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**BEFORE THE SUBCOMMITTEE ON RAILROADS  
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE  
UNITED STATES HOUSE OF REPRESENTATIVES**

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Testimony of the  
**AMTRAK REFORM COUNCIL**

**STATEMENT OF  
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**STATEMENT OF GILBERT E. CARMICHAEL,  
ON BEHALF OF THE AMTRAK REFORM COUNCIL,  
BEFORE THE  
SUBCOMMITTEE ON RAILROADS  
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,  
UNITED STATES HOUSE OF REPRESENTATIVES  
JULY 25, 2001**

Mr. Chairman, thank you for inviting the Amtrak Reform Council to address your Committee's oversight hearing on Amtrak. My name is Gil Carmichael, and I am Chairman of the Council. Tom Till, the Council's Executive Director, accompanies me this morning.

With your permission, Mr. Chairman, I would like to summarize the Council's statement for the Committee and submit the full text for the record.

**RECENT DEVELOPMENTS IN AMTRAK'S EFFORTS TO ATTAIN OPERATING SELF-SUFFICIENCY**

Amtrak's FY 2000 "Budget Result" was \$109 million below its Strategic Business Plan. Amtrak's FY 2001 performance will be significantly worse. Through the first six months of this fiscal year, Amtrak lost \$214 million for purposes of self-sufficiency, which is \$38 million behind where it was for the first six months of last year. To stay on its glide path to self-sufficiency, Amtrak will have to turn a profit of \$36 million in the second half of this fiscal year, which would represent a \$250 million improvement over its performance during the first half of FY 2001. Continuing delays both in bringing more Acela Express trains into revenue service and in implementing plans for major cost reductions or increases in profitable revenues will make it more difficult for Amtrak to achieve its FY2001 projected Budget Result.

In addition to this retrospective analysis, Mr. Chairman, two recent issues reflect on Amtrak's progress towards self-sufficiency that have received a great deal of public attention. The first is the mortgaging of part of the assets of Penn Station, New York City, at 9.25 percent for 16 years, to obtain \$300 million in operating cash to get Amtrak through the current fiscal year, which ends September 30, 2001. This is a clear example of the difficulties Amtrak is having in improving its financial performance to attain self-sufficiency.

A second, and certainly related, event is the "strategic redirection" just getting underway at Amtrak, as reported in the *Washington Post* on Tuesday, July 17, 2001. Over the past several years Amtrak has announced several major new initiatives to help it attain operational self-sufficiency. These efforts have obviously not provided the benefits that Amtrak expected. More than 20 months after the Council formally recommended that Amtrak begin a program of systematic reductions in overhead expenses, we are encouraged that Amtrak appears to have embarked on a program to control its burgeoning costs. The Council looks forward to seeing the results.

Mr. Chairman, we believe the continuing difficulties Amtrak is having ratify the Council's conclusion that we need a major restructuring of our nation's program for intercity rail passenger service, including a corporate restructuring of Amtrak along the lines the Council recommends.

## **THE AMTRAK REFORM COUNCIL'S PROPOSALS FOR CHANGES IN THE STRUCTURE OF AMTRAK AND ITS SUPPORTING INSTITUTIONS**

The Council recommended a major redesign of Amtrak and the institutions that support it.

### **The Amtrak Reform Council Has Proposed a New Business Model for Amtrak**

The Council has concluded that Amtrak's current business model needs two structural changes:

