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FOR PUBLIC INFORMATION AND DISCUSSION

December 4, 2000

A COUNCIL POLICY PAPER

**A SUMMARY OF CURRENT LEGISLATIVE
PROVISIONS PRESCRIBING THE LEGAL
AND REGULATORY FRAMEWORK
GOVERNING THE NATIONAL RAILROAD
PASSENGER CORPORATION (AMTRAK)**

This Council policy paper is intended as a building block in the Council's program of research, education, and public policy development concerning Amtrak and rail passenger service in the United States. Its contents are designed to provide a summary of the legislative provisions that govern the structure and operations of the National Railroad Passenger Corporation, known as Amtrak. As such, the Council believes that it is important for this paper to be released for public information and discussion throughout the transportation community, both within and among governmental agencies at the federal and state levels, and in the private sector.

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EXECUTIVE SUMMARY OF LAWS **AFFECTING AMTRAK**

I. THE RAIL PASSENGER SERVICE ACT OF 1970 (“RPSA”) (49 U.S.C. 24101 ET SEQ.) (AS SUBSEQUENTLY AMENDED BY THE AMTRAK REFORM AND ACCOUNTABILITY ACT OF 1997)(“ARAA”)

A. The RPSA Prior to Enactment of the ARAA

In 1970, the U.S. railroad industry was in a precarious financial condition. In response, Congress created the National Railroad Passenger Corporation (“Amtrak”) pursuant to the Rail Passenger Service Act of 1970 (Pub. L. 91-518 and subsequent amendments (“RPSA”). Amtrak was created to relieve the freight railroads of the continued burden of deficit passenger operations and “to revitalize rail transportation service in the expectation that the rendering of such service along certain corridors can be made a profitable commercial undertaking . . .” House Report No. 91-1580, reprinted in 1970 U.S. Code Cong. & Admin. News 4735, 4737, 4741. In creating Amtrak, Congress sought to establish a single, for-profit corporate entity that, with initial Federal assistance, and with infrastructure, financial and other contributions from the freight railroads, would be responsible for providing all intercity rail passenger service over a unified national system. *Id.*

Amtrak was created by the RPSA as a private, for-profit, District of Columbia Corporation (as amended in 1978, the RPSA requires that Amtrak “shall be operated and managed as a for-profit corporation.”). RPSA, sec. 301. Amtrak’s status was further statutorily defined as a “mixed ownership Government corporation” under the Government Corporation Control Act and “not . . . an agency or instrumentality of the United States Government.” RPSA, sec. 804. Under the RPSA (prior to the enactment of the Amtrak Reform and Accountability Act of 1997), the Amtrak Board consisted of 9 members (the Secretary of Transportation, the President of Amtrak, 5 members appointed by the President subject to Senate approval and 2 members elected by the holders of preferred stock. RPSA, sec. 303, as amended.

In return for contributions to Amtrak of cash and/or equipment equal to one-half of rail passenger deficits for 1969 (as well as the mandatory assumption of specified statutory obligations towards Amtrak), the RPSA relieved each participating freight rail carrier of its statutory obligation to continue to provide passenger service. Carriers that contributed to Amtrak were provided the option of receiving either Amtrak common stock or federal income tax credits. Over a short period, all freight carriers discontinued intercity passenger service under the RPSA. Currently, there are four holders of Amtrak

common stock (3 railroads and an insurance company, as successor to the Penn Central). The only preferred stockholder is the Secretary of Transportation (in the amount of approximately \$10.6 billion), who received the shares in exchange for past capital and future capital and operating grants made to Amtrak pursuant to 1981 legislation.

The RPSA granted Amtrak the right to use tracks, facilities and services of freight railroads in providing passenger services and to compensate the freight railroads at the incremental cost level. RPSA, sec.305. Amtrak was also granted preference over freight railroads in regard to track use. Except for 366 miles of track on the Northeast Corridor (NEC) and other small segments of track that Amtrak owns subject to a USG mortgage lien, Amtrak's passenger operations are conducted over tracks owned by freight carriers.

Until amended by the ARAA, the RPSA defined a "basic system" national route network over which Amtrak was required to provide passenger service. The service could only be discontinued (subject to Congressionally imposed moratoriums) if it met with certain Congressionally-approved criteria. RPSA, §§ 201, 202. The Act also made provision for Amtrak service beyond the "basic system" at state, local or regional request subject to minimum financial assistance requirements ("Section 403(b) service."). The Act also provided for authority for Amtrak to provide mail and express and auto-train service on passenger trains and to operate commuter services under contract with state, local or regional authorities. See RPSA, § 305, 49 U.S.C. 24306. Until amended by the ARAA, the RPSA provided Amtrak a monopoly over intercity rail passenger transportation over any route over which Amtrak provided scheduled service pursuant to a contract with a freight railroad. See former 49 U.S.C.24701.

Until amended by the ARAA, the RPSA provided that Amtrak employees who are discharged or displaced as a result of a route discontinuance or reduction of train frequency below three round trips per week were entitled to up to six years of full pay and benefits ("labor protection payments"). See RPSA, § 405; 49 U.S.C. §24706(c). The RPSA, until amended by the ARAA, also prohibited Amtrak from contracting out operations (except food service operations) where the result would be the layoff of an Amtrak employee. See RPSA § 405; former 49 U.S.C. 24312.

Although the RPSA was amended numerous times since 1970 in an effort to improve Amtrak's operations and financial status, Amtrak's performance under the provisions of the RPSA did not meet with Congressional expectations. Instead of becoming commercially profitable or operationally self sufficient as Congress had hoped, Amtrak has required federal capital and operating subsidies totaling over \$23 billion since inception of operations in 1971. As of 1997, Amtrak's losses and capital needs were growing, and the prospect of an Amtrak bankruptcy in the absence of a massive infusion of Federal financial assistance was a strong probability.

B. The RPSA as Amended by the ARAA

Congress accordingly overhauled the provisions of the RPSA in 1997 by enactment of the ARAA. The ARAA:

1. Put in place a new Board of Directors, called the Amtrak Reform Board, to oversee the corporation's operations. The Reform Board consists of seven voting members appointed by the President and confirmed by the Senate (except for the DOT Secretary); the President of Amtrak serves as an ex officio, non-voting member. 49 U.S.C. 24302.
2. Required Amtrak, over the five fiscal years from FY1998 through FY2002, to wean itself from the need for federal operating grant funds and provided that after December 2, 2002 "Amtrak shall operate without Federal operating grant funds appropriated for its benefit". Sec. 24101(d).
3. Required Amtrak to redeem its outstanding common stock, owned by private shareholders, by the end of FY2002 at fair market value, and eliminated the liquidation preference and voting rights of the US-government-owned preferred stock. ARAA Sec. 415 (b) and (c).
4. Ended Amtrak's legal monopoly over intercity passenger service by rail, but retained Amtrak's special statutory access to the track of the private railroads at incremental cost and with the historical passenger service operating priority. ARAA Sec.101(a).
5. Repealed Amtrak's obligation to provide rail passenger service within the "basic system" defined by statute and provided Amtrak with complete flexibility to determine its national system of routes and services in response to the marketplace. ARAA Sec. 101(a).
6. Repealed the specific statutory requirements for labor protection payments and placed the disposition of this issue on the management-labor collective bargaining table. ARAA Secs. 141 and 142. (Amtrak and its unions opted to arbitrate the issue of labor protection. In a decision issued November 1999, the arbitration panel modified the previous labor protection requirements by, among other things, reducing the maximum duration of benefits from six years to five years and by adopting a sliding scale of service requirements before maximum benefits could be reached.)
7. Repealed the statutory prohibition against contracting out and placed the disposition of this issue on the labor-management collective bargaining table no later than November 1, 1999. ARAA sec.121. Amtrak served notice on its employee representatives on June 12, 2000 placing the contracting out issue on the bargaining table. Under the Railway Labor Act, the pre-existing ban on contracting out (which was deemed incorporated in Amtrak collective bargaining agreements under the provisions of the ARAA) remains in force until changed by negotiation or self-help.
8. Put in place limitations on rail passenger transportation liability and allowed Amtrak to enter into contracts with other railroads, states, and commuter authorities to allocate financial responsibility for claims. 49 U.S.C. 28103.

II. THE ARAA: PROVISIONS GOVERNING AMTRAK FISCAL ACCOUNTABILITY

The ARAA not only amended the RPSA, but also adopted specific provisions governing Amtrak fiscal accountability and oversight. In addition to establishing the Reform Board, the ARAA:

1. Required an independent assessment of Amtrak's financial requirements through FY2002 under oversight of the DOT Inspector General. The first Report was submitted to Congress on November 23, 1998. Follow-up reports are required for any fiscal year in which Amtrak requests federal financial assistance. ARAA secs. 202, 409.
2. Established the Amtrak Reform Council (ARC) as an independent, bi-partisan commission of 11-members. The duties of ARC are to (A) evaluate Amtrak's performance; (B) make recommendations to Amtrak for achieving further cost containment and productivity improvements and financial reforms; and (C) identify Amtrak routes which are candidates for closure or realignment. If, after January 1, 1997 Amtrak enters into an agreement involving work-rules intended to achieve savings with Amtrak employee labor unions, Amtrak must report quarterly to ARC the savings realized and how those savings are allocated. ARC must submit an annual report to Congress that includes an assessment of: (1) Amtrak's progress on the resolution of productivity issues; (2) the status of those productivity issues; (3) Amtrak routes which are candidates for closure or realignment, and (4) recommendations for improvements and for any changes in law it believes necessary or appropriate. ARAA sec. 203.
3. Provided for an Amtrak "sunset trigger." If at any time more than two years after December 2, 1997 ARC finds that Amtrak's business performance will prevent it from meeting the financial goals of the ARAA or that Amtrak will require operating grant funds after December 2, 2002, ARC shall immediately notify the President and Congress. In making such a finding, ARC shall take into account Amtrak's performance; the findings of the independent assessment under sec. 202; the level of Federal funds made available for carrying out the financial plan referred to in 49 U.S.C. 24101(d); and acts of God, national emergencies and events beyond the reasonable control of Amtrak. Within 90 days of making a finding, (1) ARC shall develop and submit to Congress an action plan for a restructured and rationalized national intercity rail passenger system; and (2) Amtrak shall submit a liquidation plan. The ARAA provides for Senate procedures for considering the ARC restructuring and Amtrak liquidation plans. ARAA secs. 204, 205.
4. Required ARC to report quarterly to Congress on the use of amounts received by Amtrak under section 977 of the Taxpayer Relief Act of 1997 (TRA). See discussion below.

