Amtrak’s Acela averages only 83 mph from Washington, DC, to New York City and 65 mph from New York City to Boston. Furthermore, Amtrak mis-designed the

Acela tilt mechanism requiring modifications and reducing train speeds, while several equipment malfunctions, such as cracked wheels and brake defects forced Amtrak to withdraw the entire Acela fleet twice.

As evidenced below, despite the billions of taxpayer dollars spent over the forty-years of ownership, Amtrak has failed to effectively grow its NEC ridership. In fact, Amtrak's 2010 NEC ridership was actually lower than it was in 1977.

Amtrak Ridership (in millions)				
From Amtrak Annual & Monthly Reports				
Year	NEC Spine	Long Distance	State Supported	Total
1972				16.6
1973				16.9
1974				18.2
1975				17.4
1976				18.2
1977	10.6	4.0	4.0	19.2
1978				18.9
1979				21.4
1980				21.2
1981				20.8
1982				19.0
1986	10.7	5.1	4.4	20.2
1987	10.7	5.1	4.4	20.4
1988	11.2	5.4	4.8	21.4
1989	11.1	5.5	4.7	21.3
1990	11.2	5.8	5.2	22.2
1991	10.9		11.1	22.0
1992	10.1		11.2	21.3
1993	10.3		11.8	22.1
1994	11.7	6.3	3.2	21.2
1995	11.6	6.1	3.0	20.7
1996	11.0	5.4	3.3	19.7
1997	11.1	5.4	3.7	20.2
1998	11.9	5.0	3.0	21.1
1999	12.3	5.5	3.7	21.5
2000	12.9	5.5	4.1	22.5
2003	11.0	3.9	9.7	24.6
2004	10.9	3.7	10.2	24.8
2005	9.5	3.8	10.8	24.1
2006	9.5	3.8	11.3	24.5
2007	10.4	3.9	12.3	26.6
2008	10.7	4.2	13.8	28.7
2009	10.0	4.2	13.1	27.3
2010	10.5	4.5	14.1	29.1

Meanwhile, as shown below, in the international arena, the private sector has operated passenger rail that it is profitable and increases ridership. For example, in 2004, Virgin Rail began providing service on Great Britain's West Coast Line from London to Manchester, and by 2010 had doubled the ridership. Furthermore, from a 2004 debt of \$406.9 million, Virgin Rail returned to the government a payment of \$244 million and \$81 to investors.

Similarly, in Japan, after privatization in 1987, annual total ridership for JR Central, which operates the Tokyo to Osaka high-speed rail line, has increased from 102 million to 151 million riders, while revenues have increased 52% from 1988 to 2008. The Tokyo to Osaka line is the world's first high-speed rail line, and runs a substantially longer distance in less time than Amtrak's DC to New York route.

International Competition Success							
Country	Structure	Ridership Information			Line Distances	Travel Time	Profitability
United Kingdom West Coast Line Virgin Rail	Competitive operations	2004 14 million	2010 28.6 million	100% increase	London -- Manchester 184 miles	2 hours	In past six years, went from \$406.9 million in debt to \$244.1 million paid to the government and \$81.4 million in Virgin profits.
Japan JR Central	Regionalized -- private operators	2004 132 million	2010 158 million	5% increase	Tokyo -- Osaka 320 miles	2 hrs, 25 min	In the twenty years since privatization in 1987, revenues have increased 52%.
United States Amtrak	Government-subsidized monopoly	2004 10.9 million	2010 10.5 million	4% decrease	D.C. -- New York 225 miles New York -- Boston 230 miles	D.C. -- New York 2 hrs, 45 min New York -- Boston 3 hrs, 30 min	Taxpayers subsidize each Amtrak ticket at an average of \$54.48.

Given these successes, the Competition for Intercity Passenger Rail in America draft bill offers a new direction for high-speed and intercity passenger rail on the NEC by leveraging private sector investment and increasing competition. The draft bill separates the NEC from Amtrak, transferring title from Amtrak to the U.S. Department of Transportation in consideration for all but one share of the Amtrak's preferred stock and forgiveness of all Amtrak's mortgages and liens held by the Secretary. The draft bill creates a NEC Executive Committee to whom the Secretary will lease the NEC for 99 years and whose role is to manage the NEC infrastructure and operations.

To bring the private sector to the table, the Secretary would begin the process by issuing a request for expressions of interest to finance, design, build, operate, and maintain intercity

passenger rail on the main line of the NEC, including the best structure for the public-private partnership. Based on the submissions, the Secretary would select two or three entities to submit detailed proposals to the NEC Executive Committee that meet the bill's performance standards for the NEC. Upon submission of the detailed proposals, the NEC Executive Committee would select the winning bidder based on how the bid meets or exceeds the performance standards, the greatest amount of private sector financing, the least amount of federal support, and how closely the public-private partnership aligns with that identified by the Secretary in soliciting the detailed proposals.

The draft bill requires that the process to establish the public-private partnership be completed within 18 months from the date of enactment. The draft bill ensures that freight and commuter interests are protected. It also creates new jobs in rail construction, operations, and station-related development, while protecting the jobs of any displaced Amtrak employees.

By leveraging private sector investment and expertise, increasing competition, and opening the door to public-private partnerships, the nation can finally achieve real high-speed passenger rail where it is most needed.

III. Intercity Passenger Rail Competition

Title II of the draft bill includes the Intercity Passenger Rail Competition initiative, which will give States greater control and authority over their passenger rail services. Fifteen states around the country currently pay Amtrak to operate intercity passenger rail. These State-supported corridors are less than 750 miles in length and exist because States are committed to passenger rail options and are willing to pay for the services. While ridership on these routes has grown, they still require a federal subsidy and there is room for improvement in service and financial performance.

State-Supported Routes

Route Names and City-Pair Origins & Destinations

<i>Ethan Allen Express</i>	<i>New York to Rutland, VT</i>	<i>Illinois Zephyr</i>	<i>Quincy, IL to Chicago</i>
<i>Vermont</i>	<i>Washington, DC to St. Albans, VT</i>	<i>Hawatha Service</i>	<i>Chicago to Milwaukee, WI</i>
<i>Maple Leaf</i>	<i>New York to Toronto</i>	<i>Wolverine</i>	<i>Chicago to Pontiac, MI</i>
<i>Empire Service</i>	<i>New York to Niagara Falls, NY</i>	<i>Blue Water</i>	<i>Chicago to Port Huron, MI</i>
<i>Adirondack</i>	<i>New York to Montreal, ON</i>	<i>Pere Marquette</i>	<i>Chicago to Grand Rapids, MI</i>
<i>Dowmeaster</i>	<i>Portland, ME to Boston</i>	<i>Heartland Flyer</i>	<i>Oklahoma City to Ft. Worth, TX</i>
<i>Keystone Service</i>	<i>New York to Harrisburg, PA</i>	<i>Hoosier State</i>	<i>Chicago to Indianapolis, IN</i>
<i>Pennsylvanian</i>	<i>New York to Pittsburgh</i>	<i>Missouri River Runner</i>	<i>Kansas City, MO to St. Louis, MO</i>
<i>Carolinian</i>	<i>Charlotte, NC to New York</i>	<i>Pacific Surfliner</i>	<i>San Diego to San Luis Obispo, CA</i>
<i>Piedmont</i>	<i>Charlotte, NC to Raleigh, NC</i>	<i>San Joaquins</i>	<i>Bakersfield, CA to Sacramento/San Francisco</i>
<i>Lincoln Service</i>	<i>Chicago to St. Louis, MO</i>	<i>Capitol Corridor</i>	<i>San Jose, CA to Sacramento/Auburn</i>
<i>Illini/Saluki</i>	<i>Chicago to Carbondale, IL</i>	<i>Knowledge Corridor</i>	<i>New Haven, CT to Springfield, MA</i>
<i>Mid-Atlantic Regional</i>	<i>Washington, DC to Lynchburg and Newport News, VA</i>	<i>Cascades</i>	<i>Eugene, OR to Vancouver, BC</i>

Currently, almost half of the nation's commuter railroads are operated by the private sector. As indicated below, this competitive environment has resulted in ridership growth and cost savings for States and local agencies.

Commuter Rail Competition				
Line	Privatization	Ridership Growth	09 Passenger Trips	Additional Information
MBTA Boston	Operating contract to Massachusetts Bay Railroad Company (consortium of Veolia and Bombardier)	1.73% average annual ridership increase over last 5 years.	40.6 million	Amtrak refused to bid on operating contract when MBTA put out tender in 2003 making it clear the agency was open to private sector operators.
Tri-Rail South Florida	Operating contract to Veolia, 2007-2014 with 3 option years.	10.8% average annual ridership increase over last 5 years	4.2 million	Veolia won contract with \$97 million contract; Amtrak's bid was \$162 million (\$69 million higher).
Virginia Railway Express	Operating contract with Keolis for 5 years, beginning in June 2010.	1.43% average annual ridership increase over last 5 years	3.9 million	Keolis bid \$85 million, about \$1 million less than Amtrak. This is the company's first U.S. operating contract.
Sounder Commuter Rail, Seattle WA	Operated by BNSF Railway	18.4% average annual ridership increase over last 5 years	2.5 million	Sounder commuter rail service initiated in 2000, has always been operated by BNSF (and operates over BNSF rail lines)
Trinity Railway Express, Dallas to Ft Worth	Operated by Herzog	6.6% average annual ridership increase over last 5 years	2.7 million	Operating and maintenance contract awarded to private operator Herzog since Trinity Railway Express began operations in 1997
Altamont Commuter Express, Stockton-San Jose	Operated by Herzog	5.6% average annual ridership increase over last 5 years	800 thousand	Herzog won contract with a \$5.37 million bid that was 48% lower than Amtrak's \$10.32 million bid

The draft bill will allow open competition for a number of intercity passenger rail services on State-supported routes. In 2008, the Passenger Rail Investment and Improvement Act required Amtrak and the States to develop a standardized method for allocating costs associated with the State-supported corridor services. These new allocations will provide private sector companies a transparent baseline of Amtrak's costs from which they can compete to provide the services. The draft bill allows States, with the aid of an expert panel on competitive best practices, to develop a bid process to allow the private sector to provide certain services on the route, including maintenance of way, maintenance of equipment, operations, sales and marketing, scheduling, call centers, and onboard services. If a State enters a competitive bid process for any number of the services, the State is awarded the entire Federal subsidy for the route that would otherwise go to Amtrak. The draft bill, therefore, incentivizes States to competitively bid passenger rail services, which will save money and improve passenger rail service.

The federal taxpayer also achieves savings through a new allocation process in 10 years to reflect the cost savings from competition. The draft bill also protects current levels of service and the interest of freight railroads. The draft bill further creates new private sector jobs and protects current Amtrak employees potentially displaced. By encouraging competition on State-supported routes, the draft bill will give States greater control over passenger services, save money, and improve service.

This title builds upon and makes permanent the “Alternative Passenger Rail Service Pilot Program,” authorized in section 214 of Division B of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA). Though this program was required to be implemented within one year after PRIIA’s enactment, the Federal Railroad Administration has failed to do so.

IV. Long-Distance Passenger Rail Competition

The third and final title of the draft bill is entitled “Long-Distance Passenger Rail Competition.” This title will open Amtrak’s failing long-distance routes to competition to reduce the burden on taxpayers and improve service for the traveling public. Allowing head-to-head competition will give the private sector the opportunity to revive these money-losing routes.

Amtrak’s most heavily subsidized routes in the national network are the long-distance routes, defined as those 750 miles or more in length. Each one of these 15 routes, listed below, is operated at a loss, totaling \$527.3 million in 2010, or an average of \$117.84 per ticket. Some routes perform much worse. The Sunset Limited, for example, which travels between New Orleans and Los Angeles, lost \$407.92 per passenger in 2010. In total, the long-distance routes account for three-quarters of Amtrak’s operating losses.

Long-Distance Subsidy				
Route	City Pairs	Net Operating Loss	Ridership	Subsidy Per Passenger
Silver Star	New York - Miami	\$46,500,000	393,586	\$118.14
Cardinal	Chicago - New York	\$15,200,000	107,053	\$141.99
Silver Meteor	New York - Miami	\$39,100,000	352,286	\$110.99
Empire Builder	Seattle - Chicago	\$56,200,000	533,493	\$105.34
Capitol Limited	Chicago - Washington D.C.	\$20,600,000	218,956	\$94.08
California Zephyr	San Francisco - Chicago	\$52,100,000	377,876	\$137.88
Southwest Chief	Los Angeles - Chicago	\$57,700,000	342,403	\$168.51
City of New Orleans	Chicago - New Orleans	\$21,800,000	229,270	\$95.08
Texas Eagle	Chicago - Los Angeles	\$27,100,000	287,164	\$94.37
Sunset Limited	Los Angeles - Orlando	\$37,400,000	91,684	\$407.92
Coast Starlight	Seattle - Los Angeles	\$47,100,000	444,205	\$106.03
Lake Shore Limited	Chicago - New York/Boston	\$35,000,000	364,460	\$96.03
Palmetto	New York - Savannah	\$13,800,000	189,468	\$72.84
Crescent	New York - New Orleans	\$40,200,000	298,688	\$134.59
AutoTrain	Loxton, VA - Sanford, FL	\$18,500,000	244,252	\$75.74
TOTAL		527,300,000	4,474,844	\$117.84 (avg)

The draft bill will reduce the need for subsidies for these routes, by opening them to competition. Upon petition by an interested party, the Secretary will bid operation of the long-distance route out for competition among the petitioner, Amtrak, and any other interested entity. The Secretary will then select the winning bidder based in-part on the lowest possible level of Federal financial support required. By allowing private-sector operators to compete and make a profit on these routes, the draft bill will improve services and reduce federal spending, while creating jobs and protecting Amtrak employees.

The Competition for Intercity Passenger Rail in America offers a bold new direction for high-speed and intercity passenger rail. Witnesses will discuss how increasing competition will create jobs, improve passenger rail efficiency and service, increase innovation, and drive down costs to the Federal government, State partners, and passengers.

V. Invited Witnesses

The Honorable Joseph Boardman
President
Amtrak

Richard Geddes
Adjunct Scholar
American Enterprise Institute

Anne Stubbs
Executive Director
Council of Northeast Governors

Bill Millar
President
American Public Transportation Association

Thomas Hart
Vice President, Government Affairs & General Counsel
U.S. High Speed Rail Association

Edward Wytkind
President
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112TH CONGRESS
1ST SESSION

H. R. _____

To develop high-speed rail in the Northeast Corridor through a public-private partnership, and to encourage private sector competition on intercity passenger rail corridors.

IN THE HOUSE OF REPRESENTATIVES

Mr. MICA (for himself and Mr. SHUSTER) introduced the following bill; which was referred to the Committee on _____

A BILL

To develop high-speed rail in the Northeast Corridor through a public-private partnership, and to encourage private sector competition on intercity passenger rail corridors.

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Competition for Intercity Passenger Rail in America Act
6 of 2011”.

1 (b) TABLE OF CONTENTS.—The table of contents of
 2 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—NORTHEAST CORRIDOR PASSENGER RAIL COMPETITION

Sec. 101. Purposes.

Sec. 102. Redemption of common stock.

Sec. 103. Transfer of assets.

Sec. 104. Northeast Corridor Executive Committee.

Sec. 105. Phase-out of Amtrak's general authority for the Northeast Corridor.

Sec. 106. Performance standards.

Sec. 107. Solicitation and selection of proposals.

Sec. 108. Lease agreement.

Sec. 109. Funding.

Sec. 110. Employees.

Sec. 111. Applicability of subtitle IV.

TITLE II—INTERCITY PASSENGER RAIL COMPETITION

Sec. 201. Definitions.

Sec. 202. Authority to participate in program.

Sec. 203. Disposition of Federal subsidies.

Sec. 204. Competitive procurement process.

Sec. 205. Performance standards; access to facilities; employees.

Sec. 206. Access rights to track.

Sec. 207. Accounting of costs.

Sec. 208. Advisory Commission.

Sec. 209. Applicability of subtitle IV.

TITLE III—LONG-DISTANCE PASSENGER RAIL COMPETITION

Sec. 301. Long-distance routes alternative passenger rail service.

3 **TITLE I—NORTHEAST CORRIDOR**
 4 **PASSENGER RAIL COMPETITION**

5 **SEC. 101. PURPOSES.**

6 The purposes of this title are to—

7 (1) preserve and expand intercity passenger rail
 8 service in the Northeast Corridor between the Dis-
 9 trict of Columbia and Boston, Massachusetts, in a
 10 manner that is driven by sound economics;

1 (2) allow the development of real high-speed
2 rail service in the Northeast Corridor that will de-
3 crease road and air congestion and delay;

4 (3) encourage intermodal connectivity between
5 intercity passenger rail and other transportation
6 modes at stations to make intercity passenger rail
7 service more effective and attractive to riders;

8 (4) leverage Federal financial support with pri-
9 vate sector investment in rail infrastructure capital
10 improvements and value capture strategies that
11 produce revenue streams to support intercity pas-
12 senger rail; and

13 (5) create an effective public-private partner-
14 ship to manage the capital assets and operations of
15 intercity passenger rail service on the Northeast
16 Corridor.

17 **SEC. 102. REDEMPTION OF COMMON STOCK.**

18 (a) VALUATION.—The Secretary of Transportation
19 shall arrange, at Amtrak's expense, for a valuation of all
20 assets and liabilities of Amtrak to be performed by the
21 Secretary of the Treasury, or by a contractor selected by
22 the Secretary of the Treasury. Such valuation shall be con-
23 ducted in accordance with criteria and requirements to be
24 determined by the Secretary of Transportation, in such

1 Secretary's discretion, and shall be completed not later
2 than 30 days after the date of enactment of this Act.

3 (b) REDEMPTION.—(1) Prior to the transfer of assets
4 to the Secretary required by section 103, and not later
5 than 90 days after the date of enactment of this Act, Am-
6 trak shall redeem all common stock in Amtrak issued prior
7 to the date of enactment of this Act at the book value
8 of such stock, based on the valuation performed under
9 subsection (a).

10 (2) No provision of this title, or amendments made
11 by this title, provide to the owners of the common stock
12 a priority over holders of indebtedness or other stock of
13 Amtrak.

14 (c) ACQUISITION THROUGH EMINENT DOMAIN.—In
15 the event that Amtrak and the owners of its common stock
16 have not completed the redemption of such stock by 90
17 days after the date of enactment of this Act, Amtrak shall
18 exercise the eminent domain provisions contained in sec-
19 tion 24311 of title 49, United States Code, as amended
20 by this section, to acquire that stock. The valuation per-
21 formed under subsection (a) shall be deemed to constitute
22 just compensation except to the extent that the owners
23 of the common stock demonstrate that the valuation is less
24 than the constitutional minimum value of the stock.

1 (d) AMENDMENT.—Section 24311 of title 49, United
2 States Code, is amended—

3 (1) by striking “or” at the end of subsection
4 (a)(1)(A);

5 (2) by striking the period at the end of sub-
6 section (a)(1)(B) and inserting “; or”; and

7 (3) by inserting the following after subsection
8 (a)(1)(B):

9 “(C) necessary to redeem Amtrak’s common
10 stock from any holder thereof, including a rail car-
11 rier.”.

12 (e) CONVERSION OF PREFERRED STOCK TO COM-
13 MON.—(1) Subsequent to the redemption of the common
14 stock in Amtrak issued prior to the date of enactment of
15 this Act, the Secretary of Transportation shall convert the
16 one share of the preferred stock of Amtrak retained under
17 section 103 of this Act for 10 shares of common stock
18 in Amtrak.

19 (2) Amtrak shall not issue any other common stock
20 without the express written consent of the Secretary of
21 Transportation.

22 **SEC. 103. TRANSFER OF ASSETS.**

23 (a) TRANSFER.—(1) Not later than 90 days after
24 completion of the redemption or acquisition specified
25 under section 102 of this Act, Amtrak shall, in return for

1 the consideration specified in subsection (e), transfer to
2 the Secretary of Transportation title to—

3 (A) the portions of the Northeast Corridor be-
4 tween Boston, Massachusetts, and the District of
5 Columbia (including the route to Springfield, Massa-
6 chusetts, the route to Harrisburg, Pennsylvania, and
7 portions of the route to Albany, New York, from the
8 Northeast Corridor mainline) currently owned or
9 leased by Amtrak under the note and mortgage de-
10 scribed in section 24907 of title 49, United States
11 Code, as well as any improvements made to those
12 assets, including the rail right-of-way, stations,
13 track, signal equipment, electric traction facilities,
14 bridges, tunnels, and all other improvements owned
15 or leased by Amtrak between Boston, Massachusetts,
16 and the District of Columbia (including the route to
17 Springfield, Massachusetts, the route to Harrisburg,
18 Pennsylvania, and portions of the route to Albany,
19 New York, from the Northeast Corridor mainline);
20 and

21 (B) all rolling stock and other equipment nec-
22 essary to support intercity passenger rail service on
23 the properties described in subparagraph (A) at the
24 level in effect as of the date of enactment of this
25 Act.

1 (2) The rolling stock and equipment to be included
2 in the transfer required under paragraph (1)(B) shall be
3 determined through negotiation between Amtrak and the
4 Secretary of Transportation, with any dispute being re-
5 solved by the Inspector General of the Department of
6 Transportation.

7 (3) The Secretary shall submit a report to the Com-
8 mittee on Transportation and Infrastructure of the House
9 of Representatives and the Committee on Commerce,
10 Science, and Transportation of the Senate 180 days after
11 the transfer of property that details an inventory of all
12 assets transferred from Amtrak to the Secretary under
13 this section.

14 (b) EXISTING ENCUMBRANCES.—(1) Notwith-
15 standing the transfer of any assets under subsection (a)
16 that Amtrak has provided as security or collateral for a
17 debt entered into prior to the date of enactment of this
18 Act, Amtrak shall remain liable for the debt secured by
19 those assets.

20 (2) The obligation of Amtrak to repay in full any in-
21 debtedness to the United States is not affected by this
22 title or an amendment made by this title.

23 (c) CONSIDERATION.—In consideration for the assets
24 transferred to the Secretary under subsection (a), the Sec-
25 retary shall—

1 (1) deliver to Amtrak all but one share of the
2 preferred stock of Amtrak held by the Secretary and
3 forgive Amtrak's legal obligation to pay any divi-
4 dends, including accrued but unpaid dividends as of
5 the date of transfer, evidenced by the preferred
6 stock certificates; and

7 (2) release Amtrak from all mortgages and
8 liens held by the Secretary.

9 (d) AGREEMENT.—(1) Prior to accepting title to the
10 assets transferred under this section, the Secretary shall
11 enter into an agreement with Amtrak under which Amtrak
12 will exercise on behalf of the Secretary care, custody, and
13 control of the assets to be transferred until a contract
14 takes effect under section 108(b).

15 (2) The agreement entered into under paragraph (1)
16 shall identify in detail the specific functions of Amtrak's
17 employees and equipment, and the specific numbers and
18 locations of the employees and equipment associated with
19 each function, that would be needed for continuation of
20 commuter and freight rail service in the event that Amtrak
21 were to cease operation, and identify those actions that
22 would be required to ensure that such functions can be
23 continued on an interim basis to avoid any interruption
24 in commuter or freight rail service on the Northeast Cor-
25 ridor.

1 (e) FURTHER TRANSFERS.—The Secretary may, for
2 appropriate consideration, transfer to the underlying
3 States title to real estate properties previously owned by
4 Amtrak that constitute the route to Springfield, Massa-
5 chusetts, the route to Harrisburg, Pennsylvania, and por-
6 tions of the route to Albany, New York, from the North-
7 east Corridor mainline.

8 **SEC. 104. NORTHEAST CORRIDOR EXECUTIVE COMMITTEE.**

9 (a) COMMITTEE.—

10 (1) AMENDMENT.—Chapter 249 of title 49,
11 United States Code, is amended by inserting after
12 section 24902 the following new section:

13 **“§ 24903. Northeast Corridor Executive Committee**

14 **“(a) NORTHEAST CORRIDOR EXECUTIVE COM-**
15 **MITTEE.—**

16 **“(1) ESTABLISHMENT.—**Not later than 180
17 days after the date of enactment of the Competition
18 for Intercity Passenger Rail in America Act of 2011,
19 the Secretary of Transportation shall establish a
20 Northeast Corridor Executive Committee to—

21 **“(A) manage the infrastructure and inter-**
22 **city passenger rail operations of the main line**
23 **of the Northeast Corridor between the District**
24 **of Columbia and Boston, Massachusetts; and**

1 “(B) promote mutual cooperation and
2 planning pertaining to the rail operations and
3 related activities of the Northeast Corridor.

4 “(2) MEMBERSHIP.—The Northeast Corridor
5 Executive Committee shall consist of the following
6 members:

7 “(A) The Secretary of Transportation.

8 “(B) 1 member representing the States
9 (including the District of Columbia) that con-
10 stitute the Northeast Corridor as defined in sec-
11 tion 24102, designated by a majority vote of
12 the Governors of the States (and the Mayor of
13 the District of Columbia) that constitute the
14 Northeast Corridor.

15 “(C) 2 members, one appointed by the
16 Speaker of the House of Representatives and
17 one by the majority leader of the Senate, who
18 have general business and financial experience
19 and experience or qualifications in transpor-
20 tation, with specific railroad-related experience,
21 neither of whom may be a current Federal or
22 State government employee.

23 “(D) 1 member, selected by a majority of
24 the voting members of the Northeast Corridor
25 Infrastructure and Operations Advisory Com-

1 mission, who is a public-private partnership ex-
2 pert with general business and financial experi-
3 ence, experience or qualifications in transpor-
4 tation, and extensive experience in public-pri-
5 vate partnerships, and who is not a current
6 Federal or State government employee.

7 “(3) TERMS.—An individual appointed under
8 paragraph (2)(B), (C), or (D) shall be appointed for
9 a term of 5 years. Such term may be extended until
10 the individual’s successor is appointed and qualified.
11 An individual may serve for more than 1 term.

12 “(4) DETAIL OF PERSONNEL; ADMINISTRATIVE
13 EXPENSES.—Upon request of the Northeast Cor-
14 ridor Executive Committee—

15 “(A) the head of any department or agency
16 of the United States may detail any of the per-
17 sonnel of that department or agency to the Ex-
18 ecutive Committee to assist in it carrying out
19 its duties; and

20 “(B) the Secretary of Transportation shall
21 provide administrative support to the Executive
22 Committee until the Executive Committee is
23 able to provide its own such support through a
24 contract entered into under section 108(b) of

1 the Competition for Intercity Passenger Rail in
2 America Act of 2011.

3 “(5) CONSULTATION.—The Northeast Corridor
4 Executive Committee shall consult with other enti-
5 ties as appropriate.

6 “(b) GENERAL AUTHORITIES.—To carry out its du-
7 ties, the Northeast Corridor Executive Committee may—

8 “(1) acquire, maintain, and dispose of any in-
9 terest in property used to provide improved high-
10 speed rail transportation under section 24902;

11 “(2) acquire, by condemnation or otherwise,
12 any interest in real property that the Northeast Cor-
13 ridor Executive Committee considers necessary to
14 carry out the goals of section 24902;

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

18 “(4) improve rail rights of way between Boston,
19 Massachusetts, and the District of Columbia to
20 achieve the goals of section 24902 of providing im-
21 proved high-speed rail passenger transportation be-
22 tween Boston, Massachusetts, and the District of
23 Columbia, and intermediate intercity markets;

24 “(5) acquire, build, improve, and install pas-
25 senger stations, communications and electric power

1 facilities and equipment, public and private highway
2 and pedestrian crossings, and other facilities and
3 equipment necessary to provide improved high-speed
4 rail passenger transportation over rights of way im-
5 proved under paragraph (4); and

6 “(6) make agreements with other carriers and
7 commuter authorities to grant, acquire, or make ar-
8 rangements for rail freight or commuter rail pas-
9 senger transportation over, rights of way and facili-
10 ties on the Northeast Corridor.

11 “(c) COMPENSATORY AGREEMENTS.—Rail freight
12 and commuter passenger rail transportation provided
13 under subsection (b)(3) shall be provided under compen-
14 satory agreements with the responsible carriers.

15 “(d) COMPENSATION FOR TRANSPORTATION OVER
16 CERTAIN RIGHTS OF WAY AND FACILITIES.—(1) An
17 agreement under subsection (b)(6) shall provide for rea-
18 sonable reimbursement of costs but may not cross-sub-
19 sidize intercity passenger rail, commuter passenger rail,
20 and rail freight transportation.

21 “(2) If the parties do not agree, the Surface Trans-
22 portation Board shall order that transportation described
23 in subsection (b)(6) continue over the Northeast Corridor
24 and shall determine compensation (without allowing cross-
25 subsidization among commuter passenger rail, intercity

1 passenger rail, and rail freight transportation) for such
2 transportation not later than 120 days after the dispute
3 is submitted. The Surface Transportation Board shall as-
4 sign to a rail carrier obtaining transportation under this
5 subsection the costs the Northeast Corridor Executive
6 Committee incurs only for the benefit of the carrier, plus
7 a proportionate share of all other costs of providing trans-
8 portation under this paragraph incurred for the common
9 benefit of the Northeast Corridor Executive Committee
10 and the carrier. The proportionate share shall be based
11 on relative measures of volume of car operations, tonnage,
12 or other factors that reasonably reflect the relative use of
13 rail property covered by this subsection.

14 “(3) This subsection does not prevent the parties
15 from making an agreement under subsection (b)(6) after
16 the Surface Transportation Board makes a decision under
17 this subsection.”.

18 (2) TABLE OF SECTIONS.—The table of sections
19 for chapter 249 of title 49, United States Code, is
20 amended by inserting after the item relating to sec-
21 tion 24902 the following new item:

“24903. Northeast Corridor Executive Committee.”.

22 (b) GOALS AND REQUIREMENTS.—

23 (1) AMENDMENT.—Section 24902 of title 49,
24 United States Code, is amended to read as follows:

1 **“§ 24902. Goals and requirements**

2 “(a) **MANAGING COSTS AND REVENUES.**—The
3 Northeast Corridor Executive Committee shall manage op-
4 erating costs, pricing policies, and other factors with re-
5 spect to the Northeast Corridor, with the goal of having
6 revenues derived each fiscal year from providing intercity
7 rail passenger transportation over the Northeast Corridor
8 route between the District of Columbia and Boston, Mas-
9 sachusetts, equal at least the operating costs of providing
10 that transportation in that fiscal year and some level of
11 operating profit that shall be reinvested in capital im-
12 provements on the Northeast Corridor.

13 “(b) **PRIORITIES IN SELECTING AND SCHEDULING**
14 **PROJECTS.**—When selecting and scheduling specific
15 projects, the Northeast Corridor Executive Committee
16 shall apply the following considerations, in the following
17 order of priority:

18 “(1) Safety-related items should be completed
19 before other items because the safety of the pas-
20 sengers and users of the Northeast Corridor is para-
21 mount.

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

25 “(3) Reliability of intercity rail passenger trans-
26 portation must be emphasized.

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

5 “(5) Improvements that will pay for the invest-
6 ment by achieving lower operating or maintenance
7 costs should be carried out before other improve-
8 ments.

9 “(6) Construction operations should be sched-
10 uled so that the fewest possible passengers are in-
11 convenienced, transportation is maintained, and the
12 on-time performance of Northeast Corridor com-
13 muter rail passenger and rail freight transportation
14 is optimized.

15 “(7) Planning should focus on completing ac-
16 tivities that will provide immediate benefits to users
17 of the Northeast Corridor.

18 “(c) AUTOMATIC TRAIN CONTROL SYSTEMS.—A
19 train operating on the Northeast Corridor main line shall
20 be equipped with an automatic train control system de-
21 signed to slow or stop the train in response to an external
22 signal.

23 “(d) HIGH-SPEED TRANSPORTATION.—The North-
24 east Corridor Executive Committee shall enter into con-
25 tractual agreements that support the establishment of

1 high-speed rail, as defined in section 26105, on the North-
2 east Corridor route between the District of Columbia and
3 Boston, Massachusetts.

4 “(e) AGREEMENTS FOR OFF-CORRIDOR ROUTING OF
5 RAIL FREIGHT TRANSPORTATION.—(1) The Northeast
6 Corridor Executive Committee may make an agreement
7 with a rail freight carrier or a regional transportation au-
8 thority under which the carrier will carry out an alternate
9 off-corridor routing of rail freight transportation over rail
10 lines in the Northeast Corridor between the District of Co-
11 lumbia and New York metropolitan areas, including inter-
12 mediate points. The agreement shall be for at least 5
13 years.

14 “(2) The Northeast Corridor Executive Committee
15 shall apply to the Surface Transportation Board for ap-
16 proval of the agreement and all related agreements accom-
17 panying the application as soon as the agreement is made.
18 If the Board finds that approval is necessary to carry out
19 this chapter, the Board shall approve the application and
20 related agreements not later than 90 days after receiving
21 the application.

22 “(3) If an agreement is not made under paragraph
23 (1) of this subsection, the Northeast Corridor Executive
24 Committee, with the consent of the other parties, may
25 apply to the Surface Transportation Board. Not later than

1 90 days after the application, the Board shall decide on
2 the terms of an agreement if it decides that doing so is
3 necessary to carry out this chapter. The decision of the
4 Board is binding on the other parties.

5 “(f) COORDINATION.—(1) The Secretary of Trans-
6 portation shall coordinate—

7 “(A) transportation programs related to the
8 Northeast Corridor to ensure that the programs are
9 integrated and consistent with high-speed and inter-
10 city passenger rail operations on the Northeast Cor-
11 ridor; and

12 “(B) amounts from departments, agencies, and
13 instrumentalities of the Government to achieve
14 urban redevelopment and revitalization in the vicin-
15 ity of urban rail stations in the Northeast Corridor
16 served by intercity and commuter rail passenger
17 transportation.

18 “(2) If the Secretary finds significant noncompliance
19 with this section, the Secretary may deny financing to a
20 noncomplying program until the noncompliance is cor-
21 rected.

22 “(g) APPLICABLE PROCEDURES.—No State or local
23 building, zoning, subdivision, or similar or related law, nor
24 any other State or local law from which a project would
25 be exempt if undertaken by the Federal Government or

1 an agency thereof within a Federal enclave wherein Fed-
2 eral jurisdiction is exclusive, including without limitation
3 with respect to all such laws referenced herein above re-
4 quirements for permits, actions, approvals or filings, shall
5 apply in connection with the construction, ownership, use,
6 operation, financing, leasing, conveying, mortgaging or en-
7 forcing a mortgage of—

8 “(1) any improvement undertaken by or for the
9 benefit of the Northeast Corridor Executive Com-
10 mittee as part of, or in furtherance of, intercity pas-
11 senger rail improvements on the Northeast Corridor
12 between the District of Columbia and Boston, Mas-
13 sachusetts (including without limitation mainte-
14 nance, service, inspection or similar facilities ac-
15 quired, constructed or used for high speed trainsets);
16 or

17 “(2) any land (and right, title or interest cre-
18 ated with respect thereto) on which such improve-
19 ment is located and adjoining, surrounding or any
20 related land.

21 These exemptions shall remain in effect and be applicable
22 with respect to such land and improvements for the benefit
23 of any mortgagee before, upon and after coming into pos-
24 session of such improvements or land, any third party pur-
25 chasers thereof in foreclosure (or through a deed in lieu

1 of foreclosure), and their respective successors and as-
2 signs, in each case to the extent the land or improvements
3 are used, or held for use, for railroad purposes or purposes
4 accessory thereto.”.

5 (2) EFFECTIVE DATE.—The amendment made
6 by paragraph (1) shall take effect on the date that
7 a lease agreement is entered into under section
8 108(a) of this Act.

9 **SEC. 105. PHASE-OUT OF AMTRAK'S GENERAL AUTHORITY**
10 **FOR THE NORTHEAST CORRIDOR.**

11 Section 24904 of title 49, United States Code, is re-
12 pealed, except that Amtrak may continue to exercise the
13 authorities granted thereunder until a contract takes ef-
14 fect under section 108(b) of this Act.

15 **SEC. 106. PERFORMANCE STANDARDS.**

16 Expressions of interest and detailed proposals sub-
17 mitted under section 107 shall ensure that, on the main
18 line of the Northeast Corridor between the District of Co-
19 lumbia and Boston, Massachusetts, the following perform-
20 ance standards are met or exceeded:

21 (1) COMMUTER RAIL.—Commuter rail services
22 dependent upon rail access, maintenance, and dis-
23 patching, shall be continued at no less than the lev-
24 els of service in effect as of the date of enactment
25 of this Act.

1 (2) FREIGHT RAIL.—Freight rail services de-
2 pendent upon rail access, maintenance, and dis-
3 patching shall be continued at no less than the levels
4 of service in effect as of the date of enactment of
5 this Act.

6 (3) HIGH-SPEED RAIL.—Express intercity pas-
7 senger rail service between the District of Columbia
8 and New York City shall achieve 2-hours or less one-
9 way trip time, and express intercity passenger rail
10 service between New York City and Boston, Massa-
11 chusetts, shall achieve 2.5-hours or less one-way trip
12 time.

13 (4) INTERCITY RAIL FREQUENCY.—Frequency
14 of intercity passenger rail service shall be increased
15 to not less than twice the number of train move-
16 ments in effect as of the date of enactment of this
17 Act.

18 (5) PROJECT COMPLETION.—The time to com-
19 plete the entire proposed project, including all plan-
20 ning, engineering, construction, and the commence-
21 ment of operational activities described in the pro-
22 posal, shall not exceed 10 years after the date of en-
23 actment of this Act.

1 **SEC. 107. SOLICITATION AND SELECTION OF PROPOSALS.**

2 (a) **IN GENERAL.**—Not later than 30 days after the
3 date of enactment of this Act, the Secretary of Transpor-
4 tation shall issue a request for expressions of interest from
5 entities, including consortia or teams of private companies,
6 that demonstrate the entity’s technical and financial ca-
7 pacity to submit a substantive and responsive proposal to
8 finance, design, build, operate, and maintain intercity pas-
9 senger rail service, including high-speed rail service, on the
10 main line of the Northeast Corridor between the District
11 of Columbia and Boston, Massachusetts, in a manner that
12 meets or exceeds the performance standards described in
13 section 106. Entities shall prepare and submit such ex-
14 pressions of interest not later than 150 days after the date
15 of enactment of this Act.

16 (b) **CONTENTS.**—An expression of interest submitted
17 under subsection (a) shall include—

18 (1) information about the persons or companies
19 submitting the expression of interest, including in-
20 formation describing the technical qualifications of
21 such persons or companies to finance, design, con-
22 struct, operate, and maintain the railroad, railroad
23 equipment, and related facilities, stations, and infra-
24 structure;

25 (2) a description of the proposed rail service,
26 including possible routes, required infrastructure in-

1 vestments and improvements, equipment needs and
2 type, train frequencies, peak and average operating
3 speeds, and trip times;

4 (3) a description of how the project would com-
5 ply with Federal rail safety and security laws, or-
6 ders, and regulations, including those governing
7 high-speed rail operations;

8 (4) a financing plan identifying—

9 (A) the amount and proposed source of
10 any requested Federal, State, or local public
11 contribution toward the project;

12 (B) the amount and proposed source of
13 private sector funding or financing toward the
14 project; and

15 (C) the anticipated annual operations and
16 capital costs for the project, and revenues asso-
17 ciated with the project through farebox recov-
18 ery, value capture strategies, use of infrastruc-
19 ture, or other means; and

20 (5) a statement describing the preferred struc-
21 ture of the public-private partnership between the
22 person or companies and the Northeast Corridor Ex-
23 ecutive Committee, including supporting reasons for
24 such preference.

25 (c) EVALUATION AND SELECTION.—

1 (1) IN GENERAL.—Not later than 240 days
2 after the date of enactment of this Act, the Sec-
3 retary of Transportation shall, after evaluating the
4 expressions of interest submitted by entities under
5 subsection (a), submit a report to the Committee on
6 Transportation and Infrastructure of the House of
7 Representatives and the Committee on Commerce,
8 Science, and Transportation of the Senate that—

9 (A) describes the public-private partner-
10 ship structure that will be utilized to finance,
11 design, build, operate, and maintain intercity
12 passenger rail service, including high-speed rail
13 service, on the main line of the Northeast Cor-
14 ridor between the District of Columbia and
15 Boston, Massachusetts, in a manner that meets
16 or exceeds the performance standards described
17 in section 106; and

18 (B) selects 2 or 3 entities to be awarded
19 \$2,000,000 each from available Federal Rail-
20 road Administration funds for the purpose of
21 preparing detailed proposals under the selected
22 public-private partnership structure.

23 (2) EVALUATION CRITERIA.—The Secretary
24 shall make the selection described in paragraph
25 (1)(B) among the expressions of interest submitted

1 by entities based an analysis of which submissions
2 best meet on the following criteria:

3 (A) The expression of interest indicates
4 that the project will successfully meet or exceed
5 the performance standards under section 106.

6 (B) The expression of interest incorporates
7 the greatest amount of private sector financing.

8 (C) The expression of interest incorporates
9 the least amount of Federal support.

10 (D) The expression of interest is based on
11 a public-private partnership structure that
12 closely aligns with the structure selected by the
13 Secretary under paragraph (1)(A).

14 (d) DETAILED PROPOSALS.—Not later than 1 year
15 after the date of enactment of this Act, the Northeast Cor-
16 ridor Executive Committee shall accept detailed proposals
17 from entities to finance, design, build, operate, and main-
18 tain intercity passenger rail service, including high-speed
19 rail service, on the main line of the Northeast Corridor
20 between the District of Columbia and Boston, Massachu-
21 setts, in a manner that meets or exceeds the performance
22 standards described in section 106.

23 (e) SELECTION AND REPORT.—Not later than 90
24 days after receiving the detailed proposals submitted
25 under subsection (d), the Northeast Corridor Executive

1 Committee shall select the best proposal and submit to
2 the Committee on Transportation and Infrastructure of
3 the House of Representatives and the Committee on Com-
4 merce, Science, and Transportation of the Senate a report
5 that—

6 (1) identifies the selected proposal;

7 (2) includes an implementation plan to put in
8 place the public-private partnership structure out-
9 lined in the selected proposal; and

10 (3) explains why that proposal was selected
11 rather than the other submitted proposals.

12 **SEC. 108. LEASE AGREEMENT.**

13 (a) IMPLEMENTATION OF PUBLIC-PRIVATE PART-
14 NERSHIP.—Not later than 90 days after the Northeast
15 Corridor Executive Committee submits the report under
16 section 107(e), the Secretary of Transportation shall im-
17 plement the public-private partnership structure described
18 under section 107(c)(1)(A) and shall enter into a lease
19 agreement with the Northeast Corridor Executive Com-
20 mittee for a period not to exceed 99 years for management
21 of the infrastructure of and intercity passenger rail oper-
22 ations on the main line of the Northeast Corridor between
23 the District of Columbia and Boston, Massachusetts.

24 (b) CONTRACT.—Upon the effective date of the lease
25 agreement entered into under subsection (a), the North-

1 east Corridor Executive Committee shall enter into a con-
2 tract with the submitter of the proposal selected under
3 section 107(e) for carrying out such proposal.

4 **SEC. 109. FUNDING.**

5 (a) **TERMINATION OF AUTHORITY.**—After a lease
6 agreement described in section 108(a) has been entered
7 into, no further Federal funds shall be appropriated or
8 obligated to Amtrak for capital expenses or operating
9 grants with respect to the main line of the Northeast Cor-
10 ridor between the District of Columbia and Boston, Mas-
11 sachusetts.

12 (b) **TRANSFER OF AMOUNTS.**—Amtrak shall transfer
13 to the Secretary of Transportation all amounts appro-
14 priated by the Federal Government for the fiscal year in
15 which the lease agreement described in section 108(a) was
16 entered into that have been provided to Amtrak for capital
17 expenses or operating grants with respect to the main line
18 of the Northeast Corridor between the District of Colum-
19 bia and Boston, Massachusetts, and such amounts shall
20 be available to the Secretary for carrying out this title.

21 **SEC. 110. EMPLOYEES.**

22 (a) **OPERATORS DEEMED RAIL CARRIERS FOR CER-**
23 **TAIN PURPOSES.**—A person that conducts rail operations
24 over the main line of the Northeast Corridor between the
25 District of Columbia and Boston, Massachusetts, under a

1 public-private partnership structure implemented under
2 this title shall be considered a rail carrier only for pur-
3 poses of title 49, United States Code. Such rail carrier
4 shall enter into negotiations with representatives of its em-
5 ployees to establish appropriate labor protections and col-
6 lective bargaining rights.

7 (b) **HIRING PREFERENCE.**—A person that conducts
8 rail operations over the main line of the Northeast Cor-
9 ridor between the District of Columbia and Boston, Mas-
10 sachusetts, under a public-private partnership structure
11 implemented under this title shall provide hiring pref-
12 erence to qualified Amtrak employees displaced by the
13 award of a contract under section 108(b).

14 **SEC. 111. APPLICABILITY OF SUBTITLE IV.**

15 Subtitle IV of title 49, United States Code, shall not
16 apply to a person that conducts rail operations over the
17 main line of the Northeast Corridor between the District
18 of Columbia and Boston, Massachusetts, under a public-
19 private partnership structure implemented under this title
20 for such operations, except for sections 11123, 11301,
21 11322(a), 11502, and 11706.

22 **TITLE II—INTERCITY**
23 **PASSENGER RAIL COMPETITION**

24 **SEC. 201. DEFINITIONS.**

25 In this title:

1 (1) ADVISORY COMMISSION.—The term “Advi-
2 sory Commission” means the State-Supported
3 Routes Passenger Rail Competition Advisory Com-
4 mission established under section 208.

5 (2) COVERED SERVICE.—The term “covered
6 service” means any service applicable to a State-sup-
7 ported route, including maintenance of way, mainte-
8 nance of equipment, operation, sales and marketing,
9 scheduling, call centers, and onboard service, with
10 respect to which cost allocations have been estab-
11 lished pursuant to section 209 of the Passenger Rail
12 Investment and Improvement Act of 2008 (49
13 U.S.C. 24101 note).

14 (3) ELIGIBLE PARTICIPANT.—The term “eligi-
15 ble participant” means—

16 (A) a State that has participated in the
17 process to develop and implement a cost alloca-
18 tion methodology under section 209(a) of the
19 Passenger Rail Investment and Improvement
20 Act of 2008 (49 U.S.C. 24101 note);

21 (B) a group consisting solely of States de-
22 scribed in subparagraph (A);

23 (C) an Interstate Compact consisting solely
24 of States described in subparagraph (A); or

1 (D) a public agency established by one or
2 more of the States described in subparagraph
3 (A) and having responsibility for providing
4 intercity passenger rail service.

5 (4) PROGRAM PARTICIPANT.—The term “pro-
6 gram participant” means an eligible participant that
7 has entered into a competitive procurement process
8 under this title.

9 (5) RAIL CARRIER.—The term “rail carrier”
10 has the meaning given that term in section 10102(5)
11 of title 49, United States Code.

12 (6) STATE.—The term “State” includes the
13 District of Columbia.

14 (7) STATE-SUPPORTED ROUTE.—The term
15 “State-supported route” means a corridor or route
16 of not more than 750 miles between endpoints, oper-
17 ated by Amtrak or another rail carrier that receives
18 funds under chapter 244 of title 49, United States
19 Code, under a cost share agreement with a State, a
20 group of States, an Interstate Compact, or a public
21 agency established by one or more States and having
22 responsibility for providing intercity passenger rail
23 service.

1 **SEC. 202. AUTHORITY TO PARTICIPATE IN PROGRAM.**

2 (a) **AUTHORITY.**—Effective 1 year after the trans-
3 mitted to Congress of the report required under section
4 209(e) of the Passenger Rail Investment and Improve-
5 ment Act of 2008 (49 U.S.C. 24101 note), an eligible par-
6 ticipant may enter into a competitive procurement process
7 to select an entity to enter into a contract with for the
8 performance of one or more covered services under this
9 title.

10 (b) **REPORT TO CONGRESS.**—Section 209 of the Pas-
11 senger Rail Investment and Improvement Act of 2008 (49
12 U.S.C. 24101 note) is amended by adding at the end the
13 following new subsection:

14 “(e) **REPORT TO CONGRESS.**—Not later than 3 years
15 after the date of enactment of this Act, Amtrak and the
16 States (including the District of Columbia) participating
17 in the process described in subsection (a) shall transmit
18 to the Committee on Transportation and Infrastructure
19 and the Committee on Appropriations of the House of
20 Representatives, and to the Committee on Commerce,
21 Science, and Transportation and the Committee on Appro-
22 priations of the Senate, a report providing in detail oper-
23 ating and capital cost allocations for all State-supported
24 routes, using the methodology developed under this sec-
25 tion, including all cost categories.”

1 (c) REVIEW.—Section 209(c) of the Passenger Rail
2 Investment and Improvement Act of 2008 (49 U.S.C.
3 24101 note) is amended by inserting “at least 12 of” after
4 “If Amtrak and”.

5 **SEC. 203. DISPOSITION OF FEDERAL SUBSIDIES.**

6 (a) IN GENERAL.—Effective upon notification to the
7 Secretary of Transportation that a program participant
8 has entered into a competitive procurement process under
9 this title, the portion of any Federal subsidy to Amtrak
10 that is attributable, under the methodology described in
11 section 202, to the State-supported route with respect to
12 which the competitive procurement applies shall be trans-
13 ferred to the program participant.

14 (b) COST SAVINGS.—If, as a result of cost savings
15 in the performance of covered services under a contract
16 entered into pursuant to this title, any amount transferred
17 under subsection (a) is not required for the performance
18 of such covered services, the program participant may re-
19 tain such excess amount, to remain available until ex-
20 pended, but may only use such amount for the purposes
21 of improvements to the State-supported route with respect
22 to which the covered services apply.

23 **SEC. 204. COMPETITIVE PROCUREMENT PROCESS.**

24 (a) ADVISORY COMMISSION RECOMMENDATIONS.—In
25 carrying out a competitive procurement process under this

1 title, including deciding what covered services to include
2 in such competitive procurement process, a program par-
3 ticipant shall take into consideration the recommendations
4 of the Advisory Commission.

5 (b) APPLICATION.—An entity seeking to perform cov-
6 ered services under a contract awarded pursuant to this
7 title shall submit an application to the program partici-
8 pant which shall include—

9 (1) a description of how the applicant intends
10 to perform the covered services;

11 (2) materials demonstrating the capability of
12 the applicant to perform the covered services in con-
13 formance with the requirements of this title;

14 (3) an identification of any property owned by
15 Amtrak that is or may be required for the perform-
16 ance of the covered services; and

17 (4) the amount and sources of non-Federal
18 funding the applicant will use to support the per-
19 formance of the covered services.

20 (c) SELECTION.—A program participant shall select
21 the winning applicant on the basis of the applications sub-
22 mitted under subsection (b), taking into consideration—

23 (1) the financial and performance metrics devel-
24 oped pursuant to section 207 of the Passenger Rail

1 Investment and Improvement Act of 2008 (49
2 U.S.C. 24101 note); and

3 (2) selection criteria recommended by the Advi-
4 sory Commission.

5 (d) AMTRAK AS SOLE APPLICANT.—If Amtrak is the
6 only applicant in a competitive procurement process en-
7 tered into under this title—

8 (1) the program participant shall promptly ter-
9 minate any additional procedures in the competitive
10 procurement process and declare Amtrak the win-
11 ning applicant; and

12 (2) the program participant may retain
13 amounts transferred to it under section 203(b) of
14 this Act.

15 **SEC. 205. PERFORMANCE STANDARDS; ACCESS TO FACILI-**
16 **TIES; EMPLOYEES.**

17 (a) CONTINUATION OF SERVICE.—A contract entered
18 into for provision of covered services pursuant to a com-
19 petitive procurement process under this title shall include
20 provisions to ensure that passenger rail service on the
21 State-supported route to which the covered service applies
22 shall be no less frequent, nor over a shorter distance, than
23 Amtrak provided on that route before the award.

24 (b) PERFORMANCE STANDARDS.—An entity selected
25 to receive a contract for provision of covered services pur-

1 suant to a competitive procurement process under this
 2 title shall comply with the minimum standards established
 3 under section 207 of the Passenger Rail Investment and
 4 Improvement Act of 2008 (49 U.S.C. 24101 note) and
 5 such additional performance standards as the program
 6 participant may establish in the performance of such con-
 7 tract.

8 (c) ACCESS TO FACILITIES AND EQUIPMENT.—

9 (1) REQUIREMENT.—The Federal Railroad Ad-
 10 ministration shall, to the extent necessary to enable
 11 the performance of covered services under a contract
 12 entered into pursuant to this title, require Amtrak
 13 to provide access to its reservation system, stations,
 14 and facilities directly related to operations to any
 15 rail carrier awarded such contract, in accordance
 16 with section 217 of the Passenger Rail Investment
 17 and Improvement Act of 2008 (49 U.S.C. 24101
 18 note).

19 (2) AGREEMENT.—To the extent that an entity
 20 identifies Amtrak equipment or rolling stock to be
 21 required for the performance of the covered service
 22 under subsection (b)(2), the entity and Amtrak shall
 23 enter into an agreement to purchase or lease such
 24 equipment or rolling stock.

25 (d) EMPLOYEES.—

1 (1) OPERATORS DEEMED RAIL CARRIERS FOR
2 CERTAIN PURPOSES.—An entity that performs cov-
3 ered services under a contract entered into pursuant
4 to this title shall be considered a rail carrier only for
5 purposes of title 49, United States Code. Such rail
6 carrier shall enter into negotiations with representa-
7 tives of its employees to establish appropriate labor
8 protections and collective bargaining rights.

9 (2) HIRING PREFERENCE.—An entity that per-
10 forms covered services under a contract entered into
11 pursuant to this title shall provide hiring preference
12 to qualified Amtrak employees displaced by the
13 award of such contract.

14 **SEC. 206. ACCESS RIGHTS TO TRACK.**

15 The right of access to track owned by another rail-
16 road that is necessary for the performance of covered serv-
17 ices under a contract entered into pursuant to this title,
18 and the cost of such access, shall be subject to contract
19 negotiation with the owner of that track.

20 **SEC. 207. ACCOUNTING OF COSTS.**

21 Not later than January 1, 2021, each program par-
22 ticipant providing for the performance of covered services
23 through a competitive procurement process under this
24 title, and Amtrak, shall transmit to the Congress a report
25 providing a specific accounting of costs with respect to

1 each State-supported route, including an accounting of
2 any cost savings with respect to covered services under
3 this title.

4 **SEC. 208. ADVISORY COMMISSION.**

5 (a) **ESTABLISHMENT.**—Not later than 180 days after
6 the date of enactment of this Act, there shall be estab-
7 lished a State-Supported Routes Passenger Rail Competi-
8 tion Advisory Commission.

9 (b) **MEMBERS.**—The Advisory Commission shall con-
10 sist of—

11 (1) the Governor (or a representative thereof)
12 of each of the States with a State-supported route;

13 (2) the Secretary of Transportation (or a rep-
14 resentative thereof);

15 (3) an individual, appointed by the President,
16 with general business and financial experience, expe-
17 rience or qualifications in transportation, and exten-
18 sive experience in public-private partnerships, who
19 shall not be an employee of the Federal Government;

20 (4) 1 individual appointed by the Speaker of
21 the House of Representatives;

22 (5) 1 individual appointed by the minority lead-
23 er of the House of Representatives;

24 (6) 1 individual appointed by the majority lead-
25 er of the Senate; and

1 (7) 1 individual appointed by the minority lead-
2 er of the Senate.

3 (c) CHAIRMAN.—The Advisory Commission shall
4 have a chairman, who shall be an individual described in
5 subsection (b)(1), elected by a majority of the members
6 of the Advisory Commission.

7 (d) ADDITIONAL CONSULTATION.—The Advisory
8 Commission shall consult with—

9 (1) owners of track on State-supported routes,
10 and other freight railroads operating on such routes;

11 (2) representatives of rail operating labor;

12 (3) representatives of rail construction labor;

13 (4) potential applicants for a competitive pro-
14 curement process under section 204; and

15 (5) Amtrak.

16 (e) REPORT.—Not later than 1 year after the date
17 of enactment of this Act, the Advisory Commission shall
18 transmit to the Congress a report that includes—

19 (1) recommendations of the operations and
20 services that should be eligible for competitive pro-
21 curement under this title;

22 (2) guidelines for model competitive procure-
23 ment process procedures for program participants;

1 (3) recommendations of criteria for evaluating
2 and selecting bids made through the competitive pro-
3 curement process;

4 (4) recommendations on establishing public-pri-
5 vate partnership equipment pools;

6 (5) identification of worldwide best practices for
7 the operations and services associated with intercity
8 passenger service rail for corridors similar to the
9 State-supported routes;

10 (6) criteria for evaluating the outcomes of the
11 program under this title, with a focus on improve-
12 ments to operations and services and cost savings;
13 and

14 (7) accounting standards to assist in providing
15 to the Congress under section 207 of this Act the
16 accounting of the costs of each State-supported
17 route.

18 (f) SUNSET.—The Advisory Commission shall termi-
19 nate after transmitting its report under subsection (e).

20 **SEC. 209. APPLICABILITY OF SUBTITLE IV.**

21 Subtitle IV of title 49, United States Code, shall not
22 apply to an entity selected to receive a contract for provi-
23 sion of covered services under this title for those covered
24 services for which it is awarded the contract, except for
25 sections 11123, 11301, 11322(a), 11502, and 11706.

1 **TITLE III—LONG-DISTANCE**
2 **PASSENGER RAIL COMPETITION**
3 **SEC. 301. LONG-DISTANCE ROUTES ALTERNATIVE PAS-**
4 **SENGER RAIL SERVICE.**

5 (a) AMENDMENT.—Section 24711 of title 49, United
6 States Code, is amended to read as follows:

7 “§ 24711. Long-Distance Routes Alternative Passenger
8 **Rail Service**

9 “(a) IN GENERAL.—Within 1 year after the date of
10 enactment of the Competition for Intercity Passenger Rail
11 in America Act of 2011, the Secretary shall implement a
12 long-distance routes alternative passenger rail service pro-
13 gram. Such program shall—

14 “(1) permit a rail carrier, as defined in section
15 10102(5), to petition the Secretary to be considered
16 as a passenger rail service provider in lieu of Am-
17 trak over a long-distance route described in section
18 24102(5)(C);

19 “(2) require the Secretary to notify Amtrak and
20 members of the public through the publication of a
21 notice in the Federal Register within 30 days after
22 receiving a petition under paragraph (1) and estab-
23 lish a deadline by which the petitioner, Amtrak, and
24 any other rail carrier that wanted to compete would

1 be required to submit a bid to provide passenger rail
2 service over the route to which the petition relates;

3 “(3) require that each bid describe how the bid-
4 der would operate the route, submit materials dem-
5 onstrating the capability of the applicant to perform
6 such operations, itemize what Amtrak property
7 would be needed, if any, and detail the source and
8 amount of non-Federal funding the bidder would use
9 to assist in such operations;

10 “(4) require the Secretary to select winning bid-
11 ders by evaluating the bids on the basis of—

12 “(A) the financial and performance metrics
13 developed under section 207 of the Passenger
14 Rail Investment and Improvement Act of 2008;
15 and

16 “(B) the lowest possible level of required
17 Federal financial support; and

18 “(5) require the Secretary to execute a contract
19 within a specified, limited time after the deadline es-
20 tablished under paragraph (2) and award to the win-
21 ning bidder—

22 “(A) the right and obligation to provide
23 passenger rail service over that route in a man-
24 ner consistent with the standards developed

1 under section 207 of the Passenger Rail Invest-
2 ment and Improvement Act of 2008; and

3 “(B) an operating subsidy at a level that
4 is on average for the duration of the contract
5 less annually than the level in effect during the
6 fiscal year preceding the fiscal year in which
7 the petition was received.

8 “(b) PERFORMANCE STANDARDS.—If the Secretary
9 awards the right and obligation to provide passenger rail
10 service over a long-distance route to a rail carrier other
11 than Amtrak, the Secretary shall ensure that operating
12 and subsidy rights are conditioned upon performance
13 standards being met, including that the service provider
14 shall—

15 “(1) continue to provide passenger rail service
16 on the route that is no less frequent, nor over a
17 shorter distance, than Amtrak provided on that
18 route before the award; and

19 “(2) comply with the minimum standards estab-
20 lished under section 207 of the Passenger Rail In-
21 vestment and Improvement Act of 2008.