1. First, its nationwide train operations need to be separated (at a minimum, from an accounting standpoint) from the management and funding of the Northeast Corridor infrastructure.
  - The Council is not proposing that we institute the kind of track separation that has been done in the United Kingdom. Unlike what was done in Britain, the Council is not proposing to remove the infrastructure from the majority user; it is not proposing private ownership of the infrastructure; and it is not proposing that the infrastructure organization have a board of directors that does not represent the users of the corridor. What the Council is proposing is an Amtrak-owned or U.S. Government-owned structure that could be likened to an East Coast passenger version of the Alameda Corridor – a shared asset controlled by a Board of Directors representing its users.
  - Wells Fargo and Credit Lyonnais required that a separate entity be carved out of Penn Station before they would lend \$300 million in operating cash to Amtrak last month. We believe the taxpayers deserve the same transparency and accountability in dealing with a massive system of infrastructure, on which Amtrak is a minority user, and whose investment requirements are far beyond any rational capital funding that Amtrak as an integrated train operating and infrastructure will be given or would be able to use effectively.
  - The Council's March 2001 Report points out that combining the financial operations of the Northeast Corridor infrastructure with those of Amtrak's national intercity train operations seriously degrades the financial performance and ultimate accountability of Amtrak's train operations. Reasonable estimates indicate that the burden to Amtrak of its ownership of the Northeast Corridor infrastructure may place as much as \$300 million in uncompensated cash expense on Amtrak's income statement, in addition to requiring a comparable annual magnitude of capital expenditures. Amtrak has not yet provided the Council with separate financial statements on the Northeast Corridor infrastructure to confirm these estimates, even though such statements were promised by early 2001 in an August 2000 letter from Amtrak.

2. Second, Amtrak's core business of passenger, mail, and express train operations, as well as the infrastructure, need to be insulated from direct political influence by consolidating existing governmental program functions for Amtrak in the Federal Railroad Administration or another appropriate federal agency or oversight entity. Such an entity could also take on the additional responsibilities that would accrue to the federal government for corridor development.

With these changes, new and separate funding sources can be provided:

1. For equipping and operating the national system of intercity rail passenger services. This will most likely be done through appropriated funds, an excise tax, or a combination of these two funding mechanisms.
2. For renewing and improving the capacity and operating speed of the infrastructure of the Northeast Corridor, the other federally-designated high-speed rail corridors, and the network of inter-corridor trains. This will most likely be done through appropriated funds or some form of federally-subsidized bonds.

### **THE PROPOSED HIGH-SPEED RAIL INVESTMENT ACT – H. R. 2329 and S. 250**

The "High Speed Rail Investment Act" would authorize Amtrak to issue \$12 billion in bonds to finance high-speed rail projects.

The Council is on record as favoring funding for the responsible, economic development of the emerging high-speed rail corridors. Regarding the proposed High Speed Rail Investment bonds, the Council has said that, if the bonds are the only way the Congress can find to fund development of the federally-designated corridors, then the Council would support the bonds, with the amendments set forth below. Twelve billion dollars would be a start. This is true for all but the Northeast Corridor, where high priority funding needs exceed substantially the amount of funding likely to be available under the High Speed Rail Investment Act.

The Council recommends that, should the Congress decide to take up the bond bill, the following amendments be incorporated:

- The funds should be used principally for infrastructure improvements; bond funds should only be used for equipment expenditures if private-sector financing is not available.
- States and regional rail transportation authorities should also be able to issue the bonds, where permitted to do so by their state constitutions.
- DOT and the states should control the selection of projects outside the NEC. Assets outside the NEC are not Amtrak's assets, and Amtrak no longer has a monopoly to provide intercity rail passenger service.
- Objective criteria are needed for evaluating, prioritizing, and approving projects submitted to be funded by the bonds.

- Each project should be evaluated by an impartial government body on its own merits and free from any requirement that Amtrak operate the services benefiting from the funding.
- All funds, including both state contributions and bond proceeds, should be under the control of an Independent Trustee and should not be permitted to be entangled in any manner with the internal finances of any issuer.

### **Alternative High Speed Rail Investment Bonds**

As Chairman of the Amtrak Reform Council, I asked the Council staff to investigate whether there might be alternative high-speed rail investment bonds that would achieve the objectives of developing the corridors while addressing the Council's concerns about the current bond proposal. The staff talked to states, the Department of the Treasury, committee staff members, investment bankers, and our own Council members, who have experience in financial markets, and came up with two alternative bonds. The alternative bonds address the main concerns the Council identified with S. 250 and H.R. 2329, but their price may limit their attractiveness to the states.

An alternative comparable in structure to the proposed high-speed bonds would have the states and the private railroads put up 35-38 percent in an escrow account, which would be invested in a special issue zero coupon U.S. Treasury obligation with a maturity date coinciding with the maturity date of the bonds being issued. Such an arrangement eliminates the financial risk that there would not be sufficient funds in the escrow fund to fully redeem the maturing bonds.