III. THE TAXPAYER RELIEF ACT OF 1997 (TRA)

Under the TRA, Amtrak was treated as entitled to apply its tax carrybacks against the income tax paid by its railroad predecessors of approximately \$2.3 billion and to claim the \$2.3 billion as a tax refund. TRA funds can only be used by Amtrak for certain statutorily defined “qualified expenses” and payments to non-Amtrak states. ARAA sec. 209. Congress requested the General Accounting Office to conduct an initial review of Amtrak’s TRA expenditures. The GAO Report was issued in February 2000.

IV. THE RAILROAD RETIREMENT ACT OF 1974 (“RRA”) (45 U.S.C. 231 ET SEQ.)

Rail carriers who engage in the interstate transportation of freight or passengers, such as Amtrak, are covered under the provisions of the RRA, rather than the Social Security Act (“SSA”) for retirement benefits. Tax costs to railroad employers for an employee making the same wages in other industries is nearly three times higher than for employers under SSA.

The RRA has two components with respect to benefits and taxes: a social security equivalent benefit component (Tier I) and a pension component (Tier II). The Railroad Retirement system is funded on an industry-wide “pay as you go” basis with employer and employee taxes pooled and used to fund the benefits payable to all eligible industry employees or retirees. The pooling system has given rise to special federal appropriations to Amtrak (“mandatory payments”) that by law have not been considered a “government subsidy of Amtrak.” See 49 U.S.C. § 24104. These “mandatory payments” represent Railroad Retirement tax liabilities to Amtrak that are used to pay Tier II benefits of non-Amtrak beneficiaries (so-called “excess payments”).

V. THE RAILROAD UNEMPLOYMENT INSURANCE ACT (“RUIA”) (45 U.S.C. 351 ET SEQ.)

The railroad industry, including Amtrak, is subject to RUIA, rather than state unemployment insurance statutory regimes with respect to unemployment benefits and taxes. Because unemployment payments under RUIA are experience-based and vary by employer, the ARAA does not include RUIA taxes and benefits as an “excess payments” issue requiring federal funding.

VI. THE RAILWAY LABOR ACT (“RLA”) (45 U.S.C. 151 ET SEQ.)

Unlike other industries whose labor relations are governed by the National Labor Relations Act, the RLA governs labor relations in the railroad and airline industries. Amtrak is subject to the RLA pursuant to 49 U.S.C. § 24301. The basic purposes of the RLA are: (1) to avoid any interruption to interstate commerce; (2) to ensure the right of railroad employees to join a labor organization; (3) to provide for the complete independence of carriers and employees with respect to self-organization; (4) to provide

for the prompt and orderly settlement of all disputes concerning rates of pay, rules or working conditions (“major disputes”); and (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of interpretation or application of agreements (“minor disputes”). Under the RLA, either side must provide 30 days’ written notice (“Section 6 notice”) of any intended change in an agreement. Minor disputes are handled by negotiation “on property” or by compulsory arbitration (by the standing National Railroad Adjustment Board or public law boards on local properties). Major disputes that cannot be resolved through collective bargaining procedures are submitted to mediation by a 3-member National Mediation Board (“NMB”). If the NMB is unsuccessful and finds the controversy threatens substantially to interrupt interstate commerce, the NMB is required to notify the President. The President is empowered to appoint a neutral Presidential Emergency Board (PEB) to investigate and submit a report. If the parties cannot agree 30 days after the PEB report and recommendations, either side is free to resort to self-help measures (e.g., a strike or lockout). The President may also request emergency legislation, or Congress may act on its own, to resolve the dispute.

VII. THE FEDERAL EMPLOYERS LIABILITY ACT (“FELA”) (45 U.S.C. 51 ET SEQ.)

Unlike most American workers, railroad workers are not covered by state no-fault workers’ compensation insurance systems when they are injured on the job. Instead, injured railroad employees, including Amtrak employees, are covered under FELA. FELA was enacted in 1908, at a time when railroads were the nation’s largest employer and rail work was especially hazardous. Under FELA, an injured employee negotiates a settlement with the railroad employer. If the negotiations fail, the employee may file a lawsuit alleging negligence by the employer to recover losses. FELA allows workers to seek recovery for economic and non-economic damage (such as pain and suffering). Workers’ compensation systems, which do not require a showing of negligence, typically limit recovery to economic losses.

VIII. THE DISTRICT OF COLUMBIA BUSINESS CORPORATION ACT (“DCBCA”) (D.C. CODE § 29-301 ET SEQ.)

Amtrak is subject to the DCBCA to the extent that it is consistent with the provisions of the RPSA. RPSA § 24301(e). In the absence of overriding federal legislation, the DCBCA contains requirements that Amtrak must comply with in order to amend its charter and take other corporate actions.

IX. Subtitle V, PART A, of Title 49 U.S.C. (Rail Safety) (49 U.S.C. 20101 et seq.)

The Rail Safety provisions of Title 49, 49 U.S.C. 20101 et seq., are applicable to all railroad carriers, including Amtrak and commuter railroads. The Act

regulates all aspects of railroad safety, including equipment, facilities, rolling stock and operations.

**IX. SUBCHAPTER IV OF TITLE 11, UNITED STATES CODE
(RAILROAD REORGANIZATION) (11 U.S.C. 101 ET SEQ.)**

Chapter 11 of the Bankruptcy Code, which generally sets out procedures for railroad reorganization, would govern an Amtrak bankruptcy. Chapter 11 seeks to protect the public interest in continued rail service as well as the interests of railroads, creditors and stockholders. Amtrak may initiate bankruptcy proceedings by filing a voluntary bankruptcy petition that is authorized by its Board of Directors. Three or more creditors whose unsecured claims totaled at least \$10,000 could also file an involuntary petition. After a petition is filed, an appointed trustee, with court oversight, would make decisions about the railroad's operations and financial commitments (rather than Amtrak's Board of Directors).

The trustee would be responsible for developing a plan of reorganization. Amtrak's creditors and shareholders would vote on the plan. Because the United States is a shareholder and creditor of Amtrak, the Secretary of Treasury would accept or reject the plan on behalf of the United States. Additionally, the plan would have to be court approved. If a plan were not approved within five years, the court would have to order liquidation. The court could also order liquidation earlier if it determined liquidation to be in the public interest. Under such circumstances, the case would be handled as if the case were a liquidation case under Chapter 7 of the Bankruptcy Act.

**I. THE RAIL PASSENGER SERVICE ACT OF 1970
(RPSA)(49U.S.C. 24101 ET SEQ.) (AS SUBSEQUENTLY
AMENDED AND RECODIFIED AND AS AMENDED BY THE
AMTRAK REFORM AND ACCOUNTABILITY ACT OF 1997)**

**A. LEGISLATIVE BACKGROUND OF THE RPSA AND OVERVIEW OF
GENERAL PROVISIONS OF THE RPSA PRIOR TO THE AMTRAK REFORM
AND ACCOUNTABILITY ACT OF 1997**

In 1970, the U.S. railroad industry was in precarious financial condition with several major carriers in bankruptcy proceedings or on the verge of bankruptcy. See Railroad Regulation, Economic and Financial Impacts of the Staggers Rail Act of 1980 (GAO, May 1990) at 10-11). The precarious financial condition of the railroad industry was particularly felt with respect to rail passenger operations. The number of passenger trains operated was in radical decline and many of the existing passenger trains were either operating under heavy deficits or were in discontinuance proceedings before the Interstate Commerce Commission (the federal regulatory agency empowered to oversee and approve discontinuances of rail freight or passenger operations). See House Report No. 91-1580 to P.L. 91-518, reprinted in 1970 U.S. Code Cong. & Admin. News 4735, 4736-4737. By 1970, the rail carriers' combined annual losses for passenger service exceeded \$1.7 billion in today's dollars. 1995 GAO Report to Congressional Committees, Intercity Passenger Rail, Financial and Operating Conditions Threaten Amtrak's Long term Viability (February 1995) at 4.

The National Railroad Passenger Corporation (Amtrak) was created by Congress pursuant to the Rail Passenger Service Act of 1970 (Pub. L. 91-518 (RPSA)). Amtrak was created to relieve the freight railroads of the continued burden of deficit passenger operations and "to prevent the complete abandonment of intercity rail passenger service and to preserve a minimum of such service along specific corridors." House Report No. 91-1580, reprinted in 1970 U.S. Code Cong.& Admin. News 4735. In creating Amtrak, Congress sought to establish a single, for-profit, corporate entity which, with initial direct Federal assistance of \$40 million and loan guarantees of \$100 million, and with infrastructure, financial, and other contributions from the freight railroads, would be responsible for providing all intercity rail passenger service over a unified National system. Id. at 4735, 4737, 4741; RPSA sec. 601, 602. Amtrak was also "expected to revitalize rail transportation service in the expectation that the rendering of such service along certain corridors can be made a profitable commercial undertaking...." Id. at 4735.

In return for contributions to Amtrak of cash and/or equipment in an amount equal to one-half of its rail passenger deficit for 1969 (as well as the mandatory

assumption of specified statutory obligations towards Amtrak, including providing Amtrak access to its track), the RPSA relieved each participating freight rail carrier of its statutory obligation to continue to provide rail passenger service over its routes without the necessity of first seeking regulatory approval from the ICC. RPSA, secs. 401, 402. (Aggregate payments to Amtrak from all railroads under this provision totaled \$197 million over a 36-month period.) The RPSA also established a 5-year moratorium period before which carriers not contracting with Amtrak to provide service and making the required contributions could not discontinue passenger operations. RPSA, sec. 404. Carriers that contributed cash and/or equipment to Amtrak were provided the option of receiving either Amtrak common stock (at a par value of \$10) or federal income tax credits in the amount contributed. RPSA, sec.401, 402. Over a short period of time, all of the freight carriers discontinued intercity passenger service pursuant to the provisions of the RPSA.

Amtrak was created by the RPSA as a private, for-profit corporation subject to the provisions of the District of Columbia Business Corporation Act. *Id.* at 4739, 4742; RPSA, sec. 301. Amtrak’s status was further statutorily defined as a “mixed ownership Government corporation” under the Government Corporation Control Act. RPSA, sec. 804. The RPSA further noted that Amtrak “would not be an agency or instrumentality of the United States Government.” *Id.* at 4739; RPSA, sec.301.

The original provisions of the RPSA provided that a majority (8) of Amtrak’s original 15-member Board of Directors were to be appointed by the President (subject to Senate approval). The remaining seven Directors were to be elected by common and preferred shareholders. *Id.* at 4742; RPSA, sec. 303.