22 “(c) ACCESS TO AMTRAK FACILITIES.—The Sec-
23 retary shall require Amtrak to provide access to its res-
24 ervation system, stations, and facilities directly related to
25 operations of the long-distance route to any rail carrier

1 awarded a contract under this section. Such access shall
2 be provided under terms of an agreement between the rail
3 carrier and Amtrak. If the parties cannot agree upon
4 terms, and the Surface Transportation Board finds that
5 access to Amtrak's facilities or equipment, or the provision
6 of services by Amtrak, is necessary to carry out this sec-
7 tion, the Surface Transportation Board shall, within 120
8 days after submission of the dispute, issue an order that
9 the facilities and equipment be made available, and that
10 services be provided, by Amtrak, and shall determine rea-
11 sonable compensation, liability, and other terms for use
12 of the facilities and equipment and provision of the serv-
13 ices.

14 “(d) ACCESS RIGHTS TO TRACK.—The right of ac-
15 cess to track owned by another railroad that is necessary
16 for the operation of Amtrak long-distance routes under the
17 alternative passenger rail service program under this sec-
18 tion, and the cost of such access, shall be subject to con-
19 tract negotiation with the owner of that track.

20 “(e) CESSATION OF SERVICE.—If a rail carrier
21 awarded a route under this section ceases to operate the
22 service or fails to fulfill its obligations under the contract
23 described in subsection (a)(5), the Secretary, in collabora-
24 tion with the Surface Transportation Board, shall take
25 any necessary action consistent with this title to enforce

1 the contract and ensure the continued provision of service,
2 including the installment of an interim service provider
3 and re-bidding the contract to operate the service. The en-
4 tity providing such interim service shall either be Amtrak
5 or a rail carrier defined in subsection (a)(1).

6 “(f) EMPLOYEES.—A rail carrier that is awarded a
7 contract under this section shall—

8 “(1) be considered a rail carrier only for pur-
9 poses of this title;

10 “(2) enter into negotiations with representatives
11 of its employees to establish appropriate labor pro-
12 tections and collective bargaining rights; and

13 “(3) provide hiring preference to qualified Am-
14 trak employees displaced by the award of such con-
15 tract.

16 “(g) APPLICABILITY OF SUBTITLE IV.—Subtitle IV
17 of this title shall not apply to a rail carrier awarded a
18 contract under this section for the route over which it is
19 awarded the contract, except for sections 11123, 11301,
20 11322(a), 11502, and 11706.”.

21 (b) CONFORMING AMENDMENT.—The table of sec-
22 tions for chapter 247 of title 49, United States Code, is
23 amended by amending the item relating to section 24711
24 to read as follows:

“24711. Long-Distance Routes Alternative Passenger Rail Service.”.

**SECTION BY SECTION ANALYSIS OF COMPETITION FOR INTERCITY
PASSENGER RAIL IN AMERICA ACT**

Transportation and Infrastructure Committee Chairman John Mica and Railroads Subcommittee Chairman Bill Shuster have developed a three-tiered initiative to take American passenger rail in a bold new direction. The Competition for Intercity Passenger Rail in America Act does more with less by leveraging private sector investment and increasing competition. Specifically, the plan includes:

Title I – Northeast Corridor Passenger Rail Competition

In the next decade, the Northeast Corridor Passenger Rail Competition Initiative will bring real high-speed rail to and double intercity passenger rail service on the nation’s Northeast Corridor (NEC) between Washington, DC, New York City, and Boston through a private sector partnership and competitive bid process.

Title II – Intercity Passenger Rail Competition

The Intercity Passenger Rail Competition Initiative will give States greater control and authority over their passenger rail services. The plan incentivizes these States to competitively bid passenger rail services, which will save money and improve passenger rail service.

Title III – Long-Distance Passenger Rail Competition

The Long-Distance Passenger Rail Competition Initiative will bring competition to Amtrak’s least successful lines, long-distance routes. Allowing head-to-head competition will give the private sector the opportunity to revive these money losing routes.

Title I – Northeast Corridor Passenger Rail Competition

Section 101. Purposes

This section lays out the purposes of the title, which are to:

1. Expand intercity passenger rail service in the Northeast Corridor (NEC) in a manner driven by sound economics
2. Develop real high-speed rail service in the NEC to decrease road and air congestion and delay
3. Encourage intermodal connections at intercity rail stations to transit, airports, and other modes of transportation, to make rail service more effective and attractive to riders
4. Leverage Federal financial support with private sector investment, both for construction of rail infrastructure and development around rail stations, using revenue-producing value capture strategies
5. Create an effective public-private partnership (PPP) to manage NEC capital assets and intercity passenger rail operations

Section 102. Redemption of Common Stock

Subsection (a) directs the Secretary of Transportation to arrange a valuation of all assets and liabilities of Amtrak within 1 month of enactment

Subsection (b) directs Amtrak to redeem all common stock at the value determined by the Secretary within 3 months of enactment. Outstanding claims on Amtrak's assets by shareholders must be cleared before NEC assets can be transferred from Amtrak ownership to the U.S. Department of Transportation (DOT)

Subsection (c) authorizes Amtrak to exercise its eminent domain provisions to acquire outstanding common stock shares if Amtrak is unable to successfully redeem its common stock from shareholders before the deadline

Subsection (d) amends Amtrak's eminent domain authority in 49 U.S.C. 24311 to clarify that such authority extends to the redemption of common stock

Subsection (e) directs the Secretary, after Amtrak has redeemed all common stock, to convert one share of preferred stock (held by DOT) to 10 shares of common stock. After NEC assets have been transferred to DOT, these 10 shares of common stock will be the only remaining Amtrak stock shares, and DOT will be the single shareholder of Amtrak and owner of record of the NEC

Section 103. Transfer of Assets

Subsection (a) directs Amtrak to transfer all NEC assets to DOT 90 days after the redemption of common stock, or 180 days after enactment. The assets of the NEC include the portions of the Corridor owned by Amtrak between Washington, DC and Boston, MA, including the routes stemming from the NEC main line to Springfield, MA, to Harrisburg, PA, and portions of the route to Albany, NY. The assets to be transferred are: rail right-of-way, stations, track, signal equipment, electric traction facilities, bridges, tunnels, rolling stock, and other equipment necessary to support intercity passenger service on the NEC. The subsection provides for a negotiated determination of what rolling stock and equipment are necessary for NEC operations, with any dispute to be resolved by the DOT Inspector General. Within 1 year of enactment, DOT is required to provide a report to Congress that details an inventory of all assets transferred from Amtrak to the Secretary under this section

Subsection (b) clarifies that Amtrak remains responsible for any outstanding debt, even if such debt has been collateralized with NEC assets

Subsection (c) directs the Secretary to release Amtrak from all mortgages and liens and delivers to Amtrak the preferred stock held by DOT, in consideration for transfer of NEC assets

Subsection (d) directs the Secretary and Amtrak to enter into an agreement for Amtrak to continue care, custody, and control of the NEC assets until the PPP contract described in section 108(b) takes effect. Amtrak is required to include information in this agreement that identifies in detail the specific number of employees and equipment that will be needed to ensure continued freight and commuter rail operations after the transfer of NEC assets

Subsection (e) authorizes the Secretary to enter into negotiations to determine appropriate consideration for the transfer of real estate property previously owned by Amtrak on the routes from New Haven, Connecticut to Springfield, Massachusetts, from Philadelphia to Harrisburg, Pennsylvania, and portions of the route from New York City to Albany, New York, to the underlying States

Section 104. Northeast Corridor Executive Committee

Subsection (a) amends chapter 249 of 49 U.S.C. to insert a new section 24903, which establishes the Northeast Corridor Executive Committee, a 5-member public-interest body that will manage the infrastructure and intercity passenger rail operations of the main line of the Northeast Corridor, and will promote mutual cooperation and planning with Northeast Corridor States, planning organizations, commuter rail operators, freight operators, local elected officials, and other stakeholders

The NEC Executive Committee is made up of the Secretary of Transportation, one member representing Northeast Corridor States, two members appointed by the United States Congress (the majority leader of the Senate and Speaker of the House of Representatives make the appointments), and one member who is an expert in public-private partnerships. Members of the NEC Executive Committee serve for 5-year terms, and the Committee is supported by administrative support from the DOT until the PPP contract takes effect, at which time such administrative support will be built into the PPP contract

The NEC Executive Committee is given the same general authorities in managing the infrastructure and intercity passenger rail operations of the main line of the Northeast Corridor that Amtrak has historically been given under 49 USC 24902. Freight and commuter rail services over the NEC are to be provided under compensatory agreements with the responsible service providers. The current compensation for access provision is maintained, providing for reasonable reimbursement of costs. If the parties are in disagreement regarding compensation, the Surface Transportation Board is authorized to determine appropriate compensation

Subsection (b) amends 49 USC 24902 to detail the goals and requirements of the NEC Executive Committee in managing costs and revenues of NEC intercity passenger rail services, requiring that such service be managed in a way that returns an operating profit, which shall be reinvested in capital improvements on the NEC. Priorities are laid out for selecting and scheduling capital improvement projects, focusing first on safety, then on projects that benefit the greatest number of passengers, reduce trip times, increase reliability, and lower the operating and maintenance costs

The Secretary is directed to coordinate transportation programs, including other modes of transportation, in the NEC region to ensure that these programs are consistent and integrated with high-speed and intercity passenger rail operations on the NEC

The effective date of these amendments to 49 US 24902 is delayed until the NEC property is leased by the Secretary to the NEC Executive Committee under a 99-year lease, as described in section 108(a)

Section 105. Phase-Out of Amtrak's General Authority for the Northeast Corridor

This section repeals 49 USC 24904, but allows Amtrak to continue its general authority to manage and operate NEC intercity passenger rail operations until the PPP contract described in section 108(b) takes effect

Section 106. Performance Standards.

This section details the performance standards for the competitive expressions of interest and detailed proposals for managing the infrastructure of and operating intercity passenger rail on the NEC. The following standards are to be met or exceeded:

1. All current commuter rail services on NEC continued at current levels
2. All current freight rail services on NEC continued at current levels
3. 2 hours or less high-speed rail service between Washington, DC and New York, and 2.5 hours or less between New York and Boston
4. Double the number of trains on the NEC, including both high-speed and regional service
5. Complete the entire proposed project within 10 years

Section 107. Solicitation and Selection of Proposals.

Subsection (a) directs the Secretary within 30 days of enactment to issue a request for expressions of interest (RFEI) from entities. The RFEI's shall demonstrate the entity's technical and financial capacity to submit a substantive and responsive detailed proposal to design, build, operate and maintain intercity passenger rail service, including high-speed rail, on the NEC, in a manner that meets or exceeds the performance standards in section 106. Entities can be consortia or teams of private companies. RFEI's are due to be submitted to the Secretary within 150 days of enactment

Subsection (b) details the contents of the RFEI's, which shall include:

1. Information about the persons or companies, their technical qualifications and experience
2. Description of the proposed intercity passenger rail services, including possible routes, required infrastructure improvements, peak and average operating speeds, and trip times

3. Description of how the proposed rail services would comply with Federal rail safety laws and regulations, including those governing high-speed operations
4. Financing plan identifying federal funding, amount and proposed source of private financing, and anticipated annual operating and capital costs for the project, including expected farebox recovery, value capture strategies for station development, and other uses of infrastructure
5. Statement describing the preferred PPP structure, including supporting reasons for such preference. RFEI's may outline a PPP structure that separates infrastructure management from operations, or may be a turnkey design-build-operate-maintain and finance structure

Subsection (c) directs the Secretary to evaluate the RFEI's and down-select 2 or 3 of the best proposals. These entities will receive stipends of \$2 million each for the purpose of preparing detailed proposals. The Secretary is also directed to select and describe the PPP structure that will best be utilized to finance, design, build, operate, and maintain intercity passenger rail service, including high-speed rail, on the NEC. These decisions are to be detailed in a report and submitted to Congress within 240 days of enactment. The evaluation criteria the Secretary shall use are that the RFEI:

1. meets or exceeds the performance standards in section 106;
2. includes greatest amount of private sector financing;
3. includes least amount of Federal support;
4. the proposed PPP structure closely aligns with the PPP structure selected by the Secretary

Subsection (d) provides for the entities to prepare detailed proposals to finance, design, build, operate, and maintain intercity passenger rail service, including high-speed rail, on the NEC. These detailed proposals are submitted to the NEC Executive Committee 1 year after enactment

Subsection (e) directs the NEC Executive Committee to evaluate the detailed proposals and select the best proposal, then to submit a report to the House T&I Committee and the Senate Commerce Committee that identifies the selected proposal, lays out an implementation plan to put the selected PPP structure in place, and explains why the proposal was selected over the other submittals. This report is to be submitted 90 days after receiving the detailed proposals for evaluation, 15 months after enactment

Section 108. Lease Agreement

Subsection (a) directs the Secretary to implement the selected PPP structure and to enter into a 99-year lease agreement with the NEC Executive Committee for management of the infrastructure of and intercity passenger rail operations on the NEC. This lease shall be executed not later than 90 days after the NEC Executive Committee's selection report, or 18 months after enactment

Subsection (b) directs the NEC Executive Committee to enter into the selected PPP contract once the NEC property lease has been executed

Section 109. Funding.

Subsection (a) terminates all Federal funding authorized for Amtrak capital and operating expenses on the NEC after the lease agreement with NEC Executive Committee has been executed

Subsection (b) provides that any funds already appropriated for Amtrak NEC capital expenses or operations in the fiscal year in which the lease agreement is executed shall be transferred to the Secretary, for purposes of carrying out this title

Section 110. Employees.

Subsection (a) deems that persons carrying out NEC capital improvements and operations under the PPP structure in this title are deemed to be rail carriers, and shall enter into negotiations with labor representatives to establish appropriate labor protections and collective bargaining rights

Subsection (b) directs that displaced Amtrak employees have preference for hiring for NEC capital improvements and operations under the PPP structure in this title

Section 111. Applicability of Subtitle IV.

This section allows the person conducting operations under the PPP structure to step into the shoes of Amtrak for the purpose of STB-related authorizations for such operations

Title II – Intercity Passenger Rail Competition

Section 201. Definitions.

This section defines the terms used in the title

Eligible participants include:

1. A State (including the District of Columbia) that has participated in the process to develop and implement a cost allocation methodology under Section 209(a) of the Passenger Rail Investment and Improvement Act of 2008;
2. Group of such states;
3. An Interstate Compact consisting of some or all of such states; or
4. A public agency established by one or more of such States and having responsibility for providing intercity passenger rail service

A “State-supported route” is defined as a corridor or route of not more than 750 miles between endpoints, operated by Amtrak or another rail carrier that receives funds under Chapter 244 of title 29, US Code, under a cost share agreement with a State, a group of States, and Interstate Compact, or a public agency established by one or more States and having responsibility for providing intercity passenger rail

Section 202. Authority to Participate in the Program.

Subsection (a) allows eligible participants to enter into a competitive procurement process to select an entity to enter into a contract for the performance of one or more covered services (covered services may include operations, maintenance of way, maintenance of equipment, sales and marketing, scheduling, call centers, and on board services)

Subsection (b) amends Section 209 of the Passenger Rail Investment and Improvement Act of 2008 to require a report to Congress providing in detail operating and capital cost allocations for all State-supported routes, including all cost categories

Subsection (c) amends Section 209 of the Passenger Rail Investment and Improvement Act to clarify that at least 12 states must voluntarily adopt and implement the methodology developed in Section 209

Section 203. Disposition of Federal Subsidies.

Subsection (a) establishes that upon entering into a competitive procurement process, program participants shall be transferred the portion of any Federal subsidy to Amtrak that is attributable to that State-supported route being competed

Subsection (b) allows program participants to retain any excess amounts of funding achieved from cost savings through competitive procurement, but only to be used for the purposes of improvements to the program participant's State-supported route

Section 204. Competitive Procurement Process.

Subsection (a) requires program participants to take into consideration recommendations of the Advisory Commission when carrying out a competitive procurement process, including deciding what covered services to include

Subsection (b) details the process through which applicants shall submit applications to program participants. Applications shall include:

1. A description of how the applicant intends to perform the covered services;
2. Materials demonstrating the capability of the applicant to perform the covered services;
3. An identification of any property owned by Amtrak that is or may be required for the performance of the covered services;
4. The amount and sources of all of non-Federal funding the applicant will use to support the performance of the covered services

Subsection (c) provides selection criteria for program participants to select winning applicants. Program participants shall take into consideration:

1. The financial and performance metrics developed pursuant to Section 207 of the Passenger Rail Investment and Improvement Act of 2008;
2. Selection criteria recommended by the Advisory Commission

Subsection (d) terminates and declares Amtrak the winning applicant if Amtrak is the only applicant in a competitive procurement process, but allows the program participant to retain amounts transferred to it under Section 203

Section 205. Performance Standards; Access to Facilities and Equipment; Employees.

Subsection (a) requires that passenger rail service on State-supported routes is no less frequent, nor over a shorter distance, than Amtrak provided on that route

Subsection (b) requires entities selected shall comply with the minimum standards established under Section 207 of the Passenger Rail Investment and Improvement Act of 2008, and that program participants may establish additional performance standards

Subsection (c) requires Amtrak:

1. To provide access to its reservation system, stations, and facilities directly related to operations to any rail carrier awarded a control through the competitive procurement process, in accordance with Section 217 of the Passenger Rail Investment and Improvement Act of 2008
2. To enter into an agreement with selected entities to purchase or lease Amtrak equipment or rolling stock identified by the selected entity to be required for the performance of covered services

Subsection (d) requires rail carriers (defined as an entity that provides covered services under a contract entered into pursuant to this title) to:

1. Enter into negotiations with representatives of its employees to establish appropriate labor protections and collective bargaining rights
2. Provides hiring preference to any qualified Amtrak employees displaced by the award of a contract through a competitive procurement process

Section 206. Access Rights to Track.

Ensures the right of access to track owned by another railroad that is necessary for the performance of covered services, and the cost of such access, shall be subject to contract negotiations with the owner of that track

Section 207. Accounting of Costs.

Requires each program participant providing for the performance of covered services through a competitive procurement process, and Amtrak, to no later than January 1, 2021 transmit to Congress a report providing a specific accounting of costs with respect to each State-supported route, including an accounting of any cost savings

Section 208. Advisory Commission.

Subsection (a) establishes a State-Supported Routes Passenger Rail Competition Advisory Commission.

Subsection (b) establishes that the members of the Advisory Commission shall consist of:

1. The Governor (or a representative thereof) of each of the States with a State-supported route;
2. The Secretary of Transportation (or a representative thereof);
3. A Public-Private Partnership expert, appointed by the President;
4. An individual appointed by the Speaker of the House;
5. An individual appointed by the Minority Leader of the House;
6. An individual appointed by the Majority Leader of the Senate; and
7. An individual appointed by the Minority Leader of the Senate

Subsection (c) requires that the Advisory Committee shall have a chairman, who shall be an individual described in subsection (b), elected by a majority of the members of the Advisory Commission

Subsection (d) requires the Advisory Commission to consult with:

1. Owners of the track on State-supported routes and other freight railroads operating on such routes;
2. Representatives of rail operating labor;
3. Representatives of rail construction labor;
4. Potential applicants for a competitive procurement process under section 204; and
5. Amtrak

Subsection (e) requires the Advisory Commission to submit a report to Congress not later than 1 year after the date of enactment that includes:

1. Recommendations of the operations and services that should be eligible for competitive procurement;
2. Guidelines for model competitive procurement process procedures for program participants;
3. Recommendations of criteria for evaluating and selecting bids made through the competitive procurement process;
4. Recommendations on establishing public-private partnership equipment pools;
5. Identification of worldwide best practices for operations and services associated with intercity passenger rail service for corridors similar to the State-supported routes;
6. Criteria for evaluating the outcomes of the program, with a focus on improvements to operations and services and cost savings;
7. Accounting standards to assist in providing to Congress under Section 207 the accounting of the costs of each State-supported route

Subsection (f) terminates the Advisory Commission after transmitting its report to Congress

Section 209. Applicability of Subtitle IV.

This section allows the entity selected to receive a contract for provision of covered services to step into the shoes of Amtrak for the purpose of STB-related authorizations for such services.

Title III – Long-Distance Passenger Rail Competition

Section 301. Long-Distance Routes Alternative Passenger Rail Service.

This section creates new statutory provision in title 49, section 24711 “Long-Distance Routes Alternative Passenger Rail Service”

Subsection (a) requires establishment of a program for long-distance passenger rail service within one year of the date of enactment:

1. Allows a rail carrier to petition the Secretary to open a specific long-distance route for competition
2. Requires the Secretary to notify Amtrak and the public within 30 days of receiving a petition and establishes a deadline for petitioner, Amtrak, and any other rail carrier to submit bids for service
3. Requires that each bid must describe how the bidder would operate the route, submit materials demonstrating the capability of the applicant to perform such operations, itemize what Amtrak property would be needed (if any), and details the source and amount of non-Federal funding the bidder would use to assist in such operations
4. Requires the Secretary of Transportation to select winning bidders by evaluating bids on the basis of:
 - a) Financial performance metrics under section 207 of PRIIA; and
 - b) Lowest possible Federal funding support
5. Requires the Secretary of Transportation to award to the winning bidder:
 - a) The right and obligation to provide passenger rail service over the long-distance route consistent with the standards developed under Section 207 of PRIIA; and
 - b) An operating subsidy that is less than Amtrak’s on average over the life of the contract

Subsection (b) requires the service provider to:

1. Continue to provide service at level no less frequent than Amtrak's; and
2. Comply with the standards established under section 207 of PRIIA

Subsection (c) requires Amtrak to provide access to its reservation system, stations, and facilities directly related to operations

Subsection (d) ensures the right of access to track owned by another railroad that is necessary for the performance of covered services, and the cost of such access, shall be subject to contract negotiations with the owner of that track

Subsection (e) provides process for resolution of cessation of service

Subsection (f) deems the winning bidder a rail carrier and requires that bidder to enter into negotiations with representatives of its employees to establish appropriate labor protections and collective bargaining rights, and to provide hiring preference to any qualified Amtrak employees displaced by the award of a contract through a competitive procurement process

Subsection (g) allows the winning bidder to step into the shoes of Amtrak for the purposes of STB-related authorizations

**LEGISLATIVE HEARING ON THE
COMMITTEE PRINT “COMPETITION FOR
INTERCITY PASSENGER RAIL IN AMERICA”**

WEDNESDAY, JUNE 22, 2011

HOUSE OF REPRESENTATIVES,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
WASHINGTON, DC.

The committee met, pursuant to notice, at 11:10 a.m. in Room 2167, Rayburn House Office Building, Hon. John Mica (Chairman of the committee) presiding.

Mr. MICA. I would like to call this legislative hearing of the House Transportation and Infrastructure Committee to order. The purpose of this hearing today is to review the committee print, which is entitled, “Competition for Intercity Passenger Rail in America.” We have assembled a list of witnesses.

The order of business will be, first, opening statements by Members. And then we will turn to our witnesses that we have. And I recognize myself, as we get started here.

Ms. BROWN. Mr. Chairman? The people have not been permitted to—

Mr. MICA. Yes. And I, as the chair—the people will be seated. But in the effort of moving forward at the appointed time, which is 11:00, Members will have the opportunity to present their opening statements.

And as the witnesses are recognized—as you know, some Members took extensive time during the last markup, biting into our time of this important hearing, this bipartisan hearing that I had agreed to at the request of Ms. Brown, the ranking member, at the request of the full committee chairman, Mr. Mica, and the ranking member, Mr. Rahall.

We are going to proceed with a full hearing, and everyone will have an opportunity, as far as the Members, to give opening statements. And then we will hear from the witnesses who are being assembled, and will be seated as we proceed.

Ms. BROWN. Mr.—

Mr. MICA. As I said, the order of business will be opening statements. I will proceed with my opening statements, then we will turn to the ranking member or the others who wish to be recognized.

Let me again welcome everyone today, and say that I am pleased to comply with a request both in writing and verbally that I had from Mr. Rahall, from Ms. Brown, to convene a legislative hearing on the committee print of the proposal by myself and Mr. Shuster, which is entitled, “Competition for Intercity Passenger Rail in

America.” We are very pleased to move forward and try to improve passenger rail service, not only in the Northeast Corridor, not only for high-speed rail, but also for passenger rail in America.

As a very strong advocate of passenger rail, I believe it can not only benefit us as far as energy and as far as improvement in the environment, but in many other ways. I think it is a segment of the economy that has been stuck in neutral for many years. We are celebrating the 40th anniversary of Amtrak, which has a history of a Soviet-style train operation.

While train operations and systems around the world have moved into the 21st and sometimes the 22nd century, achieving speeds of 150 miles an hour on average not uncommon in Europe and Asia, some of them going much faster than that on average.

While we have our snail-speed trains that Amtrak promotes at great expense, underwriting every ticket last year by approximately \$50.80, some of the routes in the hundreds of dollars—and I have no problem with subsidization of any forms of transportation, so long as they are reasonable and accomplish what we set out to do by moving people efficiently, economically, by the best possible infrastructure that we can work together to provide.

Let me say that we have two reasons for this legislation that Mr. Shuster and I have introduced, as I continue with my opening statement as we get settled here and get everyone together.

The first reason, of course, is my great disappointment in high-speed rail. I was excited when President Obama, even as President-elect, had stated one of his goals was to create high-speed rail systems like we have in Europe and Asia. He came to the floor of the House of Representatives during his State of the Union and said that that was his goal, and repeated it.

And then the second reason we had, of course, was the money, which was thrown at several projects. And to go back for just a second, Mr. Shuster and I worked aggressively during the Bush administration, and prior to that I worked back as far as Susan Molinari, previous chairs of this committee, to try to bring good reforms and improve passenger rail service across the United States, including the PRIIA Act, which we worked on in a bipartisan manner with Mr. Oberstar.

I helped author and promote the high-speed rail provisions, working in the House and Senate, with both Republicans and Democrats, and we actually got the President of the United States to sign that law that, again, set out a blueprint for creating high-speed rail, involving States and localities and others in the process, setting up, again, a participatory outline and framework.

All that was sort of blown apart when some of the grants were announced. We threw \$8 billion in stimulus money and another \$2.5 billion through regular appropriations at high-speed rail. And when those decisions were made behind closed doors without proper consultation of Members of Congress and others, you see exactly what you got: people rejected snail-speed trains, they rejected 39-mile-an-hour systems that would be slightly improved, and you could still ride a bus and get there faster than you could by Amtrak-proposed service.

So, money came back from Ohio. The 70-, 80-mile-an-hour snail-speed proposals for Wisconsin and Florida that were sold as high

speed were also rightfully rejected. And I am not very pleased with the inglorious start that we have had in throwing money at projects that had no possibility of succeeding, either in providing high-speed service, or in moving this country into the 21st century of high-speed rail.

Even by Federal definition that we put in the law, high speed is 110 miles an hour, which was watered down by Amtrak in negotiations. And, in fact, you will find the world's standard is 120 miles per hour.

We have ended up with a horrible start. I couldn't think of a worse launch of high-speed rail in the United States, undermining the efforts that we worked so hard for to launch true high-speed service around the Nation.

I am not even happy with the one project that retains the possibility of high-speed rail in California. We went out to Fresno, and we actually did a hearing out there, and the section that has been chosen between Fresno and Bakersfield has neither the population nor the intercity connections to make that route a success. And yet we are throwing billions of dollars at that marginal project, instead of a successful project.

What we have tried to do is turn our focus to the Northeast Corridor. And people—any of the people who say that we are not going to succeed, I can tell you right now, Mr. Boardman, representatives of labor and others, that we are succeeding. Because the first thing we got done was the recognition by this administration and others to designate the Northeast Corridor after some time waiting as a high-speed rail corridor.

And we do have some recognition by Amtrak, who is now considering—and we will hear the plans from Mr. Boardman—of bringing the private sector in, because he knows as well as I know and every Member knows, that you will be turning blue before Congress ever gives \$117 billion or waits 30 years for high-speed rail in this Nation.

So, yes, we will have a full hearing on this, and as we rolled this out, we tried to do it in a bipartisan manner, bringing in people from around the United States, not just the bigshots in Washington. We connected people, hundreds of people from around the country, who had an opportunity to participate both by teleconference and by webcast. We offered later—and everyone saw it when I saw it—a committee print which you see before you today.

We will have a hearing every week, if we have to, until we get this done, or we get high-speed rail moving and intercity passenger service that meets an adequate world standard.

And all along the way, Mr. Shuster and I have guaranteed, promised, committed to preserving labor's existing benefits, wages, and whatever else they have; I don't want that to be an issue. Anybody who thinks that the glorious future for Amtrak is to continue with the status quo, as some have said we should do, are sleeping at the switch, as far as labor is concerned.

Labor, look at the future that labor has had with Amtrak and with what's going on. We have gone from 29,000 Amtrak employees when I came to Congress to 19,000. Do you want to continue to lose jobs in an industry where other parts of the world they are actually gaining and are moving people? Is that the history you want?

I made part of the record today the outline of what Amtrak did to labor, and they argued for years over wages and salaries, minor benefits for their employees. I went to those meetings with Mr. Oberstar and tried to get off dead center, so that labor could—that's in Amtrak, and the great people who work in that, could get the benefits and some of the other terms of employment that they have in the private sector that they got from privatization of our freight rail, which we did years ago, and again, Amtrak left in neutral.

No one is trying to harm labor in any way. And I will go out to the unions, if I have to go from shop to shop, and explain it to them again on train to train, and let them know that they will be protected by whatever we do here.

Now, in an unprecedented fashion, too, we rolled out that measure last week, the committee print, and I saw it in the afternoon when everyone else did. We discussed the general outline of what Mr. Shuster and I proposed, both for high-speed rail in the Northeast Corridor and other corridors, and then long-distance and intercity passenger service. His intent is also a follow-up of what we put in PRIIA. He asked for just a couple of lines that are money-losers to be put up for bid to allow the private sector—and I ask you why can't you—why can't we ask the private sector to bid on some of these routes, if we are guaranteeing, again, labor all of their opportunities, their wages? Why can't we do that? Why are we so closed minded that people can't consider an offer that may be better?

We did protect Amtrak in the case, again, that service will continue to be provided. And no one said that we want to dismantle Amtrak. In fact, if there wasn't an Amtrak already, there would have to be—you would have to create an Amtrak that would be the franchisee and oversee some of the passenger service.

So, we put provisions into PRIIA, both for high-speed rail and for intercity passenger service, that we think we can build upon, and that we think that we can have an opportunity to provide more service, more employment, and true high-speed rail, while opening the door to competition and leaving Amtrak intact. But what we get, in fact, are just negative comments.

And we will move this forward, one way or the other. We will move it forward in this Congress or in future Congresses. And I guarantee that Amtrak will tell us today and in the future that they will have to move in that direction, because they are not going to find \$117 billion that Congress can give them, and we aren't going to wait 30 years to have that service in the Northeast Corridor or any place else in the United States.

So, I think that gave everyone an opportunity to get settled.

[Laughter.]

Mr. MICA. And, Ms. Brown, you think that everyone got an opportunity to be settled?

Ms. BROWN. We appreciate that, Mr. Chairman.

Mr. MICA. And I wanted to make certain that everyone understands with clarity my position. If there is anything I didn't amplify, I will be glad to do it as we proceed.

So, with those brief opening comments, I am pleased to yield to Mr. Rahall.

Mr. RAHALL. Oh, thank you, Mr. Chairman. I was asleep at the switch. Not that your comments would ever put me to sleep, but I do want to thank you for holding today's hearings at the request of subcommittee ranking member, Corrine Brown, and myself, as the proposal you and Mr. Shuster have put forth raises a great many questions and concerns.

Amtrak is a for-profit corporation. It is not an agency of the Federal Government. Yet your proposal would divest Amtrak of its assets in the Northeast Corridor and leave it responsible for its debts.

The nonpartisan Congressional Research Service has determined that this proposal is unconstitutional because it violates the appointments clause of the Constitution. It is also likely that the proposal violates the takings clause, because it takes Amtrak's private property without just compensation.

As a for-profit corporation, I believe Amtrak's standing is very little different than that of any other for-profit corporation in America. Yet I do not think anyone would dream of, say, legislatively stripping CSX or Norfolk Southern of its assets if one was unhappy with the freight service they were providing.

There are many other peculiar aspects to this proposal. Under it the Secretary of Transportation would solicit expressions of interest from entities interested in replacing Amtrak as the operator in the Northeast Corridor. The Secretary would then select up to three entities to be awarded \$2 million in Federal funds to develop more detailed proposals.

Subsequently, the Northeast Corridor Executive Committee established by the measure would accept the detailed proposals and select the best one. There is no criteria contained in the measure as to what qualifications or restrictions might pertain to these entities. In fact, under a clear reading of the measure, China could qualify and operate the Northeast Corridor. Now, I don't believe that is something we really want to see happen.

I also fail to see why we would hand over \$2 million in taxpayer dollars to up to three entities in order for them to develop a detailed proposal. That is rather odd, paying somebody to develop a proposal to submit to yourself. I do not think that is how things of this nature are normally done.

There is also no guidance or criteria governing which proposal the committee would select, other than it being the "best." What does that mean, "the best"? The best what? Would we amend Federal aviation or highway statutes to say that the goal of those programs is to have the best aviation system, or the best highways?

The answer is, of course, that while we all want to do the best, we would not use that term, as it is not a statutory term of art.

In the case of your measure, Mr. Chairman—and I do commend you for your vigorous pursuit thereof—I think any overreaching goal as to what constitutes the best would include creating and retaining jobs, and provide the highest level of safety and security.

As to other aspects of the measure, Amtrak relies on an operating profit from the Northeast Corridor to offset less profitable long-distance lines in other parts of the country, areas that rely heavily on passenger rail service. This includes—and accuse me of being parochial or whatever—but this includes the Cardinal that

runs in my home State of West Virginia, a route connecting New York to Chicago.

With the establishment of Amtrak in the Northeast Corridor, the Cardinal will suffer a fatal blow under this proposal, along with many other vital routes that connect rural areas of our country coast to coast, including the Auto Train, Capital Limited, California Zephyr, Coast Starlight, Empire Building, and Texas Eagle. Right now, Amtrak serves about 40 percent of America's rural population. All of this service will be lost under the draft legislation.

I also have serious concerns about the implications of this proposal on rail labor. Under this measure, the existing contracts of some 19,000 Amtrak workers would be abrogated, and new workers would have no Davis-Bacon protections, and no protections under the Railroad Retirement Act, railroad unemployment compensation, and the Railway Labor Act. In other words, this proposal leaves rail labor sitting at the station.

While proponents of this proposal claim this will save money, I fear it will have just the opposite result. Under existing contracts, Amtrak workers who get displaced receive up to 5 years of protection. As such, under this proposal, Amtrak would be responsible for up to \$4.4 billion for displaced workers, an obligation that Amtrak would not be able to meet. This would undoubtedly fall on the U.S. Government. This is just one of the many ways that this proposal will cost, not save, the American taxpayers money.

And then finally, as I conclude, Mr. Chairman, in its present form this proposal will have serious consequences for commuter rail agencies and freight railroads. And, frankly, I am not sure that the proposal can even be fixed. My fear is that if it is enacted, it will result in a transcontinental tragedy.

I thank you for the time, and look forward to today's witnesses.

Mr. MICA. Well, thank you. And, as I said, we offered this committee print online last Wednesday and asked any Members who had amendments to offer them by the close of business Friday. We extended that until Monday at noon. We did agree on this legislative hearing.

And I do want to say—and I have taken notes of the issues that the ranking member has—that we are interested in crafting legislation that can have bipartisan support, and move this process forward. And when I saw the draft myself I had some concerns about some of the same issues that you raise.

And we will be glad to take amendments from, again, committee members and others to make certain that our intent to provide good service, not to eliminate any, or interfere with any existing service, is achieved.

So, again, just comments. We will, as we continue and move towards markup on the legislation, welcome everyone's participation.

Mr. Shuster, chairman of the rail subcommittee, you are recognized.

Mr. SHUSTER. Thank you, Mr. Chairman. I appreciate you holding this hearing today. I appreciate the ranking member for calling for it—Ms. Brown of the subcommittee.

This is an important issue. The ranking member, Mr. Rahall, talked about Amtrak being a for-profit corporation. But if it were a bona fide for-profit corporation, it would be bankrupt by now.

Amtrak would be gone. It would be sold off into pieces, or somebody would have come in and taken it over for \$.10 on the dollar.

It has never lived up to what it was established to be: a for-profit corporation. And those out there today and on this committee talking doomsday for Amtrak, I think it's doomsday for Amtrak if we do nothing.

We have to look around the world at what is going on. Private sector capital, private sector operations, are coming in all over Europe and they are taking over the operations of these railways and making them profitable, or at least moving them towards break-even or profitability. And I think the same thing can happen with passenger rail in this country.

I remember back 15, 16 years ago, 20 years ago, even 30 years ago, when we deregulated—that is what we are doing here, I believe, we are deregulating passenger rail in this country, just like we deregulated freight rails, just like we deregulated the trucking industry in this country, just like we deregulated the airline industry. And two of the three have been great successes. The trucking industry and the freight rail systems have had great success. For the airline industry, the consumer has had success, I believe. We have got a lot of options for inexpensive flights around the country. The industry, though, has struggled; 9/11 didn't help at all.

But still, we deregulated those modes of transportation. And, on all accounts, I think we would come down saying that it was a very successful deregulation. I think we can do that here, with passenger rail.

I don't like to mention this to people, but I think it is important—they were Democratic Presidents that deregulated these industries. My friends on the other side of the aisle, I hope they look back at history. When we deregulated aviation and we deregulated freight rails in this country, Jimmy Carter was the President of the United States. Today you would think that was heresy, for a Democrat to do that, but in fact, that is what happened. Same with the trucking industry. Bill Clinton was the President of the United States.

Deregulation works. And it can work in passenger rail. And I believe it can save passenger rail in this country. And, as the chairman said, if we didn't have Amtrak, we would probably would have to, in this bill, create Amtrak. It is not saying Amtrak is going away. Amtrak can participate, Amtrak will probably be here. I am quite sure it will be here in some shape or form. But it is going to be different, and it needs to be different if we want to have a vibrant passenger rail system in this country. And I believe we need to.

I say in a lot of hearings about the population of the United States. It went from 200 million to 300 million people and we crossed that threshold about 4 or 5 years ago; it took us 65 years. We are now going to cross the 400 million threshold in about 30, or even 25 years from now. Passenger rail has to be a viable part of our transportation system, especially in the Northeast Corridor, where the population density is incredible. You look around the world, it is one of the most populous corridors in the world. We need to do better. And I believe this proposal does that.

When I look around the world—and there is debate, but there are facts that have been shown to me—and when you talk about the West Coast rail that Virgin Rail took over in England, it was started out by the British Government by giving them \$400 million in subsidies. Today, they pay the British Government \$240 million, plus they make a profit of \$80 million. They have gone in there using marketing and best practices and over the last 6 years, they doubled the ridership from 14 million to 28 million people.

I talked to a number of companies that are very interested in coming into the United States and investing in some shape or form in the Northeast Corridor. They believe that today's numbers of 10 million passengers could grow to 30 million or 40 million passengers, which is incredible. And that is what we have to do.

The proposal also affects State-supported routes. My State of Pennsylvania is very eager to have competition on the Keystone Corridor, which has been a great success between Amtrak, the State, building that line and increasing the ridership by 40 to 50 percent over the last 4 or 5 years.

Both you and I look at examples on the negative side. And, of course, I am going to ask Mr. Boardman—I don't believe he was there at the time, but in Florida, the Florida Rail South, the Veolia bid that got the contract was \$97 million; Amtrak was \$162 million. I was in business. I couldn't stay in business if my prices were that much higher. And why is that?

And then, to add insult to injury, Amtrak is suing Veolia because of four employees they say were stolen from Amtrak. As I said, I was in business, and I had people come to work for me and people who went to work for somebody else, and I also had other business owners say to me, "Oh, you stole my employee." You can't steal something you don't own. So I don't know why Amtrak is pursuing, with Federal taxpayer dollars, a court case about four employees that changed where they wanted to work. I think it is ludicrous.

And there are many examples. We had, the other day, the person that runs ACE Rail in southern California, where the bids came in. Amtrak bid double what the private sector company bid—I don't remember which private sector company it was.

I believe bringing competition to passenger rail is the way to save it. I don't believe that we are going to kill it. We are going to save it and make it stronger, I believe, for the future, for the future generations of American passengers. And I look forward to working with Mr. Rahall and other colleagues—Ms. Brown, on the other side of the aisle. If there are provisions that we need to add to this, let's talk about it.

Because I think, at the end of the day, as history marches forward, passenger rail is going to need to be deregulated. Competition in the transportation industry is what makes it stronger, as it has in the past. So, with that, Mr. Chairman, I went over my time. But thank you, and I yield back.

Mr. MICA. I thank the chairman. Let me recognize the ranking member of the rail subcommittee, Ms. Brown.

Ms. BROWN. Thank you. My notes say that I am supposed to say, "Thank you, Mr. Mica, for holding today's hearing." I don't think so, because I think legislation that affects the entire passenger and freight rail system in the United States deserves a hearing, exam-

ination, and debate. There are numerous legal, financial, and operational questions that need to be answered before we auction off Amtrak to Wall Street investors.

We have, as we sit here today, no surface transportation reauthorization bill, and no way to pay for it. This week we will be forced to delay the Federal Aviation Administration bill for the twentieth time, at the very moment that we should be working together to solve problems.

We have this bill before us today that will be dead on arrival in the United States other body, the Senate. We absolutely need to find a way to get these transportation programs reauthorized so we can put people back to work. But this legislation will do the exact opposite. This legislation turns over one of our Nation's most valuable transportation asset to Wall Street investors with little or no regulation or service outcome. No safety or security mandates after being targeted by—given a private or possible foreign entity the right to take the land and property of the United States citizen and provide no protection for labor, all the while jeopardizing the railroad retirement system.

This legislation also put the American taxpayers on the hook for billions of dollars in Amtrak debt, environmental clean-up, windfall profits for billionaires, and largely subsidies for—assuming that they would ever survive. In fact, this is unheard of. We are giving \$6 million to encourage people to bid.

We all agree that we need better service on the Northeast Corridor. But no one is going to operate trains at 200 miles per hour on infrastructure built in the 1800s. Amtrak has an operating profit on the corridor, and is steadily increasing passengers. And we can tear apart Amtrak and hope for the best, or we can give Amtrak the tools that it needs to run true high-speed rail along with the numerous other services that they provide.

The United States used to have the best passenger rail service in the world. Now we are being left behind because we refuse to invest necessary money for the true national passenger rail service. Japan and Great Britain—which is often talked about on this committee—Japan invested \$30 billion—30—I am sorry, \$300 billion in infrastructure. That cost never passed on to the operators.

Great Britain, which is often talked about, recently invested \$15 billion to improve the West Coast Line, which Virgin Rail runs. Virgin pays only \$160 million annually to Great Britain for the infrastructure improvement. Amtrak is expected to do less, yet they have a higher operating profit on the Northeast Corridor than Virgin on the West Coast Line. In fact, I think about \$130 million.

The American people deserve better. And privatizing Amtrak rail along the Northeast Corridor is definitely not the way to improve our Nation's passenger service. It will kill our Nation's passenger rail, and dismantle Amtrak, which I believe is the true goal of this legislation, and has always been the true goal from the Bush administration, when they zero out the funding for Amtrak.

Mr. Chairman, I have received a number of letters and statements of concerns regarding this draft bill, including statements from Amtrak, the National Association of Railroad Passengers, and a number of labor unions, the Brotherhood of Locomotive Engineers and Trainmen, the International Brotherhood of Teamsters, just to

name a few, and several other Members. I would ask unanimous consent that they be included in the hearing record, and given 30 days to get that information to the committee.

I yield back the balance of my time.

Mr. MICA. I thank the gentlelady. Other Members seek recognition? Mr. Southerland, gentleman from Florida.

Mr. SOUTHERLAND. Thank you, Mr. Chair. I commend you for having this hearing, and I appreciate bringing this incredibly important issue to the forefront of the full committee.

You know, I will tell you. At least—you know, we have talked about this issue, and we talk about other countries that are doing well. I applaud us for often times, in referring to those countries, countries that are our allies, countries that do appreciate freedom and do appreciate free enterprise and free markets. Often times we hear on the Hill raising up countries that in no way exemplify the values that we hold true in this country.

And so, I think sometimes you don't have to redesign or reinvent the wheel. There are some good ideas out there around the world that I think we need to be learning from, and using them as our R&D, and trying to implement on the issue that is before us today.

You know, it blows my mind that Amtrak's long-distance routes operated a deficit of \$527 million, requiring an average subsidy per ticket of \$177.84. I, too, as Chairman Shuster made mention, stuck on to the ranking member's comments about how Amtrak is a for-profit organization. You know, I am new to this whole world, being here in Congress for 6 months. But I will tell you my family has been in business, a business my grandfather started. And I will tell you that if we were having to subsidize to the percentages that Amtrak is having to subsidize, it is just real clear we would have gone bankrupt and we would have ceased to exist, and we would not have perpetuated our business, our family business, to three generations now.

There are just some brutal realities out there, just brutal realities. When you are in a hole, stop digging. Spoken like a true funeral director, because that is what I am. I know about digging holes. And what I see here just violates common sense.

I understand how critically important this issue is regarding the transportation, and as far as the sector we are looking at. We want it to survive, we want it to thrive. And I think that, in looking at how we can best do that, to inject some private—public-private partnerships, makes sense. But the one thing that doesn't make sense is digging a deeper hole.

And so, I am eager today to hear from our panel. I thank you all for being here. We are going to disagree, and that is OK. But I will tell you your ideas, they either fill the hole in, or dig it deeper, one of the two. We are broke. We are broke.

And so, Mr. Chairman, I thank you. I look forward to hearing from our—from those that are going to testify here today, and I yield back.

Mr. MICA. Thank the gentleman. Mr. Sires, the gentleman from New Jersey.

Mr. SIRES. Chairman Mica, Ranking Member Rahall, I thank you for holding this hearing today. As a Member whose district is in the Northeast Corridor, and as someone who travels home nearly

every weekend on Amtrak, I have some concerns and reservations about this bill, which proposes to separate Northeast Corridor from Amtrak.

The Northeast Corridor is important to Amtrak because it generates revenue which can be used to make up the—for losses in long-distance routes. However, more important than this, Amtrak provides an essential service to millions of passengers each and every day, and is a key component of our regional economy.

The Northeast Corridor is not owned by Amtrak. And if the Northeast Corridor is to be split, it would split up into different private corporations. The ramification must be known.

For example, the tunnel between New Jersey and New York are easements held by New York City. This legislation seems to assume that New York City would be willing to transfer these easements. Homeland Security concerns could be triggered. What would be the security requirements for private corporations to take over Amtrak routes? Where would labor jobs go?

Additionally, under this plan, what would be the implications for the commuter railroads such as the New Jersey Transit?

I am much—I am very much looking forward to the testimony of our witnesses, and thank the chairman and the ranking member for holding this hearing.

Mr. MICA. Thank you. Mr. Nadler.

Mr. NADLER. Thank you, Mr. Chairman. Thank you, Chairman Mica and Ranking Member Rahall, for holding this hearing on the chairman's bill to privatize the Northeast Corridor.

I am glad we are holding a hearing, instead of a markup, as I think was originally intended. This is a pretty drastic proposal that makes sweeping changes to the intercity passenger rail system. It requires careful thought and deliberation, and I appreciate the chairman's willingness to slow the process down, so we can begin to address the many questions and concerns raised by the legislation.

The bill requires Amtrak to redeem common stock and transfer its assets to DOT. At the same time, it directs the Secretary to solicit "expressions of interest" from private entities to build and operate high-speed rail service, and then it gives \$2 million to the top contenders to prepare a more detailed proposal. It is not clear why an entity that supposedly has enough funding to build and operate a high-speed rail line needs taxpayer support just to write a proposal.

Then the Executive Committee establishing the bill would evaluate these proposals, select the best one, and notify Congress of its decision. Congress would have no role in the decision. Congress would just be told what will happen, and the Secretary is directed to implement the Executive Committee's selected plan and grant a 99-year lease to the Executive Committee to carry it out.

One of the biggest problems with the bill is that it sets in motion the elimination of Amtrak before any proposals are reviewed or recommended. We have no idea if there are any viable private financing schemes that adequately meet the desired criteria.

We have already requested proposals in PRIIA, and none were submitted for the NEC. I understand the chairman has indicated that he thinks DOT didn't really act in good faith in search of pro-

posals, but his bill setting up a new RFP is also in the hands of the DOT. Regardless, the logic doesn't follow that, therefore, we should first eliminate Amtrak and then hope that a solution will magically appear.

As the chairman knows, I have supported his quest to research and review privatization proposals. But why should we take the drastic actions laid out in this bill until a detailed plan has been presented and properly evaluated? Why should we disrupt or eliminate current service and potentially lose good paying jobs until we know what will replace it? And why shouldn't we keep investing in Amtrak in the interim, and allow it to compete, as well?

Another major problem is that this bill grants broad authority, including eminent domain authority and preemption of several State and local laws, to this Executive Committee which is eventually to be staffed by the private entity with a lot of unanswered questions. There might be legitimate reasons to have such authority. And, generally speaking, I support it. When furthering interstate transportation and commerce, that is clearly in the public interest.

But under this bill we don't know exactly who we are giving this authority to, or when or how it will be used. This is a monumental states' rights issue, and a very broad grant of authority to an unknown, unaccountable entity over our districts.

There are simply too many unanswered questions to allow such broad Federal preemption, and to place it in the hands of a private entity.

I also question the provision of the bill requiring Amtrak to redeem all common stock at the book value. DOT performed the evaluation and determined the stock is worthless, which—an evaluation the courts have upheld. Under this bill, Congress is stepping in, providing a direct windfall to at least one of the shareholders. I have concerns about the takings issue in the bill. But beyond that, this could create a real problem of unjust enrichment.

I am, frankly, surprised that, as my friends on the other side of the aisle are pushing drastic cuts across the Federal budget, that they would agree to just handing someone a windfall of hundreds of millions of dollars.

These are just a couple of the big picture concerns. There are many other troubling aspects of the bill, such as inadequate labor protections, the potential impact of the railroad retirement system, and the increased cost for the freight railroads, the probable loss of State-supported and long-distance routes, and the shifting financial burden to States and local governments.

If one of the main goals of privatization is presumably to reduce Federal funding, it seems odd to leave the Federal Government with such significant costs and liabilities. I would rather take that money and invest it directly in Amtrak's plan to eliminate the \$9 billion backlog created by Federal under-investment, and to implement Amtrak's plan to upgrade its high-speed rail service.

My biggest problem with this bill is that it throws the entire passenger rail system off a cliff, and hopes the safety net will suddenly appear. At least it hopes the NEC is saved. It doesn't deal effectively with other routes, except to remove the cross-subsidy from

the Northeast Corridor that now supports them. These are risks I am not willing to take.

As of now, I must oppose this bill. But I do commend the fact that we are holding a hearing, and hope we can explore many of the subjects raised by the bill. But we certainly shouldn't take the approach that the bill does of, in effect, abolishing Amtrak, and then hoping a proposal will emerge that can adequately replace it. I think that is, to put it mildly, putting the cart before the horse.

I thank you, I yield back.

Mr. MICA. Thank the gentleman. Mr. Cravaack?

Mr. CRAVAACK. Thank you, Mr. Chairman, and I want to begin by commending you and Mr. Shuster for this bold, new direction. I think that Amtrak needs to go. And I thank all the panel for being here, as well, and I look forward to your testimony, and I hope to learn a lot along the way.

Just some comments. I am a pilot from Northwest Airlines—or now Delta—and living through deregulation, or not—but living as a result of deregulation, I can tell you that it is good for the consumer. Some of the arguments I am hearing here today were probably some of the same arguments that we heard about the airline deregulation, as well.

Quite frankly, Amtrak is broken. And the other fact is we are broke. I hear about investment. Where is that investment money going to come from? Right now, 47 percent of our debt is foreign-owned. Do we plan to go to over 50 percent of that debt? Have foreign-owned entities own our debt, and begin to start telling us where we can and cannot invest our money? I am not willing to put my children and my grandchildren at that risk.

When I see investment, or what I think the private sector should be doing, and what they can do, is start investing. The demand is there. And with the demand being there, you are going to see the private sector slip right in and start making profits, accordingly.

When I see competition, what I see is increasing flexibility of schedules, affordability, and quality increasing, as we have seen all through the competition model. I have seen this with the airlines itself.

Einstein had it right. Keeping—doing the same thing over and over again and expecting different results is the true definition of insanity. We cannot continue on with this model. I look forward to hearing what you have to say, and hopefully joining with you and partnering with you in a private enterprise that can create a significantly profitable model that will actually benefit the consumer and have long-term viability without increasing the debt on this country. I thank you very much, and I—Mr. Chairman, I yield back.

Mr. MICA. Thank you. Ms. Norton?

Ms. NORTON. Mr. Chairman, I appreciate this hearing. I mean the last hearing Amtrak wasn't here to talk to—it is like I talk about you while you are not here. It is important to about them and to talk to them, with them here. And so this is an important hearing.

I also think you have every right to be impatient with the backwardness of the United States on high-speed rail. May I remind the chairman that for decades, for almost 75 years, we have sat here

and watched every advanced country—and some not so advanced—develop high-speed rail, and never lift a finger to do anything about it, until the administration, in fact, initiated a stimulus package in the middle of the great recession. It was aimed at finally, finally, starting up a nationwide high-speed rail system, while at the same time offering jobs to the many troubled areas of our country.

That is why we didn't, for example, concentrate on the Northeast Corridor, which would have been more efficient, but that was not what those times called for. In fact, starting it up all across the country made a lot of sense. But we see some States even have decided to give back the money—including your own, Mr. Chairman, despite your best efforts to encourage the State of Florida, one of those most in need of high-speed rail, to proceed.

The criticisms of Amtrak that I have heard here are no substitute for hard thinking about how to fix that system and get high-speed rail. That is the easy part. And I regret that this is an easy solution.

The bill has an encyclopedia of flaws I will not—I will focus on only two of them. I am particularly troubled, by the way, by the cavalier treatment of American workers who have worked for Amtrak for decades. Because this bill surely wipes out their contracts, and undermines their retirement system.

But let me focus on two fatal flaws. It is really surprising to see the Majority introduce a bill that has such Fifth Amendment-taking violations. This bill, if it were ever to get through the Senate—and I don't think anyone entertains the illusion that it would—would be in court if any President ever signed it. I don't want—the constitutional Fifth Amendment takings violations are replete throughout the bill. That, itself, is a fatal flaw.

But there is another fatal flaw in the thinking behind this bill. The authors do not take into account that there is no passenger railroad service in the world today that is not heavily subsidized. The authors wipe out 1970, when the railroads came begging the Federal Government to “Take this off our hands.” Do you think the Federal Government wanted to take on a railroad and subsidize it the way we have done? Of course not. But both then and now, the private sector was not prepared to do what you would have them do now.

Now, they do have a recourse. And, mind you, they will go to that recourse as quick as they were to—to get control of the Northeast Corridor. That recourse is available now. It is prohibited in the United States. It is prohibited in Asia. It is prohibited in Europe. And that is why passenger rail service is heavily subsidized throughout the globe. If you think we are the first country in the world to invent a privatized railroad system, I ask you to look at the history of the world.

This is not deregulation. This is privatization, where the private sector would begin by depending on a Federal subsidy, “Give me the money to write the proposal,” and then would either be begging us for money to keep the fares down or, God help us, would be raising the fares themselves.

This is an interesting exercise, but we ought to understand it is no more than that at a time when we need to get serious about the

business of Amtrak and the hard challenges and problems it poses for this committee. I thank you, Mr. Chairman.

Mr. MICA. I thank the gentlelady. Ms. Napolitano.

Mrs. NAPOLITANO. Thank you, Mr. Chair and Ranking Member Rahall.

I would like to ensure that I agree totally with Ranking Member Brown's comments, am in strong opposition for this bill. It would end intercity passenger rail. And it goes beyond that, especially in my State of California. It gives those assets to the Northeast Corridor and et cetera, et cetera, as we have heard. It Would have a tragic impact on my State of California, most definitely.

We have three of the top five busiest passenger rail corridors in the United States: the Surfliner, the Capital Corridor, the San Joaquin Corridor. And many long-distance Amtrak routes travel through California, including Sunset Limited, which does stop in my district. Metrolink, which is a commuter rail agency of southern California, is operated by Amtrak.

The only way Amtrak would be able to continue operating in California is if the State itself incurred the enormous cost of operation of its equipment, of its maintenance, the station services and support services. And, as we well know, California, along with many other States, is in the doldrums. Their budgets—they are going bankrupt.

So, there will not be any ability to have those States support, due to their major budget constraints. They would help—would actually hinder hundreds of thousands of people ability to travel, and would be able to further clog our California freeways, which are already called parking lots in the sky.

We want, we should, we must assist Amtrak become a more profitable entity, instead of trying to encourage demise. Again, I strongly oppose the Competition for Intercity Passenger Rail in America Act, and I yield back.

Mr. MICA. Mr. Larsen?

Mr. LARSEN. Thank you, Mr. Chairman. At a time when we ought to be improving our domestic infrastructure to remain competitive in the global economy, and to promote growth and efficiency and feed the American market, I think this is exactly the wrong bill at the wrong time. Instead of jeopardizing 20,000 jobs and shutting down an economic driver in many regions in this country, we ought to be investing in our transportation and infrastructure to create jobs in our local community.

This proposal would seriously threaten the promising future—and the promising present, actually—of passenger rail in the Pacific northwest. Without revenues from the Northeast Corridor, Amtrak would shut down their long-distance routes. And certain portions of my State would end, as well. Washington State's passenger rail service is operated by Amtrak, and would face huge cost increases if Amtrak continued to operate.

I also note Washington State, as a State government, is a major contributor to this service in Washington State. The commuter rail, which is operated by Amtrak, would also have to find a new operator.

Washington State's passenger rail ridership has experienced strong growth over the past few years, and our State remains com-

mitted to its future. Our State has received over \$700 million in high-speed rail funds, and these dollars are going to work right now in our local communities, creating jobs and helping commerce to move more efficiently from point to point. And this proposal would be a serious set-back to these efforts.

I am also concerned about this bill's effect on the men and women who work on our railroads. It would abrogate all existing contracts for workers on the Northeast Corridor and other privatized routes, and provides no protections for dismissed personnel. For rail workers in the new system, Davis-Bacon protections would not apply, and they would be exempt from the Railway Labor Act and the railroad retirement and unemployment systems. Without RLA protections, workers would lose their longstanding right to collectively bargain. It would also undermine their railroad retirement system that provides pensions for many people.

This is a job-killing proposal, Mr. Chairman. If you are indeed open to making fixes to it, we look forward—I look forward—to hearing from our witnesses to see what kind of fixes we can make to it. So I look forward to the testimony today, and after a short meeting upstairs I will return to listen to the testimony. Thank you.

Mr. MICA. Any other Members seek recognition?

[No response.]

Mr. MICA. No other Members seek recognition? We have had a request for submission to the record from Ms. Brown of letters, articles, and reports, and they will be made part of the record.

I ask unanimous consent that also—

Ms. BROWN. Mr.—I asked for an extension of 30 days.

Mr. MICA. Extension of 30 days. That is excellent. If Mr. Rahall agrees, we cannot wait to not comply with a 30-day request. Mr. Rahall agrees, so the record will be open for a period of 30 days. And we will hold as many additional hearings as we need to take testimony. Maybe by that time some Members will have had time to read the bill and find out that what they are talking about isn't even in the bill.

But additional unanimous request consents, I have several here. A copy of the letter to myself and Mr. Shuster from Ms. Brown, Mr. Rahall.

[No response.]

Mr. MICA. Without objection, so ordered part of the record.

[The information follows:]



U.S. House of Representatives
Committee on Transportation and Infrastructure

John L. Mica
 Chairman

Washington, DC 20515

Rich F. Raball, III
 Ranking Member

James W. Coon II, Chief of Staff

June 15, 2011

James H. Zola, Demoral Chief of Staff

The Honorable John L. Mica
 Chairman
 Committee on Transportation and Infrastructure
 U.S. House of Representatives
 Washington, DC 20515

The Honorable Bill Shuster
 Chairman
 Subcommittee on Railroads, Pipelines and Hazardous Materials
 U.S. House of Representatives
 Washington, DC 20515

Dear Chairman Mica and Chairman Shuster:

We write regarding the proposal that you unveiled this morning for "a dramatically new approach" to privatize intercity passenger and high-speed rail in the United States, and in particular the Northeast Corridor. During the briefing, you mentioned that you plan to introduce legislation next Tuesday and mark it up the following day, Wednesday, June 22, 2011.

As Ranking Member of the Committee on Transportation and Infrastructure and the Subcommittee on Railroads, Pipelines, and Hazardous Materials, we request that the Committee hold a legislative hearing on the bill before the Committee formally considers the legislation at either a Full Committee or Subcommittee markup. This legislation, which you state makes sweeping changes to the national passenger rail system, has not been shared with Democratic Members or staff; we have not been briefed on the proposal; and it is not yet available for public review. We believe there should be an opportunity to have a formal discussion on this legislation that would allow all interested and affected parties to participate before moving it through the Committee process. Legislative hearings would provide an appropriate public forum for such a discussion.