Another approach would be to authorize special private activity, tax-exempt bonds to would be issued by the states but would be exempt from the U.S. Treasury Department per capita limitations on the amount of such obligations that states can issue annually (\$75 per resident). Since the credit for these bonds would be based on the pledge of trackage rights fees by the users of the bonds, it would be essential for the underlying rail operators to be financially sound and that the inherent demand for rail improvements is likely to continue.

We will continue to refine these alternatives with the goal of making them more attractive.

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Mr. Chairman, before I conclude my statement, I would like to address one further point. Nothing in the Council's positions recommends any changes in the laws or contracts that affect the rights of rail labor with regard to rail passenger service. Changing those laws is not the Council's job, and it's not on our agenda. To the contrary, I believe that, if we can create a more effective intercity rail passenger system, there will be more rail passenger jobs for railway labor than since before the formation of Amtrak.

In closing, Mr. Chairman, let me introduce other members of the Council in attendance, James Coston, appointed by Senator Tom Daschle and Nancy Rutledge Connery, appointed by Senator Trent Lott.

Thank you for inviting to the Council to testify. I will be pleased to answer any questions you or other members of the Committee might have.

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## SUMMARY OF THE COUNCIL'S SECOND ANNUAL REPORT

The Amtrak Reform Council's second annual report<sup>1</sup> reaches a number of conclusions about passenger rail service in America:

- Amtrak as it is today has not and will never meet our expectations for improved rail passenger service, whether we are talking about reasonable expectations for either improvements in financial performance or for consistent, higher quality service for its customers.
- While Amtrak is performing poorly, demand for rail passenger service is increasing as travelers face congested highways and frequent aviation delays. There is a strong resurgence of state interest in improving passenger rail service, particularly higher-speed service in crowded inter-urban corridors.
- The Council determined that Amtrak's long-term failure to improve its performance is due to its fundamentally flawed institutional structure, and not to Amtrak's Board of Directors, managers, or employees. The Council's report calls for fundamental reforms.

### RECOMMENDATIONS FOR INSTITUTIONAL CHANGE AND A NEW BUSINESS MODEL

The Council believes the root of Amtrak's institutional problems is in its charter legislation, the Rail Passenger Service Act of 1970. If passenger service is to improve and to grow, these flaws need to be addressed:

- Amtrak was established to serve the commercial marketplace but operates in many important respects like a government agency. Political considerations keep Amtrak from being run as a well-run business. The Council believes, and I personally agree, that a major part of the reason that Amtrak does not act more like a business is that it has to live in a heavily politicized climate. **Amtrak's commercial functions should be separated from its government functions and run like a business.**
- Amtrak owns, funds, operates, and maintains much of the Northeast Corridor (NEC) rail right-of-way and real estate, a burden Amtrak cannot afford. NEC infrastructure responsibilities also divert Amtrak's attention from its core business as a provider of intercity rail passenger, mail, and express services. Passenger train operations should be conducted by a customer-focused commercial enterprise shielded from political interference, much like a well-managed airline. Infrastructure should be managed by a government entity that would own, fund, operate, and maintain the Northeast Corridor and other infrastructure now owned by Amtrak. **The remedy is to appropriately separate Amtrak's train operations from the ownership, management, and funding responsibilities for the Northeast Corridor.**
- The government needs a stronger, more focused government program agency to administer funds for passenger service, develop public policy on passenger service issues, insulate train operations and the infrastructure entity from political interference, and provide oversight. Amtrak needs an effective program agency that can hold its passenger train and its NEC infrastructure businesses accountable and insulate them from political pressure. Government would continue as a major source of financial support, principally in the form of capital funding for infrastructure. **Amtrak's**

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<sup>1</sup> Amtrak Reform Council, Intercity Rail Passenger Service in America: Status, Problems, and Options for Reform, 2<sup>nd</sup> Annual Report to Congress, March 2001.