The RPSA, however, was subsequently amended to provide that Amtrak shall be “operated and managed as” a for-profit corporation. RPSA, sec.301 (as amended 1978). The right of common shareholders to elect a portion of the members of the Board of Directors was also subsequently repealed (by sec.1175 of The Amtrak Improvement Act of 1981), and the Amtrak Board (prior to additional reforms enacted under the ARAA) was reduced to 9 members (the Secretary of Transportation, the President of Amtrak, 5 members selected by the President, and 2 members elected by the holders of preferred stock). RPSA, sec.303.

Currently there are four holders of Amtrak common stock (3 railroads and an insurance company, as a successor to the Penn Central). (Amtrak was authorized initially to issue common stock only to railroads. RPSA, sec. 304.) The only preferred stockholder is the Secretary of Transportation (in the amount of approximately \$10.6 billion (March 1998 GAO Report, Intercity Passenger Rail, Issues Associated with a Possible Amtrak Liquidation, at 14)), who received

preferred shares (par value \$100) in exchange for past capital grants made to Amtrak by the Government through fiscal year 1981 and for future operating and capital grants pursuant to the provisions of Sec.1175 of the Amtrak Improvement Act of 1981, Pub. L. 97-35; RPSA sec.304 (as amended 1981). The requirement that Amtrak issue preferred shares to the Secretary of Transportation in exchange for federal assistance was repealed by the ARAA.

The RPSA granted Amtrak the right (enforceable by the ICC) to use tracks, facilities, and services of freight railroads in providing passenger services and to compensate the freight railroads at the incremental cost level (plus incentive payments) for the use of their tracks, facilities, and services. RPSA, sec. 305 (as amended in 1973 and 1978); RPSA, sec. 402. Congress also provided that passenger trains operated by Amtrak must be accorded preference over freight trains operated by other railroads in the use of track. RPSA sec. 402 (as amended in 1973). Except for 366 miles of track on the Northeast Corridor, which Amtrak owns subject to a U.S Government mortgage lien (the NEC was transferred to Amtrak by Conrail under the provisions of Title VII of the Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. 94-210) and short segments of track in New York, Pennsylvania, and Michigan, all of Amtrak's intercity passenger operations under the RPSA are conducted over tracks owned by freight carriers.

The RPSA (as originally enacted and until amended by the ARAA in 1997) defined a "basic system" national route network over which Amtrak was required to provide passenger service. RPSA, sec. 201, 202. The Act (as amended) also made provision for Amtrak service beyond the "basic system", including service that Amtrak would be required to provide at state, local or regional agency request subject to minimum state, local or regional agency financial assistance requirements ("Section 403(b) service"). RPSA, sec. 403 (as originally enacted and as amended 1974). Amtrak could discontinue service over the "basic system" (subject to Congressionally imposed moratoriums) only if the discontinuance met with certain Congressionally-approved criteria. RPSA sec. 404 (as amended 1975); see former 49 U.S.C.24703. (Amtrak, although it added and discontinued various services since 1971, is currently operating over virtually the same route system it had at its inception.) The RPSA (as amended 1976) also provided Amtrak authority to operate commuter services under contract with regional, state or local authorities. The RPSA (as originally enacted and until amended by the ARAA) also granted Amtrak a monopoly over intercity rail passenger transportation over any route over which Amtrak provided scheduled service pursuant to a contract with a freight railroad. See former 49 U.S.C. 24701.

Amtrak was also authorized to provide mail and express and auto-ferry (auto-train) service on passenger trains, and was directed to take all action necessary to

increase revenues from mail and express services. See RPSA, sec.305, 49 U.S.C. 24306.

As originally enacted, the RPSA contemplated that Amtrak would contract with the freight railroads for the provision of rail passenger services and that such services would generally continue to be provided by freight railroad employees. See RPSA, sec. 305, 401-402; *id.* at 4742, 4744. The Act was amended shortly after to allow Amtrak to employ directly its own employees and to operate and control directly, to the extent practicable, all aspects of the service that it provides. RPSA, sec 305 (as amended in 1972); see 49 U.S.C. 24305(b). (The 1972 amendments also initiated the provision of federal grants and loan guarantees to Amtrak in addition to that provided in the original 1970 legislation. See RPSA, sec 601, 602 (as amended 1972).)

Until amended by the ARAA, the RPSA provided that Amtrak employees who are discharged or displaced as a result of a route discontinuance or a reduction of train frequency below three round trips per week are entitled to up to six years of full pay and benefits (“labor protection payments”). See RPSA, sec. 405; 49 U.S.C. 24706(c). The RPSA, until amended by the ARAA, also prohibited Amtrak from contracting out operations (except food service operations) where the result would be the layoff of an Amtrak employee. See RPSA, sec 405; former 49 U.S.C.24312.

Although the RPSA was amended numerous times since 1970 in an effort to improve Amtrak’s operations and financial status, Amtrak’s performance under the provisions of the RPSA did not meet with Congressional expectations. Instead of becoming commercially profitable or operationally self-sufficient as Congress had hoped in establishing Amtrak, Amtrak has required federal capital and operating subsidies totaling over \$23 billion since inception of operations in 1971. Moreover, Congress has not funded Amtrak’s capital needs on an adequate, reliable basis, and Amtrak has deferred capital improvement requirements totaling billions of dollars in the Northeast Corridor. Further, as of 1997, Amtrak’s losses and capital needs were growing, and the prospect of an Amtrak bankruptcy in the absence of a massive infusion of financial assistance from the Federal Government was a strong probability. See GAO Report, Intercity Passenger Rail, Issues Associated With a Possible Amtrak Liquidation (March 1998).

It was this statutory and financial background that led Congress to overhaul the provisions of the RPSA in 1997 and adopt the reforms set forth in the ARAA. [N.B. As enacted in 1970, the RPSA was included in Title 45 of the United States Code and amended periodically. In 1994, the rail statutes, including those applicable to Amtrak, were recodified in Subtitle V of Title 49 of the Code; all subsequent revisions have been to the Title 49 provisions.]

B. SUMMARY OF CURRENT PROVISIONS OF THE RPSA (CODIFIED AT 49 U.S.C. 24101 ET SEQ.) APPLICABLE TO AMTRAK (AMENDMENTS MADE BY THE ARAA IN ITALICS)

**TITLE 49, UNITED STATES CODE
SUBTITLE V, RAIL PROGRAMS
PART C, PASSENGER TRANSPORTATION**

CHAPTER 241--GENERAL

Sec. 24101. Findings, purpose and goals

- (a) FINDINGS –Public convenience and necessity require that Amtrak, to the extent its budget allows, provide intercity rail passenger transportation between crowded urban areas and in other areas of the U.S.; Amtrak should be available to operate commuter rail passenger transportation under contract with commuter authorities that do not provide the transportation themselves; the Northeast Corridor (NEC) is a valuable resource of the U.S.
- (b) PURPOSE—By using innovative concepts, Amtrak shall provide rail passenger transportation that completely develops the potential of modern rail transportation to meet intercity and commuter passenger transportation needs of the U.S.
- (c) GOALS—Amtrak shall—
 - (1) use its best business judgment in acting to minimize U.S. Government subsidies, including increasing fares; increasing revenue from mail and express; reducing management costs; and increasing employee productivity;
 - (2) minimize government subsidies by encouraging State, regional and local governments and the private sector, *separately or in combination*, to share the cost of providing rail passenger transportation;
 - (3) carry out strategies to achieve immediately maximum productivity consistent with safe operation;
 - (4) operate Amtrak trains to all station stops within 15 minutes of time in published timetables;
 - (5) develop transportation on rail corridors subsidized by States and private parties;
 - (6) implement schedules based on a system-wide average speed of at least 60 m.p.h.;
 - (7) encourage rail carriers to assist in improving intercity rail passenger transportation;

- (8) improve Amtrak performance through operational programs and employee incentives;
- (9) ensure equitable access to the NEC by intercity and commuter rail passenger transportation;
- (10) coordinate uses of NEC; and
- (11) maximize use of its resources, including the most cost-effective use of employees.

(d) **MINIMIZING GOVERNMENT SUBSIDIES**—*Amtrak shall prepare a financial plan to operate within the funding levels authorized by Section 24104, including budgetary goals for fiscal years 1998 through 2002. Commencing no later than [December 2, 2002], Amtrak shall operate without Federal operating grant funds appropriated for its benefit.*

Sec. 24102. Definitions

This section sets forth definitions of terms used in RPSA, including the “Northeast Corridor,” “basic system,” “intercity rail passenger transportation,” “commuter rail passenger transportation,” “auto-ferry transportation,” and “rail carrier,” which is newly defined as “a person, *including a unit of state and local government*, providing rail transportation for compensation.”

[**N.B.** The definition of “basic system” in Section 24102(2), which pre-existed enactment of ARAA, is no longer necessary. Under the ARAA amendments, Amtrak’s obligation to provide rail passenger service within the basic system was repealed. See former Section 24701 (Operation of basic system) repealed by ARAA Section 101(a). The ARAA also repealed a prior prohibition on other entities from operating intercity passenger service over an Amtrak route unless Amtrak gives consent. See ARAA Section 101(a), repealing former RPSA Section 24701(b). Accordingly, Amtrak is not precluded from discontinuing any service it considers unpromising or unprofitable, including over the “basic system” as previously defined.]

Sec.24103. Enforcement

Except as provided in paragraph (2) only the Attorney General may bring an action against Amtrak or a rail carrier to enforce provisions of the RPSA. Paragraph (2) allows a rail employee or employee representative to bring an action if the conduct complained of involves a labor agreement; only the Attorney General can bring an action to review a discontinuance of a route or train or transportation or reduction in frequency of transportation.

Sec. 24104. Authorization of Appropriations

Specified sums are authorized to be appropriated to the Secretary of Transportation for the benefit of Amtrak for Fiscal Years 1998-2002 for capital expenditures, operating expenses, and Internal Revenue Code (IRC) tax liabilities under the Railroad Retirement Tax Act and Railroad Unemployment Insurance Act that are more than the amounts needed for Amtrak beneficiaries (“mandatory payments”). *Commencing [December 2, 2002], no funds authorized for Amtrak shall be used for operating expenses other than those prescribed for tax liabilities under Section 3221 of the IRC that are more than the amount needed for benefits of individuals who retire from Amtrak and for their beneficiaries (“mandatory payments”)*, amounts appropriated for mandatory payments described as not a U.S. Government subsidy of Amtrak. Amounts appropriated shall be paid to Amtrak as follows: 50 percent on October 1; 25 percent on January 1; 25 percent on April 1. Amounts appropriated may not be used to subsidize operating losses of commuter rail passenger or rail freight transportation. [N.B. The annual DOT Appropriation Acts have altered this payment schedule in recent years by making a certain percentage available on the first day of the then current fiscal year and the rest available on the first day of the following fiscal year.]

