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SENATE REPUBLICAN POLICY COMMITTEE

Legislative Notice

No. 35 October 24, 2007

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

Calendar No. 158

On May 22, 2007, the Committee on Commerce, Science, and Transportation reported S. 294 favorably with two amendments; S. Rept. 110-67.

Noteworthy

- As reported, S. 294 will reauthorize Amtrak for six years. Over this period, it will authorize $11.4 billion for operating costs, capital projects to maintain current operations, infrastructure, and costs to return the Northeast Corridor (NEC) to a state-of-good-repair. The bill also authorizes funds for debt payments for capital equipment and leases, makes changes to the composition of Amtrak's board, requires Amtrak to adopt modern accounting practices, requires the development of an annual budget, and requires development of a standard methodology to allocate costs among routes.

- A managers' amendment is expected that will make technical changes and eliminate certain provisions in the bill dealing with rail security. The managers' amendment was not available at press time.

- Amtrak's authorization expired in 2002. Since then, Amtrak's annual appropriations have totaled about $1.3 billion per year. For FY 2008, the Administration requested $800 million for Amtrak and $100 million for state-matching capital grants. Amtrak requested $1.53 billion for FY 2008.

- As passed by the Senate, H.R. 3074, the FY 2008 Transportation and Housing and Urban Development and Related Agencies Appropriations bill, includes $1.37 billion for Amtrak, which is $570 million above the Administration's request and $76.5 million above the FY 2007 level. The House-passed version included $1.4 billion for Amtrak.

Highlights

Supporters of S. 294 note that the legislation takes several steps toward improving Amtrak's long-term health and financial viability. An October 2005 GAO report was highly critical of Amtrak, noting specifically that the organization lacked strategic plans, a strategic planning process, a clear mission, and measurable goals. In addition, GAO found that Amtrak's internal efforts to track and manage procurement were weak. Moreover, Amtrak's financial outlook was worsening each year, and the entity's financial reporting and general financial management practices were inadequate to appropriately track expenses and allocate costs. Finally, GAO noted that without increasing transparency and oversight, Amtrak would likely be unable to achieve operational viability.

In response to these concerns, S. 294 requires a financial accounting system for Amtrak operations and a five-year financial plan that is to be monitored by the Department of Transportation Inspector General. In consultation with the Surface Transportation Board (STB) and the freight railroads, the Federal Railroad Administration (FRA) and Amtrak must jointly develop metrics and standards for measuring the performance and service quality of intercity train operations. Such metrics and standards shall include cost-recovery, on-time performance, ridership per train mile, on-board and station services, and the connectivity of routes. For state-supported routes, the legislation directs Amtrak to develop a uniform cost allocation methodology to assign costs and determine compensation for state-supported services.

The bill also directs the Secretary of the Treasury, in consultation with the Secretary of Transportation and Amtrak, to negotiate the restructuring of Amtrak's debt (the authority to initiate a negotiation would expire on October 1, 2008). If a restructuring results in significant savings, the Secretary of the Treasury would assume the restructured debt, with the full faith and credit backing of the Treasury. If no restructuring is possible, Amtrak must pay the debt.

The bill adds the Amtrak President to the Amtrak Board. Other members are required to have either rail, transportation, or a business background. For long-distance routes, the bill establishes a competitive bid program allowing freight railroads to bid to operate a certain number of long-distance and state corridor routes.

FRA is directed to retain a consultant to develop and recommend objective methodologies for route and service decisions. These methodologies shall give consideration to cost recovery and on-time performance of existing routes, connections with other routes, transportation needs of communities not served by other public transportation, and the methodologies used by rail service providers in other countries.

Critics of the bill assert that notwithstanding the competitive bidding provision in S. 294, the bill does not do enough to address the operating losses of long-distance trains and the long-term maintenance costs across all lines. In addition, some have objected generally to the persistent use of taxpayer dollars to subsidize the use of Amtrak's services, and in particular to the failure of Amtrak to deliver appropriate returns on the taxpayer dollars invested in its operations and resources.

Overview:

Title I authorizes appropriations for Amtrak capital grants, operating grants, capital grants to states, grants to the Federal Railroad Administration (FRA), repayment of long-term debt and capital leases, Railroad Retirement Account payments, and rail cooperative research programs. For FY 2008, the bill authorizes grants to Amtrak and to states participating in the Next Generation Corridor Train Equipment Pool Committee. It also authorizes appropriations for Amtrak to evaluate changes necessary to make stations accessible by individuals with disabilities.