**governmental functions, together with the Amtrak program responsibilities of DOT, should be consolidated in a single government entity – which could be a parent corporation with a properly-structured board of directors or a government agency. The government entity would not be new layer of bureaucracy; it would be a governing body with defined oversight responsibilities to ensure that the Amtrak train operating company and other Amtrak subsidiaries operate as effective businesses.**

- There is presently no secure source of capital funding for passenger rail service. **The Council believes Congress should provide a stable and adequate source of federal funding for the capital needs of the NEC and other rail passenger assets.**

### **STRUCTURAL OPTIONS**

Various approaches exist for restructuring Amtrak to separate its infrastructure, train operations, and government functions. The Council has developed for discussion five such options representing points on a continuum of possible structures, not an exclusive list. These options range from splitting Amtrak into two or three companies, to involving the states more heavily in rail passenger service, to partial or complete privatization of Amtrak.

The Council believes that privatization of Amtrak along the lines of the British model is impracticable at this time.

### **CAPITAL FUNDING ESTIMATES**

This year Amtrak defined its 20-year capital requirements – \$23.6 billion in funding to maintain the current system and \$73.6 billion for growth, including the high-speed corridors, for a total of some \$97 billion for the entire 22,000-mile national system. Amtrak is requesting that the federal government fund \$30 billion of this total, or \$1.5 billion per year. Of this amount, some \$16 billion would be used to support current service and \$14 billion would be used to provide “seed money” for high-speed rail development. The relationship between the \$12 billion in bonds, and Amtrak's request for \$30 billion is not clear.

### **CONCLUSION AND NEXT STEPS**

This summary of our report demonstrates the Council's conviction that America needs a “new Amtrak” with an effective institutional framework, separated from the costly burden of the Northeast Corridor infrastructure, incentives to operate efficiently, and a customer-focused corporate culture.

In upcoming formal hearings, the Council will gather comments from federal, state, and local officials, freight railroads, the public, Amtrak, and other interested parties. What we learn will help us to enhance our recommendations. Our goal is to provide to the Congress our detailed recommendations by early next year.



**THE PROPOSAL TO AUTHORIZE SPECIAL BONDS TO FINANCE HIGH-SPEED RAIL INVESTMENTS**

A possible source to fund a portion of the development and improvement of existing and future rail passenger corridors is the \$12 billion of bonds in the proposed High Speed Rail Investment Act (S. 250 and H.R.2329).<sup>2</sup> The new bills provide for \$1.2 billion in bonds per year for 10 years. A minimum of 20 percent of project costs is to be funded by state matching funds for each project. The states' 20 percent funding match would be invested in escrow accounts for 20 years with the expectation that the states' funds will grow through investment income to equal the par value of the bonds in 20 years and would be available to redeem the bonds when they mature. Holders of High Speed Rail Investment Act bonds would receive federal income tax credits quarterly in lieu of receiving cash interest over the 20-year lives of the bonds.

Is \$12 billion needed? Without a doubt. And considerably more, in fact, if we are serious about addressing existing infrastructure needs in the NEC and elsewhere and improving and expanding intercity rail passenger service in those corridors where anticipated transportation benefits and potential demand would justify the investment.<sup>3</sup> Indeed, even assuming that, in some form and at some time, \$1.2 billion per year of high-speed rail bonds for corridor development is provided, Amtrak would still need sums approaching \$1 billion per year in other funds just to maintain its existing infrastructure and operations.

The Council would not be doing its duty as an independent oversight agency if it did not point one thing out. The reason we are all facing the very difficult issues that these bonds pose – quoting from the Council's first annual report – is that:

Unlike roads and air, however, neither local nor state governments nor the federal government have determined an institutional and financial solution for adding the track and equipment capacity to provide an expanded system of intercity rail passenger service. The privately-owned rail freight rights-of-way present unique issues compared to the publicly-owned and publicly-funded national systems of highways, airports, and airways. Rail rights-of-way, unlike other modes of transportation, do not have a stable funding mechanism for rail passenger corridor development.<sup>4</sup>

Under current transportation policy, Amtrak is doing what, in other modes, is done by two separate (and separately funded) types of organizations: one focusing on infrastructure and one focusing on transport operations. The infrastructure organization is exemplified by the roles of the Federal Highway Administration operating in concert with the state highway departments, the Federal Aviation Administration, and the Corps of Engineers. The role of transport operations is – in all of these other modes – carried out by operating companies that carry passengers, mail, and express. Transport companies in modes other than rail are not entangled with huge infrastructure funding

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<sup>2</sup> The Senate and House bills are essentially the same but differ in certain respects as discussed infra.