CHAPTER 243—AMTRAK

Sec. 24301. Status and applicable laws

- (a) STATUS—Amtrak—
 - (1) is a railroad carrier under Section 20102(2)[safety] and Chapters 261 [high-speed rail assistance] and 281[law enforcement] of Title 49;
 - (2) shall be operated and managed as a for-profit corporation; and
 - (3) is not a department, agency, or instrumentality of the United States Government.
- (b) PRINCIPAL OFFICE AND PLACE OF BUSINESS—District of Columbia
- (c) APPLICATION OF TITLE IV—*Subtitle IV* [economic regulation provisions administered by Surface Transportation Board as successor to the ICC] *do not apply to Amtrak except for Sections 11301 (access to terminal facilities); 11322(a) (pooling agreements); 11502 (protection against double income taxation of employees) and 11706 (liability standards for shipments damaged in transit). Amtrak shall continue to be considered an employer under the Railroad Retirement Act of 1974, the Railroad Unemployment Insurance Act, and the Railroad Retirement Tax Act.*

- (d) APPLICATION OF SAFETY AND EMPLOYEE RELATIONS LAWS— safety and employee relations laws [e.g., the Railway Labor Act] that apply to rail carriers apply to Amtrak.
- (e) APPLICATION OF CERTAIN ADDITIONAL LAWS.—5 U.S.C. 552 (Freedom of Information Act (FOIA provisions) and, to extent consistent with the provisions of the RPSA, the District of Columbia Business Corporations Act, apply to Amtrak; 5 U.S.C. 552 *applies to Amtrak for any fiscal year in which Amtrak receives a federal subsidy.*
- (f)-(n) Sets forth certain miscellaneous provisions including exemptions for Amtrak from state laws relating to rates, routes and service, and exemption from certain state taxes on personal property, real estate, and Amtrak services.

Sec. 24302. Board of Directors

(a) *REFORM BOARD.—*

(1) *ESTABLISHMENT AND DUTIES— The Reform Board assumes the responsibilities of Amtrak’s former Board of Directors by March 31, 1998 or as soon thereafter as at least 4 members are appointed; the Board appointed under prior law shall be abolished.*

(2) *MEMBERSHIP— The Reform Board shall consist of 7 voting members appointed by the President and confirmed by Senate (except for the DOT Secretary); Reform Board members have a 5 year term; the President of Amtrak serves as an ex officio, non-voting member;*

(b) *BOARD OF DIRECTORS—Alternative procedures are established for selection of the Board of Directors after 5 years, depending on whether Amtrak has received federal assistance during the then current fiscal year.*

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

Sec. 24303. Officers

Provides for the appointment and terms, pay, and bars on conflicts of interest of Amtrak officers.

Sec. 24304. Employee stock ownership plans

In issuing stock pursuant to applicable corporate law, Amtrak is encouraged to include employee stock ownership plans.

[**N.B.** The ARAA repealed former 49 U.S.C. 24302 (Board of Directors) and 49 U.S.C. 24304 (Capitalization) of the RPSA (as recodified in Title 49) and replaced those sections entirely with the current provisions. See ARAA Sections 411 and 415. Old Sections 24302 and 24304 provided for the issuance by Amtrak of two classes of stock: common and preferred. Common stock could only initially be issued to a railroad; preferred stock could only be issued to a non-railroad. Both common and preferred stock had voting rights under the former provisions of the RPSA. See former RPSA Section 303(c)(1970), formerly codified at 49 U.S.C. 24302(b) (1997) (“The articles of incorporation of Amtrak shall provide for cumulative voting for all stockholders”). Currently, Amtrak common stock is held by three railroads and an insurance company (as a successor to the Penn Central). The Secretary of Transportation is the only holder of preferred stock (in an amount of approximately \$10.6 billion (March 1998 GAO Report, at 14)). The common stockholders right to elect a portion of the Board of Directors was repealed by sec. 1175 of the Amtrak Improvement Act of 1981. The right of preferred shareholders to elect 2 members of the former Board of Directors was repealed by the ARAA; preferred stock was also made non-voting. See ARAA sec.415(c). There is no specific provision in the RPSA providing for voting by common stockholders. However, Amtrak’s articles of incorporation provide for cumulative voting by common stockholders as required under the former provisions of the RPSA.

Sec. 24305. General Authority

- (a) **ACQUISITION AND OPERATION OF EQUIPMENT AND FACILITIES**—(1) Amtrak may acquire, operate, maintain and make contracts for the operation and maintenance of equipment and facilities necessary for intercity and commuter rail passenger transportation, mail and express, and auto-ferry.
 - (2) Amtrak shall operate and control directly, to the extent practicable, all aspects of the rail passenger transportation it provides.
 - (3) *Amtrak may enter into contracts with unsubsidized motor carriers of passengers for the intercity transportation of passengers.*
- (b) **MAINTENANCE AND REHABILITATION**—Amtrak may maintain and rehabilitate rail passenger equipment and shall maintain a regional maintenance plan that includes, inter alia, a systematic preventive maintenance program.
- (c) **MISCELLANEOUS AUTHORITY.** Amtrak may transport mail and express and shall use all feasible methods to obtain the bulk mail business of the U.S. Postal service.

- (d) THROUGH ROUTES AND JOINT FARES—Amtrak may establish through routes and joint fares with any domestic or international motor carrier, air carrier, or water carrier.
- (e) RAIL POLICE—Amtrak may employ rail police.
- (f) DOMESTIC BUYING PREFERENCES—Amtrak is required to employ domestic buying preferences for purchases of \$1 million or more. The Secretary of Transportation may waive the requirement on application of Amtrak where, inter alia, goods are not manufactured in the U.S. in reasonably available or satisfactory commercial quantities or where rolling stock or power train equipment cannot be delivered in the U.S. in a reasonable time.

Sec. 24306. Mail, express, and auto-ferry transportation

Amtrak shall take necessary action to increase its revenues from mail and express; state and local laws shall not prevent Amtrak (and other rail carriers) from providing auto-ferry service.

Sec. 24307. Special transportation

Amtrak shall maintain a reduced fare program for persons 65 and older, the impaired and for active or retired rail carrier employees eligible for free or reduced fares on April 30, 1971.

Sec. 24308. Use of facilities and providing service to Amtrak

- (a) GENERAL AUTHORITY—(1) Amtrak may make an agreement with a rail carrier or regional transportation authority to use facilities of, and have services provided by, the carrier or regional authority on agreed terms. The terms shall include a penalty for untimely performance.
- (2) If the parties cannot agree, the Interstate Commerce Commission [Surface Transportation Board] may order that facilities and services be provided to Amtrak and may prescribe reasonable terms and compensation. When prescribing reasonable compensation, the ICC shall consider quality of service when determining whether, and the extent to which, compensation shall be greater than the incremental costs of using the facilities and providing the services. The ICC shall decide the dispute within 90 days. Amtrak's right to facilities and services is conditioned on payment of the compensation.
- (b) OPERATING DURING EMERGENCIES— The ICC shall require a rail carrier to provide facilities immediately during an emergency.

- (c) PREFERENCE OVER FREIGHT TRANSPORTATION—Except in an emergency, intercity and commuter rail passenger transportation provided by or for Amtrak has preference over freight transportation unless the Secretary of Transportation orders otherwise.
- (d) ACCELERATED SPEEDS—If a rail carrier refuses to allow accelerated speeds on trains operated by or for Amtrak, Amtrak may apply to the Secretary of Transportation for an order requiring accelerated speeds.
- (e) ADDITIONAL TRAINS—When a rail carrier does not agree to provide, or allow Amtrak to provide, for the operation of additional trains over a line of the carrier, Amtrak may apply to the Secretary for an order requiring the operation of additional trains. If the parties cannot agree on compensation, the ICC shall decide the dispute under subsection (a).

Sec. 24309. Retaining and maintaining facilities

A facility of a rail carrier or regional authority that Amtrak used to provide rail passenger transportation on February 1, 1979, *or on January 1, 1997*, may be downgraded or disposed of only after approval of the Secretary of Transportation.

[Sec. 24310. (Assistance for upgrading facilities) repealed by sec 403 of ARAA]

Sec. 24311. Acquiring interests in property by eminent domain

Amtrak may acquire by eminent domain interests in property necessary for intercity rail passenger transportation, except property of a rail carrier, a State, a political division of a state, or a governmental authority. If Amtrak and a rail carrier cannot agree on a sale to Amtrak of an interest in property of a rail carrier necessary for intercity rail passenger transportation, Amtrak may apply to the ICC for an order requiring the carrier to convey the interest on reasonable terms, including just compensation. Amtrak may subsequently convey to a third party an interest conveyed to Amtrak under this subsection.

Sec. 24312. Labor standards

Amtrak shall ensure that laborers and mechanics employed by contractors and subcontractors in construction work financed under an agreement made under Section 24308 will be paid wages that comply with the wage requirements in the Davis-Bacon Act (40 U.S.C. 276a—276a-5). Wage rates in a collective bargaining agreement negotiated under the Railway Labor Act are deemed to comply with the Davis-Bacon Act.

Sec. 24313. Rail safety system program

Amtrak shall maintain a rail safety system program in consultation with rail labor organizations.

[Sec. 24314 (Demonstration of new technology) repealed by Section 404 of ARAA]

Sec. 24315. Reports and audits

- (a) AMTRAK ANNUAL OPERATIONS REPORT—By February 15 of each year Amtrak shall submit to Congress a report that provides specified information (e.g., ridership, passenger miles, revenue-to-cost ratios, and subsidies) for each route on which Amtrak provided intercity rail passenger transportation.
- (b) AMTRAK GENERAL AND LEGISLATIVE ANNUAL REPORT—By February 15, Amtrak shall submit to the President and Congress a complete report of its operations, activities and accomplishments.
- (c) SECRETARY'S REPORT ON EFFECTIVENESS OF THIS PART—The Secretary of Transportation shall include in his annual report a report on the effectiveness of this part in meeting the requirements for a balanced transportation system in the U.S.
- (d) INDEPENDENT AUDITS—An independent CPA shall audit the financial statements of Amtrak each year.
- (e) COMPTROLLER GENERAL AUDITS—The Comptroller General may conduct performance audits of the activities and transactions of Amtrak.
- (f) AVAILABILITY OF RECORDS AND PROPERTY OF AMTRAK AND RAIL CARRIERS—Amtrak and rail carriers with which Amtrak has a contract shall make available all records and property necessary for an audit under subsections (d) and (e).
- (g) COMPTROLLER GENERAL'S REPORT TO CONGRESS—The Comptroller General shall submit to Congress a report on each audit, giving comments, information and recommendations and specifying any financial transaction or undertaking he considers is carried out without authority of law.
- (h) *ACCESS TO RECORDS AND ACCOUNTS*—A State shall have access to any records used to determine the amount of any payment to Amtrak by the State.