Title II makes changes to Amtrak's operations and management structure. The Amtrak Reform Board is replaced with a reconstituted Board of Directors (Board). The Board is required to improve Amtrak's financial accounting, reporting systems, and practices; develop a five-year plan; and implement methodologies for allocating operating and capital costs among states and Amtrak. The Surface Transportation Board (STB) is authorized to investigate delays and assess damages upon a host rail carrier if appropriate. Other parties may petition STB for the investigation of delays.

Amtrak is also required under this title to evaluate the financial and operating performance of long distance passenger rail routes and develop a performance improvement plan. FRA is directed to establish an alternative passenger rail service program under which route owners could petition FRA to become a passenger rail carrier. The Secretary of the Treasury is authorized to negotiate the structure of Amtrak's debt. Amtrak's self-sufficiency requirements are also repealed. FRA is required to study the extent to which Amtrak's locomotives could use biodiesel.

Title III authorizes DOT to make grants to states, Interstate Compacts, and public agencies for the financing of facilities and equipment for intercity passenger rail transportation. It also directs Amtrak to plan for next-generation corridor equipment, directs FRA to assist states to develop state rail plans, and directs the Department of Transportation (DOT) to establish a research program.

Title IV directs the completion of a risk assessment of freight and passenger rail transportation and requires the Department of Homeland Security (DHS) to make recommendations accordingly. It authorizes DHS to make grants to Amtrak for system-wide security upgrades and safety-related infrastructure upgrades. DHS is also authorized to make grants to prevent or respond to acts of terrorism or sabotage. The title also directs DHS to execute certain research and development activities related to rail security, requires reports on preclearing and screening of passengers and baggage between the United States and Canada, and protects rail employees who provide information regarding threats to security by instituting whistleblower provisions. Rail carriers transporting high hazardous material must establish risk mitigation plans.

Background

Congress first created Amtrak in 1971 through the Rail Passenger Service Act of 1970. Amtrak provides intercity rail service at 500 stations in 46 states on over 22,000 miles of track. Its assets include 730-route miles both between Massachusetts and Washington DC (known as the Northeast Corridor or the NEC) and in Michigan, major facilities in New York, NY; Chicago, Illinois; and Philadelphia, Pennsylvania; as well as 425 locomotives and 2,141 railroad cars. Freight companies own most of the track on which Amtrak operates.

Since its inception, Amtrak has required federal assistance to continue operation. Under the 1970 Act, Amtrak was expected to operate without federal support by 1973. This did not materialize, and Congress has either directly or through grants financed Amtrak's operational losses, spending nearly $30 billion.[1] The corporation is now well over $3 billion in debt.

Amtrak's current fiscal predicament stems from its management practices over the past decade. The most recent authorization, the Amtrak Reform and Accountability Act of 1997, required the corporation to be solvent without federal support by December 2002. Amtrak failed to meet this goal. Faced with shrinking federal support, a lack of expanded ridership, and continued operation of commercial lines operating at a loss, Amtrak cut capital investment and relied on private debt financing to continue operations.

[1] Government Accountability Office (GAO), "Amtrak Management: Systemic Problems Require Actions to Improve Efficiency, Effectiveness, and Accountability," October 2005, p. 41.

Bill Provisions

TITLE I - AUTHORIZATIONS

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

This section authorizes capital and operating grants to Amtrak for each of the fiscal years 2007 through 2012. Operating grant authorizations are as follows:

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

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

Amount authorized	Percent available for States
FY 07: $813 million	3 percent
FY 08: $910 million	11 percent
FY 09: $1.071 billion	23 percent
FY 10: $1.096 billion	25 percent
FY 11: $1.191 billion	31 percent
FY 12: $1.231 billion	33 percent

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

Section 102. Authorization for the Federal Railroad Administration.

This section authorizes to be appropriated to FRA such funds as are necessary to implement responsibilities authorized by this Act for fiscal years 2007 through 2012.

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

This section authorizes funds to be appropriated to pay interest and principal on Amtrak's long-term debt for fiscal years 2007 through 2012, at an average amount authorized per year for interest and principal repayment of $287.5 million, including adjustments for early buyout of debt.

Section 104. Excess railroad retirement.

