



SENATE REPUBLICAN

POLICY COMMITTEE

Legislative Notice

No. 74

September 28, 2008

House Amendment to the Senate Amendment to H.R. 2095 – The Rail Safety and Amtrak Reauthorization Bill

On September 24, 2008, the House passed H.R. 2095, as amended with consolidated Rail Safety and Amtrak reauthorization language, under suspension of the rules.

Noteworthy

- On September 27, 2008, the Majority Leader filed cloture on the motion to proceed to the motion to concur in the House message to accompany H.R. 2095, the consolidated rail safety and Amtrak reauthorization bill. The cloture vote is scheduled to occur Monday, September 29 at 12:30 p.m. The Majority Leader has filled the amendment tree.
- On September 24, 2008, the House agreed to the Senate amendment to H.R. 2095 with an additional amendment, by voice vote. The amendment was added in lieu of conference reports for H.R. 2095, the Rail Safety Improvement Act of 2008, and S. 294, the Passenger Rail Investment and Improvement Act of 2008; it contains consolidated legislative language dealing with both bills. Division A contains rail safety language, and Division B the Amtrak language.
- Division A reauthorizes the Federal Railroad Administration (FRA), provides \$1.6 billion for rail safety programs over fiscal years (FYs) 2009 through 2013, mandates installation of positive train control, makes changes concerning hours of service requirements, requires certain mandatory training, increases civil penalties for violations, and makes changes to grade crossing safety management practices. Division B authorizes \$13.1 billion for Amtrak and passenger rail through FY 2013. This amount includes \$9.7 billion for Amtrak operating grants, capital grants, and debt repayment, \$1.9 billion for grants to states to support intercity passenger rail service, and \$1.5 billion for grants for high-speed rail corridors. Division B also authorizes \$1.5 billion for the Washington Metropolitan Area Transit Authority (WMATA) through 2019.
- A Statement of Administration Policy (SAP) for the House amendment was unavailable at press time.

Background

Rail Safety:

- S. 1889, the Railroad Safety Enhancement Act of 2007, was introduced in July 2007. The Senate Committee on Commerce, Science, and Transportation approved the Senate bill on September 27, 2007. H.R. 2095, the Federal Railroad Safety Improvement Act of 2007, House companion legislation, was introduced in May 2007. The House bill passed on October 17, 2007, by a vote of 377-38 (Roll no. 980). On August 1, 2008, the Senate passed H.R. 2095 by unanimous consent, with a substitute amendment containing the text of the managers' amendment. The managers' amendment included substantial portions of S. 1889.
- The Federal Railroad Administration (FRA) was created in 1966 by the Department of Transportation Act. The agency is the primary federal body charged with ensuring safety in the rail industry. Its principal responsibilities include the promulgation and enforcement of rail safety regulations. It also conducts research and development in support of rail safety objectives and has certain responsibilities concerning rail security. The agency utilizes 421 federal safety inspectors and 160 state safety inspectors to monitor compliance with federally mandated safety standards. The federal inspectors operate within units organized as follows: Track and Structures, Signal and Train Control, Motive Power and Equipment, Operating Practices, Hazardous Materials, and Drug and Alcohol. They also promote numerous initiatives under the Highway-Rail Grade Crossing and Trespasser Prevention Programs. FRA's authorization expired at the end of FY 1998 when the Federal Railroad Safety Authorization Act of 1994 expired.

Amtrak:

- S. 294, the Passenger Rail Investment and Improvement Act of 2007, was introduced in January 2007. The bill was passed out of the Commerce Committee in April 2007, and passed by the full Senate on October 30, 2007 by a vote of 70-22. The House passed S. 294 by voice vote on July 22, 2008, with an amendment in the nature of a substitute containing the text of H.R. 6003, which was passed on June 11, 2008 by a vote of 311-104.
- Congress created Amtrak in 1971 through the Rail Passenger Service Act of 1970. It provides intercity rail service at 500 stations in 46 states on over 22,000 miles of track. Its assets include 730-route miles both between Massachusetts and Washington DC (known as the Northeast Corridor or the NEC) and in Michigan; major facilities in New York, New York, Chicago, Illinois, and Philadelphia, Pennsylvania; and 425 locomotives and 2,141 railroad cars. Freight companies own most of the track on which Amtrak operates. Amtrak's last authorization passed in 1997 and expired in 2002.

Bill Highlights

Division A

Overview:

Division A of H.R. 2095 reauthorizes the Federal Railroad Administration (FRA) and provides \$1.6 billion for rail safety programs over fiscal years (FYs) 2009 through 2013. It mandates installation of positive train control; makes changes concerning hours of service requirements; requires a risk reduction program, which includes a technology implementation and fatigue management for all Class I and rail carriers with poor safety records; requires certain mandatory training; increases civil penalties for violations; and makes changes to grade crossing safety management practices.

Division A establishes that the mission of the FRA is to ensure that safety is the highest priority. It creates a new position of Chief Safety Officer, requires the Department of Transportation (DOT) to develop a long-term strategy for improving rail safety, and requires annual reporting concerning progress in implementing unmet statutory mandates and open safety recommendations by the Department of Transportation's Inspector General and the National Transportation Safety Board (NTSB). The bill directs the NTSB to establish a program to assist accident victims, requires the FRA to establish a new bridge safety inventory program, increases federal rail safety inspectors, and requires the FRA to audit railroads for compliance with accident and safety incident requirements.

Federal Railway Administration (FRA) Authorizations:

The bill authorizes \$1.6 billion through FY 2013 to make improvements to rail safety programs administered by the Federal Railroad Administration (FRA). The bill also authorizes funding for grants to states, local governments, and rail carriers to improve railroad infrastructure and implement new safety technology.