[Chapter 245 (Amtrak Commuter) repealed by Section 106(a) of ARAA. N.B. The Amtrak Commuter provisions, as adopted in 1981, authorized Amtrak to establish a separate subsidiary to conduct commuter operations. The Amtrak Commuter provisions were never used.]

CHAPTER 247—AMTRAK ROUTE SYSTEM

24701. National rail passenger transportation system

Amtrak shall operate a national rail passenger system which ties together existing and emergent regional rail passenger service and other intermodal passenger service. [N.B. Amtrak notes that Public Law No. 97-102 (the Department of Transportation and Related Agencies Appropriation Act, 1982) provided that “notwithstanding any other provision of law, [Amtrak] shall provide through rail passenger service between Washington, D.C. and Chicago, via Cincinnati.” Amtrak further notes that this provision has not been specifically repealed.]

[Section 24702. (Improving rail passenger transportation) repealed by Section 101(b) of ARAA]

[Section 24703. (Route and service criteria) repealed by Section 103 of ARAA]

[Section 24704. (Transportation requested by States, authorities, and other persons) repealed by Section 105(a) of ARAA.]

(N.B. Section 24704 codified the section of the RPSA, formerly known as 403(b), that defined a minimum cost-sharing arrangement between Amtrak and state or local governments that requested passenger services that were supplemental to those provided by Amtrak as part of the basic system. Under the ARAA, Amtrak is free to negotiate any form of cost-sharing arrangements it wishes, and in fact has been doing for some time; see Summary Report, Office Of Inspector General, U.S. DOT (November 23, 1998) at 17, n11)]

[Section 24705. (Additional qualifying routes) repealed by Section 104 of ARAA]

Sec. 24706. Discontinuance

Amtrak shall give notice at least 180 days before a discontinuance under Section 24704 [repealed, see above] or discontinuing service over a route. [N.B. The former provision required 90 days’ notice.] The notice shall be given in the way Amtrak decides will give a State, a regional or local authority, or another person the opportunity to agree to share or assume the cost of any part of the train, route, or service to be discontinued. Amtrak may discontinue service during the first month of any fiscal year if appropriations are not enacted at least 90 days before the beginning of the fiscal year and the 30 days following enactment of an appropriation or rescission of an appropriation.

[Section 24707. (Cost and performance review) repealed by Section 101(d) of ARAA]

[Sec. 24708. (Special commuter transportation) repealed by Section 101(e) of ARAA]

(N.B. Sec. 24708 provided for an obligation of Amtrak to operate what were formerly known as “ Section 403(d) “ trains, which were certain Northeast Corridor trains (“Clocker Service”))

Sec. 24709. International transportation

Amtrak may develop and operate international intercity rail passenger transportation between the U.S. and Canada and Mexico. The Secretary of the Treasury and Attorney General, in cooperation with Amtrak, shall maintain en route customs inspection and immigration procedures.

CHAPTER 249 – NORTHEAST CORRIDOR IMPROVEMENT PROGRAM

Sec. 24902. Goals and requirements

- (a) **MANAGING COSTS AND REVENUES**—Amtrak shall operate with the goal of having revenues derived each year from providing intercity passenger service over the NEC route between the District of Columbia and Boston equal at least the operating costs for the service.
- (b) **PRIORITIES IN SELECTING AND SCHEDULING PROJECTS**— provides a list of priorities (e.g., safety-related items first) that Amtrak should apply for projects over the NEC.
- (c) **COMPATIBILITY WITH FUTURE IMPROVEMENTS AND PRODUCTION OF MAXIMUM LABOR BENEFITS**— Improvements under this section shall be compatible with future improvements in transportation.
- (d) **AUTOMATIC TRAIN CONTROL SYSTEMS**—A train operating on the NEC main line or between the main line and Atlantic City shall be equipped with an automatic train control system designed to slow or stop the train in response to an external signal.
- (e) **HIGH-SPEED TRANSPORTATION**—If practicable, Amtrak shall establish intercity rail transportation in the NEC that carries out Section 703(1)(E) of 4-R Act of 1976. [N.B. Section 703(1) (E) established certain “required goals” of the NEC improvement project, including trip times between Boston-New York of 3 hours and 40 minutes and between New

- York-Washington, D.C. of 2 hours and 40 minutes. That section also required a report on the feasibility of a 3 hour Boston-New York schedule and a 2 ½ hour New York-Washington schedule.]
- (f) EQUIPMENT DEVELOPMENT—Amtrak shall develop economical and reliable equipment suitable for the NEC.
 - (g) AGREEMENTS FOR OFF-CORRIDOR ROUTING OF RAIL FREIGHT TRANSPORTATION--- Amtrak may make agreements with a rail freight carrier or regional transportation authority under which the carrier will carry out an alternative off-corridor routing of freight traffic between the District of Columbia and New York metropolitan areas. Amtrak shall apply to the ICC for approval of the agreement. If an agreement is not made, Amtrak, with the consent of the other parties, may apply to the ICC to decide the terms of the agreement.
 - (h) COORDINATION—The Secretary of Transportation shall coordinate transportation programs related to the NEC and amounts from the Government to achieve urban redevelopment in the vicinity of urban rail stations on NEC.
 - (i) COMPLETION—Amtrak shall give highest priority to completing the program.
 - (j) APPLICABLE PROCEDURES— No State or local building, zoning, or similar or related law shall apply to any improvement or mortgage of improvement made by or for the benefit of Amtrak. This subsection shall not apply to any improvement or related land unless Amtrak receives a federal operating subsidy in the fiscal year in which the improvement is initiated.

[Section 24903. (Program master plan for Boston-New York main line) repealed by Section 405(a) of ARAA]

Sec. 24904. General authority

- (a) GENERAL—to carry out this chapter and the Regional Rail Reorganization Act of 1973, Amtrak may acquire and dispose of property; acquire property by condemnation; provide for rail freight, intercity rail passenger and commuter operations over property acquired; make improvements to rights of way over the NEC; and make agreements with other carriers and commuter authorities to grant, acquire or make arrangements for rail freight and commuter operations over the NEC.
- (b) COMPENSATORY AGREEMENTS—Rail freight and commuter agreements must be compensatory.
- (c) COMPENSATION FOR TRANSPORTATION OVER CERTAIN RIGHTS OF WAY AND FACILITIES—An agreement with freight carriers and commuter authorities under subsection (a) shall provide for

reasonable reimbursement of costs but may not cross-subsidize intercity rail passenger, commuter rail passenger, and rail freight transportation. If the parties do not agree, the ICC shall order that transportation continues over facilities acquired under the 3R and 4R Acts (the NEC) and shall establish reasonable compensation. The ICC shall assign to a rail freight carrier the costs Amtrak incurs only for the benefit of the carrier, plus a proportionate share of all other costs incurred for the common benefit of Amtrak and the carrier.

Sec. 24905. Coordination board and safety committee

Establishes a Northeast Corridor Coordination Board (composed of representatives of commuter authorities, Amtrak and Conrail) and a Safety Committee (composed of representatives of DOT, Amtrak, freight carriers, commuter agencies, rail passengers and rail labor) to ensure equitable access to the NEC and recommend safety improvements to the NEC.

Sec. 24906. Eliminating highway at-grade crossings

In consultation with States on the main line of the NEC, the Secretary of Transportation shall develop a plan not later than September 30, 1993, to eliminate, as far as practical and necessary, all highway at-grade crossings on the main line by December 31, 1997. Amtrak shall pay 20 percent of the costs of eliminating each highway at-grade crossing under the plan.

Sec. 24907. Note and mortgage

To secure amounts expended by the U.S. Government to acquire and improve property in the NEC, the Secretary of Transportation may obtain a note of indebtedness from, and may make a mortgage agreement with, Amtrak to establish a mortgage lien on the property for the Government. [N.B. The U.S. Government currently holds a note from Amtrak for about \$3.8 billion in debt, which matures on December 31, 2975, and is secured by a mortgage on Amtrak's real property, primarily on the NEC and in the Midwest. (The USG also holds a second note from Amtrak in the amount of about \$1.1 billion, which is secured by a lien on Amtrak's rolling stock; this lien was subsequently subordinated to the security interests of Amtrak's equipment creditors.) See March 1998 GAO Report, Intercity Passenger Rail. Issues Associated With a Possible Amtrak Liquidation at 14.]

Sec. 24908. Transfer taxes and levies and recording charges

A transfer of interest of property under this chapter is exempt from Federal, state, or local taxes.

Sec. 24909. Authorization of appropriations

Contains various provisions pre-dating the ARAA providing authorization of appropriations for Amtrak and specifying specific projects (e.g., “automate the Bush River Drawbridge at milepost 72.14”) that the amounts authorized are to be used for.

CHAPTER 261—HIGH-SPEED RAIL ASSISTANCE

Sec. 26101. Corridor Planning

Provides that the Secretary of Transportation may provide up to 50 percent of financial assistance to public agencies for high-speed rail corridor planning. No less than 20 percent of the publicly financed costs shall come from state and local sources. The section contains specific criteria for determining financial assistance, including the extent to which the proposed planning focuses on systems which will achieve sustained speeds of 125 mph or more, the integration of the corridor into metropolitan area and statewide transportation planning, the potential interconnection of the corridor with other parts of the Nation’s transportation system, and estimated level of ridership and capital cost of corridor improvements.

Sec. 26104. Authorization of appropriations

Provides for appropriation authorizations through Fiscal Year 2001 for carrying out Sec. 26101.

CHAPTER 281—LAW ENFORCEMENT

Sec. 28102. Limit on certain accident or incident liability

When a publicly financed Virginia commuter authority makes a contract to indemnify Amtrak for liability for operations conducted by or for the authority or to indemnify a rail carrier over whose tracks the operations are conducted, liability against Amtrak, the carrier or authority for all claims (including punitive damages) arising from an accident or incident in the District of Columbia may not be more than the limits of the liability coverage (minimum of \$200,000,000) the authority

maintains to indemnify Amtrak or the carrier. The section is effective only after Amtrak or a rail carrier makes an operating agreement with the Virginia commuter transportation authority to provide access to its property.