The Honorable John L. Mica
The Honorable Bill Shuster
June 15, 2011
Page 2

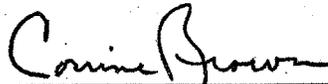
We have long supported improving passenger rail service in this country and believe if we are going to move any legislation forward that attempts to make such sweeping changes of our national passenger rail service, each Member of our Committee must have the time to read and review the legislation. Your proposal has serious ramifications, not only for Amtrak and the Northeast Corridor but for all States and communities across the nation that may lose their long- and short-distance train service. Before we are required to cast a vote on your bill, each Member of our Committee should also have the opportunity at Committee hearings to hear and question impacted parties on this legislation regarding the potential impacts on passenger rail service, jobs, Amtrak, commuter and freight rail, and the American taxpayer.

Thank you for your consideration.

Sincerely,



NICK J. RAHALL, II
Ranking Democratic Member
Committee on Transportation and Infrastructure



CORRINE BROWN
Ranking Democratic Member
Subcommittee on Railroads,
Pipelines, and Hazardous Materials



U.S. House of Representatives
Committee on Transportation and Infrastructure

John L. Mica
 Chairman

Washington, DC 20515

Nick J. Rahall, II
 Ranking Member

James W. Coon II, Chief of Staff

June 16, 2011

James H. Zola, Democrat Chief of Staff

The Honorable Nick J. Rahall, II
 Ranking Member
 Committee on Transportation and Infrastructure
 U.S. House of Representatives
 Washington, DC 20515

The Honorable Corrine Brown
 Ranking Member
 Subcommittee on Railroads, Pipelines, and Hazardous Materials
 U.S. House of Representatives
 Washington, DC 20515

Dear Ranking Member Rahall and Ranking Member Brown:

Thank you for your letter dated June 15, 2011, regarding the roll out of Competition for Intercity Passenger Rail in America Act of 2011. We share your interest in improving intercity passenger rail service for our country, which is why we have already held a number of hearings since January of this year on how to best accomplish this goal.

As you will recall, the Committee's first hearing of the session was a full Committee field hearing in New York on January 27th entitled, "Developing True High-Speed Rail in the Northeast Corridor: Stop Sitting on our Federal Assets." The six hearing witnesses spoke on the importance of high-speed rail for the Northeast Corridor and the need for competition and public-private partnerships to help achieve that goal. Directly following the hearing, the Committee held a robust roundtable discussion with a diverse and large group of participants, including Amtrak, the Federal Railroad Administration, the Northeast Corridor Advisory Committee, union representatives, private investors, and others.

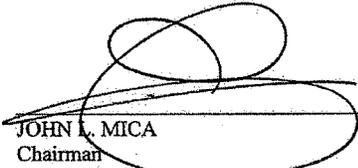
Building on the information developed from the January hearing and roundtable, the Subcommittee held a hearing on March 11th on "Finding Ways to Encourage and Increase Private Sector Participation in Passenger Rail Service." The Federal Railroad Administration and Amtrak both testified at this hearing, as the subcommittee explored different ways to enhance and improve intercity passenger rail, including allowing private sector participation.

The full Committee held a second Northeast Corridor-focused hearing on May 26th, entitled, "Opening the Northeast Corridor to Private Competition for the Development of High-Speed Rail." There, with the help of six witnesses, including union representatives, private investors, academia, and other interested parties, the Committee discussed alternatives that would bring high-speed rail to the Northeast Corridor through private competition.

We are grateful for the high level of Member interest and the extensive questions, comments, and expertise from witnesses, participants, and Members at these hearings, which have helped to bring a variety of perspectives to our exploration of this issue.

Throughout these hearings, we have been open with our ideas for developing high-speed rail and increasing competition for intercity passenger rail. We have attached the draft bill, Competition for Intercity Passenger Rail in America and have made it publicly available on the Committee website for comment. We invite your recommendations to improve the draft legislation now and at the Full Committee markup next week.

Sincerely,



JOHN L. MICA
Chairman
Committee on Transportation and Infrastructure



BILL SHUSTER
Chairman
Subcommittee on Railroads,
Pipelines, and Hazardous Materials

Attachment

Mr. MICA. This is a list of the hearings on intercity rail competition that we did so far in the committee: January 27th in New York City; March 11, 2011, here in Washington; and then May 26th here in Washington. Also, a list of the witnesses who testified on bringing competition into the passenger rail service. That will be made part of the record.

[The information follows:]

2011 Hearings on Intercity Rail Competition

1. “Developing True High-Speed Rail in the Northeast Corridor: Stop Sitting on Our Federal Assets,” *January 27, 2011*
 - The Honorable Michael Bloomberg, Mayor, City of New York
 - The Honorable Ed Rendell, Co-Chair, Building America’s Future
 - Mr. Thomas Hart, Vice President, Governmental Affairs, U.S. High Speed Rail Association
 - Ms. Petra Todorovich, Director, America 2050, *Representing* the Business Alliance for Northeast Mobility
 - Mr. Perry Offutt, Managing Director, Morgan Stanley
 - Mr. Robert Scardelletti, International President, Transportation Communications International Union

2. “Finding Ways to Encourage and Increase Private Sector Participation in Passenger Rail Service,” *March 11, 2011*
 - The Honorable Joseph Szabo, Administrator, FRA
 - Stephen Gardner, Vice President of Policy & Development, Amtrak
 - Pat Simmons, Rail Division Director, North Carolina Department of Transportation
 - John H. Broadley, John H. Broadley & Associates, P.C.
 - Stan Feinsod, Secretary & Treasurer, Association of Independent Passenger Rail Operators
 - Edward Wytkind, President, Transportation Trades Department, AFL-CIO

3. “Opening the Northeast Corridor to Private Competition for the Development of High-Speed Rail,” *May 26, 2011*
 - Senator Frank R. Lautenberg, New Jersey
 - Carlos Bonilla, Adjunct Fellow, Reason Foundation
 - Ignacio Jayanti, President, Corsair Capital
 - James H. Richardson, Senior Vice President, Real Estate Asset Services, Forest City Enterprises
 - Thomas Hart, Vice President, Governmental Affairs, U.S. High Speed Rail Association
 - Michael Goetz, Executive Director, Railroad Cooperation and Education Trust
 - Edward Wytkind, President, Transportation-Trades Department, AFL-CIO

Mr. MICA. And also made part of the record, I want to reference the cover page of the PRIIA Act—the gentlelady from the District said that nothing had been done relating to high-speed passenger rail service—which is signed by President Bush. I helped author the high-speed rail provisions signed by the President October 2008.

In the first passenger rail reauthorization in some 11 years undertaken by Congress, and then the point also that there are not systems that make money, we will take a page from our introductory document that is entitled, “International Competition Success Stories,” and show exactly where some routes have been, in fact, turning a profit, increasing employment dramatically, and providing good economic opportunity. So we will put that in the record, too.

[The information follows:]



PUBLIC LAW 110-432—OCT. 16, 2008

FEDERAL RAIL SAFETY IMPROVEMENTS

- (1) in Vancouver, Canada, no later than June 1, 2009; and
 (2) in other areas as determined appropriate by the Secretary.
- Canada.
Deadline.

SEC. 407. HISTORIC PRESERVATION OF RAILROADS.

(a) **STUDY; OTHER ACTIONS.**—The Secretary of Transportation shall— State listing.

(1) conduct a study, in consultation with the Advisory Council on Historic Preservation, the National Conference of State Historic Preservation Officers, the Department of the Interior, appropriate representatives of the railroad industry, and representative stakeholders, on ways to streamline compliance with the requirements of section 303 of title 49, United States Code, and section 106 of the National Historic Preservation Act (16 U.S.C. 470f) for federally funded railroad infrastructure repair and improvement projects;

(2) take immediate action to cooperate with the Alaska Railroad, the Alaska State Historic Preservation Office, the Advisory Council on Historic Preservation, and the Department of the Interior, in expediting the decisionmaking process for safety-related projects of the railroad involving property and facilities that have disputed historic significance; and

(3) take immediate action to cooperate with the North Carolina Department of Transportation, the North Carolina State Historic Preservation Office, the Virginia State Historic Preservation Office, the Advisory Council on Historic Preservation, and the Department of the Interior, in expediting the decisionmaking process for safety-related railroad projects of the North Carolina Department of Transportation and the Southeast High Speed Rail Corridor involving property and facilities that have disputed historic significance.

(b) **REPORT.**—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit, to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, a report on the results of the study conducted under subsection (a)(1) and the actions directed under subsection (a)(2) and (3). The report shall include recommendations for any regulatory or legislative amendments that may streamline compliance with the requirements described in subsection (a)(1) in a manner consistent with railroad safety and the policies and purposes of section 106 of the National Historic Preservation Act (16 U.S.C. 470f), section 303 of title 49, United States Code, and section 8(d) of Public Law 90-543 (16 U.S.C. 1247(d)).

TITLE V—HIGH-SPEED RAIL**SEC. 501. HIGH-SPEED RAIL CORRIDOR PROGRAM.**

- (a) **CORRIDOR PLANNING.**—Section 26101 is amended— 49 USC 26101.
- (1) in the section heading, by striking “**Corridor development**” and inserting “**High-speed rail corridor planning**”;
- (2) in the heading of subsection (a), by striking “CORRIDOR DEVELOPMENT” and inserting “CORRIDOR PLANNING”;
- (3) by striking “corridor development” each place it appears and inserting “corridor planning”; and

(4) in subsection (c)(2), by striking “development” and inserting “planning”.

49 USC 26104.

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 26104 is amended in paragraph (1) of subsection (a) by striking “\$70,000,000” and inserting “\$30,000,000”.

(c) CONFORMING AMENDMENT.—The item relating to section 26101 in the table of sections of chapter 261 is amended by striking “Corridor development” and inserting “High-speed rail corridor planning”.

(d) HIGH-SPEED RAIL CORRIDOR DEVELOPMENT.—Chapter 261 is amended by adding at the end thereof the following:

“§ 26106. High-speed rail corridor development

“(a) IN GENERAL.—The Secretary of Transportation shall establish and implement a high-speed rail corridor development program.

“(b) DEFINITIONS.—In this section, the following definitions apply:

“(1) APPLICANT.—The term ‘applicant’ means a State, a group of States, an Interstate Compact, a public agency established by one or more States and having responsibility for providing high-speed rail service, or Amtrak.

“(2) CORRIDOR.—The term ‘corridor’ means a corridor designated by the Secretary pursuant to section 104(d)(2) of title 23.

“(3) CAPITAL PROJECT.—The term ‘capital project’ means a project or program in a State rail plan developed under chapter 227 of this title for acquiring, constructing, improving, or inspecting equipment, track, and track structures, or a facility of use in or for the primary benefit of high-speed 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 high-speed rail service, mitigating environmental impacts, communication and signalization improvements, relocation assistance, acquiring replacement housing sites, and acquiring, constructing, relocating, and rehabilitating replacement housing.

“(4) HIGH-SPEED RAIL.—The term ‘high-speed rail’ means intercity passenger rail service that is reasonably expected to reach speeds of at least 110 miles per hour.

“(5) INTERCITY PASSENGER RAIL SERVICE.—The term ‘intercity passenger rail service’ has the meaning given the term ‘intercity rail passenger transportation’ in section 24102 of this title.

“(6) STATE.—The term ‘State’ means any of the 50 States or the District of Columbia.

“(c) GENERAL AUTHORITY.—The Secretary may make grants under this section to an applicant to finance capital projects in high-speed rail corridors.

“(d) APPLICATIONS.—Each applicant seeking to receive a grant under this section to develop a high-speed rail corridor shall submit to the Secretary an application in such form and in accordance with such requirements as the Secretary shall establish.

“(e) COMPETITIVE GRANT SELECTION AND CRITERIA FOR GRANTS.—

“(1) IN GENERAL.—The Secretary shall—

“(A) establish criteria for selecting among projects that meet the criteria specified in paragraph (2);

“(B) conduct a national solicitation for applications; and

“(C) award grants on a competitive basis.

“(2) GRANT CRITERIA.—The Secretary, in selecting the recipients of high-speed rail development grants to be provided under subsection (c), shall—

“(A) require—

“(i) that the project be part of a State rail plan developed under chapter 227 of this title, or under the plan required by section 211 of the Passenger Rail Investment and Improvement Act of 2008;

“(ii) 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;

“(iii) that the project be based on the results of preliminary engineering studies or other planning, including corridor planning activities funded under section 26101 of this title;

“(iv) that the applicant provides sufficient information upon which the Secretary can make the findings required by this subsection;

“(v) that if an applicant has selected the proposed operator of its service, that the applicant provide written justification to the Secretary showing why the proposed operator is the best, taking into account costs and other factors;

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

“(vii) that each project be compatible with, and operated in conformance with—

“(I) plans developed pursuant to the requirements of section 135 of title 23; and

“(II) the national rail plan (if it is available);

“(B) select high-speed rail projects—

“(i) that are anticipated to result in significant improvements to intercity rail passenger service, including, but not limited to, consideration of the project’s—

“(I) 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 207 of the Passenger Rail Investment and Improvement Act of 2008;

“(II) anticipated favorable impact on air or highway traffic congestion, capacity, or safety; and

“(ii) for which there is a high degree of confidence that the proposed project is feasible and will result in the anticipated benefits, as indicated by—

“(I) the project’s precommencement compliance with environmental protection requirements;

“(II) the readiness of the project to be commenced;

“(III) the commitment of any affected host rail carrier to ensure the realization of the anticipated benefits; and

“(IV) other relevant factors as determined by the Secretary;

“(iii) for which the level of the anticipated benefits compares favorably to the amount of Federal funding requested under this section; and

“(C) give greater consideration to projects—

“(i) that are anticipated to result in benefits to other modes of transportation and to the public at large, including, but not limited to, consideration of the project’s—

“(I) encouragement of intermodal connectivity through provision of direct connections between train stations, airports, bus terminals, subway stations, ferry ports, and other modes of transportation;

“(II) anticipated improvement of conventional intercity passenger, freight, or commuter rail operations;

“(III) use of positive train control technologies;

“(IV) environmental benefits, including projects that involve the purchase of environmentally sensitive, fuel-efficient, and cost-effective passenger rail equipment;

“(V) anticipated positive economic and employment impacts;

“(VI) encouragement of State and private contributions toward station development, energy and environmental efficiency, and economic benefits; and

“(VII) falling under the description in section 5302(a)(1)(G) of this title as defined to support intercity passenger rail service; and

“(ii) that incorporate equitable financial participation in the project’s financing, including, but not limited to, consideration of—

“(I) donated property interests or services;

“(II) financial contributions by intercity passenger, freight, and commuter rail carriers commensurate with the benefit expected to their operations; and

“(III) financial commitments from host railroads, non-Federal governmental entities, non-governmental entities, and others.

“(3) GRANT CONDITIONS.—The Secretary shall require each recipient of a grant under this chapter to comply with the grant requirements of section 24405 of this title.

“(4) STATE RAIL PLANS.—State rail plans completed before the date of enactment of the Passenger Rail Investment and Improvement Act of 2008 that substantially meet the requirements of chapter 227 of this title, as determined by the Secretary pursuant to section 22506 of this title, shall be deemed

by the Secretary to have met the requirements of paragraph (2)(A)(i) of this subsection.

“(f) FEDERAL SHARE.—The Federal share of the cost of a project financed under this section shall not exceed 80 percent of the project net capital cost.

“(g) ISSUANCE OF REGULATIONS.—Within 1 year after the date of enactment of this section, the Secretary shall issue regulations to carry out this section. Deadline.

“(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out this section—

- “(1) \$150,000,000 for fiscal year 2009;
- “(2) \$300,000,000 for fiscal year 2010;
- “(3) \$350,000,000 for fiscal year 2011;
- “(4) \$350,000,000 for fiscal year 2012; and
- “(5) \$350,000,000 for fiscal year 2013.”.

(e) TABLE OF SECTIONS AMENDMENT.—The table of sections for chapter 261 is amended by adding after the item relating to section 26105 the following new item:

“26106. High-speed rail corridor development.”.

SEC. 502. ADDITIONAL HIGH-SPEED RAIL PROJECTS.

49 USC 26106
note.

(a) SOLICITATION OF PROPOSALS.—

(1) IN GENERAL.—Not later than 60 days after the date of enactment of this Act, the Secretary shall issue a request for proposals for projects for the financing, design, construction, operation, and maintenance of a high-speed intercity passenger rail system operating within a high-speed rail corridor, including—

- (A) the Northeast Corridor;
- (B) the California Corridor;
- (C) the Empire Corridor;
- (D) the Pacific Northwest Corridor;
- (E) the South Central Corridor;
- (F) the Gulf Coast Corridor;
- (G) the Chicago Hub Network;
- (H) the Florida Corridor;
- (I) the Keystone Corridor;
- (J) the Northern New England Corridor; and
- (K) the Southeast Corridor.

(2) SUBMISSION.—Proposals shall be submitted to the Secretary not later than 270 days after the publication of such request for proposals under paragraph (1). Deadline.

(3) PERFORMANCE STANDARD.—Proposals submitted under paragraph (2) must meet any standards established by the Secretary. For corridors with existing intercity passenger rail service, proposals shall also be designed to achieve a reduction of existing minimum intercity rail service trip times between the main corridor city pairs by a minimum of 25 percent. In the case of a proposal submitted with respect to paragraph (1)(A), the proposal must be designed to achieve a 2-hour or less express service between Washington, District of Columbia, and New York City, New York.

(4) CONTENTS.—A proposal submitted under this subsection shall include—

- (A) the names and qualifications of the persons submitting the proposal and the entities proposed to finance,

design, construct, operate, and maintain the railroad, railroad equipment, and related facilities, stations, and infrastructure;

(B) a detailed description of the proposed rail service, including possible routes, required infrastructure investments and improvements, equipment needs and type, train frequencies, peak and average operating speeds, and trip times;

(C) a description of how the project would comply with Federal rail safety and security laws, orders, and regulations governing high-speed rail operations;

(D) the locations of proposed stations, which maximize the usage of existing infrastructure to the extent possible, and the populations such stations are intended to serve;

(E) the type of equipment to be used, including any technologies, to achieve trip time goals;

(F) a description of any proposed legislation needed to facilitate all aspects of the project;

(G) a financing plan identifying—

(i) projected revenue, and sources thereof;

(ii) the amount of any requested public contribution toward the project, and proposed sources;

(iii) projected annual ridership projections for the first 10 years of operations;

(iv) annual operations and capital costs;

(v) the projected levels of capital investments required both initially and in subsequent years to maintain a state-of-good-repair necessary to provide the initially proposed level of service or higher levels of service;

(vi) projected levels of private investment and sources thereof, including the identity of any person or entity that has made or is expected to make a commitment to provide or secure funding and the amount of such commitment; and

(vii) projected funding for the full fair market compensation for any asset, property right or interest, or service acquired from, owned, or held by a private person or Federal entity that would be acquired, impaired, or diminished in value as a result of a project, except as otherwise agreed to by the private person or entity;

(H) a description of how the project would contribute to the development of a national high-speed rail system and an intermodal plan describing how the system will facilitate convenient travel connections with other transportation services;

(I) a description of how the project will ensure compliance with Federal laws governing the rights and status of employees associated with the route and service, including those specified in section 24405 of title 49, United States Code;

(J) a description of how the design, construction, implementation, and operation of the project will accommodate and allow for future growth of existing and projected intercity, commuter, and freight rail service;

(K) a description of how the project would comply with Federal and State environmental laws and regulations, of what the environmental impacts would result from the project, and how any adverse impacts would be mitigated; and

(L) a description of the project's impacts on highway and aviation congestion, energy consumption, land use, and economic development in the service area.

(b) DETERMINATION AND ESTABLISHMENT OF COMMISSIONS.— Not later than 60 days after receipt of the proposals under subsection (a), the Secretary shall—

Deadline.

(1) make a determination as to whether any such proposals—

(A) contain the information required under subsection (a)(3) and (4);

(B) are sufficiently credible to warrant further consideration;

(C) are likely to result in a positive impact on the Nation's transportation system; and

(D) are cost-effective and in the public interest; and

(2) establish a commission under subsection (c) for each corridor with one or more proposals that the Secretary determines satisfies the requirements of paragraph (1), and forward to each commission such proposals for review and consideration.

(c) COMMISSIONS.—

(1) MEMBERS.—Each commission referred to in subsection (b)(2) shall include—

(A) the governors of the affected States, or their respective designees;

(B) mayors of appropriate municipalities along the proposed corridor, or their respective designees;

(C) a representative from each freight railroad carrier using the relevant corridor, if applicable;

(D) a representative from each transit authority using the relevant corridor, if applicable;

(E) representatives of nonprofit employee labor organizations representing affected railroad employees; and

(D) the President of Amtrak or his or her designee.

(2) APPOINTMENT AND SELECTION.—The Secretary shall appoint the members under paragraph (1). In selecting each commission's members to fulfill the requirements under paragraph (1)(B) and (E), the Secretary shall consult with the Chairmen and Ranking Members of the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

Consultation.

(3) CHAIRPERSON AND VICE-CHAIRPERSON SELECTION.—The Chairperson and Vice-Chairperson shall be elected from among members of each commission.

(4) QUORUM AND VACANCY.—

(A) QUORUM.—A majority of the members of each commission shall constitute a quorum.

(B) VACANCY.—Any vacancy in each commission shall not affect its powers and shall be filled in the same manner in which the original appointment was made.

(5) APPLICATION OF LAW.—Except where otherwise provided by this section, the Federal Advisory Committee Act (P.L. 92-463) shall apply to each commission created under this section.

(d) COMMISSION CONSIDERATION.—

Deadline.
Reports.

(1) IN GENERAL.—Each commission established under subsection (b)(2) shall be responsible for reviewing the proposal or proposals forwarded to it under that subsection and not later than 90 days after the establishment of the commission, shall transmit to the Secretary a report which includes—

(A) a summary of each proposal received;

(B) services to be provided under each proposal, including projected ridership, revenues, and costs;

(C) proposed public and private contributions for each proposal;

(D) the advantages offered by the proposal over existing intercity passenger rail services;

(E) public operating subsidies or assets needed for the proposed project;

(F) possible risks to the public associated with the proposal, including risks associated with project financing, implementation, completion, safety, and security;

(G) a ranked list of the proposals recommended for further consideration under subsection (e) in accordance with each proposal's projected positive impact on the Nation's transportation system;

(H) an identification of any proposed Federal legislation that would facilitate implementation of the projects and Federal legislation that would be required to implement the projects; and

(I) any other recommendations by the commission concerning the proposed projects.

(2) VERBAL PRESENTATION.—Proposers shall be given an opportunity to make a verbal presentation to the commission to explain their proposals.

(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for the use of each commission established under subsection (b)(2) such sums as are necessary to carry out this section.

(e) SELECTION BY SECRETARY.—

Deadline.

(1) Not later than 60 days after receiving the recommended proposals of the commissions established under subsection (b)(2), the Secretary shall—

(A) review such proposals and select any proposal which provides substantial benefits to the public and the national transportation system, is cost-effective, offers significant advantages over existing services, and meets other relevant factors determined appropriate by the Secretary; and

Reports.

(B) issue a report to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate containing any proposal with respect to subsection (a)(1)(A) that is selected by the Secretary under subparagraph (A) of this paragraph, all the information regarding the proposal provided to the Secretary under subsection (d), and any other relevant information deemed appropriate.

(2) Following the submission of the report under paragraph (1)(B), the Secretary shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report containing any proposal with respect to subparagraphs (B) through (K) of subsection (a)(1) that are selected by the Secretary under paragraph (1) of this subsection, all the information regarding the proposal provided to the Secretary under subsection (d), and any other relevant information deemed appropriate. Reports.

(3) The report required under paragraph (2) shall not be submitted by the Secretary until the report submitted under paragraph (1) has been considered through a hearing by the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on the report submitted under paragraph (1)(B).

(f) PRELIMINARY ENGINEERING.—For planning and preliminary engineering activities that meet the criteria of section 26101 of title 49, United States Code, (other than subsections (a) and (b)(2)) that are undertaken after the Secretary submits reports to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate as required under subsection (e), not to exceed \$5,000,000 is authorized to be appropriated from funds made available under section 26104(a) of such title. Only 1 proposal for each corridor under subsection (a) shall be eligible for such funds. Appropriation authorization.

(g) NO ACTIONS WITHOUT ADDITIONAL AUTHORITY.—No Federal agency may take any action to implement, establish, facilitate, or otherwise act upon any proposal submitted under this section, other than those actions specifically authorized by this section, without explicit statutory authority enacted after the date of enactment of this Act.

(h) DEFINITIONS.—In this section, the following definitions apply:

(1) INTERCITY PASSENGER RAIL.—The term “intercity passenger rail” means intercity rail passenger transportation as defined in section 24102 of title 49, United States Code.

(2) STATE.—The term “State” means any of the 50 States or the District of Columbia.

(3) NORTHEAST CORRIDOR.—The term “Northeast Corridor” has the meaning given under section 24102 of title 49, United States Code.

(4) HIGH-SPEED RAIL CORRIDOR.—The terms “high-speed rail corridor” and “corridor” mean a corridor designated by the Secretary pursuant to section 104(d)(2) of title 23, United States Code, and the Northeast Corridor.

**TITLE VI—CAPITAL AND PREVENTIVE
MAINTENANCE PROJECTS FOR WASH-
INGTON METROPOLITAN AREA TRAN-
SIT AUTHORITY**

SEC. 601. AUTHORIZATION FOR CAPITAL AND PREVENTIVE MAINTENANCE PROJECTS FOR WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY.

Grants.

(a) AUTHORIZATION.—

(1) IN GENERAL.—Subject to the succeeding provisions of this section, the Secretary of Transportation is authorized to make grants to the Transit Authority, in addition to the contributions authorized under sections 3, 14, and 17 of the National Capital Transportation Act of 1969 (sec. 9–1101.01 et seq., D.C. Official Code), for the purpose of financing in part the capital and preventive maintenance projects included in the Capital Improvement Program approved by the Board of Directors of the Transit Authority.

(2) DEFINITIONS.—In this section—

(A) the term “Transit Authority” means the Washington Metropolitan Area Transit Authority established under Article III of the Compact; and

(B) the term “Compact” means the Washington Metropolitan Area Transit Authority Compact (80 Stat. 1324; Public Law 89–774).

Grants.

(b) USE OF FUNDS.—The Federal grants made pursuant to the authorization under this section shall be subject to the following limitations and conditions:

(1) The work for which such Federal grants are authorized shall be subject to the provisions of the Compact (consistent with the amendments to the Compact described in subsection (d)).

(2) Each such Federal grant shall be for 50 percent of the net project cost of the project involved, and shall be provided in cash from sources other than Federal funds or revenues from the operation of public mass transportation systems. Consistent with the terms of the amendment to the Compact described in subsection (d)(1), any funds so provided shall be solely from undistributed cash surpluses, replacement or depreciation funds or reserves available in cash, or new capital.

(3) Such Federal grants may be used only for the maintenance and upkeep of the systems of the Transit Authority as of the date of the enactment of this Act and may not be used to increase the mileage of the rail system.

(c) APPLICABILITY OF REQUIREMENTS FOR MASS TRANSPORTATION CAPITAL PROJECTS RECEIVING FUNDS UNDER FEDERAL TRANSPORTATION LAW.—Except as specifically provided in this section, the use of any amounts appropriated pursuant to the authorization under this section shall be subject to the requirements applicable to capital projects for which funds are provided under chapter 53 of title 49, United States Code, except to the extent that the Secretary of Transportation determines that the requirements are inconsistent with the purposes of this section.

(d) AMENDMENTS TO COMPACT.—No amounts may be provided to the Transit Authority pursuant to the authorization under this section until the Transit Authority notifies the Secretary of Transportation that each of the following amendments to the Compact (and any further amendments which may be required to implement such amendments) have taken effect: Notification.

(1)(A) An amendment requiring that all payments by the local signatory governments for the Transit Authority for the purpose of matching any Federal funds appropriated in any given year authorized under subsection (a) for the cost of operating and maintaining the adopted regional system are made from amounts derived from dedicated funding sources.

(B) For purposes of this paragraph, the term “dedicated funding source” means any source of funding which is earmarked or required under State or local law to be used to match Federal appropriations authorized under this division for payments to the Transit Authority.

(2) An amendment establishing an Office of the Inspector General of the Transit Authority.

(3) An amendment expanding the Board of Directors of the Transit Authority to include 4 additional Directors appointed by the Administrator of General Services, of whom 2 shall be nonvoting and 2 shall be voting, and requiring one of the voting members so appointed to be a regular passenger and customer of the bus or rail service of the Transit Authority.

(e) ACCESS TO WIRELESS SERVICE IN METRORAIL SYSTEM.—

(1) REQUIRING TRANSIT AUTHORITY TO PROVIDE ACCESS TO SERVICE.—No amounts may be provided to the Transit Authority pursuant to the authorization under this section unless the Transit Authority ensures that customers of the rail service of the Transit Authority have access within the rail system to services provided by any licensed wireless provider that notifies the Transit Authority (in accordance with such procedures as the Transit Authority may adopt) of its intent to offer service to the public, in accordance with the following timetable: Deadlines. Notification.

(A) Not later than 1 year after the date of the enactment of this Act, in the 20 underground rail station platforms with the highest volume of passenger traffic.

(B) Not later than 4 years after such date, throughout the rail system.

(2) ACCESS OF WIRELESS PROVIDERS TO SYSTEM FOR UPGRADES AND MAINTENANCE.—No amounts may be provided to the Transit Authority pursuant to the authorization under this section unless the Transit Authority ensures that each licensed wireless provider who provides service to the public within the rail system pursuant to paragraph (1) has access to the system on an ongoing basis (subject to such restrictions as the Transit Authority may impose to ensure that such access will not unduly impact rail operations or threaten the safety of customers or employees of the rail system) to carry out emergency repairs, routine maintenance, and upgrades to the service.

(3) PERMITTING REASONABLE AND CUSTOMARY CHARGES.—Nothing in this subsection may be construed to prohibit the Transit Authority from requiring a licensed wireless provider

to pay reasonable and customary charges for access granted under this subsection.

(4) REPORTS.—Not later than 1 year after the date of the enactment of this Act, and each of the 3 years thereafter, the Transit Authority shall submit to the Committee on Oversight and Government Reform of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a report on the implementation of this subsection.

(5) DEFINITION.—In this subsection, the term “licensed wireless provider” means any provider of wireless services who is operating pursuant to a Federal license to offer such services to the public for profit.

Appropriation
authorization.

(f) AMOUNT.—There are authorized to be appropriated to the Secretary of Transportation for grants under this section an aggregate amount not to exceed \$1,500,000,000 to be available in increments over 10 fiscal years beginning in fiscal year 2009, or until expended.

(g) AVAILABILITY.—Amounts appropriated pursuant to the authorization under this section shall remain available until expended.

Approved October 16, 2008.

LEGISLATIVE HISTORY—H.R. 2095 (S. 1889):

HOUSE REPORTS: No. 110-336 (Comm. on Transportation and Infrastructure).

SENATE REPORTS: No. 110-270 accompanying S. 1889 (Comm. on Commerce, Science, and Transportation).

CONGRESSIONAL RECORD:

Vol. 153 (2007): Oct. 17, considered and passed House.

Vol. 154 (2008): Aug. 1, considered and passed Senate, amended.

Sept. 24, House concurred in Senate amendment with an amendment pursuant to H. Res. 1492.

Oct. 1, Senate concurred in House amendment.

INTERNATIONAL COMPETITION SUCCESS STORIES

Internationally, the private sector successfully operates passenger rail and is profitable. It is important that the U.S. learn from both the successes and errors of other countries' high-speed rail initiatives.

In 2004, private sector operator Virgin Rail began providing rail service in Great Britain. The company doubled the London to Manchester corridor's ridership in six years, with employment increases from 2,800 to 3,500. From a 2004 debt of \$406.9 million, Virgin Rail in 2010 returned to the government a payment of \$244 million and \$81 million to investors.

Similarly, in Japan, after privatization in 1987, annual total ridership for JR Central, which operates the Tokyo to Osaka high-speed rail line, has increased from 102 million to 151 million riders, while revenues have increased 52% from 1988 to 2008. The Tokyo to Osaka line is the world's first high-speed rail line, running a substantially longer distance in less time than Amtrak's DC to New York route.

It's time for a new direction in the critical NEC transportation corridor.

International Competition Success							
Country	Structure	Ridership Information			Line Distances	Travel Time	Profitability
United Kingdom West Coast Line Virgin Rail	Competitive operations	2004 14 million	2010 28.6 million	100% increase	London – Manchester 164 miles	2 hours	In past six years, went from \$406.9 million in debt to \$244.1 million paid to the government and \$81.4 million in Virgin profits.
Japan JR Central	Regionalized private operators	2004 132 million	2010 138 million	5% increase	Tokyo – Osaka 320 miles	2 hrs, 25 min	In the twenty years since privatization in 1987, revenues have increased 52%.
United States Amtrak	Government subsidized monopoly	2004 10.9 million	2010 10.5 million	4% decrease	D.C. – New York 225 miles New York – Boston 230 miles	D.C. – New York 2 hrs, 45 min New York – Boston 3 hrs, 30 min	Passengers subsidize each Amtrak ticket at an average of \$54.48.

Mr. MICA. Anyone else have anything they would like to add to the record?

[No response.]

Mr. MICA. OK. There being no additional unanimous request consents, we will now turn to our witnesses, who have been waiting patiently. We thank them for coming in today and having the opportunity to hear from them.

We will start—I won't introduce all of them, they are likely suspects we have had before, and are pleased to see.

Incidentally, I think what has been customary in the past is we were offered one witness in the past, and the last time I think there was a reference that we didn't have Mr. Boardman, because the one witness chosen by the Minority was a labor representative. But today I wanted to make certain that we had both Mr. Boardman and a labor representative. So they have been chosen by the Minority.

And to lead, we will start with Mr. Boardman, who has been requested to testify.

The other thing, too, I would like you to do is please don't rattle on about Amtrak going, you know, to Hades and all of that. What I would like to do is focus—this is a hearing on the committee draft. If you have suggestions for language, we would like to have them. For changes—I have already discussed some of the changes I would like to see with Mr. Rahall from the committee print. And that is what the purpose of this hearing is, how we can craft legislation that will allow us to increase passenger rail service and create high-speed rail service in the United States of America. That is the whole purpose, no other purpose that we are here for. And I will cut you off.

So, if you got statements to read that just go on and on, you are going to get cut off. I want to hear specific—this is committee print, "Competition for Intercity Passenger Rail Service in America," and a hearing on that draft, and I want to hear specifics on the language, positive recommendations or, if you have something critical of them that we can work together on, we would love to hear from you. But that is the way we are going to proceed.

I am very pleased and—he takes a beating from time to time, sometimes from me unwarranted, and I apologize publicly for that—but he does as good a job with the cards he is dealt. I am just trying to rearrange the cards for Mr. Boardman. Welcome, Mr. Boardman.

TESTIMONY OF JOSEPH H. BOARDMAN, PRESIDENT AND CHIEF EXECUTIVE OFFICER, AMTRAK; R. RICHARD GEDDES, ADJUNCT SCHOLAR, AMERICAN ENTERPRISE INSTITUTE; ANNE D. STUBBS, EXECUTIVE DIRECTOR, COALITION OF NORTHEASTERN GOVERNORS; WILLIAM MILLAR, PRESIDENT, AMERICAN PUBLIC TRANSPORTATION ASSOCIATION; THOMAS A. HART, JR., ESQ., VICE PRESIDENT FOR GOVERNMENT AFFAIRS AND GENERAL COUNSEL, US HIGH SPEED RAIL ASSOCIATION; AND EDWARD WYTKIND, PRESIDENT, TRANSPORTATION TRADES DEPARTMENT, AFL-CIO

Mr. BOARDMAN. Thank you, Chairman Mica, and Ranking Member Rahall, and all. Good afternoon.

For 40 years, Amtrak has been America's only high-speed rail operator, and it has managed the Federal investment on the Northeast Corridor to transform infrastructure and operations. Today we are a world leader, in terms of cost recovery and operating efficiency, the most efficient passenger railroad in America, and one of the most efficient in the world.

We share your advocacy for high-speed rail development in the Northeast Corridor, and support some of the broad objectives your bill seeks to advance, such as encouraging private sector investment, reducing Northeast Corridor trip times, and increasing Northeast Corridor high-speed rail service frequency.

Amtrak is well along in its own initiatives on this front. Amtrak has created a "Next Generation High-Speed Rail" plan for the Northeast Corridor, which has received many positive international peer reviews, and we are now moving forward on implementation.

A key to that progress will be for Amtrak to secure private funding, using more creative approaches than we have been open to in the past. The world's infrastructure needs have created new financial tools for major world-class projects, such as ours.

Amtrak intends to use those tools to realize our plan with our experience with positive peer reviews, with recent agreements developed with respected partners, and with our improved financial performance on the Northeast Corridor, we can do it. We have a plan.

We know how to gain partners. We have the knowledge and experience to make our vision a reality. This is a serious effort which offers practical solutions to the situations that exist on the Northeast Corridor, which are not easily understood, and no other entity can offer. In order for any public-private partnership to work, you need a partner that understands the key facts. And that partner is Amtrak. That ensures that Amtrak will have a key role under any structure. Perhaps you will rename Amtrak, but it will be the same women and men who understand the situation today, and understand the necessary solutions that will be required to carry out the plan.

We believe the approach outlined in this legislation risks slowing, rather than advancing, the development of high-speed rail in the Northeast Corridor. It will introduce unrealistic time schedules and assumptions. It will fail to provide adequately for transportation safety and security. And it will be more expensive.

It is important to look at the world leaders of high-speed rail in other nations to understand best practices, to study solutions. We should adopt and adapt where warranted. However, we must deal with the facts of the Northeast Corridor. There is no one that understands the facts of the Northeast Corridor better than the women and men of Amtrak. No one.

The risk associated with applying foreign business models in a different context such as the Northeast Corridor is too high. The potential for service disruptions, safety failures, and the failure to understand the environmental protections is too great for us to run.

Amtrak's Acela service has demonstrated that this mode can be competitive in the United States. Without it, this debate would not exist, and there would not be such a clear alternative.

Many people travel around the world, and are impressed with the modern high-speed systems—rail systems—they experience in Europe, Japan, or China, and they wonder, “Why not in the United States?”

First of all, every one of those central governments wrote a huge check, and they continue to do so. We have not been willing to do that. And second, we prioritize matters differently. System safety is our number one concern. We will need to avoid the mistakes that were made in Britain and China on safety. We also require a longer environmental process to protect those that will receive an impact from the construction of high-speed rail.

In closing, I will note that the theme of the bill’s provisions would set back the development of high-speed rail by 10 years or more, and will cost the economy of the northeast and the United States taxpayer a great deal more money. Thank you.

Mr. MICA. I thank you, Mr. Boardman, and we will be back for questions when we have completed all of the witnesses.

Mr. Richard Geddes, he is an adjunct scholar with the American Enterprise Institute.

Welcome, sir, and you are recognized.

Mr. GEDDES. Thank you, Chairman Mica and Ranking Member Rahall and members of the committee, for the opportunity to participate today in this important hearing. And thank you for the introduction. I enthusiastically support the bill under discussion today. The bill would facilitate private participation in the provision of passenger rail service in the United States through the use of public-private partnerships, or P3s.

P3s in transportation have been used successfully for decades in countries around the world, and in countries such as France for over 3½ centuries. A P3 also provides the best chance for the United States to achieve true high-speed rail in the foreseeable future.

The bill contemplates using P3s in at least two distinct ways: through the introduction of competition in the Northeast Corridor, and through the introduction of competition on the country’s longer distance, lower density routes.

There is absolutely nothing mysterious about a P3. It simply refers to a contractual relationship between a public sector project sponsor and a private sector firm to provide a good or service. There are many salient benefits of the P3 approach, and I will discuss just a few.

First, the introduction of competition. A key social benefit of the P3 approach is that it allows competition. Competition may be—and I believe is—the single most powerful and socially beneficial force that can be introduced into the provision of a good or service. Competition is widely recognized by scholars to encourage competitors to provide quality service at low cost, to be responsive to customers’ needs, and to encourage innovation.

A second key benefit of this proposal is the transparent and least cost provision of any desired subsidies. Competition introduced by the P3 approach allows for any desired subsidies to be delivered transparently and at the lowest possible social cost. While the Northeast Corridor may have sufficient density to generate net private investment, non-Northeast Corridor routes may require sub-

sidies to operate under a P3, as they do presently, although I firmly believe that the amount of those subsidies would certainly be significantly less.

Open competitive bidding will ensure that the taxpayer is protected. Any socially desirable subsidies will be provided at least cost to the taxpayer, and will also be transparent, which is key. In other words, the taxpayers will know what they are paying for, and the transparency of subsidies will lead to better policy decisions.

The third benefit I would like to articulate is the articulation and enforcement of key performance indicators. A critical social benefit of the P3 approach that is recognized internationally is simply that a contract exists. The contract will, of necessity, include clauses laying out what actions constitute desired performance on that contract.

This, then, requires the public sponsor to articulate precisely how excellent or poor performance will be measured, and to consider what penalties and rewards will be used to incent that performance. This will certainly result in better service provision. The contract can include basic metrics, such as on-time performance and frequency of service, as it does in many other industries where P3s are used, but also other considerations, such as the cleanliness of cabins and restrooms.

A fourth benefit is the provision—and that is absolutely key in this context—is the provision of fresh capital that would otherwise never be provided. One of the most obvious benefits of the P3 approach is that it taps into a vast pool of fresh capital that can be now injected into our passenger rail system. This allows for renovations, upgrades, and maintenance, including safety improvements, to be made much faster. This, of course, saves money. But it also results in more efficient service. This is capital that the public sector simply does not have, and will not be forthcoming.

High-speed rail is a potentially viable service that could offer the public a valuable alternative to current transportation options in the Northeast Corridor. However, it will be costly to inject fresh capital, mitigate taxpayer costs, create competition—which we recognize is key, improve performance, and enhance innovation. The public sector should be engaged—the private sector should be engaged as a full partner with the public sector through public-private partnerships.

Once again, thank you for this opportunity to appear, and I look forward to answering your questions.

And in my remaining 13 seconds I will just note to Mr. Cravaack and Mr. Mica that there is a memorial service for Alfred Kahn this Saturday at Cornell University that was so over-subscribed that they moved it from the university chapel to the largest auditorium on campus, in reference to airlines.

Mr. MICA. Thank you.

And we will now hear from Anne Stubbs, executive director of the Council of Northeastern Governors.

Welcome.

Ms. STUBBS. Thank you, Chairman Mica, Ranking Member Rahall, Chairman Shuster, and Ranking Member Brown. Thank you for the opportunity to be here today. I am with the Coalition of Northeastern Governors, which is a nonpartisan association of the

governors that works together for issues of mutual interest in the northeast.

Before touching on comments for the bill, I would like to offer just a few comments, which are elaborated in the testimony, on why the corridor is so important to the northeast, and some of the principles that underlie the comments that I will offer today.

The governors have long supported the Northeast Corridor and the larger regional transportation system, because it is both a transportation and an economic asset for our region. That includes the main stem linking Boston and Washington. It includes the branch services to Harrisburg; to Albany and points in upstate New York, Canada and Vermont; as well as the service up through Massachusetts, Connecticut, into Vermont; and to Portland, Maine. That asset is very important for our larger regional transportation system, for our economic vitality, and our community.

The CONEG goals for this northeast network are really quite straightforward. We look for greatly expanded rail ridership in an integrated, multimodal regional transportation system that works for all of the users on the Northeast Corridor, be it the intercity traveler, a business person, a tourist, a retiree, a student, or military personnel; for the commuters; as well as the freight railroads that need access to the corridor in order to get to their markets.

And the States believe that this will happen with quality service, that is safe, reliable, frequent trip time and price competitive. We are looking for ways to reduce the travel time, increase the frequency and the reliability for both the intercity and commuter traveler, and we are looking for higher speed, both premium and regional service, including express service.

So the States, a number of years ago, adopted several principles that guide how we look at this network. Again, I want to touch just very briefly on some of the highlights before I get into my comments. First, the Northeast Corridor we do see as a critical regional and national joint use asset, that should be operated as a public transportation corridor. And public oversight and control of the infrastructure, we believe, is very important to achieving that goal.

States are also co-owners, and they share in the financing and operations of intercity and commuter service on the corridor. They need to be very closely consulted with any changes in governance, funding, and management that does affect them directly.

We believe that the Federal Government has a lead role in bringing the Northeast Corridor, particularly the main stem, back to a state of good repair. And change must occur—any change must occur—in a timely and orderly manner, (with States consulted) in a way that does not jeopardize the current intercity commuter and freight services.

So, drawing upon those principles, I would like to offer a few initial remarks as the committee considers the appropriate balance of Federal, State, Amtrak, and private sector roles in the future of intercity rail, and particularly on the Northeast Corridor.

First, we do see a continuing Federal role. The Federal Government, as we understand it, would retain the underlying ownership of the Northeast Corridor right of way. And so, greater clarity is needed on that ongoing Federal role, particularly as it may affect

the future planning and oversight of the public interest in the corridor.

As I said earlier, States need to be closely involved in any of the changes that are contemplated that affect their intercity and the commuter services on or off the corridor.

Both current and future service is very much going to need the Northeast Corridor to be brought to a state of good repair. That is a significant financial investment that is needed. It is not clear, based upon our current reading of the bill, how that would be done for both existing and future high-speed services under the proposed new ownership and control of the corridor.

Shifting control of the Northeast Corridor from a public entity could also impose a number of financial and liability risks to the States. The proposed bill is very clear that one of the evaluation criteria is to reduce the need for Federal subsidies. States are likely to have many other concerns associated with a shift in responsibility, such as the potential to transfer the subsidy costs from the Federal Government to State and local governments, which, as has been noted already, are suffering under severe financial strain.

We would be looking at the implication of shifting greater liability and insurance exposure to the State, if the corridor was shifted to private control and ownership.

We would be looking to see anything that might impinge upon the State's sovereignty. We particularly noted the broad condemnation authority that is proposed for the new Northeast Corridor Executive Committee. And the States will also be looking to see how there will be some consideration or protection of the investments they have already made in the Northeast Corridor infrastructure, as well as existing intercity passenger rail projects that are underway.

Connectivity with other rail services, both on and off the corridor, is very, very important. Again, we see this as a regional network. The current bill does acknowledge that the current commuter and freight rail services would continue to have access to the Northeast Corridor infrastructure and facilities, but there is no similar assurance that is offered for the intercity service, such as the Keystone, the Empire, the Vermonter, that originate off the corridor but need access to it.

Likewise, if you separate the main line from the critical branch lines, we are not sure what the details would be on any terms and provisions and conditions of such a separation, or the implications for a continued ownership and operation of that integrated service, if a State chose not to take—seek title.

And then, finally, the Northeast States are already actively engaged with the Northeast Corridor Infrastructure and Operations Advisory Commission, which was created by this committee, and the States are very delighted that they are full and equal partners on that commission. We are not quite sure how this proposal, which does not repeal that commission, but creates a new Executive Committee and gives it future control over the Northeast Corridor and has some similar responsibilities, how the roles and responsibilities of the existing advisory commission and their proposed new Executive Committee would relate to each other.

And so, thank you for the opportunity to share these comments. And I hope they will be helpful to the committee.

Mr. MICA. Thank you.

There has been a vote called.

We will hear first from Mr. Millar.

Mr. MILLAR. Thank you, Mr. Chairman, Mr. Rahall. Thank you for including APTA in today's hearing.

As you know, APTA membership is very diverse. Many of the international rail operating and management companies, as well as the domestic companies, including Amtrak, are APTA members. Our members include the oldest commuter rail operators in America, and the brand new one in Denton, Texas, that opened just this past Monday. So we have a very diverse membership.

Understandably, we haven't had a chance to really distill a comprehensive position, given the diversity of that membership. And I am sure you will hear from many of our members, and it is our intention to take you up on your offer, and supply you with additional information in the coming weeks ahead.

That said, I have been asked to testify specifically on the experience of the U.S. commuter rail operators with competitive contracting. By way of background, there is some 27 different commuter rail operators in the U.S.; 8 of those 27 operate with their own—or what are known as directly operated systems, completely with their own employees, and own all their right of way, et cetera, et cetera, and 19 are purchase of service operators.

Of those 19, 17 have been around long enough to report to the Federal Government in the national transit database, which is operated by the Federal Transit Administration. And it is from that database that I draw much of my information today.

Also, I should point out that, while there are only eight directly operated systems, they have the lion's share of the business. Over 80 percent of the passenger miles, 80 percent of the passengers who use commuter rail are on those 8 systems.

Now, there are many factors that affect the cost of operating a system. The 2009 national transit database shows an average per-passenger mile cost of directly operated or contracted to be remarkably similar: \$.41 for directly operated, almost \$.39 per-passenger mile for purchased service. But there is a great deal of variance.

In the directly operated you can find it for as little as \$.33, as much as \$1.51. For the contract service, as little as \$.30, as much as \$2.55. So, clearly, it is not just competition that affects the cost.

If you add in fare box recovery to these systems, the picture, unfortunately, gets murkier, with the direct operating having an average of 49 percent cost recovery and the purchased service 40 percent recovery and, again, with very wide ranges.

I think, as this legislation proceeds, one of the things that will be very clear from our commuter rail operators, most commuter rail operators choose to compete their services. And whether Amtrak or others win the competition, they want to continue to have the right, because they believe the opportunity for competition is beneficial.

Let me give you a couple of closing thoughts before my time expires. First, we need to be clear. All major rail systems in the world, including America's world-leading freight network, have re-

quired large capitalization from Government. It may have occurred many years ago, it may occur on a continuing basis, but we cannot escape the fact it requires large public investment.

Second, public-private partnerships and competitive contracts, as I have hopefully demonstrated here, can be useful. But they are no substitute for major public investment. And, because of the necessity to integrate rail, passenger rail, with other forms of transportation, we certainly hope—and know this committee has been working hard to try to develop a major piece of transportation funding legislation that would set a policy not only in this area, but across all other surface modes.

Third, particularly as Mr. Boardman has said today, the Northeast Corridor is incredibly complex. It is one of the most complex rail corridors anywhere in the world, and we cannot lose sight of that. It is old, it must be updated, regardless of who owns it, regardless of who runs it. And we can't forget that every day about 700,000 Americans use the service on that corridor, and they expect to get to work, and they expect to do the other things in their life that are necessary. So we must be careful as we move forward.

Fourth, as Mr. Boardman said, Amtrak does have extensive railroading, extensive Northeast Corridor experience. And—just as when Conrail was taken over and the private carriers on the freight side realized that some of it was just too complex to disentangle. So we—they kept the private companies, they kept a piece of Conrail, as well. So we need to be careful here. We think the expertise that Amtrak has, that our commuter rail operators have, is quite useful to you. And we pledge to work with the committee as you consider these important issues.

Thank you.

Mr. MICA. For 10 minutes the committee stands in recess. Until Mr. Shuster returns as stand-by, the committee is in recess.

[Recess.]

Mr. SHUSTER. [presiding.] We will bring the hearing back to order and continue. Chairman Mica should be back momentarily.

With that, I believe, Mr. Hart, you are up.

Thomas Hart, who is the Vice President for Government Affairs and General Counsel for the United States High Speed Rail Association. It is a good thing I remembered some of that, because I could not read it.

With that, Mr. Hart, please proceed.

Mr. HART. Mr. Shuster, I would like to thank Chairman Mica for calling this hearing. I would like to also thank Ranking Member Rahall and the Subcommittee Ranking Member Corrine Brown, and acknowledge my Congresswoman, Eleanor Holmes Norton.

Thank you for having me here. This is honestly my fourth time before this committee on this subject this year. I am glad to be back.

I have put a lot of time and thought in this testimony over the last 6 months. I am really glad we have advanced the discussion and debate on the need for private investment and increased competition in our rail system nationwide, but particularly, the Northeast Corridor.

As most of you know, the United States High Speed Rail Association is a non-profit trade association committed to advancing a

state-of-the-art nationwide true high-speed rail system, to be completed in phases across the country.

I am the Vice President for Government Affairs and General Counsel for the Association. I also am here as the Director of the Washington Office of the national law firm of Quarles & Brady.

This is a real opportunity for progress to be made within this committee and within the body of Congress.

The US High Speed Rail Association works with everybody, and that is truly committed to advancing high-speed rail.

That is reflected in just my schedule this week, where Monday I spent a number of hours with Senator Mark Kirk in Chicago. He advanced on Monday and proposed private/public partnership legislation in the Senate called the Lincoln Legacy Infrastructure Development Act.

Also, while I was in Chicago, I spoke before Reverend Jesse Jackson's Rainbow PUSH Coalition, and brought them up to speed on the initiatives for high-speed rail across the country.

We speak to everyone. We engage with everyone. That includes the staff of this committee, both on the minority and majority side. I commend their work on this piece of legislation, and look forward to working with them and the Members going forward.

This is a real key opportunity, and I hope that the members of this committee take advantage of it.

This issue divides the committee pretty much down the line, as you mentioned at the last hearing, Chairman Shuster.

Fifty percent of the group here wants to zero out Amtrak, wants to basically eliminate funding for them and possibly privatize the entire system.

The other 50 percent, some of them feel that Amtrak is a sacred cow, should receive additional funding without oversight and real strict accountability.

The United States High Speed Rail Association is somewhere in the middle, literally. We are a firm believer in competition and a firm believer of private capital investment in high-speed rail.

We also recognize Amtrak as an unique service, and we do not support the pure privatization of Amtrak in its totality.

With this divide in Congress and the divide in the Senate and the leadership at the Presidential level, it is important that we compromise to achieve our goal of bringing private capital into the Nation's rail system and move quickly to do so with the type of bill that has been presented by you, Chairman Shuster, and Chairman Mica.

Unfortunately, the political reality is the bill will not pass the Senate in its current form.

At the same time, the status quo is unacceptable. We do not accept Amtrak's monopoly position in the Northeast Corridor. We do not support the monopoly position, and we do not frankly accept many of the reasons why Amtrak has been delayed in advancing high-speed rail across the country.

We take what we consider to be the best parts of the concept behind the bill that is presented, and offer our own suggestion.

We have actually proposed legislation back in March called the Private Investment in High Speed Rail Act of 2011. At that time,

we proposed private investment in Amtrak through increased offering of stock and bonds.

Amtrak only has one shareholder, that is the United States Government.

Specifically, Chairman Shuster, we have outlined a proposal that would split Amtrak into two entities, Amtrak Operations and Amtrak Infrastructure.

Operations would run the trains. Infrastructure would maintain and manage the rail infrastructure in the Northeast Corridor, and it would increase the opportunity for investment up to 40 percent.

I think that is a fair compromise. We can bring up to 40 percent of private equity into Amtrak, sell off 40 percent of the infrastructure subsidiary or infrastructure company, that is currently totally owned by Amtrak.

That is a significant investment that will get the attention of Wall Street, but it will maintain Government control over the infrastructure, and will provide for safety and security concerns as Mr. Boardman indicated.

We need to bring in the private sector, and by offering up 40 percent of the infrastructure facility, that would bring substantial money.

After 5 years, we could re-evaluate that structure, and possibly increase, give the investor an opportunity to increase its investment by another 20 percent, and move them into a majority position.

We also suggest that we add an infrastructure bank provision. That is supported in the Senate on a bipartisan basis now. We need to include that.

Also, a small business provision. Amtrak has gotten \$450 million just recently for procurement. They want the money but they do not necessarily want the responsibility and accountability for increasing small business participation in this sector.

A small business provision should also be added to this bill. That will go a far way in getting more bipartisan support.

I look forward to your questions, Mr. Chairman, and other members of this committee, and working with you in the future.

Thank you very much.

Mr. SHUSTER. Thank you very much, Mr. Hart, for your testimony. I just want the record to show I have always been one in the middle on this issue, too.

My colleagues on my side have for the last 20 years talked about killing Amtrak, selling it off, doing away with it, where my colleagues on the other side of the aisle say it can never succeed without the Government running it.

I come down in the middle. It is somewhere in between there. I think we can do it, and our bill is a start in that direction, I believe.

Next, Mr. Ed Wytkind. It is always good to have him here and hear his views. He is the President of the Transportation Trades Department, AFL-CIO.

With that, Mr. Wytkind, proceed.

Mr. WYTKIND. Thank you, Mr. Shuster. I want to thank Chairman Mica for allowing me the chance to participate, and of course, Ranking Member Rahall, for his strong support for our members,

and for his support in having the labor movement present its views.

I have appeared twice before this committee in the last few months to express our strong opposition to the wholesale privatization and break up of Amtrak.

You will be surprised to learn that my position has not changed today.

While it may be interesting to discuss different operating models for passenger rail in America, we have always argued that if permitted to cherry pick lucrative routes, permitted to keep the cost of infrastructure replacement and upgrades off the books, a carrier might find a profit on some routes somewhere in the system.

On the Northeast Corridor, Amtrak is operating in the black, above the rail. That may seem interesting but it has nothing to do with how you run a national passenger rail system.

Amtrak's network, a victim of decades of chronic under funding, receives Federal subsidies, but so does our entire transportation system, and so does every rail transportation system in the world, whether it is privatized or not.

Our transportation is not just about the wealth it creates for transportation providers. It is about the wealth it creates for the users of our economy, for the people, for the businesses that need transportation to be safe, reliable, and efficient.

It is about the millions of good skilled jobs that are created in the system.

Mass transit systems do not make money. The employers who rely on those systems to transport their employees do.

Airports and air traffic control are not about profits. They are about the billions of dollars in wealth they create transporting people and cargo around the world.

Highways and ports are not profit centers in and of themselves. They are profit centers for the people in the businesses that rely on them for commerce, for exporting, and for making sure we have a global economy that we are competitive in.

None of this works without proper public oversight of the taxpayers' transportation assets, without significant public investment, as Mr. Millar pointed out, and without the cross subsidies that have always been the cornerstone of our national transportation network.

That seems to be like a dirty secret that no one wants to talk about, our transportation system has always been based on having cross subsidies, and it works.

Our passenger rail system is no different, which is why we need Amtrak as the national network provider for the Nation.

Let me offer our preliminary analysis, we just got a hold of it a few days ago, of the Mica-Shuster legislation.

First, despite comments made earlier, this is an Amtrak bankruptcy plan. I believe 20,000 jobs are placed at risk by this legislation.

Removal of the Northeast Corridor from Amtrak is taking away its most prized asset, and with it goes the entire national system and up to 20,000 jobs.

Second, it gives the green light to Wall Street to cherry pick the parts of the network that can make the most profit, and let the rest of the system wither.

I am sure there are some panelists here who think that is a good idea. I do not.

That approach will not unleash the private sector's capability to provide passenger rail service to a Nation that is starving for more train service. No. It will unleash Wall Street's ability to make money for Wall Street.

Third, longstanding employee protections are eliminated in this legislation. I wish Mr. Mica was in the room to discuss it.

Despite public claims that Amtrak workers would be held harmless, there is nothing in this legislation that holds these employees harmless.

The bill would eliminate Railway Labor Act coverage, thereby stripping employees of current bargaining rights and union representation. Amtrak employees would lose all wage rates and benefits and protections in their union contracts.

So, contrary to public claims, nothing in the bill guarantees anything to the employees of Amtrak.

The Mica-Shuster proposal also eliminates coverage under the Railroad Retirement Act, the railroad pension, unemployment and disability benefits system that has been around for decades.

Thousands would be siphoned from the system in the new entities, the long-term sovereignty of the rail retirement system would be jeopardized, and enormous tax increases, yes, tax increases, would be imposed on the current employers, including, by the way, the private freight railroads.

We do not think 547,000 retirees, spouses and survivors should see their benefits threatened so that billionaires like Richard Branson can get richer and evade railroad pension obligations, which is exactly what is on the table.

Assurances have been made that our members at Amtrak will also be able to follow their work. The problem is the legislation does not do that. All it does is give them some hiring preferences, which means they are guaranteed a chance to be considered for a job.

I do not think anybody can pay a mortgage, child care or college tuition bill with that sort of promise.

Lastly, let me talk about Virgin Trains. It has been discussed in this committee, and I thought it was important to inject some new facts about Virgin Trains' operation.

First of all, the system is 35 percent more expensive than the State-owned European railways, according to a study done on the ground there.

Between 1996 and 2009, revenues from the U.K.'s privatized system more than doubled. That is great. The problem is the public subsidy grew 500 percent.

Virgin Trains received \$1.75 billion in direct Government subsidies for its West Coast franchise, and \$14 billion in indirect subsidies to upgrade the infrastructure on the West Coast line.

As one labor leader described it in Great Britain, people are getting filthy rich on public subsidies.