<sup>3</sup> The Amtrak Reform and Accountability Act charges the Council with a positive mission – to recommend improvements in Amtrak and, if Amtrak cannot improve to the extent the Congress requires, to design an improved national intercity rail passenger system. The Council was established to determine the best way to improve our national rail passenger system, and the Council sees the need for a major investment in passenger rail service over the coming years.

<sup>4</sup> Amtrak Reform Council, First Annual Report, January 2000, p.1.

burdens; they pay user fees for the use of infrastructure, and they focus their attention on serving the traveling public.

Against this backdrop, the Council's concern with this proposed legislation has two dimensions – policy and practicality.

From an overall policy standpoint, has this approach really been thought through thoroughly? Is this bond mechanism, aside from the matter of who issues them, the best way to finance passenger rail capital needs? It depends on what parts of those needs are being looked at. It is almost certainly not a sound way to fund (nor is it intended to fund) the capital needs of Amtrak the corporation. But it might well be a reasonable way to fund long-term infrastructure improvements to the Federally-Designated High-Speed Rail Corridors (FDHSRCs). That raises these specific policy issues:

1. Is Amtrak, from all standpoints, the best vehicle for issuing these bonds?
  - It does have about \$5 billion in Net Operating Loss Carryovers (NOLs), arguably available to shelter future escrow fund net income from income tax liability, but the NOLs exist because historical government funding primarily was made in the form of preferred stock investments in Amtrak by the government. Given the low likelihood that Amtrak will ever be able to redeem its preferred stock, arguably the government funding should have been characterized as operating grants rather than capital investments. If such funding had been characterized as operating grants, Amtrak would not have any NOLs. Even if the IRS does not make any audit adjustments to existing Amtrak NOLs, there are not likely to be sufficient losses going forward to offset escrow fund interest income once the approximately \$5 billion of NOLs are used. Going forward, there are 20 years (years 11 through 30 of the 30-year life of the proposed program) when interest earnings on the trust fund will be approximately \$660 million per year, which will be about \$250 million more per annum than Amtrak's likely depreciation expense. The combination of these two charges against the \$5 billion in Net Operating Loss carryovers will exhaust them a number of years before the program is over.
  - There is, therefore, a significant financial risk that Amtrak will have to fund the shortfalls between the par values of the maturing bonds and the amounts that have accumulated in the escrow accounts.
  - Should Amtrak's balance sheet be burdened with \$12 billion in debt (or with the contingent liability for such debt) for improvements to the infrastructure, most of which Amtrak does not own? What will this do to Amtrak's ability to borrow in private markets?
  - Should major program and related financing responsibilities be delegated to a corporation which is clearly having difficulties getting its core business to run well, and which is facing the need to achieve self-sufficiency by December 2, 2002?
2. Has there been a clear assessment of the best potential roles of public financing and private capital markets?
3. And finally, has there been any solid attempt to determine the best possible way for money to be invested in the infrastructure improvements of America's private railroads in order to provide the capacity and speed improvements needed to implement the FDHSRCs?

The proposed bond mechanism in effect uses Amtrak as a sort of Fannie Mae for selected portions of the infrastructure of the railroad industry which Amtrak uses. One reason for the choice is clear – the \$5 billion in NOLs that Amtrak currently holds will shelter a portion of the escrow Funds' taxable interest income needed to grow on a compounded basis and be available in 20 years to repay the bonds.