Sec. 28103. Limitations on rail passenger transportation liability

In a claim for personal injury or death of a passenger, or for damage to property of a passenger arising in connection with the provision of rail passenger transportation over right of way or facilities, owned leased or maintained by any high-speed railroad authority or operator, any commuter authority or operator, any rail carrier or any State, punitive damages, to the extent permitted by state law, may be awarded only if the plaintiff establishes that the harm was the result of conduct carried out by the defendant with a conscious, flagrant indifference to the rights or safety of others. This paragraph shall not apply in a case involving death if the applicable law provides only for punitive damages. The aggregate allowable awards to all rail passengers, against all defendants, for all claims, including claims for punitive damages, shall not exceed \$200,000,000. A provider of rail passenger transportation may enter into contracts that allocate financial responsibility for claims. Amtrak shall maintain a total minimum liability coverage through insurance or self-insurance of at least \$200,000,000 per accident or incident.

II. PROVISIONS OF THE AMTRAK REFORM AND ACCOUNTABILITY ACT OF 1997, P.L. 105-134 (DECEMBER 2, 1997) APPLICABLE TO AMTRAK (PROVISIONS NOT AMENDING TITLE 49, U.S.C.)

A. SECTION 2. FINDINGS

This section sets forth eleven findings reflecting, among other items, the importance of intercity rail passenger transportation to a national intermodal passenger transportation system; Amtrak's financial crisis; the need for immediate action if Amtrak is to survive; Amtrak's need for additional flexibility to operate in a businesslike manner; the need for Amtrak and its employees to modify collective bargaining agreements to make more efficient use of manpower and to realize cost savings; that Amtrak's Strategic Business Plan calls for the establishment of a dedicated source of capital funding; and that Federal financial assistance to cover operating losses should be eliminated by the year 2002.

TITLE I—REFORMS

SUBTITLE A—OPERATIONAL REFORMS

Sec. 106. Amtrak Commuter

(c) The subsection provides that the repeal of chapter 245 (Amtrak Commuter) by subsection 106(a) of the ARAA is without prejudice to the retention of trackage rights by Amtrak or Conrail over property owned or leased by commuter authorities.

SEC. 108. Rail And Motor Carrier Passenger Service

Amtrak and motor carriers of passengers are authorized to combine or package their services and coordinate schedules and ticketing. The authority is subject to review by the STB and can be modified or revoked by the STB in the public interest.

SEC. 109. Passenger Choice

Federal employees are authorized to travel on Amtrak for official business where travel cost is competitive.

SEC. 110. Application Of Certain Laws

(b) This subsection provides that Section 303B(m) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253b(m)) (prohibition on release of contractor proposals seeking to do business with a federal entity) applies to a proposal in the possession or control of Amtrak.

SEC. 121. Contracting Out

- (a) REPEAL ON BAN ON CONTRACTING OUT.-- —This subsection repealed the statutory ban on Amtrak contracting out non-food services set forth in former 49 U.S.C. 24312 where any loss of employment to Amtrak employees would result.
- (b) AMENDMENT OF EXISTING COLLECTIVE BARGAINING AGREEMENT—
- (1) CONTRACTING OUT.-- Section 121(b) provides that any collective bargaining agreement between Amtrak and its employees entered into before December 2, 1997 is deemed amended to include the statutory language of the contracting out ban as it existed before repealed by the ARAA. The amendment is binding on all parties and has the same effect as if arrived at by agreement under the Railway Labor Act.
- (c) CONTRACTING-OUT ISSUES TO BE INCLUDED IN NEGOTIATIONS—This subsection provides that proposals on the subject matter of contracting out work, other than food or beverage service—
- (1) shall be included in negotiations under Section 6 of the RLA between Amtrak and an organization representing Amtrak employees, which shall be commenced by: (A) the date on which labor agreements under negotiation on December 2, 1997 may be reopened; or (B) November 1, 1999, whichever is earlier;
- (2) may by mutual agreement be included in any negotiations in progress on December 2, 1997;
- (3) may not be included in any negotiation in progress on December 2, 1997 unless both Amtrak and the organization representing Amtrak employees agree to include it.
- No contract that is under negotiation on December 2, 1997 may contain a moratorium that extends more than five years from the date of expiration of the last moratorium.
- (d) The repeal of the contracting out provision is without prejudice to the power of Amtrak to contract out the provision of food and beverage services on board Amtrak trains or to contract out work not resulting in the layoff of Amtrak employees.

[N.B. Under the RLA, collective bargaining agreement provisions, such as the ban on contracting out (except for food and beverage services) inserted in Amtrak collective bargaining agreements pursuant to subsection 121(b)(1), continue in force until modified by subsequent collective bargaining agreements (or through resort to self-help measures (e.g. strikes, lockouts) after the parties' collective bargaining responsibilities under the RLA have been fully exhausted.) Amtrak served written Section 6 notices on Amtrak union representatives under the RLA to commence negotiations on contracting out proposals on June 12, 2000. Subsection 121(c) contains no requirement that Amtrak and union representatives make any specific substantive changes in the ban on contracting out, nor does it contain any deadlines as to when negotiations on contracting-out proposals must be concluded. The ban on contracting out (except for food and beverage services) thus continues to be a part of Amtrak's collective bargaining agreements until changed by the parties under the provisions of the RLA and can remain in effect indefinitely under the current provisions of subsection 121(c).]

SUBTITLE C---EMPLOYEE PROTECTION REFORMS

SEC. 141. Railway Labor Act Procedures

- (a) **NOTICES**—This subsection provides that notwithstanding any arrangement in effect prior to December 2, 1997, notices under Section 6 of the RLA with respect to all issues relating to employee protective arrangements and severance benefits which are applicable to Amtrak employees (including the Appendix C-2 provisions to the National Railroad Passenger Corporation Agreement signed July 4, 1973 [which provisions provide for up to six years of income protection for Amtrak employees who are dismissed or displaced as a result of Amtrak route discontinuances or closure or transfer of shop-work]) shall be deemed served and effective 45 days from December 2, 1997. Amtrak and affected labor organizations shall promptly supply proposals with respect to each notice.
- (b) **NATIONAL MEDIATION BOARD EFFORTS**—Except as provided in subsection (c), the NMB shall complete all efforts with respect to the dispute described in subsection (a) within 120 days of December 2, 1997.
- (c) **RAILWAY LABOR ACT ARBITRATION**—The parties may agree to submit the dispute to arbitration under Section 7 of the RLA not later than 120 days after December 2, 1997.
- (d) **DISPUTE RESOLUTION**—A dispute which is unresolved 120 days after December 2, 1997 and which is not submitted to arbitration under subsection (c) shall be submitted to the NMB for recommendations for

contract terms. If the parties fail to reach agreement, no change shall be made by the parties in the conditions out of which the dispute arose for 30 days. The provisions of Section 10 of the RLA pertaining to appointment of a Presidential Emergency Board shall not apply to a dispute described in subsection (a); the parties may employ self-help measures (e.g., strikes or lockouts) to resolve the dispute.

SEC. 142. Service Discontinuance

- (a) REPEAL—This subsection repealed the statutory employee protection provisions in former Section 24706(c) of the RPSA. These provisions (which incorporated the Appendix C-2 conditions) provided up to six years of income protection and other benefits to Amtrak employees who lose their jobs or are otherwise adversely affected by a discontinuance or reduction in frequency below 3 round-trips per week of intercity passenger rail service over a route or to shop employees who are adversely affected by a shop closure or transfer of shop work.
- (b) EXISTING CONTRACTS— Subsection (b) provides that any provision of a contract entered into before December 2, 1997 between Amtrak and a labor organization representing Amtrak employees relating to employee protective arrangements and severance benefits is extinguished, including provisions of Appendix C-2 (which specified the employee protective arrangements applicable to Amtrak employees).
- (c) SPECIAL EFFECTIVE DATE—Subsections (a) and (b) shall take effect 180 days from December 2, 1997 [(June 1, 1998)].
- (d) NONAPPLICATION OF BANKRUPTCY LAW PROVISION—Section 1172(c) of title 11 of the U.S.C. (requiring the STB, in approving an application under a proposed plan of reorganization of a rail carrier under the bankruptcy law, to require employee protective arrangements as provided under 49 U.S.C. 11347) shall not apply to Amtrak employees.

[N.B. This section of the ARAA (effective as of June 1, 1998) removed all statutory employee protection provisions covering Amtrak employees and also removed all Amtrak employee protection provisions from existing collective bargaining agreements. Instead, the ARAA (Section 141) required Amtrak and its employees to either negotiate new provisions in collective bargaining agreements or to submit the issue of employee protective provisions to binding arbitration (which award would be retroactive to April 1, 1998). Amtrak and Amtrak unions opted to submit labor protection issues to binding arbitration.

In a decision issued November 1, 1999, the 3-member arbitration board selected by the parties modified the pre-existing employee protective provisions.

The “triggers” for the imposition of employee protective benefits for affected employees remained the same: (1) discontinuance of intercity rail passenger service on a route or a reduction in frequency below 3 round trips per week; or, as affects shop employees, (2) closure of a maintenance shop facility or transfer of work from the facility to another facility more than 30 miles away.

The amount of employee protection provided to affected employees was modified (as regards major aspects) as follows:

- (1) Under pre-existing law, any affected Amtrak employee was entitled to wage and benefit protection for a period equal to the amount of service, not to exceed 6 years; under the arbitration award, an Amtrak employee must have two years of service with Amtrak to be awarded protection.
- (2) The maximum duration of employee protective benefits was reduced from 6 years to 5 years, and employees must have greater years of service on a sliding scale to reach maximum benefits. For example, an employee with 3-5 years of service would receive 12 months’ benefits; an employee with 10-15 years of service would receive 24 months’ benefits; an employee with 20-25 years of service would receive 48 months’ benefits; and an employee with 25 or more years of service would receive the maximum 5 years’ benefits. (According to Amtrak, approximately 20 percent of current Amtrak employees eligible for labor protection have more than 20 years of service and would be entitled to 4-5 years of income protection for a “trigger occurrence” if unable to exercise seniority.)
- (3) No labor protection would be required for the first two years of any new service commenced after the arbitration. The arbitration panel found that labor protection did not apply to commuter contracts.

The issue of whether labor protection would apply to the termination of Amtrak contracts for local or state (non-commuter) service was not decided by the arbitration panel. The issue was remanded for further negotiation and re-submission to arbitration if there is no agreement.

The parties are free to negotiate amendments to the arbitration award commencing January 1, 2000.]

TITLE II—FISCAL ACCOUNTABILITY

Sec. 202. Independent Assessment

This section provides for independent assessment of Amtrak's financial requirements through fiscal year 2002 under oversight of the DOT Inspector General. The Report was submitted to Congress on November 23, 1998.