We have heard from the committee that Virgin Trains is repaying the Government. The fact is that Virgin Trains takes more money from British taxpayers than it gives back.

Since 2002, it received \$2.6 billion in direct public subsidies. It is true that in 2008 and 2009, it repaid back \$81 million. That is a single year. In 2009 and 2010, they were again receiving more money than they repaid.

Repeatedly discussing this as if one single year sets out a context for the entire Virgin Trains' operation is not accurate.

Lastly, service complaints at Virgin Trains are 600 percent higher than the average train operator in Great Britain.

It is safe to say that the labor movement is not for this proposal. We have a long history in the Transportation Trades Department of working with both sides of the aisle.

I have enjoyed developing a relationship with both Mr. Mica and Mr. Shuster on all sorts of important transportation issues, but this bill written as we see it today is too harmful to Amtrak.

Our employees are placed at risk, and we think the Northeast Corridor is too vital an asset to put at risk with a privatization program that we think has many risks inherent in the ideas in there.

Having said that, we are happy to be here. I am happy to take any questions you might have. Thank you.

Mr. SHUSTER. Thank you very much, Mr. Wytkind. Mr. Chairman?

Mr. MICA. [presiding.] Thank you for taking over the chair on this important oversight hearing.

Let me say first that we did conduct three hearings on trying to improve passenger rail service. We focused first on high-speed rail, and met in New York City and had a great turn out.

When we talked to folks on high-speed rail, most of the people that we talked to believed the best possibility for success in the country is the Northeast Corridor.

Amtrak owns the Corridor basically. We do have some indebtedness. We have the connections. We have regional transportation systems that can link and distribute people. It is a real natural. We own that.

The 21,000–22,000 miles of freight rail, we do not own. Amtrak has some other little pieces here and there, but that is the most conducive.

I was disappointed with the money that was spent. We had a total of \$10.5 billion, an \$8 billion stimulus. A lot of that has been returned—projects that were just destined to fail. They just did not make sense. You could not get State support for them, whether it was Florida, Wisconsin, Ohio, or maybe even other States.

I think as a benefit to the Nation, the high-speed rail corridor in the Northeast should be our focus. It was not eligible for some of that money in the beginning. I think an important step the Obama administration took a couple of months ago is designating it as high speed, and then also awarding it some money.

But it was only three-quarters of a billion dollars that came back that was redirected to the Northeast Corridor.

The problem is that is just of taking shears around the edges and trying to develop high-speed rail piece by piece, a little appropriation by appropriation, or throwing money at it on a fractional basis,

which is not going to give us true high-speed rail or what we hope to achieve.

Mr. Boardman, you opened your testimony with saying that the key to Amtrak getting into that service is attracting capital. Was that not your comment?

Mr. BOARDMAN. Yes. We think that is one of the keys.

Mr. MICA. I have looked at it, too. Again, I have told people you are going to turn blue waiting. We have challenged you. You came back with a plan. It was 30 years, \$117 billion to do the whole thing.

If I had my druthers and I could assist you with getting that kind of capital all at once, we would do it. That is not going to happen.

What we want to do is take the funds that we can get from Congress, and then leverage them with the private sector capital.

You have already had some of these proposals out, is that not correct, to attract some private capital?

Mr. BOARDMAN. We have a solicitation that came back on the 20th, which was Monday, on looking at what we needed to do to finance what our plans were.

Mr. MICA. One of the reasons I proceeded legislatively is we put together PRIIA. PRIIA was a good faith blueprint to establish sort of an outline of how we proceed with high-speed rail.

The money came before actually we were able to move forward in an expedited fashion. That is why I think we have to approach this legislatively.

In talking with folks to get the private sector to invest capital, they are going to want a return. To do that, they are going to have to either get a return from operating the infrastructure in the Northeast Corridor, the rail itself and be in charge of it, or the operational part of the high-speed rail or the passenger rail service.

By increasing the ridership, it will increase revenues and pay the Government rather than having it subsidized. It still is subsidized. We can debate on the figures, not that we do not have to subsidize some rail service, but what you want to do is minimize that, and with a great route like we have in the Northeast Corridor, we can maximize, and I think actually bring capital into Amtrak.

Part of the question we faced in crafting this legislation, Mr. Shuster and I, we were told we should consider two models. One, infrastructure separate, and operational separate, and then also a turnkey to offer to someone.

Are you looking at it on that basis, too, Mr. Boardman, and do you have the authority to offer it on that basis?

Mr. BOARDMAN. The way we are really looking at this is that in order for profits to come to the Corridor, you have to have a Corridor that can actually increase the amount of service that is available. The trains have to be reliable. They have to be faster.

The credibility first is being able to have a vision that an infrastructure will work. It was not just us looking at a vision for the future; the vision of 220 miles an hour. It was also having others look at that vision as well, and looking across the globe at some leaders, JR East from Japan.

Mr. MICA. Was your proposal based on doing a turnkey or division of operation and the infrastructure? Is that what you discussed with these folks, or did you invite both?

Mr. BOARDMAN. I recognize the answer you want, and I will get there for you. I think what we needed to understand first was whether we had a competent plan, whether there was a plan that would really work, was it too expensive, was it realistic.

That is why we had these peer reviews, SNCF, and looking at JR st and Deutsche Bahn and all, coming and looking at what we were doing, asking, "Is this the right thing or is it not?"

What I said in my testimony is that we could adopt or we could adapt the things that made sense. As they looked at it, we began to learn some things.

First, they thought it was a little too expensive. The Japanese said you can make your tunnels a little bit narrower. You could really think about this differently. We have taken that in. We understand it.

We think that is probably a good thing in the way Government and business works today, if our plan was more now than what it is really going to cost. It is not an escalation of cost.

They also said they thought we would have a lot more ridership, and that would improve the revenues. Again, in my own experiences, if you start proposing that it is going to do so much more than what you originally started with, and then you have to see it is not, then again, you lose credibility.

The key was to get this vision to be looked at by folks that says is this credible, and it is.

Amtrak is a transportation operating company. There is no doubt. That is the core of our business. We do have a very strong engineering department, and we are the only ones, and I think you know this, that really does electric rail in the United States.

When you get to your question, are you going to split it up this way or are you going to do it another way, we do not know that.

Mr. MICA. You are looking at all the options.

Mr. BOARDMAN. We need to do what is necessary for us to get the financing and the investments.

Mr. MICA. For financing, someone is going to want a piece of the action. If they see there is a potential for revenue, they are going to want to pay their investors. That is the only way we are going to attract private capital.

The private sector just does not come in and do things for the sake of charity. They are going to want a return.

We are going to have to find some way to bring them in. They are either going to have to control—again, ownership, we have always said, would stay with the United States or Amtrak. They are going to have to control the management of that infrastructure.

Mr. BOARDMAN. The venture capitalists want their capital back. We understand that.

Mr. MICA. They are going to also want to increase service for commuters because they are going to get revenue if there is increased commuter service for freight, for high-speed rail, maximizing the Corridor.

The second thing is you get an operator. People do use the U.K. model and say it all went bad, but the U.K. was a totally different model.

They took all that rail infrastructure in the whole country that deteriorated over years, and put it into Rail U.K., or whatever it was called. It did collapse. It was a huge thing. It took everything, even some of the local commuter routes, and it had very aging, decrepit infrastructure.

That is not the case in the United States. Most of what you run, a service, 20,000 and some odd miles, is over freight rails.

We are talking about specifically the Northeast Corridor and how to maximize its development.

You do have some challenges in-house.

When I saw the proposal that was brought out, I am not sure if that is really what I want to do, to create another entity.

It was done for several purposes, one, because there was a model that was recommended by some people who might want to do this, and they said it would be attractive in that fashion, to have those options available.

We did exactly the same thing you did. We said look at the Corridor and tell us how this could remain—I am not opposed—first, I am not trying to do away with Amtrak. I am not trying to limit any service they provide or privatize all of Amtrak.

The most important part of this is do you have the authority to move forward and create those entities I described, either to offer as a turnkey or to offer separate operations and rail infrastructure? Do you think you have that ability?

Mr. BOARDMAN. I think we are going to have some of the same problems everybody would have. We do not own the whole Corridor. The States own almost 100 miles of the Corridor. There are issues that need to be worked out.

Mr. MICA. Can your attorneys look at it and see if you have that? I have had oh, we want to do that, Mica, but our charter is this, intercity passenger service and whatever we have now. They always come back and say we really do not have that charter or that ability.

What I want from your counsel is—I do not mind giving authority to Amtrak to do what we are trying to achieve. I do not know that we need to create a second entity to do this.

I have to make certain that you have the power to do this, then I am going to direct you to do it, to take those offers.

I cannot believe for the life of me that people here would not welcome the private sector making an offer. I know there have been some bad examples around the world, people taking advantage, the private sector not writing the RFP right or the terms.

I do not want to model it after that. I do not want to model anything on what the Virgin Rail did or they did wrong.

Certainly, you are going to need significant amounts of Federal capital to subsidize some of the infrastructure improvements.

Like you stated today, the key is to attract private capital. We have to have the ability for whatever entity, if it is Amtrak or another entity, to attract that private capital.

Right, Mr. Boardman?

Mr. BOARDMAN. I think that is correct.

Mr. MICA. Would you say the same thing? I know you have looked at this, Mr. Geddes.

Mr. GEDDES. Do you mean on the need to attract private capital?

Mr. MICA. Yes. You represent the American Enterprise Institute. Can you attract private capital if it is structured the way we are talking? I think you did testify affirmatively.

Mr. GEDDES. Absolutely, yes.

Mr. MICA. I want everybody to have a chance here, the gentlelady representing the Governors of Northeast.

What we tried to do, in PRIIA, we created a blueprint for going forward. The money got ahead of us, as I said, and we have now had a history of some failures on high-speed rail.

We created the different commissions to try to bring local governments into the process, whether it is the Northeast Corridor, or wherever they may pursue this, but what we were trying to do was empower and also have some transparency in the selection process of an operator.

If you wanted to select Amtrak who partnered with—I told Mr. Rahall he could put in a Build America provision or whatever he wants, if we want to do that. Whoever they want to partner with.

What we thought would be good is to empower you to go back and revise PRIIA provisions. We set up the commissions. I have been before them. They are working. We wanted to empower them in the process.

If we kept it with Amtrak, we could still do this, too.

Do you see what we are trying to do there? You have to be happy, because you have to be satisfied, like you said, your concern was on commuter rail, freight service, utilization of the Corridor, but we do not want you outside that loop.

It is nice to be advisory and everyone ignored you. We were trying to empower the locals and States who have a stake in this, not only some ownership.

Do you see what we are trying to achieve? If you can look at our language, and if you see that it needs to be better crafted, we welcome that.

Ms. STUBBS. We will look very closely at the language. One of the concerns is not just two or three members from the Northeast, but all of the States' interests, on and off the Corridor would need to be addressed.

Mr. MICA. Mr. Wytkind, you worked with us when we did the PRIIA. Again, we are trying to find a way. We set a blueprint so we can move forward and protect labor.

I know we have some language in here that probably is not the language you would like, but we had to write something initially. We want to make sure that labor is protected.

I firmly believe that you can dramatically increase your membership. You can actually significantly improve the benefits with your folks. I saw how they got treated in the past versus their brothers and sisters in the private rail operation.

I think there is hope. I welcome your suggestions in language. I may not be able to buy everything you give me, but I am trying to craft as much as I can to protect labor.

The secret to this is attracting private capital. They are going to go. They are not going to be able to do this in-house. They are

going to have to have somebody who has done it before take the project on and work with them.

They may be a partner. They may be able to contribute. They may be able to help direct the project. Actually, to construct and then to operate, I do not think in the future—

Mr. WYTKIND. Do you want me to respond?

Mr. MICA. Yes, go right ahead.

Mr. WYTKIND. First of all, I did not hear Mr. Boardman say anything other than he is looking for private capital partners. I did not hear him say he is going to be sending his operation to a private entity to run it for him.

Second of all, the reason I made the comments I made regarding your draft legislation is because this legislation does not hold Amtrak employees harmless.

None of the statutes that apply to railroad workers are applied in this legislation, including Railway Retirement.

Mr. MICA. I welcome your language.

Mr. WYTKIND. I am not trying to sort of cook the books here. We read the bill. The bill does not apply railroad laws to railroad workers.

This Florida example that keeps being raised—

Mr. MICA. If I add your language, then you will be—

Mr. WYTKIND. No. There are a lot of concerns that we have.

One last point. The Florida example that Mr. Shuster points out, that company does not pay railway retirement. If the model of the draft bill is applied in this case, the new entities will not pay railway retirement either.

Mr. MICA. I have no problem moving the train along whatever track we get to. It is going to require private capital.

Mr. WYTKIND. We are not against that. We have not been one time against that.

Mr. MICA. The private capital will require a piece of either operational pie, from an infrastructure standpoint, operations, or both. That is going to happen or you are not going to get the private capital. Then we will just chug along at our 83 miles an hour and 60 some miles an hour.

I am taking an awful lot of time. I wanted to cover these things before I scoot.

Again, I welcome your suggestions. We are keeping the record open. If I have to do more hearings and drag you back in and others back in—a lot of people did not obviously read the bill. We are going to try to educate Members slowly on this, if we have to cut it up, slice it, and feed it so people understand it.

It is nothing outrageous. It is nothing to do away with passenger rail service or harm Amtrak.

In fact, I think Amtrak could end up operating many more trains, hiring many more people, and being a very viable entity in the future if we work together in finding some means of attracting capital to this process, with private sector initiatives, efficiencies, and ingenuity, that always has made this country and the system great.

I apologize, Mr. Shuster, for taking so long. I wanted to get a couple of questions in.

Mr. SHUSTER. [presiding.] Thank you, Mr. Chairman.

With that, I will recognize Ms. Norton for questions for 5 minutes.

Ms. NORTON. I am informed that Mr. Nadler has to leave.

Mr. SHUSTER. I will recognize him and then come back to you later. Mr. Nadler?

Mr. NADLER. I thank the Chairman. I thank Ms. Norton.

Mr. Boardman, first of all, given that Amtrak is a for profit corporation, owns the Northeast Corridor, I think the bill raises a serious Fifth Amendment problem with the taking.

Under your reading of the bill, when Amtrak transfers the Northeast Corridor to the Department of Transportation, what compensation would Amtrak receive?

When Amtrak transfers their only stock to the DOT, where private interest is required under the bill, what compensation would Amtrak receive for that?

Mr. BOARDMAN. The way we read it right now is we would receive no compensation for either. In fact, in the history of the taking, that is not what we do in this country, and that is not what happened when the Corridor was transferred to Amtrak back in 1976. The private owners were paid substantially, even though they were bankrupt for that.

Mr. NADLER. You think this would be a taking of both the rolling stock and the infrastructure?

Mr. BOARDMAN. The rolling stock is a little different because we owe enough debt on that, that debt would have to be satisfied before they could take it at all. That is owned by the banks. It would not have that availability.

Mr. NADLER. Do you have financing for most of that rolling stock now?

Mr. BOARDMAN. For most of our rolling stock, yes.

Mr. NADLER. How do you transfer the rolling stock if you are still making payments on it?

Mr. BOARDMAN. As I said, we could not, because we would not have the money to pay off the debt. It would not happen. We would not have revenue any more.

Mr. NADLER. Could you transfer it if it assumed the balance of the debt?

Mr. BOARDMAN. That is not what the legislation said.

Mr. Nadler. No, but would that work?

Mr. BOARDMAN. If they took the debt with the equipment and all of that, it certainly makes it so it does not get lost.

Mr. NADLER. Amtrak makes a considerable profit on the Northeast Corridor, and cross subsidizes all the other routes; is that correct?

Mr. BOARDMAN. For operating, yes.

Mr. NADLER. If this bill or something like it were enacted, what would happen to the other corridors, other than the Northeast Corridor?

Mr. BOARDMAN. What would happen, especially with us being left with the debt, is we could not service it, and we could not operate without additional Federal subsidy.

Mr. NADLER. The other corridors, you would have to shut unless you had additional Federal subsidy?

Mr. BOARDMAN. That is correct.

Mr. NADLER. Do you know what the magnitude of that additional subsidy is that would be required?

Mr. BOARDMAN. One of the difficulties of that, and Rick and I were talking about transparency, is that the allocation formula across both the direct and indirect makes it difficult to figure out completely accurately what should be applied to those other corridors.

In this particular case, it would be a lot easier, because all the indirect costs would then be applied to the other corridors.

I have not added them up. It would be very expensive.

Mr. NADLER. It would be very expensive. Let me ask you one other thing. The dialogue a moment ago with Mr. Wytkind, he made very clear that the labor protections that labor now has with Amtrak would not be carried through by this bill as currently drafted. Those people who are now under the Railway Labor Act, et cetera.

Let's assume that were changed, and all the labor protections were in fact carried through. What would that do to the financing structure of this bill?

Mr. BOARDMAN. I am not sure I quite understand the question.

Mr. NADLER. Let's assume that the bill were changed, and every labor guarantee that Amtrak employees have, whether Railway Labor Act or whatever, were in fact carried forward. They were held harmless.

What would that do to the financing of the bill? How much cost would that impose on whom?

Mr. BOARDMAN. It is going to cost, if everything goes down, a little over \$4 billion over a 5-year period of time. You have the rest of the labor protections that are existing out there that would be transferred to whoever would be the operator for the future on the Corridor.

Again, I have not added up those numbers.

Mr. NADLER. Presumably, they would have to put that in the bids as cost factors.

Mr. BOARDMAN. I see. That is correct.

Mr. NADLER. That would be very expensive?

Mr. BOARDMAN. That would be as expensive as what it costs for us.

Mr. NADLER. Thank you. Mr. Wytkind, last question. You said that even if all the workers are held harmless and every protection was carried through, you still have other problems with this. Could you just briefly outline what the other problems are?

Mr. WYTKIND. Sure. Thank you, Mr. Nadler. I do not think Balkanizing our passenger rail system and allowing private sector interests to chase profits is the way you run a national transportation system. That is exactly what this bill would do.

Those with wealth would try to create more wealth with that wealth, and the rest of the system, which relies on cross subsidies, relies on services into communities that do not have the density of the Northeast Corridor, would all completely wither.

As Mr. Mica said very appropriately, capitalists do not chase investments that lose money. They are going to chase investments that make them money.

We think this is a flawed model. It has been tried in many industries around the world and around our country, and it always ends up giving the public sector the shaft, and the workers the shaft.

Mr. NADLER. Thank you. My time has expired.

Mr. SHUSTER. This is already a flawed model; what we are trying to do is save it. There are 28 million passengers on Amtrak every year. There are 750 to 800 million that ride airlines. I do not even know the number of people that drive their cars back and forth to work. Millions of people.

Based on the will of this country, what we have now is not going to work, and we are going to end up with a situation where the American people at some point are going to say enough, we do not want to fund Amtrak any more.

I think we have a golden opportunity right now in this time in our history to deregulate passenger rail in this country.

For labor, you talk about the 20,000 jobs that are at risk. Well, 10,000 of them have been lost in the last 10 years. We can make an argument for whatever reason.

This is about, I believe, saving passenger rail in this country, getting private sector involvement, injecting the Federal funds into it, and as Mr. Mica points out, nobody is going to put money into an operation that they do not have at least some control over.

How will this all look at the end of the day? Maybe it is Amtrak as the operator, the entity that takes care of the infrastructure, and somebody else comes in to operate, which has been shown in other examples.

You mentioned the Florida situation. That is going to be the next question, Mr. Boardman. How is it that you bid \$265 to \$97 million? Is that all railroad retirement?

If that is the case, at least they are going to be there in the future paying a wage instead of not having a wage.

We are dealing with Social Security and pensions in this country. We have to figure out how to make things pay for themselves or we are not going to have them for the future. That is what we are trying to do in this bill.

Mr. Boardman, on that Florida Tri-Rail situation, \$70 million difference in the bid. Why so much?

Mr. BOARDMAN. First of all, let me tell you this, there are about 250 million riders of rail in this country. Amtrak is responsible for most of those riders because a large portion of that comes from the Northeast Corridor.

The company that bid against us in Florida did not have liability costs to pay, like Amtrak does. It did not have the legally obligated Railway Labor Act. It did not have railroad retirement to protect the employees. There is always an additional amount of cost to the reality of what they were really trying to do.

Furthermore, and I want to come back to something you said earlier, Mr. Shuster, and that is you are not supposed to go to work for the other company until you have left the company you are in. That is what the lawsuit is about.

It is not about the fact that people cannot move from one company to the other. I have been lobbied by all the political people to tell me that we should drop this lawsuit and it will not be dropped.

Mr. SHUSTER. Again, I think it is taxpayer dollars that should not be spent.

As far as accounting, and you have been over there now for 2 or 3 years, I think things have improved, especially when it comes to accounting.

I understand you took somebody from FRA to come over to your shop, and it improved.

In the past, accounting on all accounts has not been a strong suit. It has been miserable as far as I can tell at Amtrak.

What are you doing to improve accounting? If we are to attract private capital, they want to do due diligence. They want to look at the books. Right now, I am not so sure they could figure out what is up at Amtrak.

Mr. BOARDMAN. One of the most important things for Amtrak was to be stable and continue to follow through and not be distracted by everything that comes down the pipe for Amtrak, and that has been one of my efforts at Amtrak for over 2 years, really to try to stabilize, not go in and change the entire management team like has been done in the past.

There was a series of almost seven different presidents for this company, and they changed the CFO, and they changed the senior management, and they changed this and they changed that, and it is extremely difficult for a major company like this to be able to sustain that and continue to provide the improvements organizationally, financially, and otherwise that are necessary.

There have been 8 years' worth of labor difficulty at Amtrak, and there has been a culture of blame as opposed to being a culture of accountability. That is beginning to change.

I get somewhat depressed when I see all of this occurring because we can see so many things that are improving for Amtrak and for the customers of Amtrak and for the safety of Amtrak, and it is just another disruption that throws us again to the wind.

Mr. SHUSTER. Ms. Stubbs, I have word from the administration in Pennsylvania they are very interested in what we are putting forward here. I would like to hear what the other Governors out there are saying.

Former Governor Ed Rendell is very much on board, excuse the pun, with what we are trying to move forward here. He has been out traveling the country talking about these types of private/public partnerships.

Could you let us know?

Ms. STUBBS. The comments I made today are based upon a long-standing policy. What we want to do is look very closely at the bill, hold it up against the principles that we have, and look at how it would work, both for intercity and for commuter.

I think I have indicated some of the areas that we feel would need to be addressed.

Mr. SHUSTER. Any particular States that have been more aggressive or positive?

Ms. STUBBS. It is still undergoing review in all of our States.

Mr. SHUSTER. I think you will find Pennsylvania is going to be very, very interested.

Ms. STUBBS. I know they are.

Mr. SHUSTER. Mr. Geddes, could you talk a little bit about what you have studied, looking at Europe and Japan, and the findings of competition there and its impact? From what I see, it has been positive. Can you talk a little more about that, the competition aspect of it?

Mr. GEDDES. I can, Mr. Shuster. I was on sabbatical last year studying public/private partnerships in transportation in Australia, which began with the Sydney Harbor Tunnel in the mid-1980s.

The Government simply did not have the money to build the tunnel under Sydney Harbor. The bridge that we are all familiar with in Sydney Harbor was completely and utterly congested, and that has been an extremely positive piece of infrastructure. They moved on to do competitive bidding.

My main focus has been in highways, roads, bridges and tunnels.

They did an extremely complicated P3 in Melbourne called CityLink, which has been very successful according to accounts of everybody I was able to talk to in Australia.

It introduces competition. It is a competitive bidding process to win that. Financing on CityLink was provided by the private sector, which I think is the main focus here. Now, the State of New South Wales, Sydney is in the State of New South Wales, which is predominately a labor Government in Australia, is dedicated to doing all highway transportation projects going forward through P3s.

They moved completely away from the traditional financing model and moved in the P3 direction because they are such firm believers in the P3 approach.

It has been successful. One issue I did not have time to discuss in my testimony but I think is important is not only competition, which we all agree competition is socially beneficial, but the transfer of some risks to private investors.

Private equity investors are getting a rate of return, of course, but they are being compensated for taking on real risks that are not illuminated through the traditional model. They are simply hidden and absorbed by taxpayers. Taxpayers are absorbing risks.

I think a major benefit of the P3 is to do that.

If I may, one thing I think I have learned from that experience, and this really addresses Mr. Mica's point of emphasis on what specifics we recommend as a panel in the legislation.

If you want to attract private sector investment to sunk, long-lived assets of this nature, you need to provide in this bill the institutional stability that ensures those people that they will get that return in the future, and the Government will not do something to reduce the value of that asset.

If I had one lesson from my sabbatical experience, it would be to design the legislation to provide a stable institutional structure, to which the investors from around the world, which is good, would look and say hey, I am going to put my dollars in there. These are long lived socially beneficial investments, and I know they will not be ex-appropriated by the Government down the road.

The worse possible thing is what happened in Pennsylvania. I know Governor Rendell tried up and down to get it done with the lease of the Pennsylvania Turnpike, which would have been wonderful for that State, and the investors came up with their bids,

which were multimillion-dollar costs to produce the bid, and then at the last minute, the State legislature changed its mind.

That type of time in consistency is what I would hope in the bill you could try to avoid in the future.

Mr. SHUSTER. That is a great point. With the Pennsylvania Turnpike situation, there was not as much money as was projected, number one, but second, the taxpayers need that same kind of guarantee. If you lease an asset, you are not going to squander the money and 20 or 30 years down the road look in the bank and say, "Oh, we have spent it all."

The last thing I want to say is not a question, Mr. Wytkind, it is a request. You have a very clear stance, and I understand that, but you talked about discussing other models.

Not today, but I would love for you to put together your ideas on how you do this, as long as it has a private element to it.

I just do not believe we can go forward if your solution is the Federal Government ought to give \$3 billion a year for the next 10 years to Amtrak—it is not going to happen.

We are in a world where we have to be realistic about where we are going with this. I believe that what we are proposing is realistic. That is why we are having this hearing today, to talk about other ways to do this.

I would welcome you to present me with something that is reasonable, and it does not have to be a 40-page paper, but it should include a private sector element talking about the various labor guarantees and things we can do to get you to consider moving in a different direction.

Mr. WYTKIND. I will not give you the 40-page answer now. I think you would throw me out for good.

I am happy to come back to you with all of our thoughts. We have provided some of them today. As I have said publicly, and we are going to continue to say, Amtrak needs to be the centerpiece of this proposal.

We are not against private sector participation. A significant portion of my membership that I am elected to represent works in the private sector.

Mr. SHUSTER. And they make more money.

Mr. WYTKIND. That is debatable depending on the job. The point I am making is we are not all biased and saying the private sector's role is not important and therefore we should ignore it.

As long as you understand the proposals I come back to you with are going to be with the centerpiece of the proposals being Amtrak as the primary high-speed rail provider for the country.

Mr. BOARDMAN. Can I add, Mr. Shuster?

Mr. SHUSTER. Yes.

Mr. BOARDMAN. I thought Mr. Geddes brought up an excellent point on institutional stability. I did not have the term of art when I was trying to explain what we were trying to do.

It is critical. I would not want to see this legislation damage our ability to move forward now. He may not have been applying it exactly how I am using it right this minute, but the fact is the stability of Amtrak and its future are critical to have any confidence in us as the centerpiece or anything else.

This legislation and the way that we are characterized on a regular basis does not sustain that confidence in the investing public, and it is not accurate.

Mr. SHUSTER. Mr. Hart?

Mr. HART. Yes, Chairman Shuster. I define it as a political sustainability, and it is a very key factor. That is why it is important to generate bipartisan support.

I believe you can do that. There are 29 States in the country that have public/private partnerships in operation now. There are many countries, including the nine models that I referred to for public/private partnerships in rail in my long form testimony today.

It is nothing to be afraid of. It is something to be encouraged. The private sector is ready, Congresswoman Norton, to invest in Amtrak and invest in the Northeast Corridor.

In my preparation for today and in my preparation for earlier testimony, I met with major financial institutions in New York, in and around the world, that are willing to invest capital under the right circumstances, that do not necessarily exploit the opportunity. They do want a return on their investment. They do want to minimize their risks.

There is a key factor regarding political sustainability that overrides everything.

I think this is an opportunity for the committee, bipartisan committee, one of the most bipartisan committees in Congress, to show real leadership.

The timing is now. As we approach the debt ceiling debate, which is going to really tear Congress apart and possibly the entire country apart, this opportunity here, the leadership of this committee, can impact even that debate.

Public/private partnerships are the way of the future. To deny that fact is to deny the reality that we are not going to be able to fund public transportation to the levels that we have in the past. I wish we could. We just cannot.

Public/private partnerships let the money players come to the table. That is one of the things that is absent on this panel. I am hoping there can be another hearing where we bring the real money players to the table and give them an opportunity to put their proposal and their money on the table.

That was one of the big problems with the move to reject the Florida plan. It did not give the private sector the opportunity to show they were willing to put money up.

Frankly, the folks that advocated for the rejection of that money played right into Amtrak's hands. They could not create the competitive environment to bring in other international and domestic players that wanted to compete with Amtrak on a true high-speed system in Florida. That was wiped away, and everything fell back to Amtrak by default.

We have to create an opportunity for the private sector to speak for itself, put in the terms and conditions that are acceptable, and then let the Congress, DOT, Amtrak and others evaluate it. The money will speak for itself at the time they are given the opportunity.

Mr. SHUSTER. Thank you very much, Mr. Hart. With that, I yield to Ms. Holmes Norton.

Ms. NORTON. Thank you, Mr. Chairman. I did not say the private sector did not want to invest in Amtrak or anything else. I said there was no passenger rail system that was never subsidized, and that is the operative word here.

I just want to say for the record, the chairman indicated that when I said there had been no high-speed rail bill before, he indicated he would correct me and cited a bill actually passed when the Democrats were in control of Congress, although in fact, President Bush signed this bill.

It was a bill for good repair for Amtrak. It was not a high-speed bill. It had a small, small subsidy for private proposals for high-speed rail.

Bush will not be remembered for high-speed rail or even for Amtrak. He will be remembered for year after year trying to zero out Amtrak.

Actually, Mr. Shuster was on the Floor with me. There were scores of Members trying to save Amtrak from being zeroed out and put through bankruptcy. That is all you can give Mr. Bush credit for.

I find it very interesting. The majority here has had conniptions about the affordable health care bill, too big to swallow.

Can you imagine what would happen if in its present form we were to pass this bill. It would be a nuclear shock to States all around the country. This has no chance of passage.

That is what annoys me about the bill. This is a serious matter. This is a committee that has always been very practical. How can we get something done. This is not the way to get something done.

For example, Mr. Boardman, you indicated, I believe I read in your testimony, that this proposal would actually set back the development of high-speed rail. I think you said by a number of years, 10 years. I do not have it before me now.

I do remember reading something that you wrote that said this proposal would mean the end of our national passenger rail system.

I would like you to comment on both of those.

Mr. BOARDMAN. I think the end of the system, let me just say it simply, with the debt we would be left with, we would not be able to service that debt, and as a result of that, without an increase in additional Federal assistance, there would be no way for us to continue to operate any of the non-profitable—

Ms. NORTON. That is what I want to focus on. This has been about biting off the only profitable part of the system.

If in fact Amtrak operated today with only that part with no obligation to a national system, then Amtrak would indeed be profitable. That ought to be said and that ought to be understood. Amtrak in fact pays for itself, but it also pays for a lot else.

I want Mr. Geddes, for example, to tell me what we do with the 23 States and 233 local communities all over the country who depend upon Amtrak with subsidies coming in part from Amtrak, of course, they come from the Federal Government, but they also come in part from Amtrak.

What do you want to do with them, while you are out making money with one section of the railroad?

Mr. GEDDES. Thank you for the question. I have been waiting to address that question for a while. It is terrific.

I am in no way, shape or form opposed to those subsidies, as long as subsidies are (a) transparent; (b) provided in the least possible cost.

Ms. NORTON. Which subsidies?

Mr. GEDDES. Subsidies to the routes you are referring to, to these small communities.

Ms. NORTON. Part of those subsidies come from Amtrak, the Northeast Corridor.

Mr. GEDDES. Some of the subsidies come from the Northeast Corridor.

Ms. NORTON. The other comes from the Federal Government. Do you want more from the Federal Government?

Mr. GEDDES. There is absolutely no policy reason why those subsidies need to come from riders in the Northeast Corridor. There is no solid social policy reason why a rider between Washington, D.C. and New York should be cross subsidizing a ride on Amtrak say from Des Moines to Seattle, wherever, pick your towns.

Ms. NORTON. That is a very interesting notion of transportation. Some States, Mr. Geddes, in our system regularly subsidize other States. This is a 70 percent federally funded corporation.

Some States fund smaller States, and the other way around. This is a union. Maybe you do not think there should be cross subsidy, but I do not understand why.

Mr. GEDDES. No, madam. This comes from 20 years of teaching Economics 101 after I received my Ph.D. from the University of Chicago.

A cross subsidy of the nature you are referring to generates social losses because it distorts the price system. We have recognized that in economics for over 40 years.

There is a problem, a serious problem associated with building cross subsidies into a system like this.

Ms. NORTON. I get your point, Mr. Geddes. The people of the United States will subsidize these 23 States and 233 communities rather than getting it from the private sector or the fare box of Amtrak.

I would like to ask you another question. What do you think about the proposal to pay people \$2 million to write a proposal, in light of your notion that the private sector should take responsibility? Should it not take responsibility for writing its own proposal?

Mr. GEDDES. Absolutely, and they would take responsibility.

Ms. NORTON. They should not give \$2 million from the taxpayers for people to write a proposal?

Mr. GEDDES. We have a giant body of law called antitrust laws that is intended to promote competition. We as a society believe that competition is per se good and positive.

One of the things that this proposal would do is encourage that competition.

Ms. NORTON. We pay corporations in order to encourage competition among corporations? Do I hear you right?

Mr. GEDDES. You want to get more bidders into the process.

Ms. NORTON. Should there not be an indication of whether or not a bidder, a serious bidder, was willing to put his own capital up to bid?

Mr. GEDDES. They are at risk of losing that if they do not win the bid.

Ms. NORTON. Mr. Geddes, I am chair of a subcommittee that has to do with construction and leasing for Federal buildings throughout the United States. Regularly, they engage in competition. We put out an RFP. They engage in a competition. They lose—of course, there is a way of taking care of that in the tax system or at least part of it—they lose millions of dollars every year competing for Federal contracts. Indeed, that is the way it has been throughout the Federal system.

Why should this be an exception to how the Federal Government does business with the private sector if it wants to do business with us? Put up your own money. We will know you are serious. I am not going to pay you.

Mr. SHUSTER. I would ask the gentlelady to wrap up. We want to make sure we get to Mr. Sires. They are going to call votes here shortly.

Ms. NORTON. I will wrap up very shortly. I just could not stand it.

Mr. GEDDES. It is used throughout the world, Congresswoman.

Ms. NORTON. It is not used in the United States of America. That is one part of this proposal that has to go or be laughed out of the proposal. I think the reason it is in the proposal is nobody was willing to put up his money in the first place when the word went out for private proposals.

I just want to say Amtrak is itself a public/private corporation. The public part is us.

Mr. SHUSTER. I am going to ask the gentlelady to wrap up. Mr. Sires has been here for most—

Ms. NORTON. I am going to defer then to the gentleman.

Mr. SHUSTER. I thank the gentlelady very much. Mr. Sires?

Mr. SIRES. Thank you very much. Mr. Hart, I have to say you scared the hell out of me with your statement to bring money players to the table.

It seems that every time we bring money players to the table, look at the housing industry when we brought the money people, the entities, to the housing industry, today, we have more foreclosures than ever, with some of the practices that were going on.

I am very concerned because the outcome of privatizing this is the bottom line is profits and a lot of little people are going to get hurt in this process.

If we do not find a way of protecting some of those little people, the pensions, the retirements, we are hurting a lot of Americans.

I am very concerned about that. Briefly, because I want to ask a question to Mr. Boardman.

Mr. HART. The analogy of the financial industry is a little bit misplaced, but I do recognize your overall concern and sincerity in raising the issue.

There are provisions and ways in which the financial sector can be beneficial. They can increase the quality of service for Amtrak. Put Amtrak to the test of a true business case.

How much is the Northeast Corridor worth? How much is the infrastructure in the Northeast Corridor worth? I have not heard a

number from anybody to actually tell me what is the value of the asset we are talking about.

It seems to me Amtrak should have that answer. Certainly, if it was a true for profit operating company, we would have that answer, and also a number of other answers to how to improve the operations of Amtrak.

It is a very tough question. The private sector does bring more than just money. They do bring money, which we absolutely need. They also bring a business discipline and a focus to detail and operations that would be helpful.

I am not suggesting in our proposal that the private sector take over. I am suggesting that up to 40 percent of Amtrak's infrastructure be given the opportunity for private investment.

Mr. SIRES. They will need subsidies then.

Mr. HART. Public/private partnerships are not a replacement for public investment in rail. They are a supplement to that.

Mr. SIRES. I just want you to know that I came from the private sector. I had a business for 20 years. I had to meet payroll, health benefits and everything else.

Mr. Boardman, what percentage of the business that Amtrak does now is privatized? Do you do any privatization of any of the functions of Amtrak now?

Mr. BOARDMAN. I think in terms of looking at contracts out there, we probably have about 60,000 contracts that are private contracts for the work we get done. Amtrak itself is a private business in so many ways.

We have clearly a solid way to bring the private sector in and do work, and we have that all over our railroad.

Mr. SIRES. The concern that I have also is in my district, the New Jersey Transit brings people into New York. The New Jersey Transit moves a lot of people.

I am also concerned about the freight lines. I have the ports in my district, and we have to move some of this freight away from the highways. I do not think the New Jersey Turnpike can take another truck, quite frankly.

How is that going to impact it if we go through this privatization? We may not have the right-of-way on some of these lines.

Mr. BOARDMAN. I think there is a lot of complication to that. We really do not know that. We know we need to improve the weight capacity for a lot of the freight that is out there on the Northeast Corridor to 286,000 pounds per car.

I think it is something we have to get into the detail of, of what the economic and industrial development opportunities there. There are additional people that can invest in the concept, but we have to have that institutional stability to really get people to understand that we are going to be around.

The agreements that we have made now will continue to be held for the future. I think this bill has created a lot of concern about that happening.

Mr. SIRES. How about the commuter lines?

Mr. BOARDMAN. Same way. The New Jersey Transit in particular really has been the largest growth on the Corridor, and yet when they get into Penn Station, there is nowhere for them to go, so they

have to come back through the tunnel, so they demand a large percentage of our capacity.

We need to find another place to put them in Penn Station to really make the fluidity work on the Corridor.

Mr. SIRES. The other concern that I have is the security. In my district, I represent the two most dangerous miles in the country. We have the Lincoln Tunnel. We have the Harlem Tunnel. You name it. We have it in our district.

How do you think the security is going to be impacted if you privatize a lot of this service, they may not go through a screening process for some of these people going through these tunnels.

Mr. BOARDMAN. I do not know how it will be impacted. Right now, it is not addressed at all.

Mr. SIRES. Mr. Geddes?

Mr. GEDDES. That is the very beauty in the core of the P3, that you write that detail into the contract. You say that the security procedures will be followed this way, and if they are not, there are penalties associated with that and they are articulated.

Mr. SIRES. I heard you talk about contracts before. I was an elected official. I put out things to bid. We put out that certain things have to be done in the contract. It is just another layer for the supervisor to make sure it happens.

Really, most people out there, when you are going to make money, a lot of the stuff in the contract gets cut, including employment for some of the people that are there.

Mr. SHUSTER. I thank the gentleman from New Jersey. A question to Mr. Boardman. How difficult would it be for Amtrak to provide an inventory of what they had and the value? Do you have a valuation of what the Northeast Corridor is worth?

Mr. BOARDMAN. I will look and see what we have, Mr. Shuster, and provide it.

Mr. SHUSTER. I would appreciate that. Mr. Millar, you have been very quiet and very patient. I would like to ask you a question concerning the fact that there are 27 commuter rail systems in the country, 19 contracted out.

Mr. MILLAR. Yes, sir.

Mr. SHUSTER. Four of them actually are contracted to Amtrak. Can you talk a little bit about the difference in operations, the success or lack of success?

Mr. MILLAR. Yes. Certainly, Amtrak as a management company, if I can speak of it in that way, has been a very successful provider. They have won competitive proposals, as was pointed out earlier. They have also lost some competitive proposals.

I think the fundamental point I was trying to make is that our commuter rail members who choose to purchase service want to make sure that they continue to have that right, that it is in fact beneficial to them, and in terms of service quality, that is a judgment they and ultimately their customers have to make as to what is the best, what is the worse.

We certainly know of examples with all kinds of different providers where one provider will do very well in one city. They will go to the next city and not do so well.

It is very difficult to generalize beyond the basic point, which is competition tends to be something that works and makes things better.

Mr. SHUSTER. That is one of the things in this draft bill. We want the States to have the ability to do exactly what you have done. It sounds like it has been overall positive.

Mr. MILLAR. Yes, sir.

Mr. SHUSTER. Thank you very much. With that, I will yield 5 minutes to the gentlelady from Florida.

Ms. BROWN. Thank you, Mr. Chairman. First of all, Mr. Boardman, I want to thank you for your leadership and service, and for all of the Amtrak employees.

The feeling of the chairman and others is not the feeling of all of the Members. It is not the feeling of the traveling public.

Last Friday, just for your information, I was flying from Washington to Connecticut. I sat at the airport, after going through security for 3 hours, the flight was cancelled. The next morning, I took the flight to Connecticut.

Saturday morning, I took the train from Connecticut to New York. It was on time. It was clean. There were a lot of students and traveling public. It was wonderful. I was able to do my work as I traveled. I know you do the same thing in the winter time when that plane would not have left even the next day in the snow.

I want to thank you all. The Congresswoman mentioned something about providing money to Amtrak. For years, it was zeroed out funding.

Only with this administration, I want to be clear, it was the Obama administration that put the money for Amtrak, not just for Amtrak, for high-speed rail, based on the bill that we passed. They did not make it up. We passed the bill and they implemented it based on that.

My question to you, you wrote a letter yesterday to the Congress. Would you elaborate on that letter, saying what this bill would do as far as demolishing Amtrak?

Mr. BOARDMAN. Sure. I think this bill really does not go to the depth, the understanding, the subtleties, the complexities, the difficulties that it takes to operate a railroad.

I think I am hearing today that a lot of people agree with that, there are other things that need to be done here that really would make this bill, if you had a bill, a practical one.

You do not need to do this bill. Almost everything that is available in this bill and that you want to do with the railroad in the United States is available to be done with and through Amtrak.

There has to be stability. There has to be a stable funding source. I think Mr. Geddes said the right things about the long-distance trains, quite frankly. It is a policy decision.

If you are going to decide that you are going to provide the services across the country, you need to pay for those services. Those services should be rendered at as low a cost as we can get them to. It is not always easy to get to that low cost.

Especially as we look today, and it gets more complicated for the future, you have to understand the capital that needs to be applied and given and paid for to the freight railroads. You have to under-

stand you are going to need to make continuing investment in the capital of the Northeast Corridor.

If questions did not get answered, I think Anne brought it up, are we going to bring the Northeast Corridor back to the state of good repair, and the master plan there today, even without high-speed rail, is \$52 billion to bring that back, to bring it where it really needs to be to provide that reliability.

The private sector is going to be interested in whether that is there or not, and if they are going to put part of their dollars forward, they need to know they have that public partner along with an operating partner like us.

When high-speed rail comes to really be looked at and when this whole program comes to be looked at, it has to be looked at in its whole.

If you take away the Corridor and you decide you are not going to have a policy of having a connected mobile rail system in the country, you have begun to destroy Amtrak.

Ms. BROWN. I attended every single hearing. I did not hear maybe what the chairman and others heard. He asked for recommendations on the bill. I would say strike everything and start somewhere else.

I want to ask about the labor protection. The chairman constantly mentions the protection is there for labor, and maybe you all discussed it when I was out of the room.

Mr. SHUSTER. He did.

Mr. WYTKIND. Let me explain it to you. I did discuss it with him. Nothing in this legislation guarantees anything to Amtrak's employees. The Railway Labor Act, Railroad Retirement Act, none of the statutes apply to railroad workers, despite public comments made that employees of the company will be held harmless.

Secondarily, not even the hiring preference really has much value to Amtrak workers. All they are guaranteed is a chance to be considered for a job. That is it. That is really all I can find in this bill that gives Amtrak employees any confidence they will have at least a chance to be gainfully employed.

As far as I am concerned, our public comments say close to 20,000 jobs are at risk, and that is perfectly valid based upon the current draft legislation.

Mr. SHUSTER. The gentlelady has 1 minute for a final question or remark.

Ms. BROWN. The chairman constantly talks about Virgin Air and how they make a profit. The point is the British put in over \$50 billion; is that correct? \$15 billion. This is the second round. I had been over there for the first round when they took all of the system back and bid it out again.

They put \$15 billion in recently, but they only receive \$168 million profitability.

Mr. BOARDMAN. We talked about that a little bit earlier. I think one of the things that came to light is that we were really talking about 1 year where there was any profitability, and for the rest of the time, there has been additional subsidies applied, not just Virgin, but the other private train operating companies that are over there.

The way they get that subsidy is to bid for the cheapest subsidy for that particular line.

Britain is going through another soul searching again about taking this back to a more vertically integrated system. The public share of the operating cost is now about 50 percent of the total, as opposed to 40 percent, even though they have a great deal more ridership, their subsidy levels have increased, and the total cost to them is about six times where it was back in the late 1990s.

Ms. BROWN. I went to the hearing up in New York. One of the things is there were people from the Governor's Office. It was elected officials.

The point is it is not just one system. It is working together. The point is Big Government is going to come in and take over.

I cannot believe that is the mindset of the Republican leadership on this committee.

Mr. SHUSTER. The gentlelady's time has expired. They have called a vote. I want to wrap this up so we can all get out of here.

I appreciate the gentlelady's passion for rail in this country, and I appreciate her requesting to have this hearing today.

Again, I want to thank all of you for being here today. I believe it is time to make a change in this country, to deregulate passenger rail.

Mr. Wytkind, I am looking forward to seeing your proposals. Forty pages is fine, if it is that kind of detail, and I would like to see it.

Again, I appreciate everybody being here. I thank you all for coming, and I am sure we will be talking again.

Ms. BROWN. Can I have an additional 30 seconds to close?

Mr. SHUSTER. Sure. Thirty seconds and then I am going to gavel you down.

Ms. BROWN. That is fine.

Mr. SHUSTER. I have been here for 4 hours. You have not.

Ms. BROWN. Let me just say one thing. This proposal, I promise you, is dead on arrival in the Senate. It is going nowhere. We should be dealing with the aviation bill, but what we are dealing with is a pipe dream that will end when it arrives at the Senate.

Thank you very much.

Mr. SHUSTER. I appreciate those closing remarks. I certainly disagree with them.

I think this is going to be a talking point in the House, and I think for people across the country as well; as I mentioned earlier, there are 350 million passenger train rides in the country, but only 28 million of them occur on Amtrak. The American people are going to stand up. I have already heard them in circles, even liberal circles in this country, saying the one thing we should do is end Amtrak as it exists today.

We are going to have a lot of conversations.

I believe, as Chairman Mica believes, that eventually there are going to be significant changes to the way we provide passenger rail in this country.

Again, thank you all for being here, and this hearing is over.

[Whereupon, at 2:03 p.m., the committee was adjourned.]

OPENING STATEMENT OF REP. STEVE COHEN

The Full Committee on Transportation and Infrastructure

“Competition for Intercity Passenger Rail in America Act of 2011”



June 22, 2011

I am pleased to be here today to receive testimony from our esteemed witnesses about the important subject of American Intercity Passenger Rail.

Like Chairman Mica I have a great affinity for passenger rail and a desire to advance domestic service. Moreover, we share the same concern that the United States continues to fall further behind much of the developed world when it comes to providing affordable, efficient passenger rail service to our constituents. That being said, our beliefs on how to improve and expand passenger rail vary dramatically. While I appreciate the Chairman’s intentions, I do not agree with his proposal to privatize Amtrak’s greatest asset – the Northeast Corridor.

If this legislation is enacted and Amtrak is forced to give up the Northeast Corridor, Amtrak would shut down. Because Amtrak makes an operating profit in the Northeast Corridor, this profit is used to offset operating losses on Amtrak’s other routes. Amtrak also uses these revenues to help finance and maintain more than 500 stations, mechanical and equipment shops, and other facilities it owns or operates in 46 States. Unless the Federal Government or deficit-ridden States are willing to pick up those costs, Amtrak and several commuter rail agencies that depend on Amtrak for service will be out of business, which would devastate domestic rail service and kill thousands of jobs.

I thank the witnesses for being here today and look forward to hearing their thoughts on the privatization of the Northeast Corridor.

COMMITTEE ON TRANSPORTATION & INFRASTRUCTURE

**“Opening the Northeast Corridor to Private Competition
for Development of High-Speed Rail”**

June 22, 2011
(approx) 10:30 a.m. - Room 2167 Rayburn

Opening Statement of Congressman Elijah E. Cummings

I thank Ranking Member Rahall and Ranking Member Brown
for calling so vigorously for today’s hearing. I also thank
Chairman Mica for agreeing to their request.

As a Representative from Maryland, I know how critical the
Northeast Corridor is to ensuring mobility from the Mid-Atlantic
to New York and Boston. The Corridor is also critical to local
mobility and hosts many commuter rail lines, including
Maryland’s MARC service.

Every year, 11 million passengers ride Amtrak in the Northeast Corridor, while 350 million passengers ride a commuter rail service in the Corridor.

Given the importance of this Corridor and of Amtrak service to the Northeastern United States, I am astounded that anyone would suggest selling it to the highest bidder.

While this legislative proposal raises many troubling questions about Constitutional and contractual matters – including questions whose apparent answers appear to lead to absurdities – I am also keen to understand from a business perspective how the significant infrastructure improvements that are needed all along the Northeast Corridor to enable truly high speed rail

service to travel in the Corridor would be made by the private sector.

In Maryland, for example, the B&P tunnel, which carries every train traveling into Washington, D.C. from all points north of the city, must be replaced.

This tunnel was opened in 1873, and its antiquated design limits train speeds to 30 miles per hour.

In an effort to begin the long process that will be required to eliminate this bottleneck, I supported inclusion of a provision in the 2008 Rail Safety Legislation that directed the Federal Railroad Administration to work with Amtrak, the Surface Transportation Board, the City of Baltimore, the State of

Maryland, and rail operators to select and approve a new rail tunnel alignment through Baltimore that will permit an increase in train speed and service reliability and to complete environmental reviews for this alignment by September 30, 2013.

This project received from the Recovery and Reinvestment Act the \$60 million in funding authorized in the Rail Safety Bill to support the studies necessary to enable a new alignment to be selected.

However, likely hundreds of millions of additional dollars – if not billions of dollars – will be needed to actually build the new alignment.

And sadly, the B&P tunnel is just one example of the significant infrastructure improvements that must be made on the Northeast Corridor to allow truly high speed rail to travel between Washington and Boston. In fact, these very impediments artificially constrain the Acela from achieving its full speed capabilities along much of the alignment.

Rather than cutting from our planned investments in high speed rail, we need to make creation of high speed rail service a national priority and we need to understand that investments in our nation's infrastructure are really investments in our own future success and global competitiveness.

We also need to be clear that the private sector – which seeks the highest return at the lowest cost – is unlikely to be able or willing to build a high speed rail system that truly serves our nation’s mobility priorities.

In fact, what would be most likely to occur if we go down the track envisioned in this legislation is that we will derail all passenger rail service in this nation – starting with the immediate elimination of all long distance service and the decay of the Northeast Corridor.

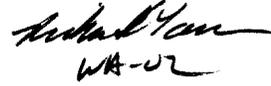
Should this proposal ever be enacted, in what I suspect would be very little time, the Federal government is very likely to

eventually have to pick up the pieces of some failed experiment in the Northeast Corridor.

If we want truly high speed rail service in this nation – and I believe we urgently need it – we should not be diverted down dead ends like this one.

Rather than cutting from our planned investments in high speed rail, we should make creation of high speed rail service a shared national priority that receives the funding necessary to succeed.

With that, I yield back. ###



Rep. Rick Larsen

Opening Statement

Hearing on the draft "Competition for Intercity Passenger Rail in America Act of 2011"

June 22, 2011

Mr. Chairman, I am strongly opposed to this proposal to eliminate Amtrak and seriously threaten the future of passenger rail in our country.

Stripping Amtrak of its greatest asset, the Northeast Corridor, as this bill proposes to do, would essentially shut down Amtrak, lay off over 20,000 men and women, and jeopardize passenger rail throughout the rest of the country.

At a time when we should be improving our domestic infrastructure to remain competitive in a global economy, promote growth and efficiency and feed the American market, this is exactly the wrong bill at the wrong time.

Instead of jeopardizing 20,000 jobs and shutting down an economic driver we ought to be investing in our transportation infrastructure to create jobs in our local community.

This ill-conceived proposal would seriously threaten the promising future of passenger rail in the Pacific Northwest. Without revenues from the Northeast Corridor, Amtrak would shut down and their long distance routes that serve portions of my state would end as well. Washington state's passenger rail service is operated by Amtrak and would face huge cost increases if Amtrak continued to operate. The Sounder commuter rail, which is operated by Amtrak, would also have to find a new operator.

Washington's passenger rail ridership has experienced strong growth over the past few years and our state is committed to its future. Our state received over \$700 million in high-speed rail funds and these dollars are going to work in our local communities, creating jobs and helping commerce move more efficiently from point to point. This proposal would be a serious setback to these efforts.

I am also concerned about this bill's effect on the men and women who work on our railroads. It would abrogate all existing contracts for workers on the Northeast Corridor and other privatized routes and provides no protections for dismissed personnel. For rail workers in the new system, Davis Bacon protections would not apply and they would be exempted from the Railway Labor Act and the Railroad Retirement and Unemployment systems. Without RLA protection workers would lose their long-standing right to collectively bargain.

It would also undermine the Railroad Retirement system that provides pensions for over 525,000 people. This is a job-killing proposal that is a slap in the face to the hardworking men and women of Amtrak.

I look forward to hearing from our witnesses more details about how this proposal would threaten the future of passenger rail in our country. And when it comes to a vote, I urge my colleagues to reject this ill-conceived proposal.

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TESTIMONY

OF

**JOSEPH H. BOARDMAN
PRESIDENT AND CHIEF EXECUTIVE OFFICER
AMTRAK
60 MASSACHUSETTS AVENUE, NE
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(202) 906-3960**

BEFORE THE

**HOUSE TRANSPORTATION & INFRASTRUCTURE
COMMITTEE**

**WEDNESDAY, JUNE 22, 2011
11:00 A.M.
2167 RAYBURN HOUSE OFFICE BUILDING**

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Good morning, Mr. Chairman, and Ranking Member Rahall. I appreciate the opportunity to discuss the proposal that's before the committee. For forty years, Amtrak has been America's only high speed rail operator and it has managed Federal investment in the Northeast Corridor to transform infrastructure and operations. Today, we are a world leader in terms of cost recovery and operating efficiency, the most efficient passenger railroad in America and one of the most efficient in the world. We share your advocacy for high-speed rail development in the Northeast Corridor and support some of the broad objectives your bill seeks to advance, such as encouraging private sector investment, reducing Northeast Corridor trip times, and increasing Northeast Corridor high-speed rail service frequency. Amtrak is well along in its own initiatives on these fronts. Amtrak has created a "Next Generation High Speed Rail" plan for the Northeast Corridor, which has received many positive international peer reviews, and we are now moving forward on implementation. A key to that progress will be for Amtrak to secure private funding, using more creative approaches than we have been open to in the past. The world's infrastructure needs have created new financial tools for major world class projects, such as ours. Amtrak intends to use those tools to realize our plan. With our experience with the positive peer reviews, with recent agreements developed with respected partners, and with our improved financial performance on the Northeast Corridor, we can do it. We have a plan. We know how to gain partners. We have the knowledge and experience to make our vision a reality. This is a serious effort, which offers practical solutions to the situation that exists on the Northeast Corridor (which is not easily understood) that no other entity can offer. In order for any public-private partnership to work, you need a partner that understands the key facts. That partner is Amtrak. That ensures that Amtrak will have a key role under any structure. Perhaps you will

rename Amtrak, but it will be the same women and men who understand the situation today and understand the necessary solutions that will be required to carry out any plan.

We believe the approach outlined in this legislation risks slowing, rather than advancing the development of high-speed rail on the Northeast Corridor. It will introduce unrealistic time schedules and assumptions, it will fail to provide adequately for transportation safety and security, and it will be more expensive.

It is important to look at the world leaders of high-speed rail in other nations to understand best practices and to study solutions, and we should adopt and adapt where warranted. However, we must deal with the facts of the Northeast Corridor. There is no one that understands the facts of the Northeast Corridor better than the women and men of Amtrak – no one. The risk associated with applying foreign business models in a different context such as the Northeast Corridor is too high. The potential for service disruptions, safety failures, and the failure to understand the environmental protections is too great a risk for us to run.

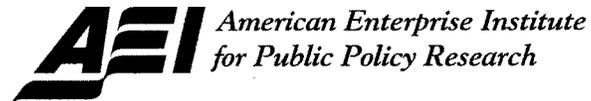
Amtrak Acela service has demonstrated that this mode can be competitive in the United States. Without it, this debate would not exist and there would not be such a clear alternative.

Many people travel around the world and are impressed with the modern high-speed rail systems they experience in Europe, Japan, or China, and they wonder, “why not in the United States?”

First of all, every one of those central governments wrote a huge check and they continue to do so. We have not been willing to do that. And second, we prioritize matters differently.

System safety is our number one concern. We will need to avoid the mistakes that were made in Britain and in China on safety. We also require a longer environmental process to protect those that will receive an impact from the construction of high-speed rail.

In closing, I will note that the theme of the bill's provisions would set back the development of high-speed rail by ten years, or more, and will cost the economy of the Northeast and the United States taxpayer a great deal more money.



Testimony before the
House Committee on Transportation and Infrastructure

“Competition for Intercity Passenger Rail in America”

R. Richard Geddes
Adjunct Scholar
American Enterprise Institute

June 22, 2011

The views expressed in this testimony are those of the author alone and do not necessarily represent those of the American Enterprise Institute.

Chairman Mica, Ranking Member Rahall, and Members of the Committee:

Thank you for the opportunity to submit this testimony to the House Transportation and Infrastructure Committee hearing on "Competition for Intercity Passenger Rail in America."

I am R. Richard Geddes, associate professor in the Department of Policy Analysis and Management at Cornell University, adjunct scholar at the American Enterprise Institute, and the author of *The Road to Renewal: Private Investment in U.S. Transportation Infrastructure* (AEI Press, 2011).

I support the passage of the bill under discussion today, which would allow for private participation in the provision of passenger rail service in the United States through the use of public-private partnerships (or PPPs). The discussion draft of the bill contemplates the use of PPPs in at least two distinct ways. The first is through the introduction of competition using a PPP on the highly traveled Northeast Corridor (NEC) between the District of Columbia and Boston. The second is through the introduction of competition using a PPP on the country's other, lower-density, long distance routes. Both the separation of passenger routes in the United States into the NEC and other, lower-density routes, and the introduction of competition using PPPs, are vital policies that will yield substantial social benefits.

It is important to first define public-private partnerships in general. A PPP simply refers to a contractual relationship between a public-sector project sponsor (where the project may here include operation and maintenance of passenger trains, as well as improvements to the underlying infrastructure) and a private sector firm or firms coordinating to provide a needed public good or service. The PPP contract is subject to all of the usual rules of contracting, and it is useful to think of a PPP as one application of a contracting approach.

Regarding the proposal at hand, I first discuss the separation of the NEC, and then move to the social benefits of the PPP approach.

The first section of the bill focuses on providing High-Speed Passenger Rail (HSR) in the NEC by allowing for competition and private participation through a public-private partnership. HSR is a commendable public policy objective that may provide valuable public benefits. However, it should be considered and pursued in the United States only where it makes economic sense. HSR makes economic sense in those regions where the revenues from rates paid by riders, as well as other revenue sources generated by HSR activities, are sufficient to cover the costs of providing HSR. This economic calculus is consistent with HSR generating net social benefits, since the revenues created by the service, which reflect the value received by riders and others, are then sufficient to pay the costs associated with providing that service. Private investment dollars will naturally flow to those routes that make economic sense.