This section authorizes such sums as are necessary to be appropriated beginning in FY 2007 to the Secretary of Transportation to pay into the Railroad Retirement Account the portion of Amtrak's Railroad Retirement Tier II Tax which exceeds the Railroad Retirement Tier II annuities paid to Amtrak retirees.

Section 105. Other authorizations.

The section authorizes $5 million for each of fiscal years 2007 through 2012 for the rail cooperative research program required under section 305. Another $5 million will be authorized for FY 2008 to Amtrak and states participating in the Next Generation Corridor Train Equipment Pool Committee established under section 303. In FY 2008, an additional $2 million is authorized for Amtrak's use in conducting the evaluation required under section 216.

TITLE II - AMTRAK REFORM AND OPERATION IMPROVEMENTS

Section 201. National railroad passenger transportation system defined.

This section defines the basic Amtrak route system and clarifies that the 180-day notice period for routes which Amtrak seeks to discontinue does not apply for routes exclusively supported by non-Federal sources, including states, regional or local authorities, or other parties that contract with Amtrak to provide intercity passenger rail service.

Section 202. Amtrak board of directors.

Effective October 1, 2007, the Amtrak Board is expanded to include 10 members as specified.

Section 203. Establishment of improved financial accounting system.

Amtrak is directed to implement a modern accounting and reporting system.

Section 204. Development of five-year financial plan.

This section requires Amtrak to submit its annual budget for the next fiscal year and a five-year financial plan to DOT on the first day of the fiscal year or 60 days after enactment of an appropriation for such fiscal year.

Section 205. Establishment of grant process.

This section requires the Secretary of Transportation to establish substantive and procedural requirements for Amtrak grant requests.

Section 206. State-supported routes.

This section requires Amtrak to develop a standardized methodology for computing and allocating operating and capital costs of short-distance routes of 750 miles or less.

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

This section directs FRA to retain a consultant to develop and recommend methodologies for route and service decisions.

Section 208. Metrics and standards.

This section requires FRA and Amtrak to jointly develop metrics and standards for measuring the performance and service quality of intercity train operations.

Section 209. Passenger train performance.

This section provides that if on-time performance of any intercity passenger train averages less than 80 percent, or the service quality fails to meet the standards established under the previous section, STB may investigate the extent to which such failure is due to causes that could reasonably be addressed by an operating freight railroad.

Section 210. Long-distance routes.

Using the metrics and standards developed under section 208, Amtrak is required to evaluate and rank each long-distance route, and to develop and implement plans to improve performance.

Section 211. Alternate passenger rail service program.

FRA will be required to develop a program under which a rail carrier or carriers that own a route over which Amtrak operates may petition FRA to become a passenger rail carrier for that route in lieu of Amtrak. Under the program, the rail carrier and Amtrak would submit a bid to provide service over the entire route, and FRA would award the right to provide such service in accordance with standards it may prescribe. The operating subsidy provided by FRA would not exceed that which Amtrak received for the route prior to the petition. An entity operating as a rail carrier that has negotiated a contingent lease agreement with a railroad that owns the infrastructure over which Amtrak currently operates may participate in this program in affiliation with the host freight railroad. The first deadline for submission of petitions will be in FY 2008 for alternate operations to commence in FY 2009. This section will not apply to more than one Amtrak route in fiscal years 2009 and 2010, and two routes beginning in FY 2011 and each fiscal year thereafter.

Section 212. Employee transition assistance.

This section provides transition assistance for Amtrak employees adversely affected by the cessation of Amtrak as the operator of a long-distance route under section 211.

Section 213. Northeast Corridor (NEC) state-of-good-repair plan.

This section requires Amtrak to prepare a capital spending plan to return the right of way and facilities of the NEC to a state-of-good-repair by the end of FY 2012.

Section 214. Northeast Corridor infrastructure and operations improvements.

This section requires the Secretary to establish a NEC Infrastructure and Operations Advisory Commission and develop future funding requirement recommendations for capital improvements and scheduling and safety enhancements. This section also requires Amtrak and the Rhode Island Department of Transportation (RIDOT) to reach agreement by no later than December 15, 2007, on access terms and other conditions for RIDOT's use of the NEC for additional commuter service in Rhode Island.

Section 215. Restructuring long-term debt and capital leases.

The Treasury Secretary is directed to enter into negotiations with the holders of Amtrak debt for the purpose of restructuring and assuming, or repaying, the debt on terms significantly more favorable to the U.S. Government. To the extent Amtrak's principal and interest payments are reduced as a result of this section, authorizations for such payments under section 103 of this Act are correspondingly reduced. Amtrak may incur no new debt without advance approval of the Secretary of Transportation.