Sec. 203. Amtrak Reform Council

This section provides for establishment of the Amtrak Reform Council (ARC) as an independent commission of 11 members. The duties of the ARC are to (A) evaluate Amtrak's performance; (B) make recommendations to Amtrak for achieving further cost containment and productivity improvements and financial reforms; and (C) identify Amtrak routes which are candidates for closure or realignment, based on performance ranking developed by Amtrak [(N.B. Requirement (C) was added by Section 349 of the Fiscal Year 1999 Omnibus Appropriations Act and continued in Sec. 331 of the Fiscal Year 2000 Omnibus Appropriations Act)]. If after January 1, 1997 Amtrak enters into an agreement involving work-rules intended to achieve savings with an organization representing Amtrak employees, Amtrak shall report quarterly to the ARC: (A) the saving realized as a result of the agreement; and (B) how the savings are allocated. Each year before December 2, 2002, ARC shall submit a report to Congress that includes an assessment of: (1) Amtrak's progress on the resolution of productivity issues; (2) the status of those productivity issues; (3) Amtrak routes which are candidates for closure or realignment; and (4) recommendations for improvements and for any changes in the law it believes to be necessary or appropriate.

Sec. 204. Sunset Trigger

If at any time more than two years after December 2, 1997, and implementation of the financial plan referred to in Section 24101(d), ARC finds that: (1) Amtrak's business performance will prevent it from meeting the financial goals set forth in Section 24101(d); or (2) Amtrak will require operating grant funds after December 2, 2002, ARC shall immediately notify the President and Congress. In making such a finding, ARC shall take into account (1) Amtrak's performance; (2) the findings of the independent assessment conducted under section 202; (3) the level of Federal funds made available for carrying out the financial plan referred to in 49 U.S.C. 24101(d); and (4) acts of God, national emergencies and other events beyond the reasonable control of Amtrak. Within 90 days after ARC makes a finding: (1) it shall develop and submit to Congress an action plan for a restructured and rationalized national intercity rail passenger

system; and (2) Amtrak shall submit a plan for the complete liquidation of Amtrak.

Sec 205. Senate Procedure for Consideration of Restructuring and Liquidation Plans

This section provides for Senate procedures for considering a restructuring proposal or liquidation disapproval resolution relating to Amtrak.

Sec. 209. Limitation on Use of Tax Refund

Amtrak may not use any amount received under Section 977 of the Taxpayer Relief Act (TRA) of 1997: (1) for any purpose other than making payments to non-Amtrak States (pursuant to Sec. 977(c)), or the financing of qualified expenses (as defined by Sec. 977(e)(1)); or (2) to offset other amounts used for any purpose other than the financing of such expenses. ARC shall report quarterly to Congress on the use of amounts received by Amtrak under Section 977.

[N.B. Under the TRA, Amtrak was treated as entitled to apply its tax carrybacks against the income tax paid by its railroad predecessors of approximately \$2.3 billion and to claim the \$2.3 billion amount as a tax refund. The TRA defines the term “qualified expenses” as expenses incurred for “(i) the acquisition of equipment, rolling stock, and other capital improvements, the upgrading of maintenance facilities, and the maintenance of existing equipment, in intercity passenger service and (ii) the payment of interest and principal on obligations incurred for such acquisition, upgrading, and maintenance.”]

Sec. 301(b). Amtrak Reform Legislation

This section provides that the ARAA constitutes Amtrak reform legislation within the meaning of Section 977 of TRA (release of funds under the TRA was made contingent on passage of Amtrak reform legislation).

Sec. 406(a). Americans with Disabilities (ADA)

Specifies certain applications of the ADA to Amtrak.

Sec. 408. Northeast Corridor Cost Dispute

This section provides that Section 1163 of the Northeast Rail Service Act of 1981 (NERSA) (45 U.S.C. 1111) is repealed. (Section 1111 provided that the ICC would determine an appropriate costing methodology for compensation to Amtrak for right-of-way related costs for the operation of commuter rail passenger service

on the NEC unless Conrail, Amtrak, and affected commuter authorities otherwise agree on a methodology. The repeal was not intended to affect the basis currently used by Amtrak, commuter authorities and freight railroads for future negotiation of cost-sharing agreements on the NEC.)

Sec. 409. Inspector General Act of 1978 Amendment

This section provides that Amtrak shall not be considered a Federal entity for purposes of the Inspector General Act for any fiscal year in which Amtrak receives no Federal subsidy. In any fiscal year in which Amtrak requests Federal assistance, the DOT Inspector General shall review Amtrak's operations and conduct an assessment similar to the assessment required by Section 202(a) of ARAA. The results of the assessment shall be submitted to Amtrak and Congress.

Sec. 410. Interstate Rail Compacts

Pursuant to this section Congress grants advance consent to States to enter into interstate compacts for intercity passenger rail service, including (1) retaining an existing service or commencing a new service; (2) assembling rights of way; and (3) performing capital improvements. The interstate compacts may also provide for means of financing the carrying-out of the compact.

Sec. 412. Educational Participation

This section provides that Amtrak shall participate in educational efforts to inform students on advantages of rail travel and need for rail safety.

Sec. 413. Report to Congress on Amtrak Bankruptcy

This section requires that, by April 1, 1998, the Comptroller General shall submit a report identifying financial and other issues associated with Amtrak bankruptcy to Congress. The report shall include an analysis of the implications of such a bankruptcy on the Federal Government, Amtrak's creditors, and the Railroad Retirement System. (The report was submitted by GAO in March 1998).

Sec. 414. Amtrak to Notify Congress of Lobbying Relationships

This section provided that if at any time during a fiscal year in which Amtrak receives Federal assistance it enters into a consulting contract or contract for lobbying with a lobbying firm or with a lobbyist, Amtrak must disclose to Congress the name of the party, the purpose of the contract, and Amtrak's financial obligation under the contract.

Sec. 415(b). Redemption of Common Stock

This section provides that Amtrak shall, before October 1, 2002, redeem all common stock previously issued, for fair market value.

Sec. 415(c). Elimination of Liquidation Preference and Voting Rights of Preferred Stock

This section provides that the preferred stock held by the Secretary of Transportation shall confer no liquidation preference and shall confer no voting rights. [N.B. Under prior law, the preferred stock conferred a liquidation preference, and until the changes made in the Board of Director provisions by the ARAA, had voting rights in electing a specified number of members of the Amtrak Board of Directors.]

Sec. 415(d). Status and Applicable Laws

This section provides that Section 9101(2) of title 31 of the United States Code, relating to Government Corporations, is amended by striking Amtrak from the list of mixed ownership Government corporations. (Amtrak was made not subject to Title 31.)

III. THE TAXPAYER RELIEF ACT OF 1997 (TRA) (SEC. 977 OF PUB. L. 105-34)

Under the Taxpayer Relief Act of 1997, Amtrak was treated as entitled to apply its tax carrybacks against the income tax paid by its railroad predecessors of approximately \$2.3 billion, which it was allowed to claim as a tax refund. The TRA funds were made contingent on the passage of “Amtrak reform legislation.” Sec. 977(f)(1). The ARAA (sec. 301(b)) expressly provides that it is to be considered Amtrak reform legislation within the meaning of the TRA.

Amtrak may use funds provided under the TRA only for “qualified expenses.” Qualified expenses include “the acquisition of equipment, rolling stock, and other capital improvements, the upgrading of maintenance facilities, and the maintenance of existing equipment, in intercity passenger rail service” and “the payment of interest and principal on obligations incurred for such acquisition, upgrading, and maintenance” after September 30, 1997. Amtrak must also use TRA funds to make certain payments to non-Amtrak states, which the states may use for defined expenses related to intercity rail passenger or bus service. Sec. 977(e)(1). The net funds made available to Amtrak under the TRA after payments to non-Amtrak states totaled approximately \$2.184 billion.

Under the ARAA (Sec. 209(b)), the ARC is responsible for monitoring Amtrak’s use of TRA funds and must report quarterly to the Congress on Amtrak’s use of such funds. Congress also requested the General Accounting Office to conduct a review of Amtrak’s TRA expenditures. The GAO’s report was issued in February 2000.

IV. THE RAILROAD RETIREMENT ACT OF 1974 (45 U.S.C. 231 ET SEQ.)

Unlike all other industries in the United States, rail carriers who engage in the interstate transportation of freight or passengers are covered under the provisions of the Railroad Retirement Act rather than the Social Security Act with respect to retirement benefits payable to their employees. The Social Security Act (also originally enacted in 1935), 42 U.S.C. 1301 et seq., is not as generous in its benefits as the Railroad Retirement Act or as costly to employers (and employees) with respect to taxes necessary to fund the system. Employer retirement tax costs under the Railroad Retirement System for the average employee of a major (Class I) railroad (average wage approximately \$56,000) are approximately three times higher (\$13,300 v. \$4,284) than for employers covered under social security with respect to an employee earning the same wage (1999 figures used). See also, 1992 GAO Report, Railroad Competitiveness (GAO/RCED-92-16) at 15-16 (railroad employer retirement tax costs approximately three times higher than other private industries). The Railroad Retirement System is administered by the Railroad Retirement Board, not the Social Security Administration.

Amtrak, as an interstate carrier of passengers, has been subject to the Railroad Retirement Act since its inception. 49 U.S.C. 24301, as amended by the ARAA, specifically provides that “Amtrak shall continue to be considered an employer under the Railroad Retirement Act...”

The Railroad Retirement System is funded on an industry-wide “pay-as-you-go” basis through payroll taxes levied on all employers and employees who are covered under the system. The taxes recovered under the system are pooled and used to fund the benefits payable to all industry employees who have retired or will retire and are eligible for benefits under the system.

The Railroad Retirement System has two components with respect to benefits and taxes: a social security equivalent benefit component (Tier I) and a pension component (Tier II). (The Railroad Retirement System also provides other benefits to railroad employees that are not available under social security; e.g., different eligibility requirements, an earlier retirement age and other payments.)

The Tier I component is equal to the benefit that would be payable to the beneficiary if the employee had been covered under the Social Security Act. Tier I benefits are funded by payroll taxes levied on employers and employees in the same amount as under the Social Security Act. The employer and employee each pay 6.2 percent on wages up to \$76,200 and 1.45 percent on all wages, with no cap.

Tier II benefits have no counterpart under the Social Security Act and are essentially a form of private pension system. Tier II benefits are financed through payroll taxes levied on employers (16.1 percent on wages up to a \$56,700 limit) and employees (4.9 percent on wages up to the same limit) in addition to the taxes imposed for Tier I benefits.