There are, however, a number of issues surrounding the bonds that could increase their risk and cost. The analysis by the Joint Committee on Taxation of last year's \$10 billion bond bill determined that the "scoring" cost of the bonds would only be approximately \$3.5 billion, under rules used by the Committee that look only at the first 10 years that the bond program exists.<sup>5</sup> In fact, the bonds will be outstanding 30 years total (20 year maturity bonds issued over 10 years will result in a portion of these bonds being outstanding for 30 years), and, during that 30 year period, the \$10 billion of bonds would likely cost federal taxpayers \$16 billion and state taxpayers \$2 billion, or a total of \$18 billion.

The recent General Accounting Office (GAO) analysis of the High-Speed Investment Act (S.250) concurs in this approach to estimating the actual cost of the \$12 billion bond proposal.<sup>6</sup> The GAO report concludes that "the tax credit for Amtrak bonds would cost the U.S. Treasury between \$16.6 billion and \$19.1 billion (in nominal dollars) over 30 years."<sup>7</sup> Given the \$80 billion to \$100 billion magnitude of projected rail passenger investment required over the upcoming 20 to 25 years (Amtrak's estimate), more expensive financing mechanisms will make it more difficult to implement rail passenger improvements, regardless of how they currently are "scored" for legislative purposes.

A much more efficient mechanism for the federal government to raise rail investment funds for designated rail passenger corridors would be for the federal government to (1) borrow the funds, or repay less outstanding federal debt, and (2) provide 80 percent grants to the projects with 20 percent matching grants provided by the states; the funds would go directly into the projects rather than into an escrow fund; and the federal government would not issue tax credits to bond holders; the current cost of borrowing funds to the federal government is approximately 6 percent long term versus a likely 7.5 to 8 percent that the federal government would have to pay in tax credits on the proposed bonds. Indeed, the GAO report concludes that "the cost of the tax credits to the U.S. Treasury under the bond approach would be at least \$400 million greater and could be more than \$3 billion greater (in present value terms) than providing annual appropriations of an equivalent amount."<sup>8</sup> Moreover, there would be no risk that (a) the escrow fund would not grow sufficiently to repay the bond principal in 20 years; (b) that bond proceeds were not used for qualified expenditures in a timely manner and therefore have to be repaid early; (c) that Amtrak may not have sufficient losses to shelter interest earnings of the escrow funds; and (d) that the administrative costs of issuing the bonds would be higher than anticipated.

This is where issues of practicality come in. In the event that the Congress decides to pass the bond bill, the Council believes that it should be done with the following amendments:

- (a) The funds primarily should be used for infrastructure improvements, with 90 percent for the FDHSRCs and 10 percent for non-FDHSRCs (the 10 percent should be allocated to non-

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<sup>5</sup> The "scoring" cost is the amount of tax credits issued during the first ten years of the program, but the scoring methodology assumes that the bonds are only outstanding for 20% of the first year that each year's tranch of bonds is issued.

<sup>6</sup> The GAO report (dated June 25, 2001) was publicly released in mid-July.

<sup>7</sup> GAO Report at 1.

<sup>8</sup> GAO Report at 2.

Corridor states by DOT) and bond funds should only be used for equipment expenditures if private-sector financing of equipment is not available. (The Council believes that passenger equipment can be funded in large part by the private sector.)

- (b) If bonds are to be a possible source of funding for the development of high-speed rail passenger service projects, the states, including state and regional rail transportation authorities, should be able to issue the bonds in addition to Amtrak.
- (c) There should be adequate criteria for evaluating and assigning priorities to candidate projects, with DOT and the states playing major roles in the selection of projects. Amtrak should not be in the business of choosing projects outside the NEC. Assets outside the NEC are not Amtrak's assets, nor does Amtrak have a monopoly to provide rail passenger transportation, particularly outside of the NEC.
- (d) Effective oversight arrangements need to be in place for projects to be funded by the bonds.
- (e) Each project should be evaluated and approved by an impartial government body on its own merits, free from any requirement that Amtrak be the sole provider of the services benefiting from the funding.
- (f) All funds, including both state contributions and bond proceeds, should be under the control of an Independent Trustee and should not be able to be borrowed by Amtrak (or any other issuer), or otherwise be entangled with the internal finances of Amtrak and other rail service operating entities. (Under the Senate bill, Amtrak would directly receive and may temporarily use without specific statutory restriction bond proceeds for the five-year "temporary investment period" provided under the bill. Although the House bill requires that all bond proceeds be initially deposited with the independent trustee, the bill does not explicitly preclude Amtrak from withdrawing bond proceeds in advance of project funding requirements and "borrowing" them for the three- year "temporary investment period" provided in the bill.) To permit commingling of funds would create a risk of having the proceeds entangled in the internal finances of the issuer in a way that could put the bond proceeds and the bond escrow account at risk in the event of creditors' claims.<sup>9</sup> (Moreover, discussions the Council's staff has had with financial experts experienced in bonds indicate that, when the prospectuses for these Bonds are issued, and when bond counsel is asked to deliver legal opinions to potential bond investors, if Bond proceeds can be mixed with Amtrak's internal funds, such a possibility could raise the perceived financial risks and interest rates of the Bonds, and possibly make the bonds impossible to sell without government guarantees.)