This is why the separation of the NEC from other, lower-density passenger rail routes is excellent policy. The Northeast Corridor appears to possess the necessary pre-requisites for true HSR. In fact, it may be the only corridor in the United States that meets these requirements. This conclusion is drawn from an assessment of the following characteristics applicable to the NEC:

- Sufficient population density: There are currently in excess of 50 million people in the corridor, which constitutes less than 2% of the U.S. land mass.
- Demonstrated demand as measured by existing intercity auto, bus, air, and rail traffic: Three of the top 25 U.S. intercity air travel city pairs are among NEC cities, 60% of the top 25 U.S. intercity air travel pairs include one or more NEC cities, in excess of one-third of all of Amtrak's intercity traffic is among NEC cities; and NEC intercity bus traffic growth has been explosive in recent years.
- Unfettered access to the rights-of-way necessary to enable HSR trains to achieve sufficient speeds between stations; the essential right of way is already owned by Amtrak.
- Existence of robust local transit systems, which facilitate potential passengers' arrival at or departure from HSR stations along the route: The NEC route encompasses Washington, Baltimore, Philadelphia, New York, and Boston, all of which possess local transit systems that are among the most extensive in the U.S.

A brief look at the two HSR systems in the world that at least cover operating costs is instructive. These two -- the Japanese Shinkansen bullet trains and the French TGV -- have been constructed on dedicated, electrified, banked, and gently curved tracks safely separated from pedestrians, motor vehicles and freight traffic. Stations are far enough apart to enable the trains to reach the promised high speeds. Most importantly, the population densities, and the economic and travel characteristics of communities and the people served, are sufficiently large to support the enormous operating expenses, not to mention capital requirements, necessary to make HSR viable in these two areas. That is, there are sufficient benefits to riders as reflected in their aggregate willingness to pay rates to at least cover the operating costs of these systems.

Even with these structural pre-requisites in place, the costs of construction are far beyond those that government can afford. The true costs -- including capital costs, operating costs and other societal costs -- of any HSR system are extremely high.

For example, Amtrak's 30-year master HSR proposal anticipates capital costs of \$117 billion, or roughly \$225 million per mile. While capital cost savings can be obtained through innovative financing and through project acceleration, contemporary HSR construction projects will nevertheless cost anywhere from the \$45 million per mile estimated for the Shanghai-Suzhou line, to the estimated \$166 million per mile for the planned Edinburgh-London high-speed line.

Taxpayers cannot afford this kind of investment in the current economic climate. Private capital will be essential to renovating the NEC to provide true HSR.

Private capital can be injected into the NEC through an innovative PPP. This necessitates treating the NEC as a unit distinct from Amtrak's national network, and is justified based on the above analysis of its unique characteristics.

Before discussing the benefits of the PPP approach, I review the structure of PPPs, and how they can be adapted to meet differing social objectives. A passenger rail PPP, either on the NEC or on lower-density, less economical, routes, can be structured in different ways depending on the objective of the public PPP sponsor. Under one approach, the public sponsor may wish to maximize the amount of private sector investment available for infrastructure renovation, such as upgrading tracks and expanding rights-of-way, thus reducing the amount of public dollars required for that upgrade. This could be done by competitive granting of a concession or lease of operational rights on the NEC, while retaining responsibility for infrastructure.

The public project sponsor would then determine all the key attributes of the desired service, such as train speed, frequency of service, allowable rates, lease length, and other contractual details. This proposed contract would also allocate various risks between the private partner and the public sponsor, such as the risk of cost overruns on system expansions and renovations.

Consortia of private firms (typically a group of investors and an operating firm), would then bid against one another for the right to operate passenger trains on the NEC. The structure of the bidding is a critical variable. If the public sponsor's goal is to minimize reliance on public funds for infrastructure renovation, then consortia can bid on the basis of the largest investment they will offer in return for lease rights. Assuming a sufficient number of bidders to make the process competitive, this process will ensure that the amount offered is the best the public sponsor can do in terms of obtaining private sector support for infrastructure renovations on the NEC.

The above discussion suggests that ridership on the NEC is likely to be high enough so that private partners would be willing to pay for the right to offer passenger rail service on that line. However, contrary to common perception – and critically for PPPs on low-density routes – ridership insufficient to cover costs does not preclude the use of a PPP. It simply changes the nature of the bidding. If the line requires a subsidy for its operation, bidding can take place on the basis of the lowest subsidy acceptable to the private partner in order to provide that service. The competition that such bidding allows ensures that the subsidy will be as low as possible, and that service will be efficiently provided. Least-cost-subsidy bidding allows for subsidies to be phased out as traffic volume, and thus revenue, on the facility increases with economic growth.

Although some commentators focus on revenue from rates paid by riders, there are additional possible sources of revenue that can be used to attract private sector investment, which may make private investment in HSR on the NEC more feasible than first imagined. For example, the winning private partner could be granted commercial or residential real estate development

rights in areas adjacent to stations. Other possible revenue sources include naming rights for stations and bulk purchases of tickets by corporate entities, among others.

Alternatively, the public sponsor may have a goal other than maximizing private investment in passenger rail infrastructure. The goal may be obtaining the best fare/service quality combination, for example. In that case, the sponsor can set the basic parameters of the contract, announce the precise criteria on which the winner will be determined, and accept bids. The key insight is that the PPP contracting approach is flexible enough to accommodate a variety of public sector sponsor objectives.

I next review a few of the salient benefits of the PPP contracting approach, and point out where these benefits apply to the NEC versus the non-NEC parts of the U.S. passenger rail system.

The introduction of competition. One often-overlooked social benefit of the PPP approach is that it allows for the single most powerful, and salutary, economic force to be introduced into the provision of a good or service: competition. Competition is widely recognized to encourage competitors to provide quality service at low cost, to be responsive to customer's needs, and to encourage competitors to innovate. Without private participation in some form, however, monopoly government-firm-only provision results. The benefits of competition are lost. That competition is a recognized social goal is evidenced by the existence and enforcement of antitrust laws, which seek to ensure that market competition prevails. The competitive benefits of PPPs can be realized on both NEC and non-NEC routes.

The transparent and least-cost provision of subsidies. Competition introduced by the PPP approach allows for any desired subsidies to be delivered transparently and at the lowest possible cost. As discussed above, the NEC may have sufficient density to generate net private investment, thus eliminating the need for taxpayer subsidies in that case. Non-NEC routes, however, may require subsidies to operate under a PPP, as they do presently. Open, competitive bidding is still critical in this case, since it will ensure that the taxpayer is protected: any socially desirable subsidies will be provided at least cost to the taxpayer, and will also be transparent, since they will be the result of bidding and must be paid to the private partner. This is critical for improved policy, as it lets taxpayers know what they are paying for a given service. Improved accounting for and transparency of subsidies leads to better decisions about their use, and thus creates improved governance of the system on behalf of taxpayers.

The articulation and enforcement of clear key performance indicators. A critical social benefit of the PPP contracting approach is simply that a contract exists. The contract will of necessity include details regarding what actions constitute adequate performance on the contract. The PPP contracting approach thus encourages the public sponsor to reflect upon, and articulate, what specific actions by the private partner constitute excellent, or poor, performance, and to consider what penalties and rewards will be assigned to each. This will result in better service provision. This may include metrics about major issues, such as the reliability and frequency of train travel, but also more detailed considerations such as the cleanliness of cabins, restrooms, and dining cars. The critical consideration is that the PPP contracting approach allows for the

penalties and rewards associated with each of these key performance indicators to be borne by a well defined and highly interested group: investors. In contrast, under government-monopoly provision, there is no contract at all, so performance expectations are obscure. Even if there were, the penalties associated with poor performance would not fall on any concentrated, interested group, but would instead simply fall on taxpayers in the form of greater subsidies. These performance benefits of the PPP contracting approach will be generated by PPPs on both the NEC and non-NEC routes.

The provision of fresh capital. One of the most obvious benefits of the PPP approach is that it allows for fresh capital to be injected into passenger rail in the United States that the public sector simply does not possess. This allows for renovations, upgrades, and maintenance to take place that otherwise would not occur. This will result in safer, faster, and more efficient service. But it also results in substantial savings, since a project will be completed faster under the PPP contracting approach where private capital can get the work done more quickly than if private capital were disallowed. This social benefit applies to both NEC and non-NEC routes.

The introduction of private sector technologies and innovation. One widely recognized, key advantage of the PPP contracting approach is that the private sector has incentives to research new technologies, to implement those technologies, and to be innovative. This will result in lower costs and improved service. Because there is a well defined group of people – the private partners - who stand to benefit from those improvements (as well as customers), those incentives to innovate are powerful. This applies to both NEC and non-NEC PPPs, and stands in contrast to a government monopoly approach, where only a highly diffuse, poorly organized group - taxpayers - stand to benefit.

With private participation, concerns about protecting the public interest from high rates that may result from market power may be intensified. It is thus critical to structure the PPP concession contract carefully. The contract should precisely specify how fares will be determined, as well as the key performance indicators, as noted above. This approach converts a public interest concern into an advantage of PPPs: performance metrics can be transparent, can be determined *ex ante*, and incentives can be set up to achieve those metrics. The critical insight is that the public interest is protected through the PPP contract.

High-Speed Rail is a potentially viable service that could offer the public a valuable alternative to current transportation options in the NEC. However, it will be costly. To mitigate taxpayer costs, the private sector should be engaged as a full partner through a public-private partnership.

Although a complete discussion of the use of the PPP approach in transportation internationally is beyond the scope of this testimony, it is useful to note that many other countries have been using it successfully for decades and in some cases for centuries. Australians have used transportation PPPs consistently since the mid-1980s, and its program is considered to be successful overall. The first transportation PPPs in France date from 1554 in the case of the

Canal de Craponne in Southeastern France, and from 1666 in the case of the Canal du Midi in Southwestern France.

Private sector participation will foster operation of a NEC HSR system like a real, viable business with an inherent focus on meeting real market needs, with success evaluated on the basis of benefits to riders and the full costs of installation, and maintenance and operation borne by the operator, not the taxpayer.

I enthusiastically recommend that this Committee adopt legislation that enables the PPP approach to be used on both NEC and non-NEC routes.



TESTIMONY OF THOMAS A. HART, JR., ESQ.¹
VICE PRESIDENT FOR GOVERNMENT AFFAIRS AND GENERAL COUNSEL
US HIGH SPEED RAIL ASSOCIATION
To US House of Representatives, Committee on Transportation and Infrastructure,
With Chairman John Mica Presiding

Wednesday, June 22, 2011

On behalf of the United States High Speed Rail Association (USHSR), its Directors, Andy Kunz, and Joe Shelhorse, and its 250 members, I extend greetings to this prestigious Committee on Transportation and Infrastructure. I am here representing USHSR as its Vice President for Government Affairs and General Counsel. I also serve as the Director of the Washington office of the national law firm of Quarles & Brady. The USHSR is a non-profit trade association committed to advancing a state-of-the-art, nationwide, "true" high speed rail (HSR) system - to be completed in phases around the country. Our mission is to build widespread public, business, and political support for major investments in a national HSR network by the public and private sectors.

I. BACKGROUND

The USHSR is pleased to share its thoughts on how to expedite the development of HSR by opening the Northeast Corridor (NEC) to private competition. In January, I had the pleasure to testify in New York City before this Committee's first hearing of this Congress. Last month, I testified before the Subcommittee on Railroads, Pipelines, and Hazardous Materials to

¹ USHSR is located at 10 G Street, NW, Suite 710, Washington, DC, 20002; telephone 202-248-5001; thart@ushsr.com; learn more about USHSR, and its upcoming conference at www.ushsr.com

emphasize, the importance of establishing federal programs that will spur the creation of public-private partnerships for funding HSR systems.

Presently, most of our national transportation systems are overloaded and in a state of disrepair - which causes delays-costing the nation more than \$100 billion dollars per year in lost time and wasted fuel. The price of oil is already trading over \$100 dollars a barrel, and is expected to continue rising indefinitely. The more quickly America can build alternative forms of transportation not dependent on foreign oil, the better the nation will be and the sooner we can recover from the current recession. Ironically, increased oil prices translate into increased rail ridership, which in turn improves the business case for HSR. We have already seen this happen the summer of 2008 when oil hit \$147 per barrel, and the ridership on America's rail systems rose to record levels. With the right development and adequate investment in HSR, a vast consumer base can be tapped into for a true HSRnetwork that can deliver safe, efficient, and faster travel.

America has a history of investing in state-of-the-art transportation infrastructure with the government funding the base infrastructure and private companies operating the transportation vehicles within that base infrastructure. This is how our highway system and our aviation systems were built and operate today. The infrastructure was built and is owned and maintained by the government, while the vehicles are operated by private, for-profit companies.

The popular Washington, DC to Boston passenger train route, otherwise known as the Northeast Corridor (NEC), is particularly ideal for HSR investments not only because it stretches across seven states totaling 480 miles, but also because it has the most robust ridership level

from a resident population of approximately 50 million. In 2009 Amtrak's daily rail ridership in the NEC was more than 27,000 passengers. Economically strong, the Northeast Corridor has among the highest income levels per capita in the nation. Such demographics make the NEC ripe for HSR development and investment by the private sector.

We believe this is the best model for the new high speed rail network in America, starting with the NEC, since this private sector development and investment has precedent in the majority of our current forms of transportation, and it is the way many high speed rail systems are developed and operated around the world.

The U.S. Government already owns the NEC through Amtrak, and it is already a busy and successful rail corridor. The key to unlocking the great value of the NEC is twofold. 1) the entire NEC needs to be upgraded to international high speed rail standards to allow for trains to travel at speeds up to 220 mph; and 2) train operations need to be separated from the infrastructure operations, as in our other forms of transportation here in America. This will allow private, for-profit rail operators to compete for passengers in the newly upgraded NEC. In this scenario the infrastructure would be owned and controlled by the U.S. Government and affected States and it can then be managed and maintained by a private company as a for-profit business. This separation would then allow a second layer of for-profit businesses to operate trains in the corridor.

II. AMTRAK OVERVIEW

Over the past 40 years Amtrak has provided a unique and valuable public service to the nation as it is the primary carrier of the nation's rail passengers. Amtrak has over 1900 employees, many of whom come from 13 organized and hard working employee unions.

In the NEC, Amtrak coordinates eight commuter rail carriers and 2,000 trains per day over NEC track. Amtrak deserves credit for their recent commitment to a HSR network by the appointment of Al Engel as their VP for HSR Deployment. Al is a seasoned veteran and expert in the field. Amtrak and the nation are lucky to have him lead this important project.

Although Amtrak has made a number of recent advancements, including making a profit last year, it must do much more to reach its full potential. The current slogan in Washington is that "everything is on the table." In this globally challenging economic environment, even Amtrak is "on the table" for critique and evaluation. Although USHSR does not support the "privatization" of Amtrak, the association does call for rapid improvements in rail service created by competition, innovation and private investment.

Despite the common misconception, Amtrak's Acela is not true HSR. Globally, HSR trains regularly operate at speeds of 186 to 220 mph. In some countries, (like Japan and China) HSR systems reach speeds in excess of 300 mph. Although the Acela has many merits, it falls short of maximizing the potential a true HSR line would deliver to both consumers and its operators. Currently, the Acela is limited by its own operating speed, compounded by the lack of separate, dedicated track. The Acela averages 79 mph on most of the line because it shares

its track with other passenger and freight trains. Therefore, the development of a true HSR system would necessitate new dedicated track independent of freight operations. Additionally, the two routes that Amtrak runs out of New York City along the NEC generate much of the entire system's revenue and are two of the few Amtrak lines that actually return considerable profits. However, with the right development and adequate investment in HSR, there is a vast consumer base that can be tapped into for a true HSR line that can deliver safe, efficient, and faster travel.

Over the years, Amtrak has become one of the nation's major recipients of government funds and subsidies. Amtrak recently received over \$450 million dollars for improvements in the NEC. Although Amtrak has begun the procurement process, it has yet to develop a comprehensive business plan that sets out goals, timetables and procedures.

Moreover, like the Federal Railroad Administration, Amtrak lacks clear government mandates for small and minority business development. As we examine ways to increase private investment and create jobs, this Committee should also develop procedures and programs to ensure small and minority business procurement by Amtrak.

III. THE PROPOSED RESTRUCTURING OF AMTRAK

The US High Speed Rail Association proposes a plan that would split Amtrak into two entities: Amtrak Operations, the national rail operator, and Amtrak Infrastructure, which would own and manage the rail infrastructure in the Northeast Corridor. Amtrak Operations would continue Amtrak's successful management of national rail operations, including the Northeast

Corridor where yearly passenger ridership is at record levels and profits currently support service in the rest of the country.

Amtrak Infrastructure would be a separate entity that would be able to sell up to 40% of its shares to private investors and potential partners. Amtrak's record for infrastructure particularly construction and maintenance is spotty at best therefore such alterations should be made. This new investment would be used to upgrade rail infrastructure in the Northeast Corridor to world-class high speed rail standards, enabling up to ten times more trains per hour using the corridor. Revenues would be generated from track access charges and renewed economic development at train stations along the corridor. Amtrak Infrastructure would be a profitable entity reducing the need for an annual federal subsidy and creating a new source of funding for expanded high speed rail development in the rest of the nation.

We believe our proposal could gain bipartisan support in this Congress, enabling high speed rail to advance instead of stalling in partisan gridlock. And in the near future, we would realize the many benefits of high speed trains attaining top speeds of over 200 miles per hour, providing a welcome transportation alternative to crowded highways and airports, creating jobs and economic development, and reducing our dependence on foreign oil.

IV. THE NEED FOR PRIVATE INVESTMENT IN HSR

The debate is now how do we fund and operate one of the most important transportation infrastructure projects in America? With the continuing economic and political climate focused on reducing public spending and the challenges in attempting to balance the budget, the future of HSR development in America will depend in part upon private sector

investment. As you know, over the past two years there has been a renewed commitment for federal investment in rail transportation, but more capital is needed to ensure a successful project that meets the expectations of consumers in an efficient and profitable manner. In essence, there must be an on-going federal HSR program established to signal that this project is one of "National Significance" similar to the way the transcontinental railroad and the interstate highway system were built. Moreover, public-private partnerships (PPPs) are needed to carry out this important national program, and global experience shows that they can be successful.

According to the Infrastructure Management Group, PPPs frequently serve the public interest by:

- reducing costs
- expediting project completion
- decreasing tax-payer risk
- lowering government subsidies
- extending the life-cycle of the project
- sparking innovation and efficiency
- insulating the project from the political change
- leveraging the use of public funds by mobilizing financial resources from the private sector
- creating jobs and small business opportunities

V. PPP/HIGH SPEED RAIL PROJECTS AROUND THE WORLD

1. UK High Speed Rail (High Speed 1 (Channel Tunnel Rail Link))

In 1996 a tender was issued for a project to construct a high speed rail line from London to the UK end of the Channel Tunnel. The line was to be built to carry passenger traffic from the UK to the Continent, as well as to enhance internal passenger travel within the UK. Construction on the project was started in 1998, the project was later split into two portions to enable completion of each, and both sections of the project build were open by 2007. The concessionaire was the London & Continental Railways Limited, and the PPP consortium included Arup, Bechtel, SBC Warburg and London Electric. Ultimate ownership of the project: the UK Economics & Finance Ministry. Financing is based on operating income. The total investment in the line is approximately \$12 billion dollars.

The project was restructured into two project portions to better contain project risk and address political and financial problems and several changes in ownership.

Last year, the UK government auctioned off a 30-year concession for the right to own and operate its first high speed railway, the HS-1, linking London to the Channel Tunnel. The sale generated approximately \$3.4 billion dollars², and the leasee was a consortium of two Canadian pension funds - Borealis Infrastructure and the Ontario Teacher's Pension Plan. The concession sale is estimated to return 40 percent of the original construction cost to the British treasury.³ Such savings are likely to help reduce the British government's record deficit. In 2040 - when the concession ends - the railway reverts back to the government, which anticipates re-bidding it for an equal or higher

² Mark Reutter, British Deal Shows Private Investment Demand for High-Speed Rail, PROGRESSIVE FIX (December 10, 2010) available at <http://www.progressivefix.com/british-deal-shows-private-investment-demand-for-high-speed-rail>.

³*Id.*

price. “[O]ver the course of its 150-year-plus lifecycle, [HS-1] repays its construction cost, probably several times over.”⁴ Reportedly, the “higher-than-expected bids for the UK’s only dedicated [HSR] line revealed [a] strong demand for such assets” and demonstrates an alternative solution to funding HSR development, especially in the Northeast Corridor which has one of the densest market of riders.⁵

2. Dutch and Belgian High Speed Rail (HSL Zuid (High Speed Line - South))

In 1999 a tender was issued for bids for construction of a 125-kilometer high speed rail line from Amsterdam Airport Schiphol to Belgium. Construction was started in 2000, and the line was opened in 2007. The concessionaire is Infrasppeed BV, and the PPP consortium includes Fluor Daniel, Siemens, Bayerische Hypo-und Vereinsbank, ING, Dexia Public Finance Bank and Rabobank. Ownership of the project is in the Dutch Ministry of Transport, Public Works and Water Management. Financing is based on a performance fee in return for 99% availability. The total project investment in the line was approximately \$10 billion dollars.

The Dutch government retained demand risk and infrastructure risk, and all rights with respect to operating, capacity utilization and tariff structure; the project was substantially delayed by a long initial negotiation, construction problems resulting in increased costs, lawsuits over deliveries of infrastructure and delays in delivery of trains. In hindsight, the contract for the project did not specifically address financial and time overruns and did not shift enough responsibility to the private sector.

⁴*Id.*

⁵ Robert Wright, *£2.1bn HS1 Sale Lifts Privatisation Prospects*, FINANCIAL TIMES (November 10, 2010) available at <http://www.ft.com/cms/s/0/6be9c170-e90d-11df-a1b4-00144feab49a.html#axzz1BgsRnLPT>.

3. Swedish High Speed Rail (Arlanda-Express)

In 1993, a tender was issued for a high speed rail project that would connect Stockholm's Central Station with the Arlanda Airport in Stockholm. Construction was started in 1995, and the line was opened in 1999. The concessionaire is A-Train AB which is owned by the Macquarie European Infrastructure Fund. The PPP consortium includes Alstom, Vattenfall and Mowlem Nordic. Ownership of the project is in the Swedish government, and the financing is based on operating income. The total investment in the line is approximately \$700 million dollars.

The Swedish government is only responsible for operating and controlling traffic; the private consortium bears responsibility for all else, including all construction and management activities and market risk. The result has been mixed. In some instances it has overburdened the private consortium. Passenger forecasts have been over-optimistic, and the line is not fully integrated with the Swedish railway system.

4. Taiwanese High Speed Rail

In 1996 a tender was issued for a 345-kilometer high speed rail network along the western coast of Taiwan, from Taipei to Kaohsiung. Construction was started in 2002, and the line was opened in 2007. The concessionaire was Taiwan High Speed Rail, and the PPP consortium included Alstom and Siemens. Ownership of the project is in the Taiwanese government, and the financing is based on operating income. The total investment in the project is approximately \$14 billion.

There was delay in opening the finished line that increased project costs, and the consortium encountered construction difficulties in urban areas. Numerous lawsuits were filed after tendering and actual passenger numbers were below forecasts. As a result the government is today practically the sole owner due to the concessionaire's financial problems.

5. Japanese High Speed Rail Systems

Japan commissioned the world's first high-speed rail line, the *Tokaido Shinkansen*, in 1964, between the country's densest urban and commercial centers from Tokyo to Osaka. The *Tokaido Shinkansen* is today the world's busiest and most successful high-speed rail system. However, this success was not preordained or inevitable. For about the first two decades of its existence, Japanese high-speed rail was wholly owned and operated by the government. By the mid-1980s, it became increasingly evident that this model was not functioning. Bureaucratic mismanagement and political meddling conspired to drive the industry into an unsustainable financial position. Against powerful objections, the decision was finally made that privatization offered the only avenue to reverse highspeed rail's decline. Japan's national network was therefore broken up by region. In 1987, the Central Japan Railway Company (JRC) was established to take ownership of the *Tokaido Shinkansen* line.

Through a series of corporate reforms and adoption of better business practices, JRC restored the economic standing of the *Tokaido Shinkansen*, and also diversified its portfolio to include real estate, merchandising, and other services. Within 10 years, the company was publicly traded on the Tokyo, Nagoya, Osaka, and Kyoto stock exchanges.

In 2006, the Japanese government completed the sale of all its common stock in JRC, formally signaling the end of any public involvement in the company.

JRC is today a completely private entity with an enviable balance sheet by any measure.

In 2010 it generated nearly \$16 billion in annual revenue, with a net income of nearly \$1 billion. For JRC's investors, this translated into a 2010 return on equity of 8.7%, outperforming most other transportation companies. Not only is JRC able cover its operating expenses without any public subsidies, it is sufficiently profitable to pay dividends to its investors, pay down its long-term debt, and invest funds back into the company for future growth. Indeed, JRC recently announced plans to invest roughly \$60 billion to build a new high-speed line to reduce congestion on the *Tokaido Shinkansen*. This line will utilize using cutting-edge, super-conducting magnetic levitation technology (SCMAGLEV), which operates at a top speed of 361mph. JRC will bear the entire cost of this \$60 billion investment without recourse to any public funding.

6. Italian High Speed Rail

The Italian example is similar in that the government is building the track and infrastructure while the CEO of Ferrari and several other business leaders have formed a new for-profit railway called NTV. They will be starting operations this summer with a brand new fleet of 25 state-of-the-art high speed trains serving all the main cities of Italy with over 50 services offered each day. This private operator will pay a track fee for using the infrastructure that will more than cover all maintenance costs of the system, while making a profit for their efforts. The advantage of this model is that the government gets all track maintenance costs covered while also collecting fees to help

pay down the capital costs, while the public gets the best train services at competitive prices.

7. French High Speed Rail (TGV)

The first line of the TGV network was first opened in 1981 between Paris and Lyon and the network now extends throughout the country, with eight new lines either under construction or in the pipeline, including extensions within France and to surrounding countries. The network is currently operated by VFE, the long-distance rail branch of SNCF, the French national rail operator. Réseau Ferré de France (RFF), also state owned, owns and manages the network, and is responsible for upgrading, developing, and enhancing it and ensuring its overall coherence.

In 2007 RFF was allowed to enter into PPPs to finance and deliver projects, after safety and development legislation came into effect. This has allowed France to build more projects beyond the capacity of the state budget, as well as share risks with project partners. More recently, TGV lines have been procured on a PPP basis, with either demand or availability risk, which has allowed more lines to be built with the help of private financing and expertise.

Standard French public procurement is similar to US design-bid-build, with the same downsides. Now the French allow HSR concession contracts and availability-based contracts (design-build-finance-operate-maintain), as follows:

- HSR concession contracts (Example project: Sud Europe Atlantique HSL)
 - Contract awarded to concessionaire, which has to operate, maintain, and make financial investment

- Concessionaire operates infrastructure independently, at its own risk for long periods (50 years)
- Revenues from railroad operator access fees
- No revenue guarantee; however, public subsidy made available at bid process partially funds construction costs
- Availability-based contracts (design-build-finance-operate-maintain)(This was the model for the Florida project)GSM-R, Bretagne-Pays de la Loire, Contournement de Nîmes Montpellier
- Public sector comparator process required
- Contracting authority pays:
 - During operation
 - Based on performance & availability
- Revenues may (minimally) come from additional sources and/or revenues subject to commercial risk

8. High Speed Rail in Spain

The Spanish Ministry of Transport has begun the tender process for the \$8 billion dollar Olmedo to Orense high-speed rail line PPP, which is the country's largest PPP to date. The mega-project will require the private sector to build and maintain the high-speed railway that will help link Madrid to the Galicia region, including 344 kilometers of greenfield track connecting Olmedo to Orense, for a period of 30 years. It will also require the private partner to help design the rail line, build and maintain it, and implement the required signaling and telecommunications infrastructure. The tender process will involve three stages: the pre-qualification of candidates; submission of initial offers followed by a negotiation period; and a final offer stage. The ministry hopes to have the line operational by the end of 2015.

Like all projects that form part of Spain's PPP program, the high-speed rail line will be backed by availability payments – public contributions that are paid to the private sector in return for making an asset available in good condition. The government is expected to contribute 40 percent of the \$6 billion dollars (excluding VAT) required for the project, with the maintenance to cost \$2 billion dollars (excluding VAT) over a 25-year period. It is expected that the successful bidders of each of these concessions will form a limited company in which ADIF, the state-owned company overseen by the Department of Transport and charged with the management of the project, will have a minority holding.

In addition, it was announced on April 26, 2011 the start of tendering for two PPP contracts to complete the 450 km high speed line between Madrid and Badajoz in Extremadura. The winning bidders would part-finance work with a combined estimated cost of \$5 billion dollars, including maintenance over a period of 25 years, forming a special-purpose vehicle with infrastructure manager ADIF to execute the project. The first contract covers civil works and maintenance on the Madrid - Sevilla high speed line and Oropesa. Tracklaying, electrification, signaling, telecommunications and other railway equipment will be let in a second package. According to the Spanish Ministry of Development, civil works and tracklaying are expected to cost up to \$3.3 billion dollars, while the budget for other railway works is 3.5 billion dollars. Of these totals, 40% would be provided by ADIF during the construction phase, with the remainder raised through long-term debt. Availability payments would be made over 25 years.

9. Summary of International HSR Projects with PPPs.

In sum, a number of European and Asian high speed rail projects have been constructed, are proposed for construction, or are already under construction. Of those proposed or under construction, including new builds within an existing system using a PPP structure is recognized as a viable and effective way to manage certain project risks, reduce government expense and produce expedited results.

Although there have not been public-private partnerships undertaken in the American railroad industry for over 80 years, there have been several other developments of transportation infrastructure in a similar manner, such as in the development of toll roadways or parking concessions.

In establishing creative public-private partnerships, governments can tap into the \$500 billion that is currently available for investment in such projects from private financial institutions on Wall Street, in pension funds, and in the banking sector. The federal government must create the proper political environment and financial incentives that minimize risk and maximize return. Furthermore, there is a potential for a high return on investment (ROI) for public projects such as this because of the existing market of experienced rail riders in large urban areas along the NEC and other urban areas.

VI. BEST PRACTICES FOR U.S. HIGH SPEED RAIL PROJECTS

One of advantages to being last to market is the ability to learn from those that paved the way before us. Thus, we can learn from the many examples of PPP's used before. The key to success is to incentivize the private sector in conjunction with targeted expenditures of public funds. These incentives must be created and implemented through federal legislation. USHSR has proposed and distributed publically a model legislation entitled the "Private Investment in High Speed Rail Act of 2011." Under such legislation, private companies seeking to invest in rail projects stand to gain specialized benefits as well as other concessions for investment in the construction and operation of the nation's HSR rail lines.

The experience of countries implementing a high speed rail system suggests certain "best practices" for consideration in construction of a U.S. high speed rail network. Among those practices are:

- 1) Establish bi-partisan political support for the project, as there almost certainly will be changes in politics during the time from the tender for bids to first operations.
- 2) Ensure strong and robust project participants and organization, especially from the private side.
- 3) Determine the right level of risk transfer from the public to the private sector.
- 4) Unbundle the overall project into more manageable portions and phases that will attract private parties.
- 5) Standardize project build specifications and components for integration with other builds and to achieve cost savings through volume purchases.
- 6) Control integration of the various project components, with each other and with the legacy system.
- 7) Use both the private and the public markets to raise capital.
- 8) Anticipate technological and other changes affecting the project.

VII. SIGNIFICANT PROVISIONS OF THE BILL

The key to success is to incentivize the private sector in conjunction with targeted expenditures of public funds. These incentives can be created and implemented through federal legislation. Last month USHSR proposed and publicly distributed model legislation entitled "Private Investment in High Speed Rail Act of 2011." Under such legislation, private companies seeking to invest in public projects stand to gain specialized benefits as well as other concessions for investment in the construction and operation of the nation's HSR rail lines.

The Bill aims to designate HSR systems as "Projects of National Significance" to justify expedited processing of requests for environmental approvals, permits, and funding. It includes incentives that will 1) create jobs through support of the "Buy America," green energy and small business initiatives, 2) revitalize our transportation infrastructure, 3) allow private investment in Amtrak through stock and bond issuances, 4) give tax credits and flexible repayment options to businesses, 5) expand RRIF and TIFIA programs, 6) advance the creation of an infrastructure bank as proposed by a bipartisan group of Senators led by John Kerry, Kay Bailey Hutchison and Mark Warner, and 7) use public funds from FRA to leverage state public-private partnerships financing for HSR. The end result means less reliance on public funds, thereby expediting HSR development, design, and construction at a reduced cost. Meanwhile, the public partner (federal and state governments) retains some control and management of the overall rail program to ensure that public and government standards are met.

Many states have already signed legislation that encourages public-private partnerships. Most recently Illinois has passed and the Governor just signed legislation that will create the

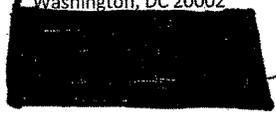
Midwest Illinois HSR Commission that will be responsible for recommending the best way to implement a public-private partnership to supplement a portion of its HSR funding gap. Moreover, Georgia and Ohio have both signed bills heralding a new wave of thinking about funding projects of this magnitude. In Georgia, its General Assembly approved a water project bill that allows construction of reservoirs by public-private partnerships. Last month, Ohio's Governor John Kasich signed a \$6.8 billion transportation budget bill which includes a public-private partnership option. He remarked that it will help the state "get more infrastructures for less." It is this growing trend that illustrates the necessity of establishing a federal program that will further assist the development of HSR projects. Due to the current economic climate and record budget deficits, America must use all available financial resources to make our rail transportation network more competitive with other nations' around the world.

VIII. CONCLUSION

At this time, this Committee and the entire Congress have an excellent opportunity to develop a public-private partnership model to fill a portion of the gap for HSR funding. The public-private partnership team of investors, lawyers, and public officials that successfully develops this model will likely be applauded for decades as the private sector helps develop HSR systems across America. We are confident that market forces will make the business case for HSR and this will show that additional federal funding is well placed as the foundation of our nation's infrastructure. The first test of the private market should occur this year when several states are expected to release their Requests For Qualifications (RFQs) to bidders. The RFQs will likely contain requirements for private investment to supplement federal and state funding.

Thank you, Mr. Chairman and Members of the Committee, for your time and your leadership. The USHSR looks forward to working with you in the future, and I welcome the Committee's questions and comments.

Thomas A. Hart, Jr., Esq.
Vice President for Government Affairs and General Counsel
US High Speed Rail Association
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Washington, DC 20002



**TESTIMONY OF
WILLIAM MILLAR, PRESIDENT
AMERICAN PUBLIC TRANSPORTATION ASSOCIATION
BEFORE THE
HOUSE COMMITTEE ON TRANSPORTATION & INFRASTRUCTURE
ON
“COMPETITION FOR INTERCITY PASSENGER RAIL IN AMERICA”
SUBMITTED BY**



**American Public Transportation Association
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June 22, 2011

APTA is a nonprofit international association of nearly 1,500 public and private member organizations, including transit systems and high-speed, intercity and commuter rail operators; planning, design, construction, and finance firms; product and service providers; academic institutions; transit associations and state departments of transportation. APTA members serve the public interest by providing safe, efficient, and economical transit services and products. More than 90 percent of the people using public transportation in the United States and Canada are served by APTA member systems.

INTRODUCTION

Chairman Mica, Ranking Member Rahall, and members of the Committee, thank you for this opportunity to express APTA's views on the "Competition for Intercity Passenger Rail in America Act of 2011." The American Public Transportation Association's (APTA) member organizations include public agencies and private businesses that are involved with providing commuter rail service and intercity and high-speed intercity passenger rail service.

ABOUT APTA

The American Public Transportation Association (APTA) is a nonprofit international association of 1,500 public and private member organizations, including transit systems, high-speed, intercity passenger and commuter rail operators; planning, design, construction, and finance firms; product and service providers; academic institutions; transit associations and state departments of transportation. APTA members serve the public interest by providing safe, efficient and economical public transportation services and products. More than 90 percent of the people using public transportation in the United States and Canada are served by APTA member systems.

OVERVIEW

I appreciate the opportunity to submit comments today on behalf of APTA. I do so with the understanding that our member organizations have had very little time to review the bill and its potential impacts. Our diverse membership will have specific interests and concerns related to the bill. Since it has not been possible to have APTA's member organizations thoroughly review the bill, there may be issues that we will need to revisit with the committee in the future, as our members better understand potential impacts and opportunities. Having said that, I want to credit this committee for attempting to craft legislation intended to encourage the development of high-speed and intercity passenger rail service, and for its efforts to encourage private sector participation and financing for such service.

I also want to encourage the committee to do everything possible to ensure that assets on the existing system are preserved and improved, and that needed service on the existing system continues and has the ability to grow, and that publicly-owned railroads do not end up paying more for access and other operating needs when existing contracts expire and must be renegotiated. APTA recognizes the need for a national intercity passenger rail system, and we hope that the bill does not undermine in any way the continuation of such a national system. In principles adopted well before introduction of this bill, APTA urged the federal government to fully fund the costs of bringing the Northeast Corridor Amtrak, state and commuter rail agency segments to a state of good repair or better over a reasonable period.

I also want to emphasize that APTA does not view public private financing as a substitute for adequate federal investment in the nation's transportation infrastructure. We strongly believe that this bill must be considered as part of a larger, well funded six-year intermodal surface transportation bill that provides predictability at the federal level for public transportation systems, commuter railroads and high-speed and intercity passenger rail operators. Such federal investment in our transportation infrastructure will return enormous benefits to the nation, create and sustain jobs, and is essential to support a growing, vibrant economy.

NORTHEAST CORRIDOR PASSENGER RAIL SERVICE

The Northeast Corridor (NEC) is one of the most complex rail corridors in the world, with more than 2,200 trains operating over the Boston to Washington route each day. Four freight railroads, seven commuter railroads, and Amtrak operate on the NEC. On an average weekday, an estimated 622,000 riders board the commuter railroads that operate on the NEC and Amtrak carries and estimated 41,000 passengers.

While our testimony focuses on state-supported passenger rail, we are still reviewing the potential implications of the changes proposed to the provision of passenger rail service on the NEC. APTA strongly supports passenger rail service in the United States, including efforts to create a national high-speed intercity passenger rail system that includes service on the Northeast Corridor. We want to work with this committee to ensure that its efforts result in more passenger rail service in this country, and that those efforts do not jeopardize existing service in the Northeast Corridor or other parts of the nation.

COMMUTER RAILROADS AND INTERCITY PASSENGER RAIL

I have been asked to specifically comment on Title II of the bill, which would allow states, groups of states, and public agencies to solicit competitive bids to operate intercity passenger rail service under cost share agreements with the states on routes of up to 750 miles. Certainly many commuter and intercity passenger railroads now contract for service, with Amtrak and with other private operators. There are now 27 commuter railroads in the United States, two of which are so new that they have not provided annual data to the National Transit Database (NTD). Of the 25 commuter railroads that have reported to the NTD, 17 agencies purchase transportation service under contract and 8 directly operate service. While a majority of commuter railroad systems currently contract for service, 80 percent of the passenger total are served by the 8 directly operated systems, a group that includes most of the oldest and largest commuter rail systems. According to NTD reported data, the cost of providing this service, based on a cost per passenger mile, is similar whether directly operated and purchased from a third party vendor.

Commuter railroad service is most often provided by contract operators under current law, and this bill would not eliminate that option. While the bill ensures that commuter rail operators dependent on rail access, maintenance, and dispatching will continue to have such services at a level that accommodates existing levels of service, we are concerned about the costs

and terms of access, maintenance, and dispatching in an era when demand for commuter rail service is growing. The fact that there were 19 U.S. commuter rail operators in 2006 and are now 29 operating commuter railroads is just one good indicator of that growth and the need to anticipate more growth in the future.

Further, while it appears that Title I of the bill ensures that commuter rail service dependent on rail access, maintenance, and dispatching on the Northeast Corridor would be at least continued at no less than the current level of service, it does not appear that Title II of the bill, which deals with intercity passenger rail competition, would ensure the continuation of even existing levels for commuter railroads. Our concern is that a contract provider of intercity passenger service would negotiate a new contract with the railroad that owns the right of way and that that new contract could adversely impact commuter rail operations on that line.

Finally, on Title II, we note that the bill creates an advisory commission on the establishment of state-supported passenger rail routes and directs the advisory commission to consult with affected parties, including track owners, labor, Amtrak, and potential applicants. We respectfully suggest that the bill direct the advisory commission to include representatives of commuter rail operations in the consultation process.

CONCLUSION

I again thank the committee for the opportunity to testify on this important proposal and pledge our commitment to work with the committee as it moves the bill forward. We will work with APTA's member organizations to better understand their views on the bill and share those views as we receive them.

TESTIMONY OF ANNE D. STUBBS
CONEG POLICY RESEARCH CENTER, INC.

BEFORE THE
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
U.S. HOUSE OF REPRESENTATIVES
“COMPETITION FOR INTERCITY PASSENGER RAIL IN AMERICA”
JUNE 22, 2011

Chairman Mica, Ranking Member Rahall, Members of the Committee:

Thank you for the opportunity to appear before you today to discuss the committee print of the *Competition for Intercity Passenger Rail in America Act of 2011*.

The CONEG Policy Research Center, Inc. is the staff arm of the Coalition of Northeastern Governors (CONEG), a non-partisan association created by the northeast governors in 1976 to encourage intergovernmental cooperation among the states on shared issues relating to the economic, environmental and social well-being of the region. Members include the governors of Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island and Vermont. CONEG works on regional transportation and rail matters with all the Northeast and Mid-Atlantic states.

The CONEG governors have long supported the Northeast Corridor (NEC) and the larger regional network of existing and planned passenger rail corridors as a transportation **and** economic artery for the Northeast. This network encompasses the Main Line connecting Boston, New York City, Philadelphia and Washington, D.C., and the branches that extend service to Harrisburg, PA; to Albany and points beyond including Vermont and Canada; to Hartford, CT, Springfield, MA, and Vermont; and to Portland, ME and points beyond. It is a vital component of an integrated transportation system that provides economic competitiveness, employment opportunities, and community revitalization through the safe, efficient, and environmentally sound movement of people and goods. The northeast region is uniquely positioned to become the American showcase for the application of advanced intercity passenger rail systems that incorporate high speed rail segments as well as improved connectivity.

The shared CONEG goal for the Northeast Corridor is improved, expanded passenger rail service and significantly increased ridership for both intercity and commuter rail service – on the Main Line and the critical branch lines. Achieving that goal for all users will require a quality and range of services that can entice travelers away from congested highways and airports and onto an intercity and commuter rail network that provides:

- intercity service, including regional service and world-class higher speed premium service, with reduced travel times, more frequent service, and better on-time performance;
- more frequent and reliable commuter rail services with expanded coordination between commuter railroads and intercity service as well as upgraded equipment and stations; and

- enhanced intermodal linkages for more seamless travel with coordinated informational services, compatible fare collections, integrated facilities, and coordinated operations.

CONEG Principles Guiding the Future of the Northeast Corridor (NEC) Network

Because of the vital regional economic and transportation importance of the Northeast Corridor, the northeast states have outlined several basic principles for its development, management, operations, and funding.

NEC is a Critical National and Regional Joint Use Asset: The Northeast Corridor is a nationally significant transportation asset that has been developed with considerable federal and state investments. It must continue to be managed as a public transportation corridor, with access for critical intercity, commuter and freight services where shared trackage is vital to economic development. Public oversight and control of the NEC infrastructure is essential to ensuring safe, secure and reliable passenger services.

States Are Vital Partners: To ensure that the NEC Network is strategically developed to its highest and best public use, states must have a meaningful role in and responsibility for intercity and commuter rail policy-making. The northeast states share in the ownership, financing and operations of passenger rail service on the NEC and its regional branches. They have invested billions of dollars in improvements to the Network that benefit intercity passenger rail. They are actively engaged in the Northeast Corridor Infrastructure and Operations Advisory Commission created by action of this Committee. They worked jointly with Amtrak and freight railroads to update an NEC Master Plan that included all users on the Main Line and its critical branches. They are currently working with Amtrak and the Federal Railroad Administration to develop a NEC passenger rail corridor service development plan which includes related National Environmental Policy Act compliance actions for improved service on the NEC.

Therefore, any changes in governance, funding and management that affect the states or their commuter and intercity rail operations, including the allocation of costs and modification of services, must result from collaborative processes with the states and should provide neutral mechanisms to resolve disagreements. Federal policy should recognize states' long-standing role as joint funders, owners and operators of passenger rail service. It should encourage states, the federal government, and railroads to work together to improve planning and management of the NEC Network across ownership, jurisdictional and modal boundaries. Investments made by states, particularly in state-owned territory, should be recognized, acknowledged and accounted for in any funding scenario where a state contributes (or may be asked to contribute) to the cost of intercity passenger rail infrastructure. The charge given to the NEC Advisory Commission to develop a standardized formula for the allocation of costs, revenues and contributions among the NEC commuter railroads and Amtrak for use of each entity's facilities and services tacitly acknowledges this principle.

Federal Government Has a Lead Role in State of Good Repair: The federal government has the dominant responsibility to restore the Amtrak-owned NEC infrastructure to a state of good repair that incorporates normalized maintenance and eliminates the backlog of deferred investment. .

Change Must Occur in a Timely and Orderly Manner: Changes in the current intercity passenger rail system must occur in a timely but orderly manner that involves close consultation with the states; reflects rigorous data and analysis; recognizes the complexity of the joint-use system and its integration with the branch lines. Any changes in funding, infrastructure, operations or institutional responsibility for the NEC Network should be undertaken in an orderly fashion that does not jeopardize current intercity, commuter and freight services.

Comments on the Discussion Draft

The following comments on the committee print of the *Competition for Intercity Passenger Rail in America Act of 2011* draw upon these principles. They identify a number of areas where it is unclear how the current provisions would incorporate these principles; the states' interest in the Northeast Corridor as a core component of an integrated, regional transportation system; and the continuation of the federal government as a strong public partner with the states in the future of the NEC.

Federal Role

- The bill provides that the Amtrak-owned assets of the Main Line of the NEC are transferred to the Secretary of Transportation, who then leases the assets to the NEC Executive Committee for 99 years; and for the Executive Committee to manage the infrastructure and operations of intercity passenger rail service on the Main Line. The Federal government continues to hold ownership of the assets and plays a role in the NEC. However, there is no clear reference to the scope and focus of the larger Federal role, other than the general provisions for the Secretary to coordinate transportation programs to ensure that the programs are integrated and consistent with high-speed and intercity passenger rail operations on the NEC. If new services or new rights of way are needed on the NEC Main Line, it is not clear if the Federal Railroad Administration would be involved in the service planning and environmental analysis of the corridor.
- The Northeast Corridor is a joint use asset – shared and used by the states and Amtrak – for public benefit **and** private commercial purposes. It is an integral part of the transportation system of the Northeast. The bill retains the Federal government's underlying ownership rights for a significant portion of the NEC. However, it is not clear that the Federal government retains an ongoing role to ensure that the public interest is served by continuing oversight and financial contribution for its support.

Role of the States

- The Northeast Corridor Executive Committee is charged to “promote mutual cooperation and planning pertaining to the rail operations and related activities of the Northeast Corridor.” The states have two opportunities (direct and indirect) to have a voice in the selection of the Executive Committee membership. However, the northeast states have a special and unique status regarding the NEC since they share in the ownership, financing and operations of passenger rail service on the Northeast Corridor and its regional branches. *Changes must be developed in close consultation with the affected states*, not just representational membership on the Executive Committee. A significant state role in the

determination of the routes, stations and services and public funding alternatives must be included in any determination of the NEC future. Performance measures for the NEC should be determined with the states that comprise the NEC and contribute to its intercity services.

Existing Services and State of Good Repair

- The Northeast Corridor requires significant resources to bring the existing infrastructure to a state of good repair (SOGR). The bill does not acknowledge the need for such SOGR investments and their importance to future capacity and reliability of express and non-express service on the NEC. The bill gives the NEC Executive Committee the authority to provide for improved, high speed service. However, it is not clear that this authority includes responsibility to ensure that the existing NEC infrastructure is brought to a state of good repair. A bill to address improved, higher speed intercity service on the NEC should address how a state of good repair on the NEC system will be achieved and maintained. The infrastructure investments needed to accomplish the SOGR and the proposed source of funds should be delineated.

Public Financing and Risk

- Any major change in the funding and governance of the NEC infrastructure, operations and services entails potential legal and financial risks, as existing responsibilities may be transferred among the various affected parties. These potential risks are less clear when responsibilities may shift from the public sector to a private entity. Therefore, any public-private partnership structure for the NEC must be developed to minimize both the risks and costs to the states.
- The bill contains evaluation criteria for the solicitation and selection of proposals that specifically address a criterion for the “least amount of Federal support.” However, it does not address whether that decrease in Federal support might be achieved in part by transferring greater costs (directly or indirectly) to the states and local governments that use and rely upon the NEC for passenger rail services. *The objective should be to minimize the amount of any public funding needed to develop a high performance NEC intercity passenger rail system.* Therefore, a solicitation and evaluation criteria should address the least amount of Federal, state and local government support.
- The bill does not clearly address how the proposers would handle the insurance and liability issues. The evaluation criteria should allow the ability to *determine whether the risk and exposure has been passed to the Federal, state or local governments.*
- The northeast states have made and continue to make major investments in the NEC infrastructure that contribute to the overall performance of the NEC for its multiple users. In addition to having a long-term vested interest in these infrastructure investments, the bill should include language to address *the continuation of those intercity rail projects on the NEC and branch lines which have been awarded under prior years appropriations.*

- Careful consideration must be given to the balance between state and local authorities and laws, and the powers and responsibilities of any new entity with development and management control of the federally-owned segments. For example, the bill vests in the NEC Executive Committee the authority to condemn and otherwise acquire any interest in real property that it considers necessary to carry out its statutory goals. This is a broad authority, and does not appear to exclude condemnation of publicly held real property, including property of a state or local government or government authority. This broad authority is particularly troublesome since portions of the NEC are owned by states.

Connectivity with Other Rail Services

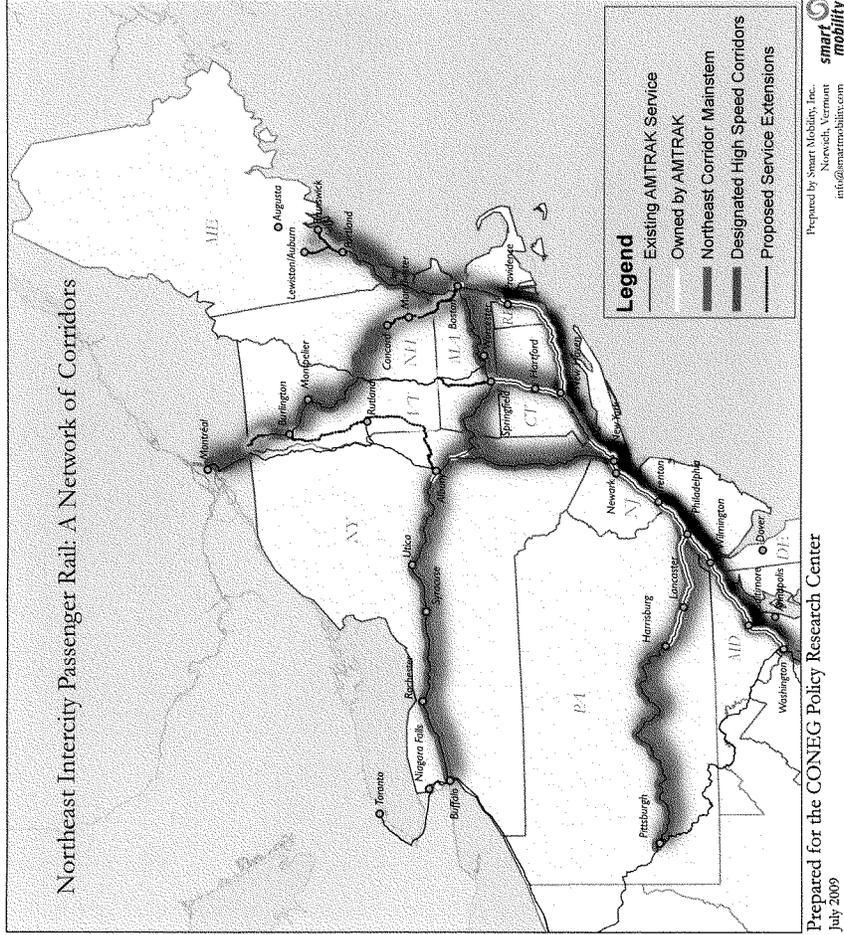
- The joint use of the NEC is central to its effectiveness as a public transportation corridor that serves other rail and transportation modes on the Main Line, as well as state-supported intercity service that originates off the Main Line. The bill clearly specifies performance standards that are designed to ensure that commuter rail and freight services that depend upon rail access, maintenance, and dispatching are to be continued at no less than the levels of service at the time of enactment. However, the bill does not address whether similar provisions will be available to intercity services that originate off the NEC Main Line, but whose service and ridership is contingent upon similar access to facilities and services on the Main Line. The language should also *recognize the interface with other intercity passenger rail services connecting to the NEC infrastructure and facilities.*
- The bill allows for the separation of the ownership of the NEC Main Line and the branch lines which are integral part of the larger regional rail network. However, it provides no details on the terms and conditions associated with such a transfer to the affected state, or, if a state decides not to seek title, the implications for continuing ownership, control, and integrated passenger rail service on the branch line.

Interaction with NEC Infrastructure and Operations Advisory Commission

- The Northeast states are active participants on the NEC Infrastructure and Operations Advisory Commission as it acts on its statutory responsibilities to develop goals for the NEC; develop specific recommendations; and develop a standardized formula for the allocation of costs, revenues and contributions among the NEC commuter railroads and Amtrak for their use of the other entity's facilities and services.

The draft legislation does not repeal Section 212 of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA) which establishes a Northeast Corridor Infrastructure and Operations Advisory Commission (NEC Commission). It makes no mention of how the responsibilities of the NEC Commission interact with the Northeast Corridor Executive Committee. It is not clear if Section 212 of PRIIA will be retained and how some of the duplicative responsibilities would be addressed.

Thank you for the opportunity to share these comments on behalf of the northeast states and the CONEG Policy Research Center. I hope that these comments will be helpful to the Committee.





A bold voice for transportation workers

**WRITTEN STATEMENT OF
EDWARD WYTKIND, PRESIDENT
TRANSPORTATION TRADES DEPARTMENT, AFL-CIO**

**BEFORE THE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
HEARING ON
COMPETITION FOR INTERCITY PASSENGER RAIL IN AMERICA**

June 22, 2011

Chairman Mica, Ranking Member Rahall and members of the Committee, I am pleased to present the views of transportation labor on the topic of today's hearing – competition for intercity passenger rail in America. This year alone I have appeared twice before this Committee to express our opposition to the privatization and break-up of Amtrak and appreciate the opportunity today to explain why we are strongly opposed to the legislation proposed by Chairman Mica and Subcommittee Chairman Shuster.

We believe the appropriate topic for today's hearing should be how to expand and finally fully invest in Amtrak as the nation's only high speed rail provider. Unfortunately, Washington is best known for repeatedly engaging in the same debates and rarely learning from previous mistakes.

We have seen the many examples of botched public transit privatization experiments, the well documented failures of privatized federal prisons and the abysmal working and safety conditions found in privatized school bus operations. In fact, Amtrak was created in 1971 because the passenger operations run by the private freight railroads went belly up 50 years ago. Higher fares, shoddy service and injuries and fatalities followed the privatization of British Rail in the 1990s. Rather than learn from these mistakes, I fear that the Mica-Shuster legislation will dramatically repeat these financial and service failures.

We believe the only hope for true high speed passenger rail is for Congress to join President Obama and finally unleash Amtrak's potential. Instead of destroying Amtrak, Congress must fund the carrier at an adequate level, invest in infrastructure improvements, replace aging locomotives and rolling stock, and give the company's skilled employees a chance to deliver on the promise of faster and more frequent passenger rail service for more Americans.

We also wonder why the topic of today's hearing is "competition" for intercity passenger rail. The problem with our passenger rail system isn't a lack of competition from the private sector; it is a lack of reliable federal funding. We don't see private investors lining up at the door to run money-losing passenger rail operations. They are, however, hoping to take advantage of

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Edward Wytkind, President / Larry I. Willis, Secretary-Treasurer



investments in Amtrak that have already been made by U.S. taxpayers, ongoing government subsidies, and artificial competitive advantages created by Congress. If you are a Wall Street investor this is a great deal – if you are a taxpayer, a passenger, or a worker, you will lose under the Mica-Shuster legislation.

No passenger rail system in the world succeeds because of competition – it succeeds because the public sector invests the resources necessary to build, expand and maintain the infrastructure. That is why the world's current and emerging economic powers are spending enormous government resources to retool and modernize their passenger and freight rail networks.

I do not suggest that the private sector isn't critical as well. The fact is that our transportation system is based on a simple model that embraces a robust role for the public sector at all levels and for significant private sector involvement. Much of the nation's infrastructure is built by private contractors but the public interest is protected by government oversight of how the funds are distributed and how the projects are delivered and completed. That is the way it has worked for decades across our entire transportation system. But if you ask private investors about the conditions necessary for them to invest in transportation projects, they will tell you that the predicate for the flow of private capital is a steady, reliable stream of federal investment. Without this crucial federal role private investors will not participate and unfortunately with major reauthorizations languishing in this town for years the hope for reliable, long-term federal investment continues to fade.

Let me offer our preliminary analysis of the Mica-Shuster privatization legislation.

First, the Mica-Shuster legislation is an Amtrak bankruptcy plan. Amtrak as we know it will disappear and along the way almost 20,000 jobs will be eliminated. The bill explicitly removes Amtrak from providing service on the NEC and requires the carrier to turn over its NEC assets to the government to eventually be given to a private company. Without Northeast Corridor operations, where Amtrak currently is operationally in the black, Amtrak can no longer run the national system. And believe me, no one is going to step up and run those services if profit is the single motive. As such, under this proposal those services will disappear across the nation's vital urban, suburban and rural passenger rail routes.

Second, it ignores the failures of the past by giving the green light to Wall Street and wealthy investors to cherry-pick those parts of the Amtrak network that can make a profit and let the rest of the system wither. That approach will not unleash the private sector's capability to provide passenger rail service to a nation starving for more train service – no, it will unleash Wall Street's skill of making money for Wall Street.

Third, basic rights and protections that cover current Amtrak employees wouldn't apply once the conversion to private operation of Amtrak's Northeast Corridor or off-corridor rail service occurs. This runs counter to claims that Amtrak workers would be held harmless by this proposal and that "current benefits and current wage levels" would be guaranteed.

The legislation dictates that private entities would be considered rail carriers “only for purposes of title 49, US Code.” Since other important laws and protections are found elsewhere in the Code the meaning of this measure is that Amtrak employees would be stripped of longstanding protections.

The newly selected private rail service provider would evade the Railway Labor Act, thereby stripping employees of current rights to bargain collectively and union representation. And oddly, the Mica-Shuster proposal only says that the new rail carrier shall negotiate with representatives of the employees “to establish collective bargaining rights.” Bargaining rights are not something that can be “negotiated” – they are provided by law. This proposal ignores this basic fact.

Amtrak employees would lose all wage rates, benefits and protections currently included in their contracts when a new entity takes over the service. If you look carefully, the proposal doesn’t extend current protections to employees – it only says that new carriers will negotiate with representatives of employees (who, by the way, have lost their labor law rights and presumably their union representation) over “appropriate labor protections.” If Amtrak employees are allegedly held harmless why is the new private carrier negotiating over “appropriate labor protections?” In the real world, this directive is meaningless and is designed to disguise the fact that employees have lost their protections in law and in their union contracts. So contrary to public claims, nothing in this bill guarantees “current benefits or current wages.”

Mica-Shuster also eliminates coverage for employees of the new entities under Railroad Retirement, the railroad pension, unemployment and disability benefits system covering almost a million active and retired workers. All other interstate carriers – Amtrak, the freight railroads and certain commuters – are covered by this law but the Mica-Shuster bill creates a new class of private carrier that would be permitted to evade these obligations.

This removal of future passenger rail employees from Railroad Retirement would be devastating to current and retired employees. It would jeopardize the solvency of the system, and would impose enormous tax increases on the current employers that participate in the system.

Think about it this way: current retirees, spouses and survivors, numbering more than 547,000, will suffer so that private carriers run by some of the world’s wealthiest people like Richard Branson can evade longstanding railroad pension obligations to feed their profits and shareholders. This is obviously a vision we strongly reject and we urge Congress to stop this run-away plan to expand privately run passenger rail operations at the expense of a 75-year-old pension system. I might add that the freight railroads have expressed serious concerns regarding the application of the Railroad Retirement Act to the new rail carriers created by this legislation.

Assurances have also been made, at least rhetorically, that the Mica-Shuster plan will give Amtrak employees the right to transfer to a job with the new private carriers. The truth is that the legislation only requires new carriers to provide a “hiring preference to qualified Amtrak employees.” The words “job guarantee” appear nowhere in the bill – perhaps it is hidden somewhere in an appendix we haven’t seen.