The fact that the Railroad Retirement System is a pooled system has given rise to special federal appropriations to Amtrak (“mandatory payments”) that by law have not been considered a “United States Government subsidy of Amtrak.” See RPSA, sec 24104. These “mandatory payments” represent Railroad Retirement tax liabilities to Amtrak under Sec. 3221 of the Internal Revenue Code that are used to pay the Tier II benefits of non-Amtrak beneficiaries – so-called “excess” payments. Amtrak has successfully argued in seeking federal assistance that it should not be held accountable for these “excess” payments for subsidy purposes because they are beyond what Amtrak would owe to its own present and future retirees and represent amounts that would go to retirees of other railroads, as well as to people who retired from railroads that went bankrupt in the past. Because of the large downsizing of the freight industry over the last decades, these “excess payments” are considerable (\$ 142 million in FY1998 as calculated by Amtrak).

[N.B. In calculating its estimated “mandatory payments” for budget purposes, Amtrak includes not only the employer but also the employee portions of Tier II Railroad Retirement tax contributions as “excess” payments by Amtrak that should be federally funded without being called an operating subsidy to Amtrak. Amtrak also omits to include certain Tier II Railroad Retirement benefits payable to Amtrak beneficiaries in its calculations. Amtrak, however, contends that it calculates the amount of “mandatory payments” using a consistent methodology that is in accord with Congressional direction. Congress has not taken issue with Amtrak’s methodology.]

V. THE RAILROAD UNEMPLOYMENT INSURANCE ACT (45 U.S.C. 351 ET SEQ.)

Unlike other industries in the United States, the railroad industry is subject to the Railroad Unemployment Insurance Act (RUIA), rather than state unemployment insurance statutory regimes with respect to unemployment benefits and taxes. Under the RPSA, Amtrak is considered an employer under RUIA. The benefits payable under RUIA are calculated differently than under the varying state laws. Because unemployment payments under RUIA are experience-based and vary by employer, the ARAA does not include RUIA taxes and benefits as an “excess payments” issue requiring federal funding.

VI. THE RAILWAY LABOR ACT (45 U.S.C. 151 ET SEQ.)

The Railway Labor Act (RLA) governs labor relations in the railroad and airline industries. Labor relations in other industries are generally governed by the provisions of the National Labor Relations Act (NLRA). Amtrak is subject to the RLA pursuant to 49 U.S.C.24301.

The basic purposes of the RLA are: (1) to avoid any interruption to interstate commerce; (2) to ensure the right of railroad employees to join a labor organization; (3) to provide for the complete independence of carriers and employees with respect to self-organization; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions (“major disputes”); and (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements (“minor disputes”).

Under the RLA, either side must provide 30 days’ written notice (“Section 6 notice”) of any intended change in an agreement. No carrier may change the rates of pay, rules, or working conditions in existing agreements except as provided in existing agreements or pursuant to Section 6 notice procedures. Within 10 days of the receipt of Section 6 notice, both sides must agree on a time and place for negotiation. Terms of agreements remain in force until changed in accordance with RLA procedures.

Under the RLA, minor disputes that cannot be resolved by negotiation or through “on property” grievance procedures are resolved through compulsory arbitration (by the standing National Railroad Adjustment Board or public law boards on local properties). There is no right to self-help (e.g., resort to strikes or lockouts) to resolve minor disputes.

The RLA contains elaborate and time-consuming procedures to resolve major disputes, with the main emphasis on avoiding interruptions to interstate commerce as a result of self-help measures. For major disputes that cannot be resolved through collective bargaining, the RLA created a 3-member National Mediation Board to mediate disputes by request of either party or on the Board’s own motion. If the NMB fails to get the parties to agree (there is no time limit on the mediation procedure) and declares an impasse, it must proffer voluntary arbitration. If the parties do not agree to arbitration, and in the opinion of the NMB the controversy threatens substantially to interrupt interstate commerce, the NMB is required to notify the President. The President is empowered to appoint a neutral Presidential Emergency Board (PEB) to make an investigation and submit a report within 30 days.

After the PEB has issued its report and recommendations, the parties are required to maintain the status quo for a period of 30 days. If no agreement is reached within 30 days, either side is free to resort to self-help measures (e.g., a strike by unions or unilateral imposition of management proposals or a lockout) to resolve the dispute. The President may also request emergency legislation, or Congress may act on its own, to resolve the dispute.

VII. THE FEDERAL EMPLOYERS' LIABILITY ACT (45 U.S.C. 51 ET SEQ.)

Unlike most American workers, railroad workers are not covered by state no-fault workers' compensation insurance systems when they are injured on the job. Instead, railroad workers must recover their losses under the provisions of the Federal Employers' Liability Act (FELA). FELA was enacted in 1908 (prior to adoption of states workers' compensation laws), at a time when railroads were the nation's largest employer and rail work was especially hazardous.

Under FELA, an injured worker negotiates a settlement with the railroad employer. If the negotiations fail, the worker may file a lawsuit alleging negligence by the employer to recover losses. No-fault systems do not require that the employee demonstrate negligence. FELA allows workers to seek recovery for economic damage (such as lost wages) and noneconomic damages (such as pain and suffering). Workers' compensation systems typically limit recovery to economic losses.

FELA has been criticized because, among other things, the need to demonstrate negligence creates an adversarial relationship between management and labor. FELA can also promote excessive and costly litigation, with a significant percentage of the recovery going to the employees' lawyers. It can also result in no recovery for the worker. See, generally, GAO Report, Federal Employers' Liability Act, Issues Associated With Changing How Railroad Work-Related Injuries Are Compensated (August 1996).

FELA is applicable to Amtrak pursuant to 49 U.S.C. 24301.

VIII. THE DISTRICT OF COLUMBIA BUSINESS CORPORATION ACT

Amtrak is subject to the District of Columbia Business Corporation Act (D.C. Code Sec. 29-301 et seq.) to the extent consistent with the provisions of the RPSA. 49 U.S.C. 24301(e). The D.C Corporation Act contains certain requirements applicable to Amtrak's capital structure and other corporate functions. The D.C. Corporation Act also contains requirements that Amtrak must comply with in order to amend its Charter (in the absence of overriding federal legislation). Amtrak's principal office and place of business must be located in the District of Columbia. 49 U.S.C. 24301(b).

Under Section 415(b) of the ARAA, Amtrak is required to redeem its outstanding common stock at fair market value by October 1, 2002. Under Amtrak's corporate Charter (Articles of Incorporation), Amtrak is required to pay all accrued and unpaid dividends on outstanding preferred stock before it may redeem its common stock. (There is currently approximately \$6 billion in accrued preferred dividends outstanding.) Under provisions of the FY 1999 Transportation Appropriations Act, DOT is authorized to sell the preferred stock back to Amtrak for such consideration, as the DOT Secretary deems appropriate. DOT also has the current right under Amtrak's Charter to convert the preferred shares to common stock. (According to Amtrak, DOT could obtain only 614,000 common shares, which is the only portion of the 10 million authorized common shares not already outstanding.) Amtrak also has various options under provisions of the D.C. Corporation Act to redeem the common stock, including through amending its Charter (which in the absence of overriding federal legislation would require approval of Amtrak common shareholders).

The D.C. Corporation Act provides less protection with respect to indemnification of directors and officers than the law of other jurisdictions. (D.C. law does not allow a corporation to indemnify officers and directors who have been adjudged in a lawsuit or other proceeding liable for negligence or misconduct in the performance of duty. D.C. Corporation Act, Section 29-304. Delaware law and the laws of many other states provide a higher level of protection.) Amtrak purchases directors' and officers' liability insurance (currently in the amount of \$50 million) to cover shortfalls in protection under D.C. law. (D.C. law also prohibits a D.C. corporation from operating a railroad. The provisions of the RPSA override D.C. law with respect to Amtrak.)

**IX. SUBTITLE V, PART A, OF TITLE 49 U.S.C. (RAIL SAFETY)
(49 U.S.C. 20101 ET SEQ.)**

The Rail Safety provisions of Title 49, 49 U.S.C. 20101 et seq., are applicable to all railroad carriers, including Amtrak and commuter railroads. The Act regulates all aspects of railroad safety, including equipment, facilities, rolling stock and operations.

X. SUBCHAPTER IV OF TITLE 11, UNITED STATES CODE (RAILROAD REORGANIZATION) (11 U.S.C. 101 ET SEQ.)

Chapter 11 of the Bankruptcy Code, which generally sets out procedures for railroad reorganization, would govern an Amtrak bankruptcy. Because of the historical importance of railroads to the economy and the public, bankruptcy law seeks, among other things; to protect the public interest in continued rail service. The bankruptcy court and an appointed trustee of Amtrak's estate would be required to consider the public interest as well as the interests of Amtrak, its creditors, and its stockholders.

Amtrak could initiate a bankruptcy proceeding by filing a voluntary petition for bankruptcy when authorized by its Board of Directors. In addition, three or more of Amtrak's creditors whose unsecured claims totaled at least \$10,000 could file an involuntary petition. After a petition is filed, a trustee would be appointed. The trustee, with court oversight, rather than Amtrak's Board of directors, would make decisions about the railroad's operations and financial commitments.

The trustee would be responsible for developing a plan of reorganization. Amtrak's creditors and shareholders would vote on the plan of reorganization. Because the United States is a creditor and stockholder of Amtrak, the Secretary of the Treasury would accept or reject the plan on behalf of the United States. A plan of reorganization would also have to be approved by the court. The court would have to find, among other things, that Amtrak's prospective earnings would adequately cover any fixed charges and that the plan is consistent with the public interest. If an Amtrak reorganization plan is not confirmed within 5 years of the bankruptcy petition the court would have to order liquidation. The court could also order liquidation earlier upon the request of a party in interest if it determined liquidation to be in the public interest. Under such circumstances, the court would distribute the assets of the estate under a statutory distribution scheme as though the case was a liquidation under Chapter 7 of the Bankruptcy Act.

The Surface Transportation Board would have a right to be heard in any Amtrak bankruptcy proceeding. 11 U.S.C. 1164. If a plan of reorganization proposed a transfer of, or operation over, any of Amtrak's rail lines to or by an entity other than Amtrak, and the transaction would otherwise be subject to regulatory approval of the STB, the proponent of the plan would first have to seek and obtain the approval of the STB (which decision must be rendered no later than 180 days after an application is filed). An action of the STB approving, modifying, conditioning or disapproving an application is appealable under the provisions of the Administrative Procedures Act. 11 U.S.C. 1172. The STB may not impose employee protective conditions applicable to Amtrak employees as a condition of granting an application. ARA, sec. 142(d).