In addition to the above modifications, there are other issues raised in S. 250 and H.R. 2329 that need to be addressed.

1. S. 250 specifically provides that "State matching contributions may include privately funded contributions." (H.R. 2329, although silent on the issue, does not preclude, and presumably would also allow, the state match to include privately funded contributions.) Amtrak, in its February 15, 2001 Fiscal Year 2002 Legislative Report (at 5), takes the position that the 20 percent "non-federal match" that the state is required to contribute to each high-speed rail corridor project, "will come from various sources, **including Amtrak**, freight railroads and communities...."(Emphasis added.)
  - Amtrak should not be permitted to be considered a "non-federal source" for purposes of the state matching contribution requirement. To allow Amtrak to provide the states' matching fund requirement defeats the very purpose of the requirement, which is to ensure that the

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<sup>9</sup> In Amtrak's case, this would include the risk of default on its commercial debt obligations that Amtrak, in Appropriations testimony, has stated that it could indeed face.

states (or public or private non-federal beneficiaries on behalf of the state) share the costs and financial risks of a project with the federal government (through the Amtrak bond mechanism) that they consider worthy of being funded.

- To allow Amtrak to make 20 percent contributions on behalf of states renders the matching requirement essentially meaningless: Amtrak would be simply putting up 20 percent of a project's cost with funds derived at least indirectly from its annual federal subsidies and in return would receive back five times that amount in new funds via the federal tax credit supported bond mechanism; the bonds would run a high risk of effectively becoming a mechanism for funding Amtrak's internal operating requirements (e.g., for progressive overhauls, capital expenditures required on corridors for operational reliability projects, and/or support of a portion of Amtrak's corporate overhead costs which could be allocated to qualified high-speed rail projects) rather than a mechanism for funding high-speed rail projects in conjunction with the states as intended. Both bills specifically contain a provision that provides that "State matching contributions shall not be derived, directly or indirectly, from Federal funds, including any transfers from the Highway Trust Fund...." This prohibition, as well as the specific requirement for state matching funds, arguably should be construed as precluding Amtrak from itself providing the matching funds.
2. Both bills eliminate the requirement in previously introduced bills (S.1900 and H.R. 3700) that the Secretary of Transportation, in approving qualified projects, "shall give preference to any project with a State matching contribution rate exceeding 20 percent." S.250 instead provides that the Secretary "may" give preference in such a case.
    - This change from the previous bills goes in the wrong direction. The purpose of the bond bill should be to provide federal funds for rail passenger projects that serve real transportation demands. Perhaps the best measure of a project's importance is the demonstrated willingness of a region, state or locality to contribute its own funds to the project. If a state agrees to contribute more than 20 percent to the cost of a project, that factor should be taken into account. Moreover, in making larger contributions, non-federal parties reduce the amount of federal funds that must be spent on a project and free authorized bonds for other needed projects. As such, state contributions above the 20 percent minimum should receive preference in project approval by the Secretary.
  3. S. 250 changes existing law to permit states to issue tax-exempt bonds for high-speed rail projects that operate "in excess of 90 mph" (the current 150-mph requirement would be eliminated along with the state volume cap for these tax-exempt bonds). The expansion of the states' authority to issue tax-exempt bonds for rail passenger transportation projects is a step in the right direction. The states (with federal assistance) should have the primary role in selecting, developing and financing rail transportation projects that will serve their populations. Moreover, the costs of developing existing and future rail corridors is enormous, and innovative financing mechanisms such as tax exempt state bonds can go a long way in meeting those financing requirements.
  4. The proposed bonds provide considerable funding to Amtrak and specific rail corridors without addressing Amtrak's fundamental institutional problems.