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

Amtrak is required to evaluate the improvements necessary to make all existing stations it serves ADA-accessible.

Section 217. Incentive pay.

Amtrak is encouraged to develop an incentive pay program for Amtrak management employees.

Section 218. Access to Amtrak equipment and services.

States wishing to use operators other than Amtrak for the provision of state-supported services will have access to Amtrak equipment, facilities, and reservation systems for the purpose of operating that particular route.

Section 219. General Amtrak provisions.

This section repeals both the operating self-sufficiency requirement and the “sunset trigger” for failing to meet the requirement. Also repealed is the requirement to redeem Amtrak's outstanding common stock. In addition, Amtrak can continue leasing vehicles from the General Services Administration. This section also specifies that DC laws are applicable to Amtrak contracts entered into with the State of Maryland. Finally, the section authorizes the establishment of facilities and procedures to conduct pre-clearance of passengers on Amtrak trains entering the United States from Canada.

Section 220. Private sector funding of passenger trains.

This provision prompts Amtrak to seek out business with private sector customers (i.e. charters, etc.) in order to decrease its federal operations grant amounts.

Section 221. On-board service improvements.

Under this provision, Amtrak is required to develop and implement a plan to improve on-board service based on the metrics and standards developed under section 208.

Section 222. Amtrak management accountability.

The DOT Inspector General must complete two overall assessments of the progress made by Amtrak management and DOT in implementing this Act.

Section 223. Locomotive biodiesel fuel use study.

This section requires FRA to conduct a study on the extent to which Amtrak can use biodiesel fuel to power its locomotive fleet.

TITLE III - INTERCITY PASSENGER RAIL POLICY

Section 301. Capital assistance for intercity passenger rail service.

This provision establishes authority for the Secretary of Transportation to make capital grants to a state to fund improvements to intercity passenger rail transportation from the funds authorized for capital improvements under section 101. A grant may not exceed 80 percent of the capital cost, but the remaining 20 percent may be funded from amounts appropriated to a department of the federal government and eligible to be expended on transportation.

Section 302. State rail plans.

States are authorized to prepare and maintain state rail plans according to requirements listed in this section.

Section 303. Next generation corridor train equipment pool.

Amtrak is required to establish a committee to design and develop specifications for joint procurement of equipment such as passenger cars and locomotives.

Section 304. Federal rail policy.

FRA is to be modified and its responsibilities expanded to include the development of a national rail plan.

Section 305. Rail cooperative research program.

The Secretary of the Department of Transportation will be directed to establish a research program to examine issues relating to intercity, commuter, and freight rail enhancements.

TITLE IV - PASSENGER RAIL SECURITY AND SAFETY

Section 401. Definitions.

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

Section 402. Rail transportation security risk assessments.

This section requires the Secretary of Homeland Security to establish a task force to complete a risk assessment of freight and passenger rail transportation and authorizes $5 million for FY 2008 for this purpose.

Section 403. System-wide Amtrak security upgrades.

This section authorizes the Secretary of Homeland Security to make security grants to Amtrak for the purpose of adopting security upgrades. Specific grant eligibilities include: securing major tunnel access points in New York, New Jersey, Maryland, and Washington, DC; securing Amtrak trains and stations; obtaining a watch list identification system and interoperable communication system; and hiring additional police and security officers. The Secretary will authorize grants to Amtrak for projects contained in a system-wide security plan approved by the Secretary, and the Secretary of Transportation will disburse the grant funds to Amtrak through DOT's existing Amtrak grant process. This section authorizes $63.5 million for FY 2008 and $30 million for fiscal years 2009 and 2010 to carry out this section.

Section 404. Fire and life-safety improvements.

This section authorizes the Secretary of Transportation to make grants to Amtrak for the purpose of making fire and life-safety improvements to Amtrak tunnels on the NEC. This section authorizes $100 million in funding for DOT for each of fiscal years 2008 through 2011 to make fire and life-safety improvements to the New York/New Jersey tunnels; $10 million for each of fiscal years 2008 through 2011 for improvements of the Baltimore & Potomac and Union tunnels in Baltimore, Maryland; and $8 million for each of fiscal years 2008 through 2011 for improvements of the Washington, DC Union Station tunnels. This section also authorizes $3 million in FY 2008 for preliminary design of a new railroad tunnel in Baltimore, Maryland.