Mica-Shuster fails to afford employees any legal or contractual rights to follow their work or even a fair and transparent system to transition to a new carrier. At least PRTIA, approved by this committee in 2008, provides both protective conditions and a process of negotiation and arbitration to transition any displaced workers to a replacement carrier. Also, protective conditions exist in current Amtrak labor contracts, but of course these agreements would have no application to the new carrier and those worker protections would be lost as well. With Amtrak losing the Northeast Corridor, and of course other routes open to competition, the company would have no ability to move its employees to other jobs within Amtrak or have the resources to compensate the thousands of employees that become displaced.

In reality, the only thing the Mica-Shuster proposal guarantees is the chance for Amtrak employees to be considered for employment. Weak hiring preferences don't help pay mortgage, child care or college tuition bills.

Beyond the employee issues let me review some of our thoughts about the privatization model that forms the foundation of Mica-Shuster and specifically about injecting competition into passenger rail.

We think this approach is fundamentally flawed because it ignores what our transportation system was built to accomplish in the first place.

Well known scholar and privatization expert Elliott D. Sclar from Columbia University in 2003 succinctly summed up the problem regarding the British Rail experiment: "the larger mission of public service became devalued from a primary goal to a secondary goal. Each of the new profit-seeking companies that now fulfill a piece of the process has a primary fiduciary concern with cost-minimization, consistent with the larger goal of maximizing shareholder value. The public service mission central to a national railroad system became of necessity secondary to the profit motive of individual suppliers."

Regarding fragmentation, Sclar continued: "Numerous regulatory entities have been established, because fragmented companies with differing responsibilities do not adequately protect all parties: the infrastructure owner that must maintain the system at a fair price; the operating companies which must fulfill their franchise agreements; and last but not least the public, which must be kept safe and protected from exorbitant fares. In Britain, this fragmentation has meant that no one was in charge of long-term strategic planning or financing for the British system as a whole. This is in stark contrast with Amtrak, which has clearly delineated its long-term plan for high speed service in the Northeast Corridor."

Sclar also noted the "brain drain" problem that surfaced following the British Rail privatization. "... the transformation from public to private saw a wholesale removal of employees and managers who understood the system in all its complexities. One of the major expenses the British government now faces is the reconstruction of its institutional base."

This Sclar study was completed almost eight years ago but the problems inherent with passenger rail privatization are the same and the story of British Rail is well known and understood. Promises of service enhancement went unfulfilled; fares went up; safety suffered and tragically accidents claimed lives.

Interestingly, the lead sponsors of this proposal, Chairman Mica and Subcommittee Chairman Shuster, have pointed to Virgin Trains as a model to emulate here in America. While we haven't had a great deal of time to evaluate Virgin's operations I think it is fair to say that claims of operational and financial success don't mesh with what has really occurred. Government subsidies have been necessary to support this so-called for-profit operator, delays and service problems plague the system, and jobs have been eliminated.

Let me conclude with a broad overview of what this privatization experiment means to our nation's passenger rail system.

We have always argued that if permitted to cherry-pick lucrative routes, and if permitted to keep the cost of infrastructure replacement and upgrades off the books, a carrier could show a profit on some routes. On the Northeast Corridor today, Amtrak is operating in the black "above the rail." This is all interesting but has nothing to do with how a nation runs and maintains a national passenger rail network that serves our national interests.

Amtrak's national network – imperfect indeed and a victim of decades of chronic underfunding – is a necessary component of America's multi-modal transportation system. Yes it receives federal subsidies but so does our entire transportation system.

As I said previously before this Committee, our transportation system isn't just about the wealth it creates for transportation providers – it is about the wealth it creates for the users of our economy, the people and businesses that need transportation need reliability, safety and efficiency. And it is about the millions of good, skilled jobs it supports throughout the system.

Mass transit systems don't make money – the employers that rely on those systems to transport their employees do, the countless communities served in which small businesses thrive do. Airports and air traffic control aren't about profits – they are about the billions of dollars in wealth they create transporting people and cargo around the world. Highways and ports are not profit centers in and of themselves – they are profit centers for persons and businesses that rely on surface transportation and water infrastructure to keep our economy on the move. Finally, without maintaining proper public oversight of our transportation system America runs the risk of creating a balkanized network based on the principle that private investors will chase profits in the system while failing to provide vital services that all regions of the country need regardless of profitability.

Our passenger rail system is no different. It will never make money once you calculate the true cost of the system and infrastructure. But just ask the users of the system what life in America would be like without Amtrak's Northeast Corridor and other key corridor services. Ask the

millions who ride the highly successful Acela service whether they think we should risk one of the world's most important transportation corridors to a privatization experiment. Ask the users if we should place the Northeast Corridor up for sale and risk having shareholder value and profit motives collide with service, safety and reliability.

The Mica-Shuster bill would decimate our national Amtrak system through a risky privatization plan that ignores recent lessons and entrusts Wall Street and wealthy investors with one of the nation's most vital transportation arteries in a region that produces 20 percent of America's GDP.

Along the way, Amtrak would go bankrupt, thousands of jobs would be destroyed, bargaining rights would be eliminated, pension benefits taken away, and in the end, this will be the generation that ruined our national passenger rail network.

We're unwilling to take so many risks. We urge the Committee and Congress to reject this wrong-headed transportation policy experiment and instead work on a bipartisan basis to fund a long-term high speed rail program with a well-funded Amtrak as its centerpiece and an engaged private sector as a necessary and vitally important partner.

Thank you for allowing us the opportunity to present our views.

June 21, 2011

Representative Bill Shuster
204 Cannon House Office Building
Washington, D.C. 20515

Dear Representative Shuster:

In response to last week's briefing, and after having the opportunity to review the "Competition for Intercity Passenger Rail in America Act," we write to express our most strenuous opposition to this proposed legislation.

First, it is quite obvious that this bill would dismantle Amtrak and jeopardize essential passenger rail service in the Northeast Corridor and throughout the country. For this reason alone we will exert unwavering efforts in opposition to this legislation.

With respect to labor protections in the draft bill, the proposal is a far cry from what Chairman Mica represented during the May 26th hearing, when he asserted that "**we will guarantee labor any current benefits, any current wage levels. In any proposal we do, that will be part of our proposal.**"

Contrary to these representations, the legislation you and Chairman Mica are sponsoring does not guarantee workers their current benefit levels. As stated in the legislation, private entities providing rail service are considered rail carriers "only for the purposes of Title 49, United States Code." Limiting carrier status to Title 49 would, as only one example, exclude rail workers employed by new rail carriers from coverage under the Railroad Retirement pension system. Removing employees of new privately run rail carriers from Railroad Retirement would be devastating to current workers and their families, and would result in an adverse impact on the Railroad Retirement fund. It would undermine the security of Railroad Retirement beneficiaries, including more than 5,000 Railroad Retirement annuitants who reside in Pennsylvania's 9th Congressional District. All told, the legislation that you and Chairman Mica are proposing threatens the Railroad Retirement benefits of approximately 6,905 active and retired railroad workers in your congressional district and 547,000 workers and retirees nationwide.

On behalf of our members, active and retired, we write to express our strong opposition to this proposed legislation that unduly attacks not only Amtrak employees, but thousands of active and retired rail workers in your congressional district and throughout the country.

Sincerely,

American Train Dispatchers Association
Brotherhood of Railroad Signalmen
International Association of Machinists and Aerospace Workers
International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers
International Brotherhood of Electrical Workers
National Conference of Firemen & Oilers, SEIU
Sheet Metal Workers International Association
Transportation * Communications International Union/IAM
Transport Workers Union of America
United Transportation Union

ASSOCIATION OF AMERICAN RAILROADS
 CONCERNS AND QUESTIONS ON THE DISCUSSION DRAFT OF
 THE COMPETITION FOR INTERCITY PASSENGER RAIL IN AMERICA ACT

- Northeast Corridor ("NEC")
 - Upon any transfer of the NEC or contract for its operations, do the freight railroad NEC access contracts remain in full force and effect and are all freight railroad rights grandfathered?
 - What assurances do the freight railroads have concerning needed capacity for future growth since the bill only provides for preservation of current levels of service.
- Intercity Passenger Rail Competition and Long Distance Alternatives
 - What happens if agreement cannot be reached between a potential competitor to Amtrak who has been selected as a winning applicant to provide the service and the freight railroad owner of the track regarding access, including the access fees?
 - Does the STB or any other agency or court have any power to arbitrate disputes between a winning applicant and a freight railroad over either (1) the right of access or (2) the terms of access (e.g. compensation, liability, schedules, etc.)?
 - What are the safety requirements for a winning applicant?
 - What are the financial fitness requirements for a winning applicant, i.e. creditworthiness and financial backing?
 - Is the ability of an applicant to provide security for the rail passenger activities, including interaction with railroad police, taken into account in the bid review process?
 - How is it expected that contracts will ensure that freight railroads incur no liability from passenger operations by new carriers? The bill does not address this.
 - Why shouldn't the negotiations with the freight railroads on access, compensation, liability, and other terms be a necessary prerequisite to making a bid, such as were the requirements in RIDE21?
- How are implications for the freight railroads' ability to meet current and future freight transportation demands consistent with national transportation policy goals taken into account in the process? The freight railroads support expanded rail passenger operations, but not at the expense of freight operations.
- How are issues relating to operational interfaces, crew changes, labor agreements, and network flow implications to be addressed if there are bidders for segments of a long distance route or for selected components of passenger service? Freight railroads prefer dealing with one entity.
- What is the impact on Railroad Retirement and Railroad Unemployment Systems? Are all new carriers required to be a part of these systems? Amtrak employees are currently 10% of the pay as you go system. Freight railroads believe that all steel wheel on steel rail carriers should be included in these systems.
- What is the impact of the bill on current commuter passenger rail agreements?

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tel 202 936.3960 fax 202 936.2850

Joseph H. Boardman
President and Chief Executive Officer



June 21, 2011

Honorable John L. Mica
Chairman
Committee on Transportation and Infrastructure
U.S. House of Representatives
2165 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Mica:

I am writing to share my concerns regarding the "Competition for Intercity Passenger Rail in America Act of 2011" and the process by which it is being developed.

This legislation proposes a complex and risky undertaking in the name of advancing improved high-speed rail service within the Northeast Corridor (NEC) and introducing private-sector competition for operation of current Amtrak short- and long-distance routes. We appreciate your advocacy for high-speed rail development in the NEC and support some of the broad objectives your bill seeks to advance, such as encouraging private sector investment, reducing NEC trip times, and increasing NEC HSR service frequency. Indeed, as you know, Amtrak is well along in its own initiatives on both of these fronts. We believe the approach outlined in this legislation would retard rather than advance the development of high-speed rail, introduce unrealistic time schedules and assumptions, fail to provide adequately for transportation safety and security, be very expensive to the taxpayer when compared to other development models, and be fundamentally damaging to the national mission for which Amtrak was created and in which the taxpayers already have invested multiple billions of dollars. For all of these reasons, we cannot support this proposed legislation.

A proposal of this magnitude requires considerable deliberation. At a minimum, it should involve in-depth engagement with Amtrak, the nation's freight and commuter railroads, and the states, as well as a regional discussion about the development of high speed, commuter, and freight rail services in the Northeast. Your original plan to move the bill out of committee 48 hours after introduction, without any meaningful consultation with Amtrak or other stakeholders, was dismaying, and we appreciate that you now plan to hold a hearing on this topic to provide stakeholders with a needed opportunity to share their views.



Honorable John L. Mica

June 21, 2011

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As currently written, this bill would likely mean the end of Amtrak and the national passenger rail system that Congress authorized nearly 40 years ago. As you know, no passenger railroad system in the world makes a profit when infrastructure costs are included in the cost/revenue calculations. The proposed legislation would leave the taxpayers with all the NEC infrastructure costs without the opportunity for any offsetting by revenues. Moreover, it would take Amtrak's most successful operation and remove the revenues generated there that help offset some of the costs of our other services. The loss of the NEC would increase public funding requirements on other routes, requiring either greater operating support from Federal and state governments or the eventual termination of services. Furthermore, in attempting to create competition for Amtrak services, the bill would seemingly permit new labor arrangements and other non-traditional railroad organizational structures that could create an uneven playing field for Amtrak and expose a large number of Amtrak's employees to the loss of participation in the Railroad Retirement system and their current collective bargaining rights. These are significant issues.

While the draft bill provides taxpayer funding to private companies to develop NEC privatization proposals, it does not authorize any funding for the costs the Federal government and Amtrak would incur to carry out the restructuring of NEC ownership and operations, or for the payment of Amtrak's legal and contractual obligations. For example, the following significant and costly issues remain unaddressed by the proposed legislation: How will the creditors for Amtrak's \$1.8 billion in debt (most of which would become immediately due if Amtrak was divested of ownership of the NEC, its principal asset) be paid? How will Amtrak's vendors be compensated for millions of dollars worth of executory contract liability? How will more than \$150 million in FELA and other personal injury liability be funded? How will more than \$56 million of known environmental liability be funded? How will adequate liability coverage be provided for continued passenger rail operations? How will a doubling of frequency occur when the tunnels to and from New York's Pennsylvania Station already carry trains every 150 seconds? The proposed legislation does not address any of these important issues. Another glaring issue unaddressed by the bill is how a corridor-wide, high-speed program would deal with the two segments owned by states -- the 56 miles of NEC trackage owned by the states of New York and Connecticut and the 37 miles owned by the Commonwealth of Massachusetts. The former is a slow-speed segment that is the biggest impediment to reducing NEC trip times, and the only portion of the NEC not operated or dispatched by Amtrak. Also unaddressed are the fates of NEC intercity, commuter and freight services, should private companies prove unwilling to assume financial and operational responsibility for the NEC on terms acceptable to the federal government after the NEC is separated from Amtrak. Amtrak has already solved -- or is capable of solving -- these issues.



Honorable John L. Mica

June 21, 2011

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Under existing law, the DOT solicited the private sector for expressions of interest in developing high-speed rail service on the NEC in 2009. That solicitation did not generate a single proposal. There is no reason to believe that current economic conditions would predict a different result today. By contrast, many of the bill's ultimate aims are embodied in initiatives already underway at Amtrak. Amtrak's high-speed *Accla* service has transformed travel in the Northeast Corridor, and has become the preferred choice for business travel between the Northeast's hub cities, driving significant revenue and ridership growth over the past decade. Amtrak is actively planning a new 220 mph high-speed rail system for the NEC with trip times nearing an hour and a half between Washington and New York and New York and Boston. Through a combination of near-term projects to increase the average speeds and capacity of today's Corridor and planning and procurement activities now underway to bring private sector interests into the process of developing this tremendous asset, Amtrak is already taking steps to make this a reality. Amtrak has the know-how and the ability to lead this project and has engaged the world leaders of high-speed rail to verify and improve on our plans, and to propose opportunities for their future involvement.

We believe America's substantial investments in Amtrak and the NEC infrastructure have proven to be a wise choice. While private-sector participation can help strengthen and grow today's intercity passenger rail network, the public investment in Amtrak must not be subject to poorly-structured deals that profit the private sector while leaving the public with more cost and greater risk. Just as with the recent collapse of the nation's financial markets, the American taxpayer will shoulder the missteps of hasty, privatization attempts that do not adequately protect the nation's transportation needs or the public interest.

We respectfully submit that such risks aren't necessary. Since 1971, Amtrak has been working cooperatively with the federal government, states, freight railroads, commuter authorities, and local communities to operate and improve our nation's passenger rail network. The NEC already handles 1,800 train movements and approximately three quarters of a million passengers every day. We orchestrate the safe and efficient movement of 150 mph *Accla* high-speed trains with slower-moving commuter and freight trains, while simultaneously operating a national network serving communities big and small across 46 states. There are even more opportunities for improvement, but the legislation that the committee is advancing is far too disruptive, too rushed, and will not meet the goals the Committee has set. By attempting to do so, it puts all of Amtrak's operations at grave risk and creates an undue burden on the American taxpayer.



Honorable John L. Mica

June 21, 2011

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We believe Congress was right when it created Amtrak for this mission 40 years ago. Amtrak is still the right organization to collaboratively lead the development of high speed and intercity passenger rail, both in the Northeast and elsewhere. In Amtrak, the nation has an entity that can implement rail passenger safety and security under the close supervision of the United States agencies to whom Amtrak reports, manages operations and executes major projects with many of the efficiencies of the private sector, while always honoring its duty to the American people and its fiduciary responsibility to the U.S. taxpayer.

The massive changes proposed by the "Competition for Intercity Passenger Rail in America Act of 2011" cannot simply be dictated from a distance. Any new model of governance, operation and ownership must be carefully considered, collaboratively developed, and painstakingly planned by the various stakeholders if we are to avoid the disruption, unneeded expense, and safety risks associated with other rail privatization efforts internationally. In fact, the Northeast Corridor Infrastructure and Operations Advisory Commission was created under Section 212 of the Passenger Rail Investment and Improvement Act of 2008 as a forum for such deliberative and cooperative planning and Amtrak is proud to be participating in this effort.

In summary, we cannot support this legislation as currently written. We appreciate your interest in improving intercity passenger rail and the NEC and stand ready to work with you on these broader aims. Enactment of this legislation would not, however, address many of the challenges, risks, and costs associated with transferring the NEC to a new entity, outsourcing its services to the highest bidder, and opening up all of Amtrak's short and long-distance routes to private competition.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph H. Boardman". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Joseph H. Boardman
President and Chief Executive Officer

LAW OFFICES

JOHN H. BROADLEY & ASSOCIATES, P.C.

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June 21, 2011

JOHN H. BROADLEY

Joyce C. Rose
Staff Director
Sub-Committee on Railroads, Pipelines &
Hazardous Materials
Committee on Transportation and Infrastructure
592 Ford House Office Building
Washington, D.C. 20515

Re: Comments on the discussion draft of the proposed Competition for Intercity
Passenger Rail in America Act

Dear Ms. Rose:

I am pleased to respond to the Committee's invitation to comment on the draft legislation and hope that the attached effort, building as it does on Messrs. Mica and Shuster's vision as expressed in the draft legislation and their remarks last week, will prove to be helpful to the Committee.

My comments on the discussion draft of the proposed Competition for Intercity Passenger Rail in America Act are enclosed. I converted the PDF version from the Committee's web site to Word and made the comments and suggested changes in the Word document. While that approach likely is easier for you to work with, the original formatting of the document is adversely affected for which I apologize.

The attached markup of the discussion draft does not address a larger issue that I would like to bring to your attention. The current draft proposes conveying Amtrak's Northeast Corridor ("NEC") assets to the Secretary. I have had some considerable experience in dealing with rail assets in government ownership as have a number of my associates who have done work overseas. Almost without exception such a model presents administrative and legal difficulties which have led almost all countries to transfer state owned rail assets to a government owned or controlled corporate entity. For example, if Government retains direct ownership inevitable issues of liens on public patrimony will arise as they did when foreign rail ministries tried to disgorge their rail operations. Leasing the infrastructure to operators has generally failed to produce infrastructure investment, because it does not permit viable permanent way liens and

Joyce C. Rose
June 21, 2011
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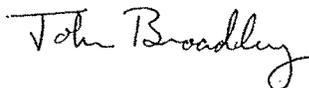
thus does not facilitate long term capital infusions from other than government sources. Our view is, if the assets are now outside the "ministry," they ought to be left there.

Accordingly, we believe consideration should be given to requiring Amtrak to establish a new subsidiary ("NEC Corp.") whose board of directors would consist of the persons proposed to comprise the Northeast Corridor Executive Committee, whose powers would be those proposed in the draft for the Northeast Corridor Executive Committee, and whose duties would be those proposed for the Committee. Such a NEC Corp. would be endowed with positive operating earnings (EBITDA), and most importantly a relatively clean balance sheet with nearly \$6 billion of net worth. This approach would provide the flexibility in management and contracting available to a corporate entity, and should avoid potential issues regarding the terms of the removal of Amtrak's NEC assets.

Moreover, this alternative approach would work well financially speaking. The attached pro-forma balance sheet of NEC Corp., based on published Amtrak data, assumes that the \$5.1 billion of notes currently held by the Secretary are converted into a convertible preferred stock which would continue to be held by the Secretary. Assuming that the terms of the convertible preferred are not financially onerous, it is likely that the NEC assets themselves would support RRIF or TIFEA financing of infrastructure investment. Additionally, the convertibility feature gives maximum flexibility for progressive conversion to common equity and conveyance of shares to the private sector as a means of injecting private capital.

Should you have any questions concerning the markup of the draft or concerning the alternative of using an Amtrak subsidiary as the recipient of Amtrak's NEC assets, please do not hesitate to call me or contact me by e-mail.

Yours very truly,



John Bradley

Enclosure: Comments
Attachment: Pro Forma Balance Sheet

Supplemental Information for discussion of capitalization.

Notional Balance Sheet of NEC Corporation compiled from Amtrak financial data and estimates as Pro Forma information.

1	Item	Estimated Amount (Dollars in Millions)
2	Assets:	
3	Est. Current Assets	260
4	Property & Plant at (depreciated) Net Book Value	6,000
5	Equipment at (depreciated) Net Book Value	900
6	Total Assets	7,160
7	Liabilities:	
8	Est. Current Liabilities	120
9	Long Term Debt:	
10	Philadelphia 30 th Street Station Parking	46
11	Penn Station New York Mortgage	197
12	UDAG Grant	11
13	Equipment Leases and Debt (est. assigned to NEC)	950
14	Total Liabilities	1,204
15	Total Net Assets	5,956
16	Shareholder Capital:	
17	Common Stock retained by Amtrak	856
18	Convertible Preferred Stock Issued in lieu of USDOT Notes	5,100
19	Total Shareholder Capital	5,956
	Note:	
	Above compiled as pro forma information from publicly available Amtrak data and estimates.	

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*Bradley
Comments*

[DISCUSSION DRAFT]

JUNE 15, 2011

112TH CONGRESS

1st SESSION

H. R.

To develop high-speed rail in the Northeast Corridor through a public-private partnership, and to encourage private sector competition on intercity passenger rail corridors.

IN THE HOUSE OF REPRESENTATIVES

Mr. MICA (for himself and Mr. SHUSTER) introduced the following bill; which was referred to the Committee on _____

A BILL

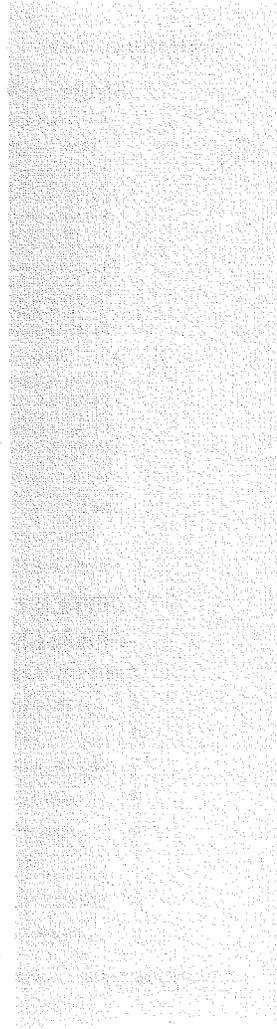
To develop high-speed rail in the Northeast Corridor through a public-private partnership, and to encourage private sector competition on intercity passenger rail corridors.

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

3 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Competition for Intercity Passenger Rail in America Act
6 of 2011”.

1 (b) TABLE OF CONTENTS.—The table of contents of



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2 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—NORTHEAST CORRIDOR PASSENGER RAIL COMPETITION

- Sec. 101. Purposes.
- Sec. 102. Redemption of common stock.
- Sec. 103. Transfer of assets.
- Sec. 104. Northeast Corridor Executive Committee.
- Sec. 105. Phase-out of Amtrak's general authority for the Northeast Corridor.
- Sec. 106. Performance standards.
- Sec. 107. Solicitation and selection of proposals.
- Sec. 108. Lease agreement.
- Sec. 109. Funding.
- Sec. 110. Employees.
- Sec. 111. Applicability of subtitle IV.

TITLE II—INTERCITY PASSENGER RAIL COMPETITION

- Sec. 201. Definitions.
- Sec. 202. Authority to participate in program.
- Sec. 203. Disposition of Federal subsidies.
- Sec. 204. Competitive procurement process.
- Sec. 205. Performance standards; access to facilities; employees.
- Sec. 206. Access rights to track.
- Sec. 207. Accounting of costs.
- Sec. 208. Advisory Commission.
- Sec. 209. Applicability of subtitle IV.

TITLE III—LONG-DISTANCE PASSENGER RAIL COMPETITION

- Sec. 301. Long-distance routes alternative passenger rail service.

3 **TITLE I—NORTHEAST CORRIDOR**
4 **PASSENGER RAIL COMPETITION**

5 **SEC. 101. PURPOSES.**

- 6 The purposes of this title are to—
- 7 (1) preserve and expand intercity passenger rail
- 8 service in the Northeast Corridor between the Dis-
- 9 trict of Columbia and Boston, Massachusetts, in a
- 10 manner that is driven by sound economics;
- 1 (2) allow the development of real high-speed
- 2 rail service in the Northeast Corridor that will de-
- 3 crease road and air congestion and delay;

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- 4 (3) encourage intermodal connectivity between
- 5 intercity passenger rail and other transportation
- 6 modes at stations to make intercity passenger rail
- 7 service more effective and attractive to riders;
- 8 (4) leverage Federal financial support with pri-
- 9 vate sector investment in rail infrastructure capital
- 10 improvements and value capture strategies that
- 11 produce revenue streams to support intercity pas-
- 12 senger rail; and
- 13 (5) create an effective public-private partner-
- 14 ship to manage the capital assets and operations of
- 15 intercity passenger rail service on the Northeast
- 16 Corridor.

17 SEC. 102. REDEMPTION OF COMMON STOCK.

18 (a) VALUATION.—The Secretary of Transportation
 19 shall arrange, at Amtrak’s expense, for a valuation of all
 20 assets and liabilities of Amtrak to be performed by the
 21 Secretary of the Treasury, or by a contractor selected by
 22 the Secretary of the Treasury. Such valuation shall be con-
 23 ducted in accordance with criteria and requirements to be
 24 determined by the Secretary of Transportation, in such
 1 Secretary’s discretion, and shall be completed not later
 2 than 30 days after the date of enactment of this Act.

3 (b) REDEMPTION.—(1) Prior to the transfer of assets
 4 to the Secretary required by section 103, and not later
 5 than 90 days after the date of enactment of this Act, Am-

6 trak shall redeem all common stock in Amtrak issued prior

Comment [JHB1]: Unless Amtrak has already done most of the work, 30 days is inadequate to do a valuation of the NEC.

Comment [JHB2]: More time for valuation requires corresponding change in this Act.

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7 to the date of enactment of this Act at the book value
 8 of such stock, based on the valuation performed under
 9 subsection (a).

10 (2) No provision of this title, or amendments made
 11 by this title, provide to the owners of the common stock
 12 a priority over holders of indebtedness or other stock of
 13 Amtrak.

14 (c) ACQUISITION THROUGH EMINENT DOMAIN.—In
 15 the event that Amtrak and the owners of its common stock
 16 have not completed the redemption of such stock by 90~~180~~
 17 days after the date of enactment of this Act, Amtrak shall
 18 exercise the eminent domain provisions contained in sec-
 19 tion 24311 of title 49, United States Code, as amended
 20 by this section, to acquire that stock. The valuation per-
 21 formed under subsection (a) shall be deemed to constitute
 22 just compensation except to the extent that the owners
 23 of the common stock demonstrate that the valuation is less
 24 than the constitutional minimum value of the stock.

1 (d) AMENDMENT.—Section 24311 of title 49, United
 2 States Code, is amended—

- 3 (1) by striking “or” at the end of subsection
- 4 (a)(1)(A);
- 5 (2) by striking the period at the end of sub-
- 6 section (a)(1)(B) and inserting “; or”; and
- 7 (3) by inserting the following after subsection
- 8 (a)(1)(B):

9 “(C) necessary to redeem Amtrak’s common

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Comment [JH83]: Don't you need a provision authorizing the necessary steps operative for this. There is an outstanding issue where the common stockholders are looking for damages from Amtrak in the amount of \$32 million for erosion of the value of the stock. It isn't clear whether this is their commitment as to the value of the stock or the extent to which its value has been eroded. If the former, then it might be easier to simply pay them the \$32 million and end the matter. The claim would have to be reviewed to determine what they are looking for.

Comment [JH84]: Ditto as a result of more time for valuation.

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10 stock from any holder thereof, including a rail car-
11 rier.”.

12 (e) CONVERSION OF PREFERRED STOCK TO COM-
13 MON.—(1) Subsequent to the redemption of the common
14 stock in Amtrak issued prior to the date of enactment of
15 this Act, the Secretary of Transportation shall convert the
16 one share of the preferred stock of Amtrak retained under
17 section 103 of this Act for 10 shares of common stock
18 in Amtrak.

19 (2) Amtrak shall not issue any other common stock
20 without the express written consent of the Secretary of
21 Transportation.

22 SEC. 103. TRANSFER OF ASSETS.

23 (a) TRANSFER.—(1) Not later than 90 days after
24 completion of the redemption or acquisition specified
25 under section 102 of this Act, Amtrak shall, in return for
1 the consideration specified in subsection (c), transfer to
2 the Secretary of Transportation title to—

3 (A) the portions of the Northeast Corridor be-
4 tween Boston, Massachusetts, and the District of
5 Columbia (including the route to Springfield, Massa-
6 chusetts, the route to Harrisburg, Pennsylvania, and
7 portions of the route to Albany, New York, from the
8 Northeast Corridor mainline) currently owned or
9 leased by Amtrak

~~under the note and mortgage de-~~

~~scribed in section 24007 of title 49, United States~~

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~~the Code~~, as well as any improvements made to those

12 assets, including the rail right-of-way, stations,
 13 track, signal equipment, electric traction facilities,
 14 bridges, tunnels, and all other improvements owned
 15 or leased by Amtrak between Boston, Massachusetts,
 16 and the District of Columbia (including the route to
 17 Springfield, Massachusetts, the route to Harrisburg,
 18 Pennsylvania, and portions of the route to Albany,
 19 New York, from the Northeast Corridor mainline);
 20 and
 21 (B) all rolling stock and other equipment nec-
 22 essary to support intercity passenger rail service on
 23 the properties described in subparagraph (A) at the
 24 level in effect as of the date of enactment of this
 25 Act.

1 (2) The rolling stock and equipment to be included
 2 in the transfer required under paragraph (1)(B) shall be
 3 determined through negotiation between Amtrak and the
 4 Secretary of Transportation, with any dispute being re-
 5 solved by the Inspector General of the Department of
 6 Transportation.

7 (3) The Secretary shall submit a report to the Com-
 8 mittee on Transportation and Infrastructure of the House
 9 of Representatives and the Committee on Commerce,
 10 Science, and Transportation of the Senate 180 days after
 11 the transfer of property that details an inventory of all
 12 assets transferred from Amtrak to the Secretary under

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Comment [DH51]: I don't think that adds anything and it might result in excluding some assets in the NEC if Amtrak has NEC assets that are not subject to the mortgage.

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13 this section.

14 (b) EXISTING ENCUMBRANCES.—(1) Notwith-
15 standing the transfer of any assets under subsection (a)
16 that Amtrak has provided as security or collateral for a
17 debt entered into prior to the date of enactment of this
18 Act, Amtrak shall remain liable for the debt secured by
19 those assets.

20 (2) The obligation of Amtrak to repay in full any in-
21 debtedness to the United States is not affected by this
22 title or an amendment made by this title.

~~(3) The security interest of any creditor of Amtrak in any
asset transferred to the Secretary pursuant to this section shall
not be affected by the transfer, however, the Secretary, in his
discretion, may provide alternative security which is the full
and fair equivalent of the security in the asset conveyed, in
which event the creditor's security interest in the transferred
assets shall be transferred to the alternative security.~~

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23 (c) CONSIDERATION.—In consideration for the assets
24 transferred to the Secretary under subsection (a), the Sec-
25 retary shall—

1 (1) deliver to Amtrak all but one share of the
2 preferred stock of Amtrak held by the Secretary and
3 forgive Amtrak's legal obligation to pay any divi-
4 dends, including accrued but unpaid dividends as of
5 the date of transfer, evidenced by the preferred

Comment [DH66]: This simply avoids a taking claim by the holders of the mortgage on Penn Station and 30th Street Station and holders of liens on any of Amtrak's equipment that is conveyed. You might also want to put in a provision that authorizes the Secretary to guarantee Amtrak's obligation in exchange for a release of the mortgage and liens.

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6 stock certificates; and

7 (2) ~~release Amtrak from all mortgages and~~
~~8 liens held by the Secretary cancel all debts owed by Amtrak~~
~~to the Secretary or to the United States except debts incurred~~
~~in the ordinary course of business.~~

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Comment [DH87]: I think this was the intention— it's cancellation of the underlying debt that's the consideration. The extent of the cancellation should likely be spelled out in more detail at a later stage. I think it is only the \$1.1 billion secured by the mortgage, but I'm not sure.

9 (d) AGREEMENT.—(1) Prior to accepting title to the
 10 assets transferred under this section, the Secretary shall
 11 enter into an agreement with Amtrak under which Amtrak
 12 will exercise on behalf of the Secretary care, custody, and
 13 control of the assets to be transferred until a contract
 14 takes effect under section 108(b).

15 (2) The agreement entered into under paragraph (1)
 16 shall identify in detail the specific functions of Amtrak's
 17 employees and equipment, and the specific numbers and
 18 locations of the employees and equipment associated with
 19 each function, that would be needed for continuation of
 20 commuter and freight rail service in the event that Amtrak
 21 were to cease operation, and identify those actions that
 22 would be required to ensure that such functions can be
 23 continued on an interim basis to avoid any interruption
 24 in commuter or freight rail service on the Northeast Cor-
 25 ridor.

1 (e) FURTHER TRANSFERS.—The Secretary may, for
 2 ~~appropriate nominal consideration, transfer to the underlying~~
 3 States title to real estate properties previously owned by

Comment [DH88]: Might as well avoid a dispute. The states can't even pay any real money for the properties in any event.

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4 Amtrak that constitute the route to Springfield, Massa-
 5 chusetts, the route to Harrisburg, Pennsylvania, and por-
 6 tions of the route to Albany, New York, from the North-
 7 east Corridor mainline.

8 **SEC. 104. NORTHEAST CORRIDOR EXECUTIVE COMMITTEE.**

9 (a) COMMITTEE.—

10 (1) AMENDMENT.—Chapter 249 of title 49,
 11 United States Code, is amended by inserting after
 12 section 24902 the following new section:

13 **“§ 24903. Northeast Corridor Executive Committee**

14 **“(a) NORTHEAST CORRIDOR EXECUTIVE COM-
 15 MITTEE.—**

16 **“(1) ESTABLISHMENT.—**Not later than 180
 17 days after the date of enactment of the Competition
 18 for Intercity Passenger Rail in America Act of 2011,
 19 the Secretary of Transportation shall establish a
 20 Northeast Corridor Executive Committee to—

21 **“(A) manage the infrastructure and inter-
 22 city passenger rail operations of the main line
 23 of the Northeast Corridor between the District
 24 of Columbia and Boston, Massachusetts; and**

1 **“(B) promote mutual cooperation and
 2 planning pertaining to the rail operations and
 3 related activities of the Northeast Corridor.**

4 **“(2) MEMBERSHIP.—**The Northeast Corridor
 5 Executive Committee shall consist of the following

6 members:

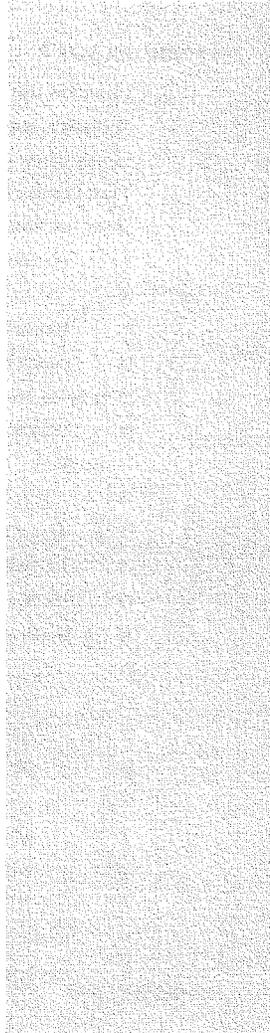
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7 “(A) The Secretary of Transportation.
8 “(B) 1 member representing the States
9 (including the District of Columbia) that con-
10 stitute the Northeast Corridor as defined in sec-
11 tion 24102, designated by a majority vote of
12 the Governors of the States (and the Mayor of
13 the District of Columbia) that constitute the
14 Northeast Corridor.
15 “(C) 2 members, one appointed by the
16 Speaker of the House of Representatives and
17 one by the majority leader of the Senate, who
18 have general business and financial experience
19 and experience or qualifications in transpor-
20 tation, with specific railroad-related experience,
21 neither of whom may be a current Federal or
22 State government employee.
23 “(D) 1 member, selected by a majority of
24 the voting members of the Northeast Corridor
25 Infrastructure and Operations Advisory Com-
1 mission, who is a public-private partnership ex-
2 pert with general business and financial experi-
3 ence, experience or qualifications in transpor-
4 tation, and extensive experience in public-pri-
5 vate partnerships, and who is not a current
6 Federal or State government employee.
7 “(3) TERMS.—An individual appointed under
8 paragraph (2)(B), (C), or (D) shall be appointed for

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9 a term of 5 years. Such term may be extended until
10 the individual's successor is appointed and qualified.
11 An individual may serve for more than 1 term.

12 "(4) DETAIL OF PERSONNEL; ADMINISTRATIVE
13 EXPENSES.—Upon request of the Northeast Cor-
14 ridor Executive Committee—

15 "(A) the head of any department or agency
16 of the United States may detail any of the per-
17 sonnel of that department or agency to the Ex-
18 ecutive Committee to assist in it carrying out
19 its duties; and

20 "(B) the Secretary of Transportation shall
21 provide administrative support to the Executive
22 Committee until the Executive Committee is
23 able to provide its own such support through a
24 contract entered into under section 108(b) of
1 the Competition for Intercity Passenger Rail in
2 America Act of 2011.

(C) The Northeast Corridor Executive Committee
shall hire on such terms as it shall deem
appropriate, a Chief Executive Office who shall
be responsible to the committee for the
performance of such functions as the committee
shall assign.

3 "(5) CONSULTATION.—The Northeast Corridor

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Comment [JH91]: I don't think a committee such as this will work without having a CEO hired on a full time basis to make sure that things get done.

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4 Executive Committee shall consult with other enti-
5 ties as appropriate.

6 “(b) GENERAL AUTHORITIES.—To carry out its du-
7 ties, the Northeast Corridor Executive Committee may—

8 “(1) acquire, maintain, and dispose of any in-
9 terest in property used to provide improved high-
10 speed rail transportation under section 24902;

11 “(2) acquire, by condemnation or otherwise,
12 any interest in real property that the Northeast Cor-
13 ridor Executive Committee considers necessary to
14 carry out the goals of section 24902;

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

18 “(4) improve rail rights of way between Boston,
19 Massachusetts, and the District of Columbia to
20 achieve the goals of section 24902 of providing im-
21 proved high-speed rail passenger transportation be-
22 tween Boston, Massachusetts, and the District of
23 Columbia, and intermediate intercity markets;

24 “(5) acquire, build, improve, and install pas-
25 senger stations, communications and electric power

Comment [H810]: I'm not certain what the distinction is between this and number 6. Is this authority for the Committee to provide service through contracts, and 6 authority for the Committee to permit others to provide service on the NEC?

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1 facilities and equipment, public and private highway
2 and pedestrian crossings, and other facilities and
3 equipment necessary to provide improved high-speed
4 rail passenger transportation over rights of way im-
5 proved under paragraph (4); and

6 “(6) make agreements with other carriers and
7 commuter authorities to grant, acquire, or make ar-
8 rangements for rail freight or commuter rail pas-
9 senger transportation over, rights of way and facili-
10 ties on the Northeast Corridor.

11 “(c) COMPENSATORY AGREEMENTS.—Rail freight
12 and commuter passenger rail transportation provided
13 under subsection (b)(3) shall be provided under compen-
14 satory agreements with the responsible-contracted carriers.

15 “(d) COMPENSATION FOR TRANSPORTATION OVER
16 CERTAIN RIGHTS OF WAY AND FACILITIES.—(1) An
17 agreement under subsection (b)(6) shall provide for rea-

18 sonable-reimbursement of costs but and may not cross-sub-
19 sidize intercity passenger rail, commuter passenger rail,
20 and or rail freight transportation.

21 “(2) If the parties do not agree on terms, the
Surface Trans-

22- portation Board shall order that transportation described

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23 in subsection (b)(6) continue over the Northeast Corridor
24 and shall determine compensation (without allowing cross-
25 subsidization among commuter passenger rail, intercity
1 passenger rail, and rail freight transportation) for such
2 transportation not later than 120 days after the dispute
3 is submitted. The Surface Transportation Board shall as-
4 sign to a rail carrier obtaining transportation under this
5 subsection the costs the Northeast Corridor Executive
6 Committee incurs only for the benefit of the carrier, plus

7 a proportionate share of common costs as determined on principles of
incremental costing, to determine the incremental financial impact of
the proposed transportation at the level of activity requested.

all other costs of providing trans-
8 portation under this paragraph incurred for the common
9 benefit of the Northeast Corridor Executive Committee
10 and the carrier. The proportionate share shall be based
11 on relative measures of volume of car operations, tonnage,
12 or other factors that reasonably reflect the relative use of
13 rail property covered by this subsection.

14 “(3) This subsection does not prevent the parties
15 from making an agreement under subsection (b)(6) after
16 the Surface Transportation Board makes a decision under
17 this subsection.”.

18 (2) TABLE OF SECTIONS.—The table of sections
19 for chapter 249 of title 49, United States Code, is

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20 amended by inserting after the item relating to sec-

21 tion 24902 the following new item:

"24903. Northeast Corridor Executive Committee."

22 (b) GOALS AND REQUIREMENTS.—

23 (1) AMENDMENT.—Section 24902 of title 49,

24 United States Code, is amended to read as follows:

1 "§ 24902. Goals and requirements

2 "(a) MANAGING COSTS AND REVENUES.—The

3 Northeast Corridor Executive Committee shall manage op-

4 erating costs, pricing policies, and other factors with re-

5 spect to the Northeast Corridor, with the goal of having

6 revenues derived each fiscal year from providing intercity

7 rail passenger transportation over the Northeast Corridor

8 route between the District of Columbia and Boston, Mas-

9 sachusetts, equal at least the operating costs of providing

10 that transportation in that fiscal year ~~plus~~ and some level of

11 operating profit that shall be reinvested in capital im-

12 provements on the Northeast Corridor.

13 "(b) PRIORITIES IN SELECTING AND SCHEDULING

14 PROJECTS.—When selecting and scheduling specific

15 projects, the Northeast Corridor Executive Committee

16 shall apply the following considerations, in the following

17 order of priority:

18 "(1) Safety-related items should be completed

19 before other items because the safety of the pas-

20 sengers and users of the Northeast Corridor is para-

21 mount.

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

25 “(3) Reliability of intercity rail passenger trans-
26 portation must be emphasized.

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

5 “(5) Improvements that will pay for the invest-
6 ment by achieving lower operating or maintenance
7 costs should be carried out before other improve-
8 ments.

9 “(6) Construction operations should be sched-
10 uled so that the fewest possible passengers are in-
11 convenient, transportation is maintained, and the
12 on-time performance of Northeast Corridor com-
B muter rail passenger and rail freight transportation
14 is optimized.

15 “(7) Planning should focus on completing ac-
16 tivities that will provide immediate benefits to users
17 of the Northeast Corridor.

18 ~~“(c) AUTOMATIC TRAIN CONTROL SYSTEMS.—A~~
19 ~~train operating on the Northeast Corridor main line shall~~
20 ~~be equipped with an automatic train control system de-~~
21 ~~signed to slow or stop the train in response to an external~~
22 ~~signal.~~

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Comment [JH811]: I don't see why that belongs in this legislation.

23 “(d) HIGH-SPEED TRANSPORTATION.—The North-
 24 east Corridor Executive Committee shall enter into con-
 25 tractual agreements that support the establishment of
 1 high-speed rail, as defined in section 26105, on the North-
 2 east Corridor route between the District of Columbia and
 3 Boston, Massachusetts.

~~4 “(e) AGREEMENTS FOR OFF-CORRIDOR ROUTING OF
 5 RAIL FREIGHT TRANSPORTATION.—(1) The Northeast
 6 Corridor Executive Committee may make an agreement
 7 with a rail freight carrier or a regional transportation au-
 8 thority under which the carrier will carry out an alternate
 9 off-corridor routing of rail freight transportation over rail
 10 lines in the Northeast Corridor between the District of Co-
 11 lumbia and New York metropolitan areas, including inter-
 12 mediate points. The agreement shall be for at least 5
 13 years.”~~

14
~~15 “(2) The Northeast Corridor Executive Committee
 16 shall apply to the Surface Transportation Board for ap-
 17 proval of the agreement and all related agreements accom-
 18 panying the application as soon as the agreement is made.
 19 If the Board finds that approval is necessary to carry out
 20 this chapter, the Board shall approve the application and
 21 related agreements not later than 90 days after receiving
 22 the application.”~~

~~23 “(3) If an agreement is not made under paragraph
 23 (1) of this subsection, the Northeast Corridor Executive~~

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Comment [JHB12]: Why do you need to highlight this. The powers of the Committee should be broad enough to allow it to enter into this type of agreement. If there is any question about it, a general power of management of the NEC should be added to the powers of the committee. This language may be ready by the freight authorities the Committee to kick them off the NEC.

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Comment [JHB13]: If a deal is done it likely would be in the form of a trackage rights agreement which would go through the STB very quickly.

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~~24 Committee, with the consent of the other parties, may
25 apply to the Surface Transportation Board. Not later than
1 90 days after the application, the Board shall decide on
2 the terms of an agreement if it decides that doing so is
3 necessary to carry out this chapter. The decision of the
4 Board is binding on the other parties.~~

Comment [DH814]: I don't see the point of this. It seems to be introducing a set of issues with the language that isn't necessary at this point.

5 “(f) COORDINATION.—(1) The Secretary of Trans-
6 portation shall coordinate—

7 “(A) transportation programs related to the
8 Northeast Corridor to ensure that the programs are
9 integrated and consistent with high-speed and inter-
10 city passenger rail operations on the Northeast Cor-
11 ridor; and

12 “(B) amounts from departments, agencies, and
13 instrumentalities of the Government to achieve
14 urban redevelopment and revitalization in the vicin-
15 ity of urban rail stations in the Northeast Corridor
16 served by intercity and commuter rail passenger
17 transportation.

18 “(2) If the Secretary finds significant noncompliance
19 with this section, the Secretary may deny financing to a
20 noncomplying program until the noncompliance is cor-
21 rected.

22 “(g) APPLICABLE PROCEDURES.—No State or local
23 building, zoning, subdivision, or similar or related law, nor
24 any other State or local law from which a project would
25 be exempt if undertaken by the Federal Government or

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1 an agency thereof within a Federal enclave wherein Fed-
2 eral jurisdiction is exclusive, including without limitation
3 with respect to all such laws referenced herein above re-
4 quirements for permits, actions, approvals or filings, shall
5 apply in connection with the construction, ownership, use,
6 operation, financing, leasing, conveying, mortgaging or en-
7 forcing a mortgage of—

8 “(1) any improvement undertaken by or for the
9 benefit of the Northeast Corridor Executive Com-
10 mittee as part of, or in furtherance of, intercity pas-
11 senger rail improvements on the Northeast Corridor
12 between the District of Columbia and Boston, Mas-
13 sachusetts (including without limitation mainte-
14 nance, service, inspection or similar facilities ac-
15 quired, constructed or used for high speed trainsets);
16 or

17 “(2) any land (and right, title or interest cre-
18 ated with respect thereto) on which such improve-
19 ment is located and adjoining, surrounding or any
20 related land.

21 These exemptions shall remain in effect and be applicable
22 with respect to such land and improvements for the benefit
23 of any mortgagee before, upon and after coming into pos-
24 session of such improvements or land, any third party pur-
25 chasers thereof in foreclosure (or through a deed in lieu
1 of foreclosure), and their respective successors and as-

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2 signs, in each case to the extent the land or improvements
3 are used, or held for use, for railroad purposes or purposes
4 accessory thereto.”

5 (2) EFFECTIVE DATE.—The amendment made
6 by paragraph (1) shall take effect on the date that
7 a lease agreement is entered into under section
8 108(a) of this Act.

9 SEC. 105. PHASE-OUT OF AMTRAK'S GENERAL AUTHORITY
10 FOR THE NORTHEAST CORRIDOR.

11 Section 24904 of title 49, United States Code, is re-
12 pealed, except that Amtrak may continue to exercise the
13 authorities granted thereunder until a contract takes ef-
14 fect under section 108(b) of this Act.

15 ~~SEC. 106. PERFORMANCE STANDARDS.~~

16 ~~Expressions of interest and Detailed proposals sub-~~
17 ~~mitted under section 107 shall ensure that, on the main~~
18 ~~line of the Northeast Corridor between the District of Co-~~
19 ~~lumbia and Boston, Massachusetts, the following perform-~~
20 ~~ance standards are met or exceeded:~~

21 (1) COMMUTER RAIL.—Commuter rail services
22 dependent upon rail access, maintenance, and dis-
23 patching, shall be continued at no less than the lev-
24 els of service in effect as of the date of enactment
25 of this Act.

1 ~~(2) FREIGHT RAIL.—Freight rail services de-~~
2 ~~pendent upon rail access, maintenance, and dis-~~
3 ~~patching shall be continued at no less than the levels~~

Comment [DH815]: I understand why this section is here, but it has a considerable flavor of top-down planning—specifying the times, specifying train frequencies. Would it not be better to solicit a range of proposals? In the end, the whole operation is going to be constrained by the availability of Federal funding and we should make sure there is a range of proposals that includes proposals that minimize the federal funding requirement.

Comment [DH816]: Expressions of interest typically do just that—they describe who the entity or consortium is and what they bring to the table and that they are interested in submitting a proposal. They can be required to supply enough data about themselves that it amounts to a "prequalification." The EOF should require a detailed description of the entity's consortium and a general description of their approach or approaches.

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4 of service in effect as of the date of enactment of
5 this Act.

6 ~~(3) HIGH-SPEED RAIL.—Express intercity pas-~~
7 ~~senger rail service between the District of Columbia~~
8 ~~and New York City shall achieve 2 hours or less one-~~
9 ~~way trip time, and express intercity passenger rail~~
10 ~~service between New York City and Boston, Massa-~~
11 ~~chusetts, shall achieve 2.5 hours or less one-way trip~~
12 ~~time.~~

13 ~~(4) INTERCITY RAIL FREQUENCY.—Frequency~~
14 ~~of intercity passenger rail service shall be increased~~
15 ~~to not less than twice the number of train move-~~
16 ~~ments in effect as of the date of enactment of this~~
17 ~~Act.~~

18 (5) PROJECT COMPLETION.—The time to com-
19 plete the entire proposed project, including all plan-
20 ning, engineering, construction, and the commence-
21 ment of operational activities described in the pro-
22 posal, shall not exceed 10 years after the date of en-
23 actment of this Act.

1 SEC. 107. SOLICITATION AND SELECTION OF PROPOSALS.

2 (a) IN GENERAL.—Not later than 30 days after the
3 date of enactment of this Act, the Secretary of Transpor-
4 tation shall issue a request for expressions of interest from
5 entities, including consortia or teams of private companies,
6 that demonstrate the entity's technical and financial ca-
7 pacity to submit a substantive and responsive proposal to

Comment [DH17]: This seems to be at odds with the idea of getting straight off the FEC. Why not let the proposals come up with options for freight.

Comment [DH18]: These are the cost drivers. It might make sense to permit a range of options—maybe require one option to meet those standards, but then allow other options that will cost less.

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8 finance, design, build, operate, and maintain intercity pas-
 9 senger rail service, including high-speed rail service, on the
 10 main line of the Northeast Corridor between the District
 11 of Columbia and Boston, Massachusetts, in a manner that
 12 meets or exceeds the performance standards described in
 13 section 106. Entities shall prepare and submit such ex-
 14 pressions of interest not later than 150 days after the date
 15 of enactment of this Act.

16 (b) CONTENTS.—An expression of interest submitted
 17 under subsection (a) shall include—

18 (1) information about the persons or companies
 19 submitting the expression of interest, including in-
 20 formation describing the technical qualifications of
 21 such persons or companies to finance, design, con-
 22 struct, operate, and maintain the railroad, railroad
 23 equipment, and related facilities, stations, and infra-
 24 structure;

25 (2) a general description of the options for the proposed
rail service that it intends to propose.

26 including possible routes, ~~required~~-infrastructure in-
 1 vestments and improvements, equipment needs and
 2 type, train frequencies, peak and average operating
 3 speeds, and trip times;

4 (3) a description of how the project would com-
 5 ply with Federal rail safety and security laws, or-

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6 ders, and regulations, including those governing
7 high-speed rail operations;

~~8(4) a financing plan with a preliminary estimate
9 identifying—~~

~~9 (A) the amount and proposed source of
10 any requested Federal, State, or local public
11 contribution toward the project;~~

~~12 (B) the amount and proposed source of
13 private sector funding or financing toward the
14 project; and~~

~~15 (C) the anticipated annual operations and
16 capital costs for the project, and revenues asso-
17 ciated with the project through farebox recov-
18 ery, value capture strategies, use of infrastruc-
19 ture, or other means; and~~

20 (5) a statement describing the preferred struc-
21 ture of the public-private partnership between the
22 person or companies and the Northeast Corridor Ex-
23 ecutive Committee, including supporting reasons for
24 such preference.

25 (c) EVALUATION AND SELECTION.—

1 (1) IN GENERAL.—Not later than 240 days
2 after the date of enactment of this Act, the Sec-
3 retary of Transportation shall, after evaluating the
4 expressions of interest submitted by entities under
5 subsection (a), submit a report to the Committee on
6 Transportation and Infrastructure of the House of

Comment [DHR19]: I don't see how this can be done in 150 days except at a fairly high level of generality

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7 Representatives and the Committee on Commerce,
8 Science, and Transportation of the Senate that—

9 (A) describes the public-private partner-
10 ship structure that will be utilized to finance,
11 design, build, operate, and maintain intercity
12 passenger rail service, including high-speed rail
13 service, on the main line of the Northeast Cor-
14 ridor between the District of Columbia and
15 Boston, Massachusetts, in a manner that meets
16 or exceeds the performance standards described
17 in section 106; and

18 (B) selects 2 or 3 entities to be awarded
19 \$2,000,000 each from available Federal Rail-
20 road Administration funds for the purpose of
21 preparing detailed proposals under the selected
22 public-private partnership structure.

23 (2) EVALUATION CRITERIA.—The Secretary
24 shall make the selection described in paragraph
25 (1)(B) among the expressions of interest submitted
1 by entities based an analysis of which submissions
2 best meet on the following criteria:

3 (A) The expression of interest indicates
4 that the project will successfully meet or exceed
5 the performance standards under section 106;

6 (B) The expression of interest incorporates
7 the greatest amount of private sector financing.

8 (C) The expression of interest incorporates

Comment [JHB20]: If meeting the trip time and frequency requirements is a sine qua non of an EOL, the federal funding involve will be very large. There will be no proposal with modest funding requirements.

Comment [JHB21]: I strongly recommend that the performance standards of 106 be flexible and that the proposals be asked to submit varying options, e.g. one that meets the performance standards and one that minimizes required federal support. The amount of money involved could be very substantial. The West Coast Main Line relies on the UK cost about £9 billion - \$14 billion.

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9 the least amount of Federal support.

10 (D) The expression of interest is based on
11 a public-private partnership structure that
12 closely aligns with the structure selected by the
13 Secretary under paragraph (1)(A).

14 (d) DETAILED PROPOSALS.—Not later than 1 year
15 after the date of enactment of this Act, the Northeast Cor-
16 ridor Executive Committee shall accept detailed proposals
17 from entities to finance, design, build, operate, and main-
18 tain intercity passenger rail service, including high-speed
19 rail service, on the main line of the Northeast Corridor
20 between the District of Columbia and Boston, Massachu-
21 setts, in a manner that meets or exceeds the performance
22 standards described in section 106.

23 (e) SELECTION AND REPORT.—Not later than 90
24 days after receiving the detailed proposals submitted
25 under subsection (d), the Northeast Corridor Executive
1 Committee shall select the best proposal and submit to
2 the Committee on Transportation and Infrastructure of
3 the House of Representatives and the Committee on Com-
4 merce, Science, and Transportation of the Senate a report
5 that—

6 (1) identifies the selected proposal;

7 (2) includes an implementation plan to put in
8 place the public-private partnership structure out-

9 lined in the selected proposal; and

10 (3) explains why that proposal was selected

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11 rather than the other submitted proposals.

12 SEC. 108. LEASE AGREEMENT.

13 (a) IMPLEMENTATION OF PUBLIC-PRIVATE PART-
14 NERSHIP.—Not later than 90 days after the Northeast
15 Corridor Executive Committee submits the report under
16 section 107(e), the Secretary of Transportation shall im-
17 plement the public-private partnership structure described
18 under section 107(c)(1)(A) and shall enter into a lease
19 agreement with the Northeast Corridor Executive Com-
20 mittee for a period not to exceed 99 years for management
21 of the infrastructure of and intercity passenger rail oper-
22 ations on the main line of the Northeast Corridor between
23 the District of Columbia and Boston, Massachusetts.

24 (b) CONTRACT.—Upon the effective date of the lease
25 agreement entered into under subsection (a), the North-
1 east Corridor Executive Committee shall enter into a con-
2 tract with the submitter of the proposal selected under
3 section 107(e) for carrying out such proposal.

4 SEC. 109. FUNDING.

5 (a) TERMINATION OF AUTHORITY.—After a lease
6 agreement described in section 108(a) has been entered
7 into, no further Federal funds shall be appropriated or
8 obligated to Amtrak for capital expenses or operating
9 grants with respect to the main line of the Northeast Cor-
10 ridor between the District of Columbia and Boston, Mas-
11 sachusetts.

12 (b) TRANSFER OF AMOUNTS.—Amtrak shall transfer

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13 to the Secretary of Transportation all amounts appro-
14 priated by the Federal Government for the fiscal year in
15 which the lease agreement described in section 108(a) was
16 entered into that have been provided to Amtrak for capital
17 expenses or operating grants with respect to the main line
18 of the Northeast Corridor between the District of Colum-
19 bia and Boston, Massachusetts, and such amounts shall
20 be available to the Secretary for carrying out this title.
21 SEC. 110. EMPLOYEES.

22 (a) OPERATORS DEEMED RAIL CARRIERS FOR CER-
23 TAIN PURPOSES.—A person that conducts rail operations
24 over the main line of the Northeast Corridor between the
25 District of Columbia and Boston, Massachusetts, under a
1 public-private partnership structure implemented under
2 this title shall be considered a rail carrier only for pur-

3 poses of title 49, United States Code ~~and other provisions of the~~

~~United States Code applicable to rail carriers~~

~~Such rail carrier~~

4 shall enter into negotiations with representatives of its em-

5 ployees to establish appropriate labor protections and col-

6 lective bargaining rights.

7 (b) HIRING PREFERENCE.—A person that conducts

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Comment (DHB22): The original language is ambiguous. Many sections of the Code applicable to rail carriers are keyed to whether they are a carrier under Title 49. It seems simpler to avoid the whole issue and make it clear that the operator is a rail carrier and subject to all the federal legislation applicable to rail carriers—FEHA, RLAA, RRA etc. That's where things will end up in any event, so why fight an unnecessary battle? If it's clear that RLAA applies, there is a procedure for certification of a union and if one is certified establishing a collective bargaining agreement. You exempt the operators from most of Subtitle IV which is the STB rules that include labor protection etc.

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8 rail operations over the main line of the Northeast Cor-
 9 ridor between the District of Columbia and Boston, Mas-
 10 sachusetts, under a public-private partnership structure
 11 implemented under this title shall provide hiring pref-
 12 erence to qualified Amtrak employees displaced by the
 13 award of a contract under section 108(b).

14 **SEC. 111. APPLICABILITY OF SUBTITLE IV.**

15 Subtitle IV of title 49, United States Code, shall not
 16 apply to a person that conducts rail operations over the
 17 main line of the Northeast Corridor between the District
 18 of Columbia and Boston, Massachusetts, under a public-
 19 private partnership structure implemented under this title
 20 for such operations, except for sections 11123, 11301,
 21 11322(a), 11502, and 11706.