5. The \$12 billion in bonding authority provided by the bills bears no relation to, and is insufficient to fund, the estimated capital costs of improving and developing the NEC and other FDHSRCs over the next 20 years.<sup>10</sup>
6. The role of project selection and oversight properly belongs to a government agency, not Amtrak.
  - States will be competing for bond money. It is essential that states receive fair and impartial treatment.
  - Project oversight should be under the direction of the Department of Transportation, including the independent assessment of the benefits and costs of qualified projects financed by the bonds.
  - There should be clear guidelines, perhaps along the lines of the Federal Transit Administration's (FTA) guidelines, for the selection and implementation of projects that are part of the "new starts" program. The FTA process, among other things, ensures that selected projects will be seen through to completion. Under the current Amtrak bond legislation, there is no assurance that any individual project will be able to secure sufficient funds to carry a project to completion. What happens to these projects when the bond money runs out? This concern is increased under the provisions of H.R. 2329 that effectively commingle bond proceeds in the escrow account and allow Amtrak to draw on bond funds intended for a specific project for use in other projects; it is also increased by Amtrak's ability to temporarily borrow funds under the Senate bill (and, unless explicitly precluded, under the House bill).
7. There is perhaps a better and simpler alternative to Amtrak issuing the bonds. The states (or entities of the states) and the private railroads should issue the bonds with 30 to 35 percent of bond principal put up initially and deposited in defeasance escrow accounts so that such funds with interest will be adequate to fully redeem the bonds in 20 years (and thus arguably not require any Amtrak or state guarantees). To eliminate all financial risk of having adequate funds for bond redemption, the U.S. Treasury Department could issue "zero coupon" debt which would be priced to exactly equal the par value of the high-speed rail investment act bonds on the redemption dates of the rail bonds, and which would be purchased by the Independent Trustee to repay the principal. Other alternative bond mechanisms may be simpler and better than the S. 250 proposal (e.g., tax-exempt state bonds with matching funds put in an escrow account to repay the bonds upon maturity).
8. Neither S.250 nor H.R. 2329 specifically provides for necessary funding of life/safety improvements in Penn Station, N.Y. through the Amtrak bond mechanism; at minimum there should be a special provision to insure the funding of these essential safety improvements (estimated cost \$900 million) above the \$3 billion total cap for the Northeast Corridor.<sup>11</sup>
9. The provision in H.R. 2329 providing for Amtrak's issuance of bonds on behalf of other intercity rail passenger carriers and pursuant to agreement with Amtrak puts Amtrak in the role of a

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<sup>10</sup> Amtrak's FY01-05 Capital Plan estimated this figure as high as \$100 billion. The GAO Report used a range of \$50-\$70 billion (presumably assuming that certain proposed projects would not be undertaken) but noted that there is currently no reliable estimate available of the capital needs to improve and develop the corridors. See GAO Report at 3, 20.

<sup>11</sup> See, e.g., December 18, 2000 Report prepared by the U.S. Department of Transportation, Office of Inspector General, in response to a request by Rep. Wolf for an update and review of the life-safety problems in Penn Station.

government agency and empowers Amtrak to veto projects of which they are not the operating carrier beneficiary. Moreover, the provision bolsters Amtrak's de facto monopoly over intercity passenger train operations and appears unlikely to be used.

Should these bonds not pass, it is likely that other ways could be found to finance high-speed rail, including the federally-designated high-speed rail corridors. Such proposals might best be developed from a well-considered effort by experts in transportation policy and finance to determine a modern Intermodal Surface Transportation Policy and an accompanying array of financing mechanisms to fund improvements in intercity passenger rail infrastructure and equipment. The Council will be ready to participate in any such discussion and debate about how to best do the job.