Section 405. Freight and passenger rail security upgrades.

This section authorizes the Secretary of Homeland Security to make grants to freight railroads, the Alaska Railroad, hazardous materials shippers, owners of rail cars used to transport hazardous materials, institutions of higher education, state and local governments, and Amtrak for full or partial reimbursement of costs incurred to prevent or respond to acts of terrorism, sabotage, or other risks. This section authorizes $100 million for DHS for each of fiscal years 2008 through 2010 to carry out this section. Grants to Amtrak are limited to $45 million and grants for hazardous material rail security will be limited to $80 million in total over the authorization period.

Section 406. Rail security research and development.

The Secretary of Homeland Security is directed to carry out a research and development program for the purpose of improving freight and intercity passenger rail security with $33 million appropriated for each of fiscal years 2008 through 2011.

Section 407. Oversight and grant procedures.

This section authorizes the Secretary of Homeland Security to enter into contracts to audit and review grants awarded under this Act.

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

This section requires Amtrak to plan for addressing the needs of families of passengers involved in any rail passenger accident involving an Amtrak intercity train and resulting in loss of life, and authorizes $500,000 for FY 2008 to carry out this new section.

Section 409. Northern border rail passenger report.

This section requires the Secretary of Homeland Security to submit a report on the current system for screening passengers and baggage on rail service between the United States and Canada.

Section 410. Rail worker security training program.

This section requires that the Secretaries of Homeland Security and Transportation work to develop and issue detailed guidance for a railroad worker security training program to prepare front-line workers for potential threat conditions.

Section 411. Whistleblower protection program.

This section precludes rail carriers from discharging, or otherwise discriminating against, a railroad employee because the employee provided information relating to a reasonably perceived threat to security.

Section 412. High hazard material security threat mitigation plans.

This section directs the Secretaries of Homeland Security and Transportation to require rail carriers transporting a high hazard material to develop security-threat-mitigation plans. The plans must include alternative routing and temporary shipments suspension options, and address assessed risks to high-consequence targets.

Section 413. Enforcement authority.

This section amends current law to clarify the DHS Secretary's legal authority for initiating an administrative enforcement proceeding for violations of transportation security regulations and requirements relating to modes of transportation other than aviation.

Section 414. Rail security enhancements.

This section allows police officers employed by a railroad to be deputized to help a second railroad in carrying out enforcement duties on the second railroad.

Section 415. Public awareness.

Under this section, the Secretary of Homeland Security must develop a national plan to improve public outreach and awareness of measures that the general public, railroad passengers, and railroad employees can take to increase railroad system security.

Section 416. Railroad high hazard material tracking.

This section requires the Secretary of Homeland Security to develop a program to encourage the equipping of rail cars transporting high hazard materials with communications technology that provides information concerning car position, depressurization, and the release of hazardous materials. Up to $3 million is authorized for fiscal years 2008 through 2010.

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

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

Section 418. Authorization of appropriations.

This section authorizes $205 million in funding for FY 2008 and $166 million for fiscal years 2009 and 2010 for the Secretary of Homeland Security. This section also authorizes $121 million for FY 2008 and $118 million for fiscal years 2009 to 2011 for the Secretary of Transportation to carry out provisions of this Act.

Administration Position

At press time, the Administration had not issued a Statement of Administration Policy (SAP) for S. 294.

Cost

CBO estimates that implementing S. 294 will increase outlays by $10.1 billion over fiscal years 2008-2017. The bill authorizes the appropriation of about $8.9 billion over fiscal years 2008-2012 in grants to Amtrak and another $1.8 billion over fiscal years 2008-2012 to the Department of Transportation for new grant programs.

CBO estimates that S. 294 will generate minimal impact on direct spending and revenue. Although S. 294 authorizes the Department of Treasury to negotiate with Amtrak's creditors, CBO does not expect Treasury to exercise this authority. Treasury's authority to initiate a negotiation would expire on October 1, 2008. In addition, S. 294

authorizes the Surface Transportation Board to assess penalties to freight railroads and provide those penalties to Amtrak. CBO, however, expects the impact of this provision to be insignificant.

Possible Amendments

In addition to the mangers' package, amendments concerning the following issues may be considered.

-Amtrak operating subsidy;
-Competitive bidding for operation of long-distance routes on Amtrak assets;
-Limits on subsidies for long distance Amtrak trains; and
-Amtrak debt restructuring.