22 **TITLE II—INTERCITY**
 23 **PASSENGER RAIL COMPETITION**

24 **SEC. 201. DEFINITIONS.**

25 In this title:

1 (1) **ADVISORY COMMISSION.**—The term “Advi-
 2 sory Commission” means the State-Supported
 3 Routes Passenger Rail Competition Advisory Com-
 4 mission established under section 208.

5 (2) **COVERED SERVICE.**—The term “covered
 6 service” means any service applicable to a State-sup-
 7 ported route, including maintenance of way, mainte-
 8 nance of equipment, operation, sales and marketing,
 9 scheduling, call centers, and onboard service, with

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10 respect to which cost allocations have been estab-
11 lished pursuant to section 209 of the Passenger Rail
12 Investment and Improvement Act of 2008 (49
B U.S.C. 24101 note).

14 (3) ELIGIBLE PARTICIPANT.—The term “eligi-
15 ble participant” means—

16 (A) a State that has participated in the
17 process to develop and implement a cost alloca-
18 tion methodology under section 209(a) of the
19 Passenger Rail Investment and Improvement
20 Act of 2008 (49 U.S.C. 24101 note);

21 (B) a group consisting solely of States de-
22 scribed in subparagraph (A);

23 (C) an Interstate Compact consisting solely
24 of States described in subparagraph (A); or

1 (D) a public agency established by one or
2 more of the States described in subparagraph
3 (A) and having responsibility for providing
4 intercity passenger rail service.

5 (4) PROGRAM PARTICIPANT.—The term “pro-
6 gram participant” means an eligible participant that
7 has entered into a competitive procurement process
8 under this title.

9 (5) RAIL CARRIER.—The term “rail carrier”
10 has the meaning given that term in section 10102(5)
11 of title 49, United States Code.

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(6) STATE.—The term “State” includes the
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B District of Columbia.

14 (7) STATE-SUPPORTED ROUTE.—The term
15 “State-supported route” means a corridor or route
16 of not more than 750 miles between endpoints, oper-
17 ated by Amtrak or another rail carrier that receives
18 funds under chapter 244 of title 49, United States
19 Code, under a cost share agreement with a State, a
20 group of States, an Interstate Compact, or a public
21 agency established by one or more States and having
22 responsibility for providing intercity passenger rail
23 service.

1 SEC. 202. AUTHORITY TO PARTICIPATE IN PROGRAM.

2 (a) AUTHORITY.—Effective 1 year after the trans-
3 mittal to Congress of the report required under section
4 209(e) of the Passenger Rail Investment and Improve-
5 ment Act of 2008 (49 U.S.C. 24101 note), an eligible par-
6 ticipant may enter into a competitive procurement process
7 to select an entity to enter into a contract with for the
8 performance of one or more covered services under this
9 title.

10 (b) REPORT TO CONGRESS.—Section 209 of the Pas-
11 senger Rail Investment and Improvement Act of 2008 (49
12 U.S.C. 24101 note) is amended by adding at the end the
13 following new subsection:

14 “(c) REPORT TO CONGRESS.—Not later than 3 years
15 after the date of enactment of this Act, Amtrak and the
16 States (including the District of Columbia) participating

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17 in the process described in subsection (a) shall transmit
18 to the Committee on Transportation and Infrastructure
19 and the Committee on Appropriations of the House of
20 Representatives, and to the Committee on Commerce,
21 Science, and Transportation and the Committee on Appro-
22 priations of the Senate, a report providing in detail oper-
23 ating and capital cost allocations for all State-supported
24 routes, using the methodology developed under this sec-
25 tion, including all cost categories.”.

1 (c) REVIEW.—Section 209(c) of the Passenger Rail
2 Investment and Improvement Act of 2008 (49 U.S.C.
3 24101 note) is amended by inserting “at least 12 of” after
4 “If Amtrak and”.

5 SEC. 203. DISPOSITION OF FEDERAL SUBSIDIES.

6 (a) IN GENERAL.—Effective upon notification to the
7 Secretary of Transportation that a program participant
8 has entered into a competitive procurement process under
9 this title, the portion of any Federal subsidy to Amtrak
10 that is attributable, under the methodology described in
11 section 202, to the State-supported route with respect to
12 which the competitive procurement applies shall be trans-
13 ferred to the program participant.

14 (b) COST SAVINGS.—If, as a result of cost savings
15 in the performance of covered services under a contract
16 entered into pursuant to this title, any amount transferred
17 under subsection (a) is not required for the performance
18 of such covered services, the program participant may re-

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19 tain such excess amount, to remain available until ex-
 20 pended, but may only use such amount for the purposes
 21 of improvements to the State-supported route with respect
 22 to which the covered services apply.

23 **SEC. 204. COMPETITIVE PROCUREMENT PROCESS.**

24 (a) **ADVISORY COMMISSION RECOMMENDATIONS.**—In
 25 carrying out a competitive procurement process under this
 1 title, including deciding what covered services to include
 2 in such competitive procurement process, a program par-
 3 ticipant shall take into consideration the recommendations
 4 of the Advisory Commission.

5 (b) **APPLICATION.**—An entity seeking to perform cov-
 6 ered services under a contract awarded pursuant to this
 7 title shall submit an application to the program partici-
 8 pant which shall include—

9 (1) a description of how the applicant intends
 10 to perform the covered services;

11 (2) materials demonstrating the capability of
 12 the applicant to perform the covered services in con-
 13 formance with the requirements of this title;

14 (3) an identification of any property owned by
 15 Amtrak that is or may be required for the perform-
 16 ance of the covered services; and

17 (4) the amount and sources of non-Federal
 18 funding the applicant will use to support the per-
 19 formance of the covered services.

20 (c) **SELECTION.**—A program participant shall select

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21 the winning applicant on the basis of the applications sub-
22 mitted under subsection (b), taking into consideration—

23 (1) the financial and performance metrics devel-
24 oped pursuant to section 207 of the Passenger Rail
1 Investment and Improvement Act of 2008 (49
2 U.S.C. 24101 note); and

3 (2) selection criteria recommended by the Advi-
4 sory Commission.

5 (d) AMTRAK AS SOLE APPLICANT.—If Amtrak is the
6 only applicant in a competitive procurement process en-
7 tered into under this title—

8 (1) the program participant shall promptly ter-
9 minate any additional procedures in the competitive
10 procurement process and declare Amtrak the win-
11 ning applicant; and

12 (2) the program participant may retain
13 amounts transferred to it under section 203(b) of
14 this Act.

15 **SEC. 205. PERFORMANCE STANDARDS; ACCESS TO FACILI-**
16 **TIES; EMPLOYEES.**

17 (a) CONTINUATION OF SERVICE.—A contract entered
18 into for provision of covered services pursuant to a com-
19 petitive procurement process under this title shall include
20 provisions to ensure that passenger rail service on the
21 State-supported route to which the covered service applies
22 shall be no less frequent, nor over a shorter distance, than
23 Amtrak provided on that route before the award.

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24 (b) PERFORMANCE STANDARDS.—An entity selected
25 to receive a contract for provision of covered services pur-
1 suant to a competitive procurement process under this
2 title shall comply with the minimum standards established
3 under section 207 of the Passenger Rail Investment and
4 Improvement Act of 2008 (49 U.S.C. 24101 note) and
5 such additional performance standards as the program
6 participant may establish in the performance of such con-
7 tract.

8 (c) ACCESS TO FACILITIES AND EQUIPMENT.—

9 (1) REQUIREMENT.—The Federal Railroad Ad-
10 ministration shall, to the extent necessary to enable
11 the performance of covered services under a contract
12 entered into pursuant to this title, require Amtrak
13 to provide access to its reservation system, stations,
14 and facilities directly related to operations to any
15 rail carrier awarded such contract, in accordance
16 with section 217 of the Passenger Rail Investment
17 and Improvement Act of 2008 (49 U.S.C. 24101
18 note).

19 (2) AGREEMENT.—To the extent that an entity
20 identifies Amtrak equipment or rolling stock to be
21 required for the performance of the covered service
22 under subsection (b)(2), the entity and Amtrak shall
23 enter into an agreement to purchase or lease such
24 equipment or rolling stock.

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25 (d) EMPLOYEES.—

1 (1) OPERATORS DEEMED RAIL CARRIERS FOR

2 CERTAIN PURPOSES.—An entity that performs cov-
3 ered services under a contract entered into pursuant
4 to this title shall be considered a rail carrier ~~only for~~
5 purposes of title 49, United States Code ~~and such other~~
~~provisions of the United States Code that apply to rail~~
~~carriers under title 49.~~

~~Such rail~~

6 ~~carrier shall enter into negotiations with representa-~~

7 ~~tives of its employees to establish appropriate labor~~

8 ~~protections and collective bargaining rights.~~

9 (2) HIRING PREFERENCE.—An entity that per-

10 forms covered services under a contract entered into

11 pursuant to this title shall provide hiring preference

12 to qualified Amtrak employees displaced by the

13 award of such contract.

14 SEC. 206. ACCESS RIGHTS TO TRACK AND LIABILITY.

15 (a) The right of access to track owned by another rail-
16 road that is necessary for the performance of covered serv-
17 ices under a contract entered into pursuant to this title,
18 and the cost of such access, shall be subject to contract

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Comment [JHB23]: See comment on Section 107(a)

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19 negotiation with the owner of that track.

~~(b) In the event a freight railroad enters into an access contract under this title for use of its track by a rail carrier other than Amtrak, such freight railroad and any other freight railroad using the track shall not be liable in damages for death of or injury to passenger on the trains of a rail carrier using the track pursuant to such an access agreement, regardless of the fault of the freight railroads, their managers, directors, contractors or employees. Such immunity shall extend to cases of negligence, gross negligence, reckless conduct, or willful misconduct by the freight railroads, their managers, directors, contractors or employees. Nothing in this section shall be construed to immunize the freight railroads or any other person from criminal liability.~~

~~(c) The Secretary shall establish a minimum level of insurance to be carried by a rail carrier with an access contract under this section, other than Amtrak, for the benefit of passengers carried by such rail carrier.~~

20 SEC. 207. ACCOUNTING OF COSTS.

21 Not later than January 1, 2021, each program par-
22 ticipant providing for the performance of covered services
23 through a competitive procurement process under this

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Comment [JH24]: If we are going to get anywhere with improving rail service on the non-NEC lines, we will need the cooperation of the freight. Their big hang-up is liability which I think needs to be addressed in pretty clear and unambiguous language. A broad immunity bar makes the provision subject to grandstanding, but anyone even remotely familiar with the industry knows that without relieving the freight of the liability risk from allowing passenger operations on their lines, they simply won't cooperate.

Comment [JH25]: This ensures that there will be compensation available for passenger casualties.

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24 title, and Amtrak, shall transmit to the Congress a report
25 providing a specific accounting of costs with respect to
1 each State-supported route, including an accounting of
2 any cost savings with respect to covered services under
3 this title.

4 SEC. 208. ADVISORY COMMISSION.

5 (a) ESTABLISHMENT.—Not later than 180 days after
6 the date of enactment of this Act, there shall be estab-
7 lished a State-Supported Routes Passenger Rail Competi-
8 tion Advisory Commission.

9 (b) MEMBERS.—The Advisory Commission shall con-
10 sist of—

11 (1) the Governor (or a representative thereof)
12 of each of the States with a State-supported route;

13 (2) the Secretary of Transportation (or a rep-
14 resentative thereof);

15 (3) an individual, appointed by the President,
16 with general business and financial experience, expe-
17 rience or qualifications in transportation, and exten-
18 sive experience in public-private partnerships, who
19 shall not be an employee of the Federal Government;

20 (4) 1 individual appointed by the Speaker of
21 the House of Representatives;

22 (5) 1 individual appointed by the minority lead-
23 er of the House of Representatives;

24 (6) 1 individual appointed by the majority lead-
25 er of the Senate; and

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1 (7) 1 individual appointed by the minority lead-
2 er of the Senate.

3 (c) CHAIRMAN.—The Advisory Commission shall
4 have a chairman, who shall be an individual described in
5 subsection (b)(1), elected by a majority of the members
6 of the Advisory Commission.

7 (d) ADDITIONAL CONSULTATION.—The Advisory
8 Commission shall consult with—

9 (1) owners of track on State-supported routes,
10 and other freight railroads operating on such routes;

11 (2) representatives of rail operating labor;

12 (3) representatives of rail construction labor;

13 (4) potential applicants for a competitive pro-
14 curement process under section 204; and

15 (5) Amtrak.

16 (e) REPORT.—Not later than 1 year after the date
17 of enactment of this Act, the Advisory Commission shall
18 transmit to the Congress a report that includes—

19 (1) recommendations of the operations and
20 services that should be eligible for competitive pro-
21 curement under this title;

22 (2) guidelines for model competitive procure-
23 ment process procedures for program participants;

1 (3) recommendations of criteria for evaluating
2 and selecting bids made through the competitive pro-
3 curement process;

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- 4 (4) recommendations on establishing public-pri-
 5 vate partnership equipment pools;
- 6 (5) identification of worldwide best practices for
 7 the operations and services associated with intercity
 8 passenger service rail for corridors similar to the
 9 State-supported routes;
- 10 (6) criteria for evaluating the outcomes of the
 11 program under this title, with a focus on improve-
 12 ments to operations and services and cost savings;
- 13 and
- 14 (7) accounting standards to assist in providing
 15 to the Congress under section 207 of this Act the
 16 accounting of the costs of each State-supported
 17 route.
- 18 (f) SUNSET.—The Advisory Commission shall termi-
 19 nate after transmitting its report under subsection (e).

20 SEC. 209. APPLICABILITY OF SUBTITLE IV.

21 Subtitle IV of title 49, United States Code, shall not
 22 apply to an entity selected to receive a contract for provi-
 23 sion of covered services under this title for those covered
 24 services for which it is awarded the contract, except for
 25 sections 11123, 11301, 11322(a), 11502, and 11706.

1 **TITLE III—LONG-DISTANCE**
 2 **PASSENGER RAIL COMPETITION**

3 **SEC. 301. LONG-DISTANCE ROUTES ALTERNATIVE PAS-**
 4 **SENGER RAIL SERVICE.**

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5 (a) AMENDMENT.—Section 24711 of title 49, United
6 States Code, is amended to read as follows:

7 “§ 24711. Long-Distance Routes Alternative Passenger
8 Rail Service

9 “(a) IN GENERAL.—Within 1 year after the date of
10 enactment of the Competition for Intercity Passenger Rail
11 in America Act of 2011, the Secretary shall implement a
12 long-distance routes alternative passenger rail service pro-
13 gram. Such program shall—

14 “(1) permit a rail carrier, as defined in section
15 10102(5), to petition the Secretary to be considered
16 as a passenger rail service provider in lieu of Am-
17 trak over a long-distance route described in section
18 24102(5)(C);

19 “(2) require the Secretary to notify Amtrak and
20 members of the public through the publication of a
21 notice in the Federal Register within 30 days after
22 receiving a petition under paragraph (1) and estab-
23 lish a deadline by which the petitioner, Amtrak, and
24 any other rail carrier that wanted to compete would
1 be required to submit a bid to provide passenger rail
2 service over the route to which the petition relates;

3 “(3) require that each bid describe how the bid-
4 der would operate the route, submit materials dem-
5 onstrating the capability of the applicant to perform
6 such operations, itemize what Amtrak property
7 would be needed, if any, and detail the source and

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8 amount of non-Federal funding the bidder would use
9 to assist in such operations;

10 “(4) require the Secretary to select winning bid-
11 ders by evaluating the bids on the basis of—

12 “(A) the financial and performance metrics
13 developed under section 207 of the Passenger
14 Rail Investment and Improvement Act of 2008;
15 and

16 “(B) the lowest possible level of required
17 Federal financial support; and

18 “(5) require the Secretary to execute a contract
19 within a specified, limited time after the deadline es-
20 tablished under paragraph (2) and award to the win-
21 ning bidder—

22 “(A) the right and obligation to provide
23 passenger rail service over that route in a man-
24 ner consistent with the standards developed
1 under section 207 of the Passenger Rail Invest-
2 ment and Improvement Act of 2008; and

3 “(B) an operating subsidy at a level that
4 is on average for the duration of the contract
5 less annually than the level in effect during the
6 fiscal year preceding the fiscal year in which
7 the petition was received.

8 “(b) PERFORMANCE STANDARDS.—If the Secretary
9 awards the right and obligation to provide passenger rail
10 service over a long-distance route to a rail carrier other

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11 than Amtrak, the Secretary shall ensure that operating
12 and subsidy rights are conditioned upon performance
13 standards being met, including that the service provider
14 shall—

15 “(1) continue to provide passenger rail service
16 on the route that is no less frequent, nor over a
17 shorter distance, than Amtrak provided on that
18 route before the award; and

19 “(2) comply with the minimum standards estab-
20 lished under section 207 of the Passenger Rail In-
21 vestment and Improvement Act of 2008.

22 “(c) ACCESS TO AMTRAK FACILITIES.—The Sec-
23 retary shall require Amtrak to provide access to its res-
24 ervation system, stations, and facilities directly related to
25 operations of the long-distance route to any rail carrier
1 awarded a contract under this section. Such access shall
2 be provided under terms of an agreement between the rail
3 carrier and Amtrak. If the parties cannot agree upon
4 terms, and the Surface Transportation Board finds that
5 access to Amtrak’s facilities or equipment, or the provision
6 of services by Amtrak, is necessary to carry out this sec-
7 tion, the Surface Transportation Board shall, within 120
8 days after submission of the dispute, issue an order that
9 the facilities and equipment be made available, and that
10 services be provided, by Amtrak, and shall determine rea-
11 sonable compensation, liability, and other terms for use
12 of the facilities and equipment and provision of the serv-

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13 ices.

14 “(d) ACCESS RIGHTS TO TRACK AND LIABILITY.—

(1) The right of ac-

15 cess to track owned by another railroad that is necessary
16 for the operation of Amtrak long-distance routes under the
17 alternative passenger rail service program under this sec-
18 tion, and the cost of such access, shall be subject to con-
19 tract negotiation with the owner of that track.

(2) In the event a freight railroad enters into an access
contract for use of its track by a rail carrier other than Amtrak
pursuant to this section, such freight railroad and any other
freight railroad using the track shall not be liable in damages
for death of or injury to passengers on the trains of a rail
carrier using the track pursuant to such an access agreement,
regardless of the fault of the freight railroads, their managers,
directors, contractors, or employees. Such immunity shall
extend to cases of negligence, gross negligence, reckless
conduct, or willful misconduct by the freight railroads, their
managers, directors, contractors, or employees. Nothing in
this section shall be construed to immunize the freight
railroads or any other person from criminal liability.

(3) The Secretary shall establish a minimum level of
insurance to be carried by a rail carrier with an access

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Comment [JHB26]: If we are going to get anywhere with improving rail service on the new NEC lines, we will need the cooperation of the freight. Their big hang-up is liability which I think needs to be addressed in pretty clear and unambiguous language. It makes the provision difficult to understand, but anyone even remotely familiar with the industry knows that without relieving the freight of the liability risk, they simply won't cooperate.

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~~contract under this section, other than Amtrak, for the benefit of passengers carried by such rail carrier.~~

Comment [JHB27]: Provides compensation for passenger casualties.

~~(4) In evaluating bids under this section, the Secretary shall adjust Amtrak's bid to take account of any difference between Amtrak's cost of access and the lowest cost of access of the non-Amtrak bidders. Such adjustment shall be for purposes of bid evaluation only.~~

Comment [JHB28]: This provision puts a competitive bidder on a level playing field with Amtrak if Amtrak is going to get the benefit of its statutory access rights.

20 “(e) CESSATION OF SERVICE.—If a rail carrier
21 awarded a route under this section ceases to operate the
22 service or fails to fulfill its obligations under the contract
23 described in subsection (a)(5), the Secretary, in collabora-
24 tion with the Surface Transportation Board, shall take
25 any necessary action consistent with this title to enforce
1 the contract and ensure the continued provision of service,
2 including the installment of an interim service provider
3 and re-bidding the contract to operate the service. The en-
4 tity providing such interim service shall either be Amtrak
5 or a rail carrier defined in subsection (a)(1).

6 “(f) EMPLOYEES.—~~(1) A rail carrier that is awarded a~~
7 ~~contract under this section shall~~

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8 ~~“(1) be considered a rail carrier only for purposes~~
9 ~~of this title and for purposes of provisions of other titles~~
10 ~~applicable to rail carriers.~~

Comment [JHB29]: See comment on Section 110.

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9 ~~poses of this title;~~

10 ~~“(2) enter into negotiations with representatives~~

11 ~~of its employees to establish appropriate labor pro-~~

12 ~~tections and collective bargaining rights, and~~

13“(23) shall provide hiring preference to qualified Am-
14 trak employees displaced by the award of such con-
15 tract.

16 “(g) APPLICABILITY OF SUBTITLE IV.—Subtitle IV
17 of this title shall not apply to a rail carrier awarded a
18 contract under this section for the route over which it is
19 awarded the contract, except for sections 11123, 11301,
20 11322(a), 11502, and 11706.”.

21 (b) CONFORMING AMENDMENT.—The table of sec-
22 tions for chapter 247 of title 49, United States Code, is
23 amended by amending the item relating to section 24711
24 to read as follows:

“24711. Long-Distance Routes Alternative Passenger Rail Service.”.

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Comment [JHB30]: I wouldn't leave this issue of applicable law ambiguous. There are enough issues without this one.

Statement for the record of the June 22, 2011 hearing:
“Competition for Intercity Passenger Rail in America.”

Ross B. Capon, President & CEO
National Association of Railroad Passengers

Submitted: June 21, 2011

We appreciate and largely share your goals – improved intercity passenger train service both in the Northeast Corridor and nationwide.

I. Careful Study of Specific Private Sector Opportunities

With a view to opening on a positive note, the Committee might ask DOT or the Amtrak Board or some other entity to look at specific examples of how Amtrak might engage more with the private sector to the benefit of both parties.

For example, consideration should be given to a possible connection between the need for redundancy in the power grid and the potential to construct new transmission lines along the Northeast Corridor where local opposition likely would be minimal. A private sector consortium could profit from selling power both to the railroad and to utilities along the route. Meanwhile, passenger train operations—intercity and commuter—would benefit from replacement of antiquated electric traction infrastructure. This would make the trains more energy efficient and—especially considering constant tension catenary (overhead wires)—more reliable, particularly in hot weather. A salutary benefit to freight operations would result from the elimination of passenger train delays caused by catenary problems.

II. Our general view of the committee’s draft bill

We do not believe the specific actions outlined in the draft legislation will lead to the identified, attractive outcomes. We do not agree with Chairman Mica’s assessment that “Amtrak has repeatedly bungled development and operations in the Northeast Corridor, and their new long-term, expensive plan to try to improve the corridor is simply unacceptable.”

Section numbers referred to here are those in the June 15 discussion draft of the Mica/Shuster bill “to develop high-speed rail in the Northeast Corridor through a public-private partnership, and to encourage private sector competition on intercity passenger rail corridors.”

III. Access to host railroad tracks

As explained by Joyce Rose at your June 15 national briefing, Amtrak would retain its statutory right of access on an incremental cost basis. This presumably also means the right to seek redress by the Surface Transportation Board (STB). We support this.

Section 206 raises serious doubts as to whether any competitor to Amtrak could gain access to host railroads' tracks, and certainly at competitive rates. **Both “the right of access” and the “cost of such access, shall be subject to contract negotiation with the owner of that track,” apparently with no measure of what is acceptable or provision for STB review.**

The railroad industry has made clear its opposition to giving Amtrak's access rights to other parties. In fact, opposition to “rights extension” has been a key industry position. The draft respects the railroads' concerns but the likely result would be extraordinarily high costs for a prospective non-Amtrak carrier for either the short corridors or the long-distance (“interstate”) routes.

The railroad industry accepted the 1970 creation of Amtrak and its access rights as a quid pro quo for being relieving of the railroads' intercity passenger train losses. Today, Amtrak is considered a known quantity which has paid its bills for over 40 years. By contrast, CSX predecessors Seaboard and RF&P suffered significant financial losses and even embarrassment dealing with the private intercity passenger ‘tenant,’ Auto-Train Corporation. See Appendix.

Amtrak has had longstanding agreements with the host railroads that include provisions regarding an allocation of responsibility. Any non-Amtrak operator would have to reach a separate agreement on allocating the responsibility for damages and indemnification with the host freight railroads, similar to the existing Amtrak-freight railroad agreements to indemnify, assuming the railroad is inclined to enter into such an agreement. Since current federal rail passenger liability limits apply only to passengers and damages to property of passengers, the freight railroads might seek to require new operators to cover third party damages.

Finally, a private operator would want some profit.

These factors—access rights; indemnification agreements; need for profits—have big cost impacts that must be factored into the equation when privatizing rail passenger operations. These issues do not bode well for compliance with section 301a, which applies to interstate routes and requires an “operating subsidy less than Amtrak's on average over the life of the

contract,” or for realizing the similar expectations this bill and its publicity have generated regarding subsidy requirements for state-supported routes.

IV. Applicability of Labor Laws

Three labor-related laws generally apply to railroads, including Amtrak:

- Railroad Retirement Act;
- Railroad Unemployment Insurance Act;
- Federal Employers Liability Act

However, these laws do not apply to Veolia, which operates Tri-Rail—the Miami-West Palm Beach commuter railroad—under contract to the South Florida Regional Transportation Authority. This is relevant to judging the significance of criticism of Amtrak for having been underbid by \$70 million for the right to operate the Miami-West Palm service. Using the South Florida situation as the basis for repeated attacks on Amtrak also seems inconsistent with the assurances we have heard that the new order as envisioned by the chairman would preserve existing labor agreements and rights.

If the chairman’s vision of competition for the right to operate intercity routes includes exemption from these laws, then the entire railroad industry should be concerned about the potential impact on the Railroad Retirement system of such a large number of employees exiting the system. Amtrak accounts for more than 10% of railroad industry employees.

V. Flexibility of existing law

Section 202 calls out a number of functions which could be contracted out, including call centers. The implication is that this can’t be done today. Actually, it is being done. As an example, the joint powers authority that administers Amtrak’s California-funded Capitol Corridor has contracted with BART (Bay Area Rapid Transit) to run the call center. Thus, a different information telephone number is shown in Capitol Corridor timetables (including on pages 117, 119 and 120 of Amtrak’s “Spring Summer 2011” system timetable). The joint powers authority also is housed within BART, taking advantage of the economies of scale inherent in using their administrative functions.

VI. Fully Allocated vs. Avoidable Costs

The route specific financial numbers which Amtrak is required to report show “fully allocated” losses. These numbers do not represent what would be saved by discontinuing a given route as they include many cost elements that would not change; the costs would simply be reallocated to routes that continued to exist. In other words, fully allocated losses are much higher than what could be saved by eliminating a given route or group of routes.

For example, the disappearance of the *Sunset Limited* would not change President Boardman’s salary nor have a material impact on other departments including, but not limited to, legal, planning, and the Amtrak Office of Inspector General. The *Sunset Limited*, moreover, is a particularly poor example to cite because the *Texas Eagle* and *Sunset Limited* function as a single route due to the heavily-used through-cars that operate Chicago-San Antonio-Los Angeles. Eliminating the *Sunset* would immediately and drastically worsen the *Eagle’s* performance, depriving the latter train of the significant share of revenues associated with trips between *Eagle* stations and points on the *Sunset* route west of San Antonio.

VII. Disposition of Amtrak Rolling Stock

We oppose the section 205 provision that effectively hands to a private entity the right to cherry pick Amtrak’s fleet, determining both which cars and how many cars are needed to serve the route(s) the entity has won the right to operate.

“To the extent that an entity identifies Amtrak equipment or rolling stock to be required for the performance of the covered service...the entity and Amtrak shall enter into an agreement to purchase or lease such equipment or rolling stock.”

If, for example, Chicago-based services are split among more two or more contractors, there would need to be:

- special equipment pooling agreements among the carriers;
- a dramatic reduction in spares ratios; and/or
- a larger fleet than currently exists, just to provide the same service level.

There appears to be no independent means to determine the outcome of conflicting and/or unjustified demands for the equipment. Of course, cherry picking of routes could parallel cherry picking of rolling stock, leaving Amtrak with the weakest routes and worst rolling stock.

VIII. Northeast Corridor

Northeast Corridor Executive Committee: It is hard to imagine a “five-member public-interest body” able to make key decisions effectively. Of particular concern is the absence of any requirement that intercity passenger rail interests or expertise be represented. One important advantage of the present set-up is that, with the intercity carrier (Amtrak) dispatching and owning most of the Corridor, the danger is minimized that decision making would be hijacked by people who place more value on specific commuter train scheduling concerns than on creating optimum pathways for intercity trains, whose expeditious passage requires coordination with commuter schedules in multiple metro areas. The intercity concern includes, but is not limited to, maintaining the hourly (‘clockface’) memory pattern that is key to Acela’s marketability. There is also the possibility that real estate development pursuits would trump transportation and/or transportation safety concerns.

Logistical Challenge: In October, 2005, the Amtrak Board voted to split the Northeast Corridor into a separate subsidiary. One of the reasons this was not pursued was the huge complication involved in transferring the thousands of titles of everything in the Corridor even just to a subsidiary. As the Amtrak Board’s own April, 2005, resolution put it: “the costs, complexities and risks of such a split within Amtrak outweigh the benefits.”

Express Service Goals: Section 106 anticipates maximum two-hour run time NYP-WAS and 2:30 NYP-BOS, doubling the existing frequency, and doing so within 10 years. Clearly, this involves relying primarily or exclusively on a brand-new railroad, as the Northeast Corridor Infrastructure Master Plan for the existing railroad (at page 21) foresees average “express service” travel times in 2030 of 2:21 NYP-WAS (“2-stop 2:15”) and 3:08 BOS-NYP. There is no enforcement mechanism and, again, no solid basis for believing that the goals can be accomplished.

Private and federal funding: Amtrak’s vision for the ‘new’ Northeast Corridor *does* include private participation to the maximum extent feasible. Conversely, any privately-managed alternative development likely would be dependent on substantial federal investment. Again, the project would have to have a significant stream of revenues that would justify any private sector investment. Finally, there is no hard evidence that demonstrates why any private entity would be interested in taking over responsibility for infrastructure and/or equipment without being able to show that such an investment would not be damaging to shareholders.

Amtrak’s Stewardship: In general, Amtrak has done an impressive job of managing the Northeast Corridor. Key elements of the infrastructure are antique. The B&P Tunnel (south

approach to Baltimore) and Union Tunnel (north approach) both opened in 1873; the New York-Washington electrification entered service in 1935. These make the nation's oft-lamented air traffic control system look modern by comparison; many Amtrak workers would consider it a luxury to work with 1950s-vintage facilities.

I recall a meeting with President & CEO Joseph Boardman early in his tenure at Amtrak. There had recently been a major power failure on the NEC, and Boardman—a Republican who served as Federal Railroad Administrator under President George W. Bush—was filled with praise for the skill of the Amtrak power directors and other Amtrak employees responsible for managing the aftermath of the failure in a way that minimized both the recovery time and damage to the system.

We were disappointed to notice that the “Flat Northeast Corridor Ridership” table at page 3 of *A New Direction* apparently is unchanged from the table shown at your May 26 hearing, notwithstanding information readily available from Amtrak and included in Rep. Brown's letter of June 2. As I wrote in our comments for the record of your May 26 hearing:

There has been much discussion of NEC ridership trends over the past 34 years, and the suggestion that this “proves” Amtrak has been an unworthy steward of the NEC. As indicated by the attachments to Rep. Brown's June 2 letter, on an apples-to-apples basis, ridership on the “NEC Spine” (Boston-Washington) rose from 6.4 million in 1976 and 6.8 million in 1977 to 10.4 million in 2010. Thus, 2010 ridership was 62.5% higher than the 1976 level and 52.9% above 1977.

These figures are constrained by three, related factors.

- *Amtrak has been mandated to maximize revenues, not ridership.*
- *The size of the available fleet could not support the significant traffic growth that lower fares would produce.*
- *Infrastructure “choke points” that partly stem from the tripling of NEC commuter trains since 1976. These important services consume a considerable amount of track capacity.*

IX. United Kingdom and Separating Tracks from Carriers

At the June 15 briefing, reference was made to a \$10 million investment, half from the private sector. It was stated that Virgin got \$300 million from the government in 2004, contrasting with Virgin in 2010 paying the government “a quarter of a billion dollars.” *National Rail Trends* published by the UK Office of Rail Regulation shows that Virgin Rail received government support for its West Coast intercity franchise in every year from 1998 through 2010 with the exception of 2009. Support ranged from between £332 million in 2004 and an estimated £52.5 million in 2010. Payment to the government in 2009 was £71.6 million. (British fiscal years end March 31.)

However, no such discussion would be complete without acknowledgment **of the British government's far larger infrastructure investment** which made Virgin's performance possible. That investment was **£8.9 billion (US\$14.4 billion)**. The numbers mentioned at the briefing do not reveal what portion of Virgin's true infrastructure costs the company's payments covered.

The following passages from *Railway Gazette International* Editor-in-Chief Christopher Jackson June "Comment" column may be of interest:

"Sir Roy McNulty's Rail Value for Money Review published on May 19 raises serious questions over the effectiveness of the UK's fragmented model, and postulates a return to something like vertical integration [common ownership of infrastructure and train operator]. Pointing out that the cost to the UK taxpayer has increased five-fold since privatization, McNulty says unit costs per passenger-km have been rising as traffic has increased, rather than falling as one would expect from economies of scale...

"The pro-separation lobby, including the independent infrastructure managers and many politicians at all levels, believes that competition is good for customers, driving costs down and quality up. Integrationists argue that the very essence of railway technology requires unified control of track and trains to optimize the system...

"Addressing the argument that separation facilitates competition, the authors [Jeremy Drew and Chris Nash, in a Working Paper published by the Institute for Transport Studies at the University of Leeds] point out that competition is not an objective in its own right but simply a means of achieving a more efficient railway. Any efficiencies gained must be set against 'higher transaction costs between infrastructure manager and operator, reduced pressure on costs and the negative impact on decision making, particularly for investment.'...

"A key factor is the degree of government support for infrastructure investment... Thus they feel 'on existing evidence there is no reason to conclude that vertical separation improves rail performance.' The jury is still out."

As I have previously noted, a May 25 *Financial Times* report, "UK rail reform poses 'big test' for operators," said, "Train operators could take over the running and maintenance of the tracks, ending the separation between track and train management that has been blamed for many of the network's failings." *FT* said operator Stagecoach "supports the integration of track and trains."

Thank you very much for this opportunity to present our views.

APPENDIX: AUTO-TRAIN CORPORATION

As reported in the May 4, 1981, *Washington Post* "Washington Business" section:

"Seaboard and RF&P [CSX predecessors] are believed to be the biggest losers in the Auto-Train bankruptcy, although a complete listing of the railroad's debts has not been made public.

"...executives of the two railroads have been embarrassed by losing several million dollars in the bankruptcy.

"Not only does Auto-Train owe the railroads millions of dollars for services, but also the two roads were forced to pay off \$2.6 million of Auto-Train's other debts. They co-signed an Auto-Train bank loan. When the loan was not paid, Seaboard had to put up \$2 million and RF&P \$600,000. Marriott Corp., which provided food on Auto-Train, guaranteed \$400,000 of the company's borrowings and lost that money along with what the company lost on unpaid food bills.

"The two railroads were so anxious to be rid of Auto-Train that they agreed to put up \$800,000 each to pay for Auto-Train's final week of operations and to finance expenses involved in shutting down the company entirely.

"In return for the \$1.6 million, Auto-Train bankruptcy trustee Murray Drabkin agreed not only to stop the train but also to cancel the long-term contract with the railroads, freeing them from future obligations...

"Amtrak already runs trains over the Auto-Train route and could run its own Auto-Train service for much less than it would cost an independent railroad." [Note: Auto-Train Corporation's last departure from Lorton, VA, was May 1, 1981; Amtrak's AutoTrain began service October 30, 1983.]

Wall Street Journal reporter Robert S. Greenberger's cover story, "Once I Had a Railroad: How Auto-Train Ran Off the Rails," appeared in the May-June 1981 issue of *Regardie's, The Magazine of Washington Business & Real Estate*. Here is one passage: "Angry creditors also confronted the company. By September 1980, Auto-Train would owe more than \$5 million to Seaboard Coast Line Railroad, on whose tracks the train ran. It also owed \$400,000 to Marriott Corp., Auto-Train's food supplier. Further, the train owed nearly \$700,000 in refunds to passengers. The Interstate Commerce Commission and other government agencies issued complaints because of this use of customers' money to finance operations."

Later, Trustee Drabkin sued Auto-Train's auditor Alexander Grant & Co., contending "that the company's financial difficulties were misrepresented for years to stockholders and the board of directors and that Auto-Train, with equipment that was rusting away for lack of spare parts, was trying to expand when it should have been consolidating its assets...In late 1979, more than half the company's equipment was inoperable..." [*The Washington Post*, March 1, 1983]. Auto-Train, of course, relied on used equipment and did not purchase new cars, which would have considerably increased costs.

National Association of Railroad Passengers www.narprail.org
505 Capitol Court NE, Suite 300, Washington DC, 20002-7706

Ray B. Chambers
Senior Transportation Advisor to RAILCET

To: Fred Miller – Counsel to the House Railroad Subcommittee
Cc: Joyce Rose – Stephen Martinko
From: Ray Chambers
Date: June 20, 2011

Subject: Proposed Competition Amendment to “Competition for Intercity Passenger Rail in America Act of 2011

Attached is the May 26 testimony of Mr. Michael Goetz on behalf of rail construction management and three key rail construction unions which calls for fair and open competition on publicly financed rail construction projects.

Rail construction labor and management would like to see an amendment added to the bill along the following lines:

- Regarding intercity passenger rail service, States and public authorities shall competitively bid out all publicly funded or financed rail construction, maintenance or rehabilitation projects on publicly owned rights of way. Federal, state, regional and local public authorities shall create no impediment to full, fair and open competition on federally funded projects.
- To the maximum extent possible, states and public authorities shall competitively bid out all publicly funded or financed rail construction, rehabilitation and maintenance projects on private rights of way, with exceptions to honor existing rail labor agreements in effect on date of passage of this statute.

We support the consistent application of existing prevailing wage requirements as established in the current federal framework under Title 23, Title 45 and Title 49 to any proposed innovative financing mechanisms. While our business is from the rail construction perspective, and it would not be appropriate to take a position on the operational issues surrounding Amtrak, we do believe there will be a need to leverage resources through the introduction of innovative financing, public private partnerships and competition in the construction and maintenance of passenger rail systems.

**“Government Financed Rail Construction and Maintenance—
A call for Maximum Open and Fair Competition”
Hearing on
Opening the Northeast Corridor to Private Competition
For the Development of High-Speed Rail
Before the House Committee on Transportation & Infrastructure**

**Testimony of Michael Goetz
Executive Director - RAILCET¹,
On behalf of
Organized Rail Construction Management and Labor**

May 26, 2011

My testimony today is on behalf of thirty railroad contractors and three international construction unions that build and maintain rail infrastructure across America. We ask that the Rail Title of the next Surface Transportation Act authorize a high performance intercity and urban passenger rail network. We suggest that the Northeast Corridor should be the crown jewel in that network. We agree with the President’s goal that within 25 years 80% of all Americans should have the option of a high performance rail passenger alternative to highway and aviation.

In these difficult budget times, we know that we cannot meet the goal of a revitalized passenger rail network by enacting a massive new grant program as we did with the creation of the interstate highway network. Therefore, we support new approaches to leverage resources through the introduction of innovative financing, public private partnerships (P3s) and competition in the design, construction and maintenance of rail passenger systems.² High

¹ *The Railroad Cooperation and Education Trust (RAILCET), is comprised of 30 rail contractors which hold a single national agreement with the Laborers International Union of North America (LIUNA) and the International Union of Operating Engineers (IUOE). The United Brotherhood of Carpenters (UBC) which represents Herzog Industries in rail operations and construction and maintenance, also endorses this testimony.*

² *Specifically we support expansion of the RRIF and TIFIA federal loan programs mixed with grant financing and made available to official P3 partners to maximize financial resources in delivering urban and intercity passenger*

speed rail service in the Northeast Corridor and the West, and the existing state supported passenger corridors,³ should be the foundation for a new national intercity and urban passenger network.

To transform the Northeast Corridor and existing intercity and urban routes into a high performance network will be a massive undertaking over a long period of time.⁴ To be successful it must have major private sector involvement and cost control in the construction, maintenance and rehabilitation of this rail network. To provide the maximum value for the taxpayer's dollar, we specifically call for fair and open competition for the construction of publicly funded or financed rail projects. We propose the following policy for construction:

- States and public authorities shall competitively bid out all publicly funded or financed rail construction, rehabilitation and maintenance projects on *publicly owned rights of way*. Federal, state, regional and local public authorities shall create no impediment to full, fair and open competition on federally funded projects.
- To the maximum extent possible, states and public authorities shall competitively bid out all publicly funded or financed rail construction, rehabilitation and maintenance projects on *private rights of way*. While the burden of proof should favor competition, we support limited exceptions to honor existing rail labor agreements in effect on date of passage of this statute. Clear Guidelines should be established to promote fair competition and enforcement by the Department of Transportation and the States. (Suggested Guidelines are attached)

In recent months there have been some unfortunate statements made before the Railroad Subcommittee that our contractors and their employees have less than professional skills and qualifications because they do not operate under the railway labor laws. That is nonsense. The fact that our employees are organized under the National Labor Relations Act, along with other private sector employees in America, does not adversely impact the quality of the work we perform or the conditions of employment. We have superior benefits with solid health and pension plans. We jointly-administer world-class training programs and utilize work standards that are second to none. We perform rail maintenance and construction efficiently and safely, as well as any in-house labor force. The skilled construction workers from the Carpenters,

rail projects. We believe it would be appropriate to create a significant Special RRIF Fund to transform the Corridor into a true HSR operation. We support the consistent application of existing prevailing wage requirements as established in the current federal framework under Title 23, Title 45 and Title 49 to any proposed innovative financing mechanisms.

³ We propose a program of accelerated development of the state supported corridors around the country. This is the foundation for a national passenger system that links city pairs. In addition to the NEC we support the continued development of a California HSR system as well as the DesertXpress project between Las Vegas and Southern California.

⁴ We express no opinion on the operational issues surrounding AMTRAK, or the rest of the proposed network. We are exclusively focused on the proposed network from a construction industry perspective.

Laborers and Operating Engineers perform complex construction projects in a wide range of industries, including rail projects.

It is true that our companies operate in a highly competitive environment. Our unions and management work closely together through cooperative strategies that demand high quality work at the best price. The bottom line is we must get our jobs done safely, on time and on budget. We will happily compare our record of quality, safety, and productivity with any similarly situated in-house workforce in America.

We also present a unified labor-management voice on legislative issues as we are doing here today. We will work with Congress for a specific proposal on the Northeast Corridor. What we respectfully ask is that principles of competition for rail construction projects be applied here and on all other publicly funded rail projects. That way, as a high performance American passenger rail network is developed, the taxpayer will receive the highest quality work at the best price.

Potential Policy Guidelines for Bids on publicly financed projects on private rights of way

1. Once procurement transactions for each federally financed construction project are identified, a state must issue a request for preliminary information (RFI) from potential contractors.
2. In response to the RFI, a private track owner may request a sole-source award if deemed required by existing labor agreements. If the Secretary (or State) concurs, the state may make a sole-source award for the specified transactions. The Sole-Source Awardee shall supply full and transparent information on the project cost to the state for the public record. The burden of proof in reaching a sole source decision shall favor competition consistent with existing federal law and the contractual rail labor agreements in existence at the time of passage of this authorizing statute.
3. With the exception of sole source awards, each project contract shall be competitively selected. The track owning railroad shall prequalify contractors for work on their rights of way, and may manage the bid process (under state guidelines) and construction for all work on their rights of way, but may not unreasonably withhold qualification for anti-competitive reasons.
4. Private parties may not enter into future agreements intended to secure sole source contracts and stifle the competitive process in the award of public funds for public interest projects on private rights of way.

**Northeast Regional Issues –
Competition for Intercity Passenger Rail in America Act
(Discussion Draft dated June 15, 2011)**

Introduction

The northeast states have long supported the Northeast Corridor (NEC) between Boston, New York City and Washington, D.C., and the region's critical network of existing and planned passenger rail corridors. This network is a vital component of an integrated transportation system that provides economic competitiveness, employment opportunities, and community revitalization through the safe, efficient, and environmentally sound movement of people and goods. The northeast states, with members appointed by each governor, are actively engaged in the Northeast Corridor Infrastructure and Operations Advisory Commission which was created by Congress to develop goals and recommendations for the future of the NEC.

The northeast states share in the ownership, financing and operations of passenger rail service on the Northeast Corridor and its regional branches. Changes must be developed in close consultation with the states; reflect rigorous data and analysis; recognize the complexity of the system; and be undertaken in a timely but orderly manner that does not jeopardize current intercity, commuter and freight service. Public oversight can ensure access for critical intercity, commuter and freight services where shared trackage is vital to economic development, transportation mobility and public transportation services.

The following comments on the June 15, 2011 discussion draft of the *Competition for Intercity Passenger Rail in America Act* identify a number of areas in the discussion draft as they relate to this interest in the Northeast Corridor as a core component of an integrated, regional transportation system, and to the states' interest in a continuing strong federal-state partnership in the future of the NEC.

Federal Role

- The NEC has served as a joint use asset, shared and used by the states and Amtrak, for public benefit and private commercial purposes. It is an integral part of the transportation system of the Northeast. If the Federal government has an underlying role as the owner of a significant portion of the NEC right of way, does the Federal government have a continuing role to insure that the public interest is served by continuing oversight and financial contribution for its support? Should this be articulated in the purposes of the legislation and addressed in the appropriate provisions?
- The Amtrak-owned assets of the NEC are transferred to the Secretary of Transportation, who then leases the assets to the NEC Executive Committee for 99 years for it to manage the infrastructure and operations of intercity passenger rail service on the Main Line. A contractor is hired by the Executive Committee to finance, design, build, operate and maintain intercity passenger rail service on the NEC. This means that the Federal government still owns the assets and plays a role in the NEC, but there is no clear reference to what the larger Federal role is. Some roles are described, such as under new "section 24902. Goals and requirements. (f) Coordination," the Secretary coordinates transportation programs related to the NEC to ensure

that the programs are integrated and consistent with high-speed and intercity passenger rail operations on the NEC. If new services or new rights of way are needed, will the FRA be involved in the service planning and environmental analysis of the corridor? What is the Federal role in obtaining the Federal resources needed by the contractor?

Role of the States

- While one of two delineated purposes of the Northeast Corridor Executive Committee is to “promote mutual cooperation and planning pertaining to the rail operations and related activities of the Northeast Corridor,” the states of the northeast region have a special and unique status. The northeast states share in the ownership, financing and operations of passenger rail service on the Northeast Corridor and its regional branches. *Changes must be developed in close consultation with the affected states* (not just having representational membership on the Executive Committee). A significant state role in the determination of the routes, stations and services and public funding alternatives must be included in any determination of the NEC future.

Existing Services and State of Good Repair

- The legislation needs to address the importance of the existing intercity passenger service on the NEC and the significant resources needed to bring the existing infrastructure on the NEC to a state of good repair (SOGR). The legislation should make clear that, in addition to the new authority of the Northeast Corridor Executive Committee to improve the rights of way on the NEC to achieve high-speed rail service, the Executive Committee is to *improve the existing intercity passenger services, including non-express services, and ensure that the system is brought to a state of good repair.* [See (new section 24903 (b)(4).]
- A performance standard of maintaining a state of good repair on the NEC system throughout the life of the contract should be included. The expression of interest that is submitted should delineate the infrastructure investments needed to accomplish the SOGR and the proposed source of funds needed to do this. (See Sec. 106 Performance Standards.)

Public Financing and Risk

- The evaluation criteria dealing with the levels of Federal support in the solicitation and selection of proposals in Section 107 should be expanded to also address implications for state and local support. The evaluation criteria in (107)(c)(2)(C) “The expression of interest incorporates the least amount of Federal support” should be modified to “The expression of interest incorporates the least amount of federal, state and local government support.” *The objective should be to minimize the amount of any public funding needed to develop a high performance NEC intercity passenger rail system.* [(See Sec. 107. Solicitation and Selection of Proposals (c) Evaluation and Selection (2) Evaluation Criteria (C).]
- The expression of interest should include an element to describe how the proposers will handle the insurance and liability issues. The evaluation criteria would be used to *evaluate whether the risk and exposure has been passed to the federal, state or local governments.*

- Language should be included to address the *continuation of those intercity rail projects on the NEC and branch lines which have been awarded under prior years appropriations* (i.e., all of the NEC projects that have been awarded to date will be needed regardless of the future owner/operator of the NEC).
- Careful consideration must be given to the balance between state and local authorities and laws, and the powers and responsibilities of any new entity with development and management control of the federally-owned segments.

Connectivity with Other Rail Services

- While recognizing the interface with the commuter and freight railroads on the NEC, the language should also *recognize the interface with other intercity passenger rail services connecting to the NEC infrastructure and facilities*. It is in some places and others not listed. Examples:

In Sec. 103. Transfer of Assets (d) Agreement (2): add “,” and the words “intercity passenger” after the words “continuation of commuter.”

Sec. 104. Northeast Corridor Executive Committee in the new section 24903. Northeast Corridor Executive Committee (b) General Authorities (6): add the words “intercity passenger rail” and “,” after the words “or make arrangements for.”

Sec. 104. Northeast Corridor Executive Committee in the new section 24903. Northeast Corridor Executive Committee (c) Compensatory Agreements: add the words “intercity passenger rail transportation”.

Interaction with NEC Infrastructure and Operations Advisory Commission

- The draft legislation does not repeal Section 212 of the Passenger Rail Investment and Improvement Act of 2008 which establishes a Northeast Corridor Infrastructure and Operations Advisory Commission (NEC Commission). It makes no mention of how the responsibilities of the NEC Commission interact with the Northeast Corridor Executive Committee. The Advisory Commission is active and undertaking its responsibilities under current statute.

Will Section 212 be retained, and if so how will some of the duplicative responsibilities be carried out? For example, the NEC Commission is to promote mutual cooperation and planning pertaining to rail operations and related activities of the NEC; a role also of the NEC Executive Committee. The NEC Commission is to develop a statement of goals and recommendations concerning the future of the NEC. The NEC Commission is to develop a standardized formula for determining and allocating the costs, revenues and compensation among the intercity and intercity services on the Main Line. However, each of these examples is an implied or explicit role given to the NEC Executive Committee.



A Luxury Cruise Liner Experience on Rails

ROMM DOULTON
Chairman

June 21, 2011

Ms. Joyce Rose
Congressional Staffer
Transportation Infrastructure Committee
2155 Rayburn House Office Building
Washington, D.C. 20515

Dear Ms. Rose,

PULLMAN PALACE CAR COMPANY, LIMITED
CITY OF LIGHTS
Proposed Traditional Passenger Rail Linking Los Angeles and Las Vegas

I applaud the House Transportation and Infrastructure Committee's bold initiative to enable private capital to develop high speed rail passenger to serve the Northeast Corridor. America's largely underutilized, 240,000 miles of existing rail infrastructure, with replacement value in excess of a trillion dollars, also represents an exciting opportunity to enable private capital funded passenger rail to provide reliable service to the nation's less well populated communities. At present Amtrak's 22,000 route miles represent less than 10% of the potential.

While high speed rail routes on both coasts hold promise, traditional passenger trains as feeder lines, traveling speeds from 79 mph to 110 mph, hold equal merit at a fraction of the development cost within significantly reduced timeframes. This class of train serves smaller markets while breathing new economic life to a wider population.

Attached is a one-page summary of Pullman Palace Car Company's Vision and Mission for your consideration, a Pullman Executive Summary that more fully describe our proposal, and a short City of Lights PowerPoint presentation.

I would appreciate having an opportunity to meet with you and your team in Washington to explain Pullman's goals in more detail in hopes of obtaining the House Transportation and Infrastructure Committee's support for the Pullman vision.

Respectfully,

A handwritten signature in black ink, appearing to read "Romm Doulton", written over a horizontal line.

Romm Doulton

6109 Dean Martin Drive ♦ Las Vegas, Nevada 89118

Phone: 702 256 2313 ♦ Fax: 702 256 4144 ♦ Cell: 702 349 9674 ♦ www.pullmancompany.com ♦ rdoulton@pullmancompany.com



VISION AND MISSION

Pullman's near term vision and mission is to revive the passenger route between Los Angeles Union Station and Las Vegas on an 11-acre master planned Pullman Central site contiguous to the Las Vegas Strip. Eleven million Southern Californians travel the dangerous and impacted I-15 annually, some of whom would prefer to leave the driving to Pullman. The new rail route will take 5 hours to cover the 263-mile journey at a cost of approximately 40% less than coach fare to fly to L.V. from L.A. Today's Pullman Palace Car Company Limited's longer term mission is to reintroduce Pullman-class passenger trains on selected routes throughout the USA. Pullman has assembled a management team of well-known passenger rail professionals and advisors. The Hon. Gilbert E. Carmichael (Former Chairman of the Amtrak Reform Council and Administrator of the FRA, whose Interstate II proposal, without question, is one of America's most credible transportation strategies) is a long-term friend and supporter of the Pullman project.

Although Pullman has made it known to Amtrak that it is prepared to work with them and employ its locomotion, T&E crews and maintenance, given the apparent lack of availability of the foregoing, we have been advised by Amtrak that Pullman's potential would be better served if it could work directly with the host railroads that are open to exploring such proposals (UP, BNSF, Metrolink). Pullman has entered into dialogue with established operators who have the capability to provide the required service(s), under contract. These groups are well regarded by the host railroads. Inasmuch as Amtrak by law controls the route rights, Pullman would propose entering into an arm's length, negotiated, franchise agreement, whereby Amtrak would be fairly compensated at no financial risk or diminution of other Amtrak routes and or rolling stock.

Spanning a five-year period, Pullman's vision (see attached brochure) is to establish three Southern California trains, 'City of Lights' from LAUS to Pullman Central; 'City of Angels' train from Pullman Central to LAUS; and 'City of Dreams' that would connect the planned California HSR at Anaheim's new ARTIC with Pullman Central.

Pullman's *cruise liner on rails experience* represents a world-class showcase that demonstrates how an up-to-date, private capital funded; passenger train system would be economically viable. Pullman's first train, 'City of Lights' and the Terminal master plan is scheduled to become operational within 20 months at a total estimated development cost of \$117 million. Project funding is now available subject to obtaining Amtrak endorsement and host railroad agreement. Once all three trains become operational each of Pullman's proposed trains will generate a projected 7,200 direct and secondary fulltime jobs for a total of 21,600 jobs. Pullman is also *Planet Friendly* as the three proposed trains eliminate a notional total of 717,000 automobiles from I-15 and reduce CO2 emissions by 184,000 tons annually. The economic benefit to Las Vegas is well into the billions of dollars.

Leveraging existing rail infrastructure, the Pullman Central site will also revitalize the moribund Hoover Dam Branch Line (Class 3) providing additional local passenger rail opportunities via a cost effective 20-mile commuter train for nearby Henderson's 300,000 residents. The much needed tourist train to Hoover Dam will cater to three million tourists who currently travel from Las Vegas to Hoover Dam annually, principally by tourist bus. Both communities have long sought to have rail service made available and welcome Pullman's initiative.

MASTER PLANNED - SYNERGISTIC INTEGRATION

RailPort (see brochure) is proposed on 14 contiguous acres to Pullman Terminal and is an intermodal, state-of-the-art *rail, road and air served frozen and fresh food distribution centre*. Surprisingly, Las Vegas has not benefitted from rail freight service since the mid 1990's. During the ensuing 15 years Clark County's population has doubled from one to two million, as has its tourism (20 to 40 million). Each year the combined resident and tourist populations consume three billion meals in Clark County. In serving this enormous market, 98% of all consumables are transported by 18-wheelers from around the nation spewing out billions of tons of CO2 emissions along the nation's interstate routes. An estimated 30 reefer cars per day stopping at RailPort remove 28,080 trucks annually.

In the four years Pullman has been pursuing its vision by taking a closer look at what passenger rail travel once was, and can be again, it is focused upon the likely rather than the unlikely. Of late, owners of rail assets are reevaluating their future role within the passenger and freight rail industries and profitably exploiting their existing infrastructure.

HSR development is likely ten years into the future. A near-term demonstration as to how cooperation of the two industries might function to everyone's benefit is the small, but important step forward, being proposed by Pullman Palace Car Company, Limited.

Title 1 - Section 102 - Why does Amtrak only get the right of eminent domain extended to clearing claims on Amtrak's assets by shareholders? What about claims by others, like states that have contingent interest ownership in Amtrak assets like amounts paid to rehabilitate trainsets that run in the corridor?

Section 103 - This section also leaves Amtrak with the debt, but it also directs the Secretary to release Amtrak from all mortgages and liens and delivers to Amtrak the 1 share of preferred stock held by Amtrak in return for the assets. NEC equipment that operates in the corridor includes the regional intercity services consisting of 26 trainsets. 6 of those 26 trainsets or 23% of them operate into and out of VA daily. NEC assets and their impact to other states that use them must be taken into consideration. Amtrak has no control over freight operations. Several freight carriers interchange freight or haul freight over the NEC assets. These are not Amtrak moves so Amtrak will not know what is going on with them like the number of people necessary to operate them. Why transfer the assets to the underlying states? They may not be able to receive ownership of operating railroad assets and why would you break up the system?

Section 104 - The NEC Executive committee appears to be parallel to the Section 212 Commission created under Section 212 of PRIIA. (Freight railroads may have rights that are granted and not agreed to.) 99 years is a long time to recover from a potential mistake. This means any asset improvement made will potentially be based on a 99 year lifetime and depreciated as such. A shorter term may warrant a faster depreciation of assets and improvement capital investment warranting a higher ROI yield for the tenant.

Section 105 - What about freight operations and dispatching of freight trains? No reference in the summary of this.

Section 106 - 10 years is an ambitious schedule since Amtrak and FRA have been working on a Tier I EIS on the corridor for some time. The NEPA process alone could take 8 years of the 10 years. Doubling the number of trains on the NEC and reducing travel times will require exponential effort of capacity construction and dispatching capabilities. Item 2 protects standing level of freight, but does not include call outs for increased freight capacity.

General - The NEC Executive Committee should also include representation of VA, NC, ME, CT, and VT - or just say all states that have regional services that are off of the corridor that feed the corridor.

Section 108 - It appears that the assets will be leased for 99 years and then a PPP to operate trains will be potentially separate. This is an approach sets up a land holding structure and operating structure. Each aspect will have its own margin center that could drive up cost of use of assets that will be passed to the consumer, thus pricing the system to the outer fringe of the market, if not done properly. So, who will negotiate freight rail access and use of the assets? The USDOT, the leaseholder of the land/assets, or the passenger rail PPP?

Section 109 - this will again push the cost of a ticket to the outer limit of the market, in my opinion. No transportation system is solely unreliant on public funding of some sort.

Title II Section 202 - Who reports to Congress? Amtrak or the states? 12 of how many states? The 15 that support regional service today? This has been an issue at the SWG as to who has to ratify.

Section 203 - PRIIA Section 209 does not provide for any subsidy to be transferred to the states. This bill makes the assumption that Amtrak will continue to receive federal operating subsidy for regional routes. I think this conflicts with the PRIIA law.

Section 204 - VA contracts with Amtrak, and under PRIIA Section 209, the 6 trains will be NEC trains. Will VA have to take the contract with the NEC provider or have to compete? We are part NEC and part not just by our geography and reliance on the NEC for destinations and trainsets. This section will not allow for the sharing or piggy backing of the NEC process for regional feeder service.

Section 205 - PRIIA calls for the states to pick up the access to facilities cost. It is not clear that the operator will pick this up or the states.

Section 206 - Access rights to be negotiated with host railroad? What about the rights that Amtrak has now under the on-corridor and off-corridor agreements resulting from the NRPSA of 1971? What happens to access train slot capacity purchased by states? Amtrak access rights and fees are exponentially lower than those negotiated

Section 208 - What if a state wants to run its own service? Does it have to go through the federal process that may result of this effort?

Title III - Section 301 - I see little interest will result from this. Long distance trains, other than the auto train, will never be self sustaining.



July 22nd, 2011

The Honorable John Mica, Chairman
House Transportation and Infrastructure Committee
2165 Rayburn House Office Building
Washington DC 20515

Dear Mr. Mica:

Veolia Transportation appreciates the opportunity to provide this letter for the record of the House Transportation and Infrastructure Committee's hearing on June 22, 2011, entitled, Legislative Hearing on the Committee Print, "Competition for Intercity Passenger Rail in America."

We want to address, specifically, testimony provided by Joseph Boardman, Amtrak President and CEO, in response to questions about its lawsuit against a competitor for the contract to operate commuter rail service for the South Florida Regional Transportation Authority (SFRTA), known as Tri-Rail. This particular action was filed against Veolia Transportation in 2007, following our selection by SFRTA to operate its service.

Mr. Boardman was questioned, initially, as to why Amtrak's price to provide the service was more than \$60 million higher, over the life of the contract, than the Veolia Transportation bid. His answers were misleading and inaccurate. He observed that operators that compete with Amtrak do not have to pay Railroad Retirement and do not have the liability costs that Amtrak incurs. In fact, this is not correct.

Veolia Transportation does, indeed, pay railroad retirement when providing services through its legally constituted railroad subsidiary to an agency whose rail operations are, by reason of their interstate characteristics, subject to jurisdiction of the Surface Transportation Board and Railroad Retirement Act. However, there are agencies whose rail operations are not subject to the Railroad Retirement Act, such as SFRTA at Tri-Rail. In the case of the SFRTA and Tri-Rail, that service was determined by the Surface Transportation Board not to be subject to the RRA and the SFRTA instructed proposers to bid the service as non-railroad, which Veolia did. It is important to clarify that this distinction is one made by the client, not Veolia or Amtrak.

More than a clarification is needed in the instance of Mr. Boardman claiming that Veolia does not incur liability costs like Amtrak. A correction is needed. While I do not know what liability costs Amtrak incurs generally, it is incorrect to say that Veolia does not have the same third party liability risks and costs for insurance that Amtrak or any other railroad has. We insure up to and beyond the maximum exposure that current law permits and incur significant costs in this regard.

Finally, Mr. Boardman commented on the lawsuit, vigorously trying to defend a lawsuit that on its face is an attempt to stifle competition and to intimidate its at-will employees who desire to better themselves in the industry.

Amtrak initiated a lawsuit on July 16, 2007 in the United States District Court for the District of Columbia, against Veolia Transportation Services, Inc. and Veolia Transportation, Inc. ("Veolia Transportation") in a case styled National Railroad Passenger Corporation (Amtrak) vs. Veolia Transportation (Civil Action No. 1:07-1263 (RBW)). The case is still pending.

The lawsuit was filed simply on the basis that Veolia Transportation made contingent offers of employment to three at-will Amtrak mid-level management employees and included their names as part of its proposed local management team in a competitive procurement to operate the Tri-Rail commuter rail service of the South Florida Regional Transportation Authority (SFRTA) between Miami and Palm Beach. Such contingent offers of employment, which simply offer employment to an individual contingent on the offerer being awarded the contract, are commonplace in the industry (Veolia made another such an offer that was accepted by a CSX employee and Amtrak itself made such an offer to another competitor's employee.) Veolia's contingent offers of employment were made to these at-will employees before competitive proposals were submitted by either Veolia or Amtrak.

At that time, all three of these employees worked for Amtrak outside of south Florida, and none of them were involved in the Tri-Rail procurement or project, as neither Amtrak nor Veolia were the incumbent Tri-Rail service provider.

The ostensible purpose of Amtrak's wasteful lawsuit was to protest the 2006 award of the Tri-Rail Operations Contract to Veolia by SFRTA, despite the fact that Amtrak did not pursue an administrative bid protest pursuant to Florida law and Amtrak's price to operate the service was \$60 million higher than Veolia's \$97 million price for 10 years. The real purpose behind Amtrak's action was to freeze its workforce in place in an effort to stem enhanced competition for competitive commuter rail contracts. Ironically, Amtrak's posture, in this regard, can have a detrimental impact on Amtrak's ability to attract top-notch employees. Strong individuals who

believe that employment with Amtrak may foreclose them from moving on, at some point, to better positions with other organizations and in the private sector could very well choose to avoid Amtrak as an employer in the first place. Amtrak viewed its size, funding and “unmatched pool of experienced managers and other personnel” (a quote from its initial Complaint) as a basis to fend off potential competitors and competition as an increasingly important goal as high-speed

rail became a significant national policy, and eventually a Congressionally-funded reality. To advance its own policy objectives, Amtrak fired all three individuals to whom Veolia made contingent offers of employment, evidencing Amtrak’s real intent to intimidate its own workforce. Indeed, one of Amtrak’s two claims against Veolia is styled “aiding and abetting a breach of fiduciary duty,” the underlying breach being the temerity of these three salaried, at-will employees to dare accept another opportunity in passenger rail that was not with Amtrak. The second claim alleges Veolia interfered with Amtrak’s “expectancy” of being awarded the Tri-Rail contract by making offers to the three employees. In other words, Amtrak is saying, “hands off all of our at-will employees.” Amtrak alleges damages of \$20.5 million as “lost profits.”

Mr. Boardman commented that employees are not supposed to go to another company until they leave the company for whom they work. Of course, nothing of this sort occurred. These individuals did come to work for Veolia once Amtrak fired them and we won the contract to operate Tri-Rail but certainly not before.

At the conclusion of the question-and-answer session with Mr. Boardman, he affirmed that he will not drop the lawsuit under any circumstances. The bottom line is that this type of action wastes taxpayer money to perpetuate an uneven playing field. The message is that if Amtrak does not win a bid to operate services, the winner of the project can expect to be sued. This is intimidation by lawsuit as viable competitors enter a market for which Amtrak once had a monopoly.

It is critical that competition be maintained for the benefit of the riders and the public agencies which sponsor service. If Mr. Boardman believes he has the superior organization in the pool of operator candidates, he doesn’t need to use litigation to deter competition. Let the market decide who it wants to engage. In the case of Tri-Rail, without competition, the SFRTA would have had only a single option which would have cost more than \$65 million more than it pays today.

We have now incurred more than three years of legal fees related to this litigation. As a public company, our legal expenditures simply erode our bottom line, an issue of great consequence to our stockholders. As a government-subsidized organization, Amtrak seems to have a bottomless ability to pay legal bills funded by taxpayers.

The Honorable John Mica

- 4 -

July 22nd, 2011

We appreciate this opportunity to respond to Mr. Boardman's comments and we fully support this proposed legislation to further open the passenger rail market to legitimate competition on a level playing field.

Sincerely,


Ronald J. Hartman
CEO – Rail Division

cc. The Honorable William Shuster, Chairman
Subcommittee on Railroads, Pipelines & Hazardous Materials
FHOB 592
Washington DC 20515

INTERNATIONAL BROTHERHOOD OF TEAMSTERS

JAMES P. HOFFA
General President

25 Louisiana Avenue, NW
Washington, DC 20001



C. THOMAS KEEGEL
General Secretary-Treasurer

202.624.6800
www.teamster.org

June 21, 2011

The Honorable John Mica, Chairman
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Nick Rahall, Ranking Member
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Mica and Ranking Member Rahall:

I write you on behalf of the 1.4 million members of the Teamsters Union, and especially those who work on our nation's railroads, to voice our strong opposition to the Intercity Passenger Rail in America Act. This proposed legislation, put forth by Chairman Mica, is nothing other than a veiled attempt to destroy Amtrak as we know it and put the interests of Wall Street ahead of those living on Main Street.

Our members, represented by the Brotherhood of Locomotive Engineers and Trainmen and the Brotherhood of Maintenance of Way Employees, will be especially aggrieved by this bill. Contrary to proclamations that workers will be protected under its provisions, the bill provides no real labor protections for Amtrak workers. Those would be eliminated or significantly curtailed once Amtrak's Northeast Corridor (NEC) is sold off to a private entity. In fact, language in the bill provides that private entities providing rail service are considered rail carriers "only for the purpose of Title 49, United States Code." That means private providers of passenger rail service would not be covered by the Railroad Retirement Act or the Railway Labor Act (RLA).

Committee on Transportation and Infrastructure
June 21, 2011
Page 2

The end result is that with no RLA coverage, these rail workers would lose the right to bargain collectively or be represented by a union under the RLA. This ill-conceived legislation would also undermine the Railroad Retirement System, putting in jeopardy the pensions provided to over 525,000 annuitants. Benefits could be slashed even if payroll taxes are increased to make up part of the shortfall.

Worse yet is what this proposal would do to passenger rail service in America. Auctioning off Amtrak's profitable NEC would destroy passenger rail service throughout the country. The NEC profit allows Amtrak to subsidize long distance lines in other parts of the U.S. where rail service can be the only means of public transportation. The NEC revenues are also used by Amtrak to finance and maintain its rolling stock, in addition to train stations, repair shops and other facilities.

Private interests have no incentive to operate for the public benefit. Their only motivation is profit, which means that services could be cut while fares and access fees could be increased. This bill rewards Wall Street investors and does nothing to advance what's really needed in this country – a strong commitment from Congress for a robust high speed rail network throughout the U.S. This assault on Amtrak should be stopped dead in its tracks!

Sincerely,

A handwritten signature in cursive script that reads "James P. Hoffa". The signature is written in black ink and is positioned above the printed name and title.

James P. Hoffa
General President

RIM Initial Comments on Discussion Draft
Contact: Robert Serlin
Serlin_robert@RIMrail.com
610-667-2825

Initial comments on Mica / Shuster Discussion Draft

Design Issues

- The proposal should remove **all** infrastructure responsibilities from Amtrak, including Amtrak's Midwest owned infrastructure. Otherwise, Amtrak will need to retain its Engineering Department and maintenance of way personnel, despite no longer controlling the NEC.
- Dispatching should be included as NEC infrastructure responsibility. Otherwise, Amtrak will still have control over the use of NEC infrastructure and it might impede fair access and true competition.
- The infrastructure transfer needs to be highly expedited, much more so than provided in the legislation. Amtrak would likely not adequately invest in and maintain the infrastructure if it knows that it will soon lose control of it.
- DOT's Secretary has a conflict of interest under this proposal because the Secretary also sits on Amtrak's board. Delegation within DOT is also unlikely to work because who is going to do something where the Department is still conflicted. Need independent, non-conflicted person that has rail transportation operational and economic knowledge and experience, and does not report to the DOT's Secretary.
- NEC Executive Committee doesn't have expertise, is another layer of management (bureaucracy), and may politicize the process. Instead, a neutral third party should be awarded the right and responsibility to run all of Amtrak's owned infrastructure subject to government oversight, regulations and standards.
- Many tasks / functions assigned to Amtrak not only put the fox in charge of the chicken coop, but also assign the fox the responsibility of deciding for the farmer which chickens will be thrown to the fox for dinner (e.g. Sec 103(d) "the Secretary shall enter into an agreement with Amtrak under which Amtrak will exercise on behalf of the Secretary care, custody and control of the [NEC] assets to be transferred ..." or Sec. 103(a)(2) "The rolling stock and equipment to be included in the transfer ... shall be determined through negotiation between Amtrak and the Sec." or Sec 103 (d)(2) Amtrak "shall determine the employees and equipment, and the specific numbers and locations of the employees and equipment associated with each function, that would be needed for continuation of commuter and freight rail service in the event that Amtrak were to cease operation", etc.)

RIM Initial Comments on Discussion Draft
 Contact: Robert Serlin
Serlin_robert@RIMrail.com
 610-667-2825

- It is not clear how the bill allows for private sector to assume control of NEC infrastructure. NEC infrastructure management appears to be reserved for the NEC Executive Committee through a 99 year lease with the DOT Secretary.
-

Technical Issues

- Sec. 102:
 - common stock redemption at book value may well be a "taking"—easy work-around applicable to achieve goal and avoid problem by structuring proposal as a stock spin-off;
 - valuation of assets and liabilities unnecessary since value of stock has little to do therewith;
 - common stock redemption already mandated in PL 105-134
 - "Subsequent to the redemption of common stock" needs to be "Concurrently with the redemption of the outstanding common stock"
- Sec. 103(a)(1)(B): some of the "rolling stock and other equipment necessary to support necessary intercity passenger rail service" on the NEC may also be necessary for other service
- Sec. 103(b): Separating the ownership of assets used as collateral for debt from the debt is complicated and may not be workable
- Sec. 103(c)(1): needs to be reconcile to work with Sec. 102(e)
- Sec. 103(d)(1): needs standards and requires a compliance enforcement mechanism
- Sec 103(d)(2): many functions, numbers, etc. can't be allocated cleanly on a specific basis because they are non-specific and used in multiple functions, so that they are not easily devisable
- Sec 104(a): 24903(a)(5): replace the word "shall" with "may"
- Sec 104(a): 24903(b)(5): include dispatching
- Sec 106(1) and (2): make subject to normal operating events, including construction activity
- Sec 106(3): Since portions of the route between NYC and BOS are controlled by third parties, e.g., ConnDOT, 2½ hours cannot be reasonably be mandated.

RIM Initial Comments on Discussion Draft
Contact: Robert Serlin
Serlin_robert@RIMrail.com
610-667-2825

- Sec 106(4): Market demands should determine the number of daily train movements
- Sec 106(5): Private sector will adapt project list to amount of time available. It will not stuff more projects than it thinks it can do into a shorter period of time to satisfy Congress.
- Sec 107(a): It's unclear that there is an opportunity to assume infrastructure responsibility alone
- Sec 107(b)(2): Very few bidders are likely to be able to answer questions like these without detailed, expensive studies.
- Sec 107(b)(4)(B): Very few bidders will be able to specify the source of money for something years down the road, IF a bid is awarded.
- Sec 107(c): these criteria may conflict with Sec 104 and Sec 106 articulated goals and standards.
- Sec 108(a): How does private sector assume the lease since the private sector appears to be the desired responsible party?
- Sec 203(b): reduces the incentives to save costs.
- Sec 204(d): If Amtrak is the sole applicant, then how can there be program participants? Amtrak doesn't meet the test of being eligible to be a program participant.
- Sec 205 disincentive for innovation
- Sec 205(c)(1) is a mistaken reference: Should be STB, not FRA. The section says it's in accordance with Sec 217 of PRIIA, but it isn't. Sec 217 references the STB and not the FRA.
- Sec 206: Unlikely to achieve desired result.
- Sec 208(e): cumbersome, unnecessary and disincentive to innovation



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June 16, 2011

U.S House of Representatives
The Honorable Congressman John L. Mica
United States Representative
2165 Rayburn House Office Building
Washington, D.C. 20515

RE: High Speed Rail

Dear Representative Mica:

Congratulations on your hearings on high speed rail along the Northeast Corridor conducted on June 15. The content was right on and format innovative and impressive.

As a transportation professional for many years and founder of KCI Technologies, Inc. - an engineering firm active in rail and transit engineering with offices in Florida and Pennsylvania as well as Maryland, I have been advocating the importance of the Northeast Corridor for many years and the need for real high speed (100MPH to 200MPH) service.

Several suggestions to your bill:

1. FRA safety regulations require a technology that can survive a crash. This will reject all existing forms of European and Asian high speed rail technologies that rely on crash avoidance rather than crash survival. These FRA requirements must be changed.
2. All realistic high speed rail technologies are currently manufactured and operated overseas. The Buy America provisions need to be made flexible to allow prompt import

June 16, 2011
Page 2 of 2

of high speed rail in the US. While eventually we want high speed rail equipment manufactured or licensed in the US, initially some relief may be required.

3. State of the art technology must be encouraged. As you know, Central Rail of Japan operates the Shinkansen bullet train in Japan, currently the best and most profitable high speed rail operation in the world. CJR has committed to parallel its bullet train with a SCMaglev operation, recognizing the cost saving and speed advantages of Maglev. Such cutting edge technology that will allow 1 hour service from DC to NY should be encouraged.

Thanks for your attention.

Congratulations on your exciting and promising proposals.



Jack Kinstlinger, P.E.
Chairman of the Board Emeritus
KCI TECHNOLOGIES, INC.
Knowledge • Creativity • Innovation
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cc: Joyce Rose
Bill Shuster

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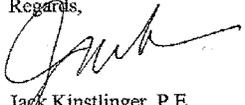
June 23, 2011

Ms Joyce Rose
 Majority Staff Director
 Transportation and Infrastructure Committee
 2165 Rayburn House Office Building
 Washington, D.C. 20515

RE: High Speed Rail Along Northeast Corridor

I find much value in the Mica-Shuster proposals. Without doubt, shifting the responsibility for design, construction, operation and financing of a dedicated true high speed service along the Northeast Corridor to private companies will yield great cost and time savings in implementation. However I recommend that the legislation be amended to allow Amtrak to continue owning and operating the existing services and assets and simply require US DOT to procure proposals from private entities to develop high speed services on a dedicated alignment totally separate from Amtrak operations. This will allow continued service during high speed rail construction, will furnish both premium and collector/distributor service along the corridor, will avoid constitutionality issues and placate states that fear losing commuter service now furnished by Amtrak. In any event, I don't believe that prospective private investors will want to be saddled with having to own and operate Amtrak's money losing slow speed service.

Regards,



Jack Kinstlinger, P.E.
 Chairman Emeritus
 410/316-7803

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June 21, 2011

The Honorable John L. Mica
Chairman
Committee on Transportation & Infrastructure
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Nick J. Rahall
Ranking Democratic Member
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Mica and Ranking Member Rahall:

On behalf of the Transport Workers Union of America and our Rail Division members employed on Amtrak as well as several freight and commuter railroads, we write to express our strong opposition to the proposed legislation "*Competition For Intercity Passenger Rail Act in America*" that was unveiled during a briefing on June 15, 2011. We have reviewed the draft legislation and view it as a proposal that would destroy Amtrak and its workforce, and jeopardize passenger rail service, not only in the Northeast Corridor (NEC), but throughout the nation.

While some may view this as "A New Direction," we disagree. This draft legislation proposes a privatization scheme, the likes of which have been proposed several times since Amtrak's inception and soundly rejected, for good reason.

During recent hearings, the Transportation & Infrastructure Committee has received a wealth of information that supports our position that this renewed attempt to implement a seriously flawed and risky privatization scheme should be rejected.

Moreover, the Committee has received extensive testimony supporting our position that Amtrak is best positioned to provide high-speed intercity passenger rail service in the NEC and throughout the nation. Amtrak has demonstrated its capability for carrying out this mission, and providing safe and reliable service, even during years of chronic underfunding.

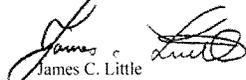
While we certainly support high-speed rail in the NEC and across the nation, legislation that would auction off the NEC and give away America's investment in Amtrak piece by piece makes no sense and threatens thousands of jobs as well as vital passenger rail service. At a time when passenger rail demand is surging, as demonstrated by continuous

record breaking ridership on Amtrak throughout the national network, it makes no sense to pursue a plan to destroy the system.

In addition to the negative impacts this proposal would have on passenger rail service, it is also woefully inadequate with respect to labor standards and does not reflect statements made during recent hearings that any proposal would guarantee employees' current benefits and wage levels. Labor standards in this proposal do not preserve current employee benefits. To the contrary, rights and protections afforded current Amtrak workers would be eliminated or significantly reduced upon conversion to private operations. As stated in the legislation, private entities providing rail service are considered rail carriers "only for the purposes of Title 49, United States Code." Limiting carrier status to Title 49 would remove private providers of passenger rail service from coverage under the Railroad Retirement Act, Railway Labor Act and most other statutes that normally apply to rail carriers and their employees. This does not guarantee a current level of benefits and is certainly not acceptable.

In conclusion, based on the foregoing and multiple additional concerns, the Transport Workers Union of America vigorously opposes this proposal and urges members of the Committee on Transportation and Infrastructure to reject this proposal.

Sincerely,


James C. Little
International President

JCL:

opeiu-153

c: Gary Maslanka
Portia Reddick- White



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Ann Johnston
City of Stockton

Executive Director
Stacey Mortensen

June 9, 2011

The Honorable John Mica
Chairman
House Transportation and Infrastructure Committee
2165 Rayburn House Office Building
Washington, DC 20515

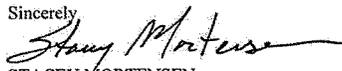
Dear Chairman Mica:

I am certain you have your hands full right now with all of the national transportation system deliberations underway. However, I wanted to take this opportunity to express my "hooray!" for your forward thinking idea to privatize the Northeast Corridor. I know it may not be popular in all circles, but I think it is a bold and necessary step to break us out of the transportation doldrums that have crippled this country.

As someone who is responsible for a commuter rail service in California, I have seen first hand how the private sector contractors offer a much more sustainable, flexible and tenacious alternative to the traditional Amtrak service model. I rejected Amtrak's proposal for our start-up operations, even though ten years ago, they were the only passenger rail O&M provider on the West Coast. Amtrak projected a monopoly mentality. They did not put effort into the service plan, show any effort for controlling costs or offer any of the numerous national resources at their disposal. Contrast this with our winning bidder Herzog Transit Services. Herzog was hungry, aggressive and determined to make our particular start-up a success. They found new and innovative ways of providing service and controlling costs. They brought the full corporate resources to assist us during the critical mobilization effort and they act in every way as a partner to us and the passengers they serve.

Herzog even takes pride in returning any unused funding to our agency each year, proving the private sector can make a reasonable profit and still work hard for the public good.

So again, I want to cheer you on in pursuit of bringing more private sector strategy and success into our national transportation system. Thank you for your effort!

Sincerely

STACEY MORTENSEN
Executive Director

NEWS RELEASE

Coalition of Northeastern Governors

CONEG GOVERNORS: THE NORTHEAST RAIL CORRIDOR IS UNIQUELY POSITIONED AS A NATIONAL MODEL FOR HIGH SPEED RAIL AND IMPROVED CONNECTIVITY

For Immediate Release:

Contact: Anne Stubbs
(202) 624-8450
adsconeg@sso.org

Washington, DC, June 16, 2011 - The Coalition of Northeastern Governors (CONEG) issued the following statement as the House Transportation and Infrastructure Committee released a proposal to provide new direction for the development of high speed rail on the Northeast Corridor.

“The northeast rail corridor is vital to the economy of Massachusetts, and the region as a whole. We are uniquely positioned to continue to be a national model for high speed rail service,” said CONEG Chairman, Massachusetts Governor Deval Patrick. With its population density, economic interdependence, and proximity to major travel sheds, the northeast region is poised to become the American showcase for the application of advanced intercity passenger rail systems that incorporate high speed rail segments and improved connectivity.

The CONEG governors have long supported the Northeast Corridor (NEC) between Boston, New York City and Washington, D.C., and the region’s critical network of existing and planned passenger rail corridors. This network is a vital component of an integrated transportation system that provides economic competitiveness, employment opportunities, and community revitalization through the safe, efficient, and environmentally sound movement of people and goods. The northeast states, with members appointed by each governor, are actively engaged in the Northeast Corridor Infrastructure and Operations Advisory Commission which was created by Congress to develop goals and recommendations for the future of the NEC.

“Our shared goal is improved, expanded passenger rail service and significantly increased ridership for both intercity and commuter rail service,” said CONEG Vice-Chair Rhode Island Governor Lincoln Chafee. “To achieve that goal, the region’s rail network must offer world-class higher speed and regional rail services that deliver reduced travel times, more frequent service, and better on-time performance – as well as more frequent, reliable and coordinated commuter rail service and enhanced intermodal linkages for seamless travel.” Achieving this goal will require continuation and strengthening of the federal-state-private sector partnership, including timely action and adequate federal funding to achieve the state-of-good repair on the Northeast Corridor.



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E-mail coneg@sso.org • www.coneg.org

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The northeast states share in the ownership, financing and operations of passenger rail service on the Northeast Corridor and its regional branches. Changes must be developed in close consultation with the states; reflect rigorous data and analysis; recognize the complexity of the system; and be undertaken in a timely but orderly manner that does not jeopardize current intercity, commuter and freight service. Public oversight can ensure access for critical intercity, commuter and freight services where shared trackage is vital to economic development, transportation mobility and public transportation services.

“We look forward to carefully reviewing this important proposal, and to working with the Committee, the Congress and the Administration to ensure that the goal of improved, integrated intercity and commuter rail service for the Northeast Corridor and its regional network is achieved,” said CONEG Transportation Lead Governor Peter Shumlin.

The CONEG Governors are CONEG Chair Governor Deval Patrick (Massachusetts), CONEG Vice-chair Governor Lincoln Chafee (Rhode Island), Governor Dannel Malloy (Connecticut), Governor Paul LePage (Maine), Governor John Lynch (New Hampshire), Governor Andrew Cuomo (New York), and CONEG Transportation Lead Governor Peter Shumlin (Vermont).

###

North Carolina DOT:

Of interest to NC is the impact on our slots for operation of the Carolinian (Charlotte to New York) which we have supported since 1990. Even with all of its warts it is one of the most successful trains in the country. We had 80% cost recovery last year and in 2004 broke even on \$20M+ operating cost. 75% or more of our passengers use the trains for interstate travel.

A second, long-term consideration for us is access to slots on the NEC for future service. Our plans (NC & VA) for the Southeast High Speed Rail Corridor (SEHSR) development would add 4 trains (each direction) between NC and WAS. Through service to the NEC is optimal and needs to be included in any NEC plan. These trains model operating revenues in excess of operating expenses, and has consistently been identified as a public (build infrastructure) private (operating concession) opportunity. This result came from Volpe/USDOT, our Tier I Record of Decision and more recently in our latest financial plan (developed by Cris Rooney).

Given the difficulties of operating a train daily (1 each direction) over three railroads (NEC/Amtrak, CSXT/NS) comprising 710 miles, these financial projections are creditable given our robust population growth together with travel time and quality improvements as well as increased service frequencies. We remain bullish on opportunities for private sector participation to operate our trains.



June 23, 2011

The Honorable John L. Mica
 Chairman of the House Committee on Transportation & Infrastructure
 2187 Rayburn House Office Building
 United States House of Representatives
 Washington, DC 20515

Re: NEC Privatization

Dear Chairman Mica:

I wish to commend you on your proposal to privatize Amtrak's North East Corridor (NEC). The NEC has long suffered from underdevelopment and it is now time to give the private sector an opportunity. Unfortunately, Amtrak has always been preoccupied with operating deficit issues which has prohibited them from focusing on developing the NEC. So, it is about time (in many ways) to see if the private sector can now maximize our taxpayer's investment. My expectations are this program will be very successful and that it will likely set the stage for a new era in public-private partnerships in our industry.

I speak with some reference on the topic having worked for the National Railroad Passenger Corporation for fifteen years. Privatization is a fond topic of mine. During my Amtrak career I performed one of the initial Amtrak privatization studies in the early 90s which identified the NEC as a potentially profitable entity. At that time it was close to breakeven less the infrastructure depreciation. I also was a member of the high-speed train evaluation committee. It is not a well known fact that committee's recommendation to the board was the Siemens' ICE proposal. Not Bombardier's Acela train. Another fact that is not well known is Amtrak privatized its equipment sales and leasing group in 2001. That company exists today as Rail World Locomotive Leasing, LLC, (RWL Leasing - Chicago, IL) and owns and manages an operating lease fleet of locomotives. I performed that privatization and continue to act as the company's President and Chief Operating Officer. RWL Leasing has been profitable eight out of its ten years of existence.

Now, having left Amtrak and becoming involved in privatizations around the world, I can tell you the most important aspect of this program will be the infrastructure and how it is addressed. It will be the project's greatest challenge and the point of maximum government liability. However, this program will be much less complicated than privatizing an entire rail system and should not be overly confused with it.

I am interested in the team that will ultimately take the NEC private and whether your office is in need of assistance regards to this project. The NEC has always been the marquee of our public rail system and this project will only make it better. I am available to meet with you and your staff upon my next visit to Washington, DC. I understand the legislation will need to pass but my sense is this is a formality.

I have been arguing a long time for private sector involvement. Because of this, I retain somewhat of a non-favored son status with the railroad.

If this is what it takes, so be it. It's time to get up to speed.

Sincerely,

Dave Patterson
 President & Chief Operating Officer
 RWL Leasing - Chicago
 Office (773) 714 - 8669 (x227)

www.railworld-inc.com
 RNC #183783695-M682

BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN

1370 Ontario Street
Standard Building, Mezzanine
Cleveland, Ohio 44113-1702

DENNIS R. PIERCE
National President



Phone: 216.241.2630
Fax: 216.241.6516
www.ble-t.org

June 20, 2011

Dear Representative,

On behalf of more than 55,000 active and retired members of the Brotherhood of Locomotive Engineers and Trainmen, a Division of the 1.4 million member International Brotherhood of Teamsters, I am writing to express my strenuous opposition to the proposal for passenger rail put forth by Representative Mica on June 15, 2011.

Contrary to Representative Mica's assertions, the proposal does not have the support of labor, and would be an unmitigated disaster for both railroad workers and the traveling public. It would jeopardize the jobs of 20,000 working men and women currently employed by Amtrak, undermine the Railroad Retirement system that provides pensions for over 525,000 adult annuitants, and imperil rail passenger service nationwide.

The claim that this proposal provides adequate labor protection is absolutely false. Basic rights of and protections for Amtrak workers would be eliminated or significantly curtailed upon privatization of Amtrak's Northeast Corridor. Moreover, the bill states that private entities providing rail service are considered rail carriers "only for purposes of title 49, United States Code." Thus, these pseudo-carriers would be exempt from important Title 45 requirements, including the Railway Labor Act and the Railroad Retirement and Railroad Unemployment Insurance Acts.

In addition, the traveling public would suffer serious reductions in service. Representative Mica seeks to auction off Amtrak's profitable Northeast Corridor, which would devastate passenger rail throughout the country. The record ridership on the Corridor enables Amtrak to devote its operating subsidies to support long distance lines in other parts of the country, which often are the only means of public transportation for isolated communities. If private entities are permitted to skim the cream from the Northeast Corridor, as proposed by Representative Mica, Amtrak will be forced to subsidize operations on the less attractive Corridor "leftovers," at the expense of these long distance lines, which will shrivel up and disappear.

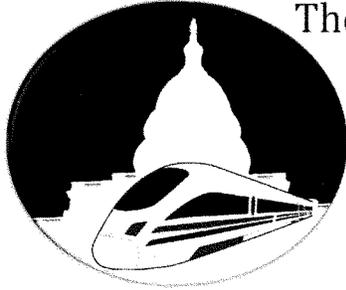
Instead of this job killing, ridership devastating plan, we ought to be looking at ways to help Amtrak achieve the goal of high-speed rail; not looking for ways to dismantle it. Please stand up for workers, communities and riders and oppose this legislation.

Sincerely,


National President

A Division of the Rail Conference—International Brotherhood of Teamsters





The Congressional Bicameral
High-Speed & Intercity
Passenger Rail Caucus

P R E S S R E L E A S E

FOR IMMEDIATE RELEASE

MEDIA CONTACTS

Wednesday, June 15, 2011

Victoria Dillon (Slaughter) (202) 225-2888

Christina Mulka (Durbin) (202) 228-5643

Lautenberg Press Office (202) 224-3224

**Rail Caucus Chairs Say Northeast
Corridor Should Stop Being Used as a
Political Pawn**

*House Committee Plan Would Destroy Amtrak, Hurt Rail
Passengers Nationwide*

WASHINGTON – Nine Co-Chairs and Vice-Chairs of the Bicameral High-Speed & Intercity Passenger Rail Caucus today released the following statement following a plan from Chairmen Mica and Shuster's plan to privatize Amtrak's northeast corridor.

Today Co-Chairs Senators Richard Durbin (D-IL) and Frank Lautenberg (D-NJ) and Reps. Louise Slaughter (NY-28), John Olver (MA-1), Corrine Brown (FL-3) David Price (NC-4) and Tim Walz (MN-1) along with Vice Co-Chairs Earl Blumenauer (OR-3) and Laura Richardson (CA-37) said,

"The Northeast Corridor is by far Amtrak's most successful corridor, exceeding all others in passengers and profit. What it suffers from, however, is the tendency to be used as a political pawn.

“Today Chairmen Mica and Shuster presented a plan to sever the Northeast Corridor, Amtrak’s most-traveled route, from the rest of America’s passenger rail network. It would dismantle the nation’s rail infrastructure and purposely put into jeopardy America’s passenger rail network. It is clear the profits from the Northeast Corridor are the backbone of Amtrak, which carried 10.4 million passengers in 2010, and yet they insist on separating it.

“We’ve seen this proposal before, when the previous Administration presented a similar plan veiling an attempt to dismantle Amtrak under the guise of supposed better service, and again we understand this to be a purely ideological gesture. The authors of this proposal won’t be happy until Amtrak is a distant memory, until every ticket taker and conductor is out of work and the millions people who ride Amtrak every year are left without.

“We agree that private investment is needed in America’s rail system and support Amtrak’s plan to attract private investment. But what we don’t support is rolling out the red carpet to foreign companies and Wall Street asking them to take over the operations of America’s railroads.

“For too long, the Northeast Corridor has been used as a talking point for anti-government ideology. The Northeast Corridor is profitable and popular. For the sake of rail passengers and tax payers nationwide, it must remain a part of Amtrak.”

In March, the founding co-chairs joined together at Union Station to announce the formation of a coalition that will serve as the leading advocates to advance high-speed and intercity rail programs across the country. Today, the Caucus is bipartisan, bicameral and has grown to include 12 Senators and 41 Representatives.

###



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Press Room: Press Releases

June 20, 2011

ROCKEFELLER CONCERNED ABOUT THREAT TO AMTRAK SERVICE IN WEST VIRGINIA

Senator Opposes Efforts to Privatize Passenger Rail Service Through State

WASHINGTON, D.C.—Senator Jay Rockefeller said today a House Republican plan to privatize Amtrak service would threaten the survival of passenger rail service in West Virginia.

"Amtrak is a lifeline for our nation's communities—including many among the Cardinal and Capitol Limited lines in West Virginia—and is an engine of economic growth," said Rockefeller. "Amtrak provides West Virginians with an affordable way to get between small communities and big cities, and the Republican plan would put it in jeopardy."

The legislation would privatize Amtrak, and offer it to the highest bidder on the private market. Rep. John Mica (R-Fla.), Chairman of the House Transportation and Infrastructure Committee, and Rep. Bill Shuster (R-Pa.), Chairman of the Railroads, Pipelines and Hazardous Materials Subcommittee, are championing the legislation.

"Selling Amtrak piece by piece to profit-seeking private companies is a risky proposal," said Rockefeller. "I believe we need to encourage private investment to help grow our transportation network. But in doing so, we must make sure that jobs and vital connections aren't threatened."

"I'm pressing for more details about this proposal, but without guarantees for safeguarding the interests of West Virginians, I cannot support this troubling plan."

###

Subject: ConnDOT Comments - Competition for Intercity Passenger Rail in America Act of 2011

Good afternoon, Ms. Rose:

Thank you for the opportunity to provide comments to the House Transportation and Infrastructure Committee as you develop the "Competition for Intercity Passenger Rail in America Act". The Connecticut Department of Transportation is very interested in participating in the crafting of a long-term strategy for the future of rail in the United States.

There are some very unique impacts to Connecticut we are continuing to analyze as this proposal moves forward, but below are several points of interest I would like to highlight.

* Careful consideration must be given to the balance of the powers and responsibilities of any new entity with development and management control of the federally-owned segments of the NEC and state and local authorities and laws.

* The NEC has served as a joint use asset, shared and used by the states and Amtrak, for public benefit and private commercial purposes. It is an integral part of the transportation system of the Northeast. If the Federal government has an underlying role as the owner of a significant portion of the NEC right of way, does the Federal government have a continuing role to insure that the public interest is served by continuing oversight and financial contribution for its support? Should this be articulated in the purposes of the legislation and addressed in the appropriate provisions?

* The Amtrak-owned assets of the NEC are transferred to the Secretary of Transportation, who then leases the assets to the NEC Executive Committee for 99 years for it to manage the infrastructure and operations of intercity passenger rail service on the Main Line. A contractor is hired by the Executive Committee to finance, design, build, operate and maintain intercity passenger rail service on the NEC. This means that the Federal government still owns the assets and plays a role in the NEC, but there is no clear reference to what the larger Federal role is. If new services or new rights of way are needed, will the FRA be involved in the service planning and environmental analysis of the corridor? What is the Federal role in obtaining the Federal resources needed by the contractor?

* While one of two delineated purposes of the Northeast Corridor Executive Committee is to "promote mutual cooperation and planning pertaining to the rail operations and related activities of the Northeast Corridor," the states of the northeast region have a special and unique status. The northeast states share in the ownership, financing and operations of passenger rail service on the Northeast Corridor and its regional branches. Changes must be developed in close consultation with the affected states. A significant state role in the determination of the routes, stations and services and public funding alternatives must be included in any determination of the NEC future.

* It is recommended that the legislation address the importance of the existing intercity passenger service on the NEC and the significant resources needed to bring the existing infrastructure on the NEC to a state of good repair (SOGR). The legislation should make clear that, in addition to the new authority of the Northeast Corridor Executive Committee to improve the rights of way on the NEC to achieve high-speed rail service, the Executive Committee is to improve the existing intercity passenger services, including non-express services, and ensure that the system is brought to a state of good repair.

* A performance standard of maintaining a state of good repair on the NEC system throughout the life of the contract should be included. The expression of interest that is submitted should delineate the infrastructure investments needed to accomplish the SOGR and the proposed source of funds needed to do this.

* While recognizing the interface with the commuter and freight railroads on the NEC, the language should also recognize the interface with other intercity passenger rail services connecting to the NEC infrastructure and facilities.

I look forward to working with you, Congressman Mica, Congressman Shuster and the rest of the committee as the bill progresses, particularly on the Northeast Corridor in Connecticut - the New Haven Line, Shoreline East and New Haven to Springfield corridors.

Sincerely,

James P. Redeker
Acting Commissioner
Connecticut Department of Transportation
(860) 594-3000



Brotherhood of Maintenance of Way Employes Division
of the International Brotherhood of Teamsters

Freddie N. Simpson
President

Perry K. Geller, Sr.
Secretary-Treasurer

June 21, 2011

Via Facsimile and First Class Mail

The Honorable John L. Mica
Chairman
U.S. House of Representatives
Committee on Transportation
and Infrastructure
Washington, DC 20515

The Honorable Bill Shuster
Committee Member
U.S. House of Representatives
Committee on Transportation
and Infrastructure
Washington, DC 20515

Dear Messrs. Chairman and Shuster:

We are writing to express in the strongest possible language our opposition to your proposal to privatize Amtrak's Northeast Corridor (NEC). The proposal is bad for the economy, will threaten a service that is vital to the well being of America, ignores the facts and history of passenger rail service in America and threatens to strip the value of the public investment in perhaps one of the most complicated and important pieces of public infrastructure in the world. You have stated that you have the support of labor for this proposal. We need to be absolutely clear about this point. We do not support this proposal and the vast majority of labor does not support this proposal for the obvious reasons - it threatens the public interest. Please stop misrepresenting our position on this to the public. You are wrong about labor's support for this ill conceived proposal and more importantly, you know you are wrong. If there is any doubt on this question in your mind about this, let this letter set the record straight. We do not support this bill.

Amtrak is a public-private success story. Amtrak pays a greater percentage of its operations from the fare box than any other passenger rail operation in the country. The privatization of passenger rail in Europe was a huge failure, sticking the European tax payer with greater costs with reduced service and increased fatalities of passengers and workers. These are facts. Repeating the failures of these experiments will not benefit America. Our own history has shown that when the private sector operated passenger rail service in the Northeast it was unable to do it. Without a publicly owned and operated Northeast Corridor the public and its economic interests will be put at risk at a time Amtrak has shown that it can operate the infrastructure and the service efficiently within the resources and parameters it is given to operate.

Your plan to sell the public's investment off to the private sector is ideologically driven, cynical and short sighted and will not provide better passenger rail service in the Northeast. Ultimately it will result in more public money being spent to undo the damage done by the private sector. When the public's interest is auctioned to the private sector the goal will not be public service but to extract maximum revenue while costing as little as possible. Eventually the infrastructure will be completely depreciated, debt will increase astronomically, the private sector will declare bankruptcy and the public will be required to rescue the service with far more

The Honorable John Mica
The Honorable Bill Shuster
June 21, 2011
Page 2

additional tax dollars than if it had remained in the public's hands. How do we know this? We already did it with the bankruptcy of the Penn Central and the public bailout of that economic crisis. Your willingness to do a rerun of that economic catastrophe must be opposed by all who support the most efficient use of tax payer dollars, desire to see passenger service grow and prosper on the NEC and put the public's interest first. The Federal government needs to operate and maintain the NEC to ensure it is being operated in the people's interest, not the interests of Wall Street and other speculators.

Please withdraw your bill and start working on the serious business of properly funding and supporting passenger service and high speed rail in the Northeast and around the country.

Respectfully,


President

cc: The Honorable Nick Rahall
Ranking Member
U.S. House of Representatives
Committee on Transportation
and Infrastructure

The Honorable Corrine Brown
Committee Member
U.S. House of Representatives
Committee on Transportation
and Infrastructure

Chair, **Paula Hammond**, Washington DOT
 Vice Chair, **Bill Bronte**, California DOT
 Secretary, **Caitlin Hughes Rayman**, Maryland DOT
 Treasurer, **Donna L. Brown**, Wisconsin DOT



S4PRC.org

Statement from States for Passenger Rail Coalition Chair Paula Hammond on House Transportation and Infrastructure Committee Passenger Rail Proposal – the Competition for Intercity Passenger Rail in America Act of 2011

June 21, 2011

“Chairman Mica and Subcommittee Chairman Shuster have introduced a wide-ranging bill focused on the future of intercity passenger rail. We appreciate the interest of the sponsors in seeking ways to make the nation’s passenger rail system more efficient and financially sustainable, proposing new initiatives to pay for the necessary investment and engaging all levels of government and the private sector. The draft legislation provides some answers to the question of how to pay for passenger rail, but it also raises tough questions.

We hope to work with Mr. Mica, Mr. Shuster, Ranking Member Rahall and Ranking Member Brown to achieve a consensus on how to move forward and make the critical investments necessary in the Northeast Corridor, in State-Supported Routes, and in long distance trains. Mr. Mica and Mr. Shuster have raised a fundamental financial concern for all of us: that there is no silver bullet and there are no easy answers.

As an alliance of 33 state leaders from across the U.S., the mission of the SPRC is to promote the development, implementation and expansion of intercity passenger rail services with involvement and support from state governments. As part of that mission we work to facilitate coordination and cooperation among state officials, and between the public and private sector at all levels (federal, state and local) in the effort to promote and develop intercity passenger rail service. To that end, we urge continued state and federal funding to support on-going development of America’s passenger rail system.

Private sector involvement could prove to be an important tool to assist in improving and building out a national network of intercity passenger rail service. We appreciate consideration of private investment and options for stimulating private interest. At the same time, Amtrak is operating record ridership levels on the Northeast Corridor, has unique access rights to tracks across the country, and has made significant investments in infrastructure and equipment. We should carefully consider any changes to the current structure and what impacts these changes may have on the future viability of intercity passenger rail.

Again, SPRC looks forward to working with the bipartisan leadership of the House Committee on Transportation and Infrastructure toward meeting the challenges ahead.”

- Alabama
- Arizona
- California
- California Capital Corridor
- Connecticut
- Delaware
- Florida
- Georgia
- Illinois
- Indiana
- Iowa
- Kansas
- Louisiana
- Maine
- Maryland
- Massachusetts
- Michigan
- Minnesota
- Mississippi
- Missouri
- New Hampshire
- New York
- Nevada
- North Carolina
- Ohio
- Oklahoma
- Pennsylvania
- Rhode Island
- South Carolina
- Tennessee
- Texas
- Vermont
- Virginia
- Washington
- Wisconsin
- California Northern
- California New England
- California Passenger Rail Authority
- Southern High Speed Rail Commission

M. B. FUTHEY JR.
International President

ARTHUR MARTIN III
Assistant President

KIM N. THOMPSON
General Secretary and Treasurer

JAMES A. STEM JR.
National Legislative Director



WASHINGTON OFFICE
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June 21, 2011

The Honorable John Mica, Chairman
The Honorable Nick J. Rahall, Ranking Member
House Transportation and Infrastructure Committee
United States House of Representatives
Washington, DC 20515

Re: Amtrak Privatization Legislation

Dear Chairman Mica and Ranking Member Rahall:

The United Transportation Union (UTU) would like to go on record in opposition to the current draft of the "Competition for Intercity Passenger Rail in America Act" that is scheduled to be discussed at a hearing on Wednesday, June 22, 2011.

UTU has long supported the expansion of rail passenger service options across America. We have also supported the concept of private investment and creative ideas like tax increment financing to fund passenger rail service. Our reading of this current draft of this legislation indicates that it would remove a major asset from Amtrak, change the Congressional charter that Amtrak received at its inception in 1971, and also virtually exclude Amtrak from bidding on the current operations it is providing today in the Northeast Corridor (NEC).

We are also very concerned about the off shore investment that this current draft appears to intend in attracting with multi-national corporate conglomerates supported by foreign governments being the primary beneficiary of the new process established by this bill. We have many private companies operating freight trains in the NEC today on agreement with Amtrak, many more commuter authorities operating commuter and intercity trains, and all operations being conducted with a high intensity focus on safety of the operations and the public.

We venture to say that if there is a private entity today that would like to offer rail passenger service in the NEC, there is precedent and experience for that service to be established under the current conditions.



June 21, 2011 Page 2 UTU letter re: Amtrak Privatization Legislation

The process established by this draft legislation effectively wipes the slate clean and starts over with no continuing service guaranteed in the NEC. The impact on the operation of that transition will have disastrous short term implications, and the long term impact will trigger many other related problems.

After the "cherry picking operation" is completed with the service in the NEC, all expectations are that a large majority of the current 20,000 Amtrak employees will be without a job, without their health care, and without their pension contributions. This process could lead to significant financing problems for our Railroad Retirement System and would impact the entire railroad industry in this country, not just Amtrak employees.

This legislation also appears to anticipate a higher level of Federal tax payer spending in this corridor than was anticipated in support of the Amtrak plans. Increasing the speeds in the NEC and reducing the travel times require major civil engineering projects, not changing the color of the paint on the locomotives.

Our last logical thought concerning this draft legislation must be focused on safety. As Amtrak and its many partners that are today operating in the NEC have discovered, operating intercity trains at up to 150 MPH mixed with lower speed commuter trains and freight operations requires a single safety overseer and experienced dispatching processes. The first causality of this legislation will be the excellent safety record that Amtrak has developed over the past four decades of operations in this corridor. Having one standard for equipment inspections, having one standard for track inspections, having one standard for signal inspections, and also having one standard enforced for operational compliance is the application that produced the excellent safety record.

As our industry learned with the experience in the United Kingdom with the splintering of the safety oversight, one safety overseer is a requirement for safe operations. Privatization of rail passenger service in other countries has resulted in many safety concerns and an increase in the amount of tax payer funding required to maintain existing operations.

This proposal ironically is coming when Amtrak is doing better than at any time in its history. NEC service is booming, demand for more train travel across America is setting records and Amtrak has proposed its "Next Generation" plan to bring 220 M.P.H. service to the NEC.

This proposed legislation is so laden with problems we offer no suggestions on how it might be improved.

June 21, 2011 Page 3 UTU letter re: Amtrak Privatization Legislation

On behalf of the 80,000 members of the United Transportation Union, we respectfully ask that this legislation be reconsidered or withdrawn.

Thank you in advance for consideration of our concerns.

Sincerely,

A handwritten signature in black ink that reads "James A. Stem, Jr." in a cursive style.

James Stem.
National Legislative Director

Cc: Members, House Transportation and Infrastructure Committee



Maryland Department of Transportation
The Secretary's Office

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Beverly K. Swaim-Staley
Secretary

Darrell B. Mobley
Deputy Secretary

June 17, 2011

The Honorable John Mica
Chairman
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Bill Shuster
Chairman
Subcommittee on Railroads, Pipelines and
Hazardous Materials
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Mica and Chairman Shuster:

Thank you for your interest in the future of passenger rail on the Northeast Corridor (NEC). This is a critical mobility corridor for Maryland, one that is already realizing great economic development and redevelopment with the current unprecedented growth in ridership. As with any effort to introduce change to an existing system, there will be many areas for further consideration and study. In response to your draft legislation, "Competition for Intercity Passenger Rail in America Act of 2011," and on behalf of the Maryland Department of Transportation, I offer the following comments and concerns related to future passenger, freight and commuter rail operations along the NEC.

Congressional consideration of rail legislation affecting the NEC should take into account the following critical aspects of service and infrastructure development in Maryland:

- 1) The Maryland Transit Administration (MTA) must be provided the opportunity to continue MARC commuter rail service at today's levels of service and affordable cost, and to expand service as needed;
- 2) MARC equipment will continue to need maintenance services comparable to those currently provided by Amtrak; if a new service provider is selected, MTA must be allowed to retain a third party to maintain equipment with no additional requirements on MARC and MARC must continue to have access to Amtrak facilities used today;
- 3) Any future operator of MARC service on Amtrak or CSX-owned lines needs to enjoy continued levels of crew and access to mechanical facilities at Union Station in Washington, D.C. and at Penn Station, Baltimore;
- 4) There should be no reduction in the level of utility of the track or catenary without MTA's concurrence;

My telephone number is 410-865-1000
Toll Free Number 1-888-713-1414 TTY Users Call Via MD Relay
7201 Corporate Center Drive, Hanover, Maryland 21076

The Honorable Mica
The Honorable Shuster
Page Two

- 5) Future conditions should at least maintain full platform access at Union Station and Penn Station;
- 6) Operating expense and capital contribution should not be increased above inflation unless otherwise negotiated by the State of Maryland;
- 7) The federal government must retain and Maryland must not be dealt the capital responsibility for State of Good Repair projects (bridges, tunnels, and other capital needs) in Maryland and throughout the NEC;
- 8) Public-Private Partnership structures must be developed so as to minimize both the risks and costs to the State;
- 9) Performance measures for the NEC should be determined by the states comprising the NEC; and,
- 10) Freight operations by Norfolk Southern and CSX railroads should be allowed the same level of access to the corridor as under Amtrak operation and be afforded an opportunity to expand in the future.

These aspects of current and future operations are critical to the State of Maryland, as well as to citizens, travelers and other users and beneficiaries of the NEC. I encourage you to give these points full consideration going forward.

Finally, it is critical that the infrastructure projects selected for federal rail funding in recent years be allowed to progress. Efforts in Congress to rescind unobligated funds from programs and projects that have already incurred valuable state and federal staff time in the development, application and selection, as well as those projects that have a signed grant or cooperative agreement, should be allowed to continue without interruption or alteration.

I thank you for the opportunity to articulate a few of the goals and objectives we in Maryland have for a vibrant and growth-oriented Northeast Corridor.

Sincerely,



Beverley K. Swaim-Staley
Secretary

The last paragraph was supposed to express our desire that Congress NOT rescind unobligated rail funds that have been awarded to states for rail projects. We have all put a great deal of effort at the state level during times of limited staffing and budgetary resources to develop the applications for these projects and need these projects to continue in order to address (in Maryland's case) state of good repair, speed and resiliency on the existing NEC. We realize this proposed rescission is the action of appropriators and not authorizers but even so, we would hope that Congressman Mica and his colleagues would recognize the merits of advancing these projects so that progress on rail development is not stalled.

**Labor Problems with Mica-Shuster Competition for
Intercity Passenger Rail in America Act**

- Chairman Mica and Subcommittee Chairman Shuster have repeatedly claimed that the Competition for Intercity Passenger Rail in America Act will hold Amtrak workers harmless and maintain current labor standards. In fact, at a May 26 House hearing, Chairman Mica stated:

“There are two things I didn't mention, before I recognize Senator Lautenberg. One, in the proposal that we put forward we will – and I've talked to Ranking Member Rahall and Chairman Shuster and others – **that we will guarantee labor any current benefits, any current wage levels. In any proposal we do, that will be part of our proposal.**”

- But now that the legislative language of Mica-Shuster has been unveiled, it is clear that this claim is false. Basic rights and protections that cover current Amtrak workers would be eliminated or significantly curtailed once the conversion to private operation of Amtrak's Northeast Corridor or off-corridor rail service occurs.
- The Mica-Shuster bill dictates that private entities providing rail service are considered rail carriers “**only** for purposes of title 49, United States Code.” But other important laws and protections for rail workers are not in title 49 but elsewhere in the law.
- Translation: private providers of passenger rail service, unlike Amtrak and freight railroads, would not be covered by the Railroad Retirement Act, the Railway Labor Act (RLA) and most other statutes that would normally apply to rail carriers and their employees.
- Because rail workers working for new private carriers would not be covered by the RLA, they would lose current rights to bargain collectively. The Mica-Shuster bill only mandates that a new rail carrier enter into negotiations with representatives of its employees “to establish collective bargaining rights.” Collective bargaining rights are afforded in law – not somehow subject to negotiation. Without a clear statutory mandate, like the one that currently covers Amtrak and freight employees, workers at the new private carrier would not even have the right to bargain or be represented by a union under the RLA.
- In addition to losing the right to bargain, Amtrak workers would lose all wage rates, benefits and protections currently included in their contract when a new entity takes over.

- Again, the bill only dictates that a new carrier and a representative of the employees negotiate over “appropriate labor protections.” Without coverage under the bargaining law which normally covers rail workers, this directive is meaningless. Contrary to the claims by Chairman Mica, nothing in the bill guarantees “current benefits or current wages.”
- In short, the Mica-Shuster legislation extinguishes current labor agreements and eliminates any legally binding bargaining rights for one class of rail workers – those employed at new private providers of passenger rail.
- The bill excludes rail workers employed at new rail carriers from coverage under the Railroad Retirement pension system. Workers and current and future retirees would therefore lose pension rights, unemployment compensation payments and occupational disability coverage. All of the other interstate rail carriers and their employees, including Amtrak, freight and commuter providers, are covered by this system.
- Not only would removing workers of new privately run rail carriers from Railroad Retirement be devastating to current workers and their families, but it would jeopardize the solvency of the Railroad Retirement fund and the security of its beneficiaries. By eliminating an entire class of employers or employees from Railroad Retirement, payroll taxes would have to be increased, benefits curtailed or both.
- Current retirees, spouses and survivors – numbering more than 547,000 – will suffer so that private passenger rail carriers can operate free from pension obligations otherwise mandated by law.
- Assurances that current Amtrak workers could transfer to the new private rail carrier and therefore enjoy some form of job security also are hollow and not provided in the actual legislation.
- The bill only mandates that new rail carriers provide a “hiring preference to qualified Amtrak employees.” In other words, the only thing this legislation guarantees to current employees is the right to be considered for a job in the new operating entity. “Hiring preferences” don’t help workers pay the mortgage and college tuition bills.
- The Mica-Shuster bill affords workers no legal or contractual rights to follow their work or even a fair and transparent system to transition to a new carrier. In contrast, PRIAA, approved by the Transportation and Infrastructure Committee and enacted into law in 2008, provides both protective conditions and a process of negotiation and arbitration to incorporate any displaced workers into a replacement carrier.

- Protective conditions also exist in current collective bargaining agreements, but these agreements would have no application to the new carrier. Amtrak, having lost the NEC under the bill, and their other routes open to competition, would have no ability to move these workers to other jobs within the company or have the funds to compensate displaced workers.
- The Mica-Shuster bill would decimate our national Amtrak system through a risky privatization scheme that entrusts Wall Street and wealthy investors with one of nation's most vital transportation assets in a region that produces 20 percent of our GDP. Along the way, Amtrak would be bankrupt, thousands of jobs would be destroyed, bargaining rights and pension benefits would be eliminated, and the only guarantee Amtrak employees would receive is the chance to be considered for whatever jobs they are "qualified" to fill with the new private providers.

June 17, 2011



Comments on the "Competition for Intercity Passenger Rail in America Act of 2011"

Robert Yaro, President, Regional Plan Association

June 17, 2011

The Regional Plan Association is pleased that Chairman Mica and Representative Shuster are committed to improving intercity passenger rail across the United States and are focusing their efforts on the Northeast Corridor. Fast, reliable, and efficient passenger rail service is essential to ensure the vitality and growth of the Northeast's \$2.6 trillion economy. The multiple stakeholders along the Corridor, including Amtrak, the federal and state governments, and eight different commuter railroads have all invested substantially in the Corridor to create the most extensive passenger rail network in the nation.

To ensure the long-term success of passenger rail in the Northeast, we must address both the \$8.8 billion backlog of deferred maintenance on the Corridor as well as plan and implement dedicated high-speed rail. This will require a sustained commitment to funding and implementation from both public and private actors. The "Competition for Intercity Passenger Rail in America Act of 2011" contains several innovative elements that could improve passenger rail in the Northeast Corridor, but it is substantially incomplete in its current form. This bill is also counterproductive in the role it has assumed for Amtrak, which has been and will continue to be a vital player in our nation's transportation system. In particular, we believe that Titles II and III should be removed from this legislation.

Positive Components of the Bill

Separate Northeast Corridor rail infrastructure from operations. This bill proposes to transfer ownership of those sections of the Northeast Corridor rail infrastructure currently owned by Amtrak to the US Department of Transportation. In principle, this step could provide greater efficiency and accountability as well as a dedicated revenue stream for track maintenance and construction. Many successful rail systems throughout the world feature this separation, in which a government-chartered public benefit corporation owns

and maintains the tracks, while a separate entity, or multiple entities, run the trains. This arrangement could also be reached by creating a separate infrastructure division within Amtrak.

The separation of infrastructure from operations allows both entities to focus on a narrow set of operational goals. This arrangement also facilitates neutral dispatching, which would optimize use of the corridor, reduce delays for both commuter and intercity trains, and allow new private operators to enter the market. To fully realize these benefits, the legislation should in fact go further, authorizing US DOT to acquire the Northeast Corridor rail infrastructure that is currently held by commuter railroads and state transportation agencies. The entire corridor should be owned and managed by one government-chartered infrastructure corporation, ideally one with a long-term outlook and some degree of political autonomy.

This institutional structure was implemented in Spain by creating two new companies from the national railroad, and both are now stronger as a result. The new infrastructure company, which was staffed almost entirely from the national railroad, became accountable for constructing and maintaining the country's rail lines, while the new operating company focused specifically on running trains. Spain now has the second-largest high-speed rail system in the world, and Spanish trains are so reliable that customers can receive a full refund if their train is more than five minutes late.

Establish a common access fee structure to provide dedicated revenue for reinvestment. This bill calls for the infrastructure owner to charge train operators a neutral access fee based on each train's marginal impact on the system. This is in line with international guidelines and will provide a dedicated revenue stream to reinvest in the Corridor. In Germany, for example, access fees cover 100% of track maintenance costs and 30% of new track construction. This revenue stream can also be used to attract private investment through a long-term lease to institutional investors such as pension funds. Two Canadian pension funds recently paid the UK government more than \$3 billion for the right to collect surplus revenue on the high-speed line between London and the Channel Tunnel over a 30-year period. This second step would not occur, however, until the public has sufficiently invested in the Corridor to reach a state of good repair.

Negative Components of the Bill

Amtrak must continue to be a vital actor in our nation's transportation system. Amtrak has operated frequent, reliable passenger service on the Northeast Corridor for more than 30 years. Amtrak's Northeast Corridor services, especially the Acela, are profitable on an operating basis, but federal and state capital investments have not been sufficient to meet the Corridor's ongoing maintenance needs. While there is significant room for improvement, Amtrak's institutional and operational experience will make it an essential partner in this system. It is both unfair to Amtrak and operationally infeasible to mandate that Amtrak's equipment and rolling stock be transferred to a private actor.

The Corridor's investment backlog must be addressed by the public sector. While

significant investments have been made, the Northeast Corridor still suffers from an \$8.8 billion investment backlog that must be addressed, either prior to or concurrent with high-speed rail construction. Fixing this backlog will not yield significant returns to private sector investors and must be addressed through public sector initiative. In addition to direct grants, this initiative can include government financing mechanisms that attract private investment indirectly, such as the use of qualified tax credit bonds that cost the government 25 cents on the dollar or less. By fixing this backlog and improving the state of the Corridor, the government will also reduce the risks faced by potential private investors, which will reduce total project cost for any private sector component.

The bill's emphasis on maximizing private sector financing is misplaced. There will be clear roles for both the public and private sector to fund and finance passenger rail on the Northeast Corridor. It is neither feasible nor desirable for the private sector to pay for the entire project, and in many cases, an overreliance on private sector capital will significantly increase total project cost. Researchers at the University of Pennsylvania have found that private sector investment can enter in early project stages through the expansion of government financing tools (such as RRIF, TIFIA, and qualified tax credit bonds), and in later stages through the lease of concession agreements on established routes.

Issues related to Amtrak's state-supported and long-distance corridors should be removed from this legislation. The Northeast Corridor is the most extensive rail transportation network in the country, with high levels of established demand as well as unique institutional and capacity constraints. These constraints require a dedicated, long-term solution, which Title I of this legislation begins to address. The state-supported and long-distance passenger rail corridors discussed in Titles II and III, however, have very different needs. While there is room to improve service on these corridors, Amtrak has been an effective operator and has long-standing relationships with the freight railroads that own these tracks. Because most of these lines will require some level of operating subsidy, their capacity to support private competition will be limited. If these corridors are ever opened to private competition, it is both unfair and infeasible to mandate that Amtrak's equipment and rolling stock be transferred to a private actor.