- H.R. 2095 as passed by the House authorized \$1.12 billion through FY 2011.
- H.R. 2095 as passed by the Senate authorized \$1.37 billion through FY 2013.

Hours of Service:

The bill prohibits signal and train crews from working in excess of 12 consecutive hours; extends hours-of-service standards to railroad contractors; limits "limbo" time; requires retrofitting or replacement of camp cars; and requires railroads to develop fatigue management plans through a mandatory risk reduction program (Section 108 of the consolidated language).

- The House and Senate versions of H.R. 2095 both contained distinct hours of service language. The final bill uses the Senate-passed version of the hours of service mandate as the standard while retaining certain elements of the House-passed language, such as reduction in limbo time.

Positive Train Control:

The bill requires all Class I railroads and intercity passenger and commuter railroads to implement a positive train control system by December 31, 2015 on all main-line track where intercity passenger railroads and commuter railroads operate and where toxic-by-inhalation

hazardous materials are transported. In addition, the bill includes a grant program for the deployment of various positive train control technologies; electronically controlled pneumatic brakes; rail integrity inspection and warning systems; switch position indicators; remote control power switch technologies; track integrity circuit technology; and other technologies. The Secretary will be permitted to assess civil penalties for violations of these requirements. All other rail carriers must implement positive train control by 2018.

- H.R. 2095 as passed by the House required that such plans be implemented by December 31, 2014.
- H.R. 2095 as passed by the Senate required that such plans be implemented by December 31, 2018.

Rail Passenger Disaster Family Assistance:

The NTSB is directed to establish a program to assist victims of passenger rail accidents and their families.

- Both the House and Senate versions of H.R. 2095 established such a program.

Training:

The bill establishes minimum training standards for railroad workers; requires certification of conductors; and requires a study on certification of other classes and crafts of employees, including signal employees.

- Both the House and Senate versions of H.R. 2095 required establishment and certification of training programs.

Penalties for Violations:

The bill increases civil penalties for certain rail safety violations from \$10,000 to \$25,000. It also increases the maximum penalty for failing to file an accident or incident report from \$500 to \$2,500.

- Both the House and Senate-passed versions of H.R. 2095 contained similar increases in civil penalties.

FRA Staffing:

The bill increases the number of federal rail safety staff each year for a required total of 200 by 2013.

- The House-passed version of H.R. 2095 required additional inspectors to total 600 by December 31, 2009, 700 by December 31, 2010, and 800 by December 31, 2011 (FRA currently has about 430 inspectors).
- The Senate-passed bill mandated no such numerical targets.

Bridge Safety:

The bill directs the FRA to issue regulations requiring track owners to develop and maintain an accurate inventory of railroad bridges; determine, and update as appropriate, the safe capacity of each bridge; maintain the original design documents of each bridge, if available, and a documentation of all repairs, modifications, and inspections of each bridge; enforce a written procedure that will ensure that its bridges are not loaded beyond their capacities; conduct regular comprehensive inspections of each bridge; and designate qualified bridge inspectors or maintenance personnel to authorize the operation of trains on bridges following repairs, damage, or indication of potential structural problems.

- The Senate-passed version of H.R. 2095 did not contain this requirement. Bridge safety was instead integrated in the broader mission, safety planning, and staffing goals as provided or mandated by the bill language.
- Title III, section 301 of the House-passed bill contained similar language as summarized above and contained in the consolidated version of H.R. 2095.

Safety Risk Reduction Program:

The bill requires rail carriers with poor safety records to complete a risk analysis and submit a risk mitigation plan.

- The Senate-passed version of H.R. 2095 contained this provision. The House-passed bill did not.

Tunnel Information:

The bill requires railroads to maintain certain information related to structural inspections and maintenance activities for tunnels, and requires railroads to provide periodic briefings to the government of the local jurisdictions in which the tunnels are located, including updates whenever a repair or rehabilitation project alters the methods of ingress and egress into and out of the tunnels.

- The Senate-passed version of H.R. 2095 did not contain this requirement.
- The language corresponds to section 609 of the House-passed bill.

Division B

Overview:

Division B of H.R. 2095 authorizes \$13.1 billion for Amtrak through FY 2013. This amount includes \$9.7 billion for operating and capital grants and debt repayment, \$1.9 billion for grants to states to support intercity passenger rail service, and \$1.5 billion for grants for high-speed rail corridors. In addition, Division B requires Amtrak to improve its financial accounting system and develop a five-year financial plan to be submitted to the Inspector General. Amtrak must utilize an independent auditor to develop and recommend methodologies for Amtrak to use in determining routes and services, including the elimination of routes if necessary. The division also creates a pilot program permitting carriers owning infrastructure over which Amtrak operates to take bids from non-Amtrak entities to provide passenger rail service on underperforming Amtrak routes.

The text includes a section, which is not included in the Amtrak total authorization amount, authorizing \$1.5 billion over 10 years for the Washington Metropolitan Area Transit Authority (WMATA) for capital and preventative maintenance projects.

Passenger Rail Investment and Improvement Act of 2008:

The bill authorizes \$13.1 billion through FY 2013. This total includes \$5.315 billion (an average of \$1.063 billion per year) to Amtrak for capital grants and \$2.949 billion (an average of \$589.8 million per year) for operating grants. The bill also authorizes \$1.9 billion for state grants for new or improved intercity passenger rail.

- S. 294 as passed by the Senate authorized a total of \$3.3 billion in operating grants and \$6.3 billion in capital grants for fiscal years 2007 through 2012, and authorized funding for state grants.

Amtrak Management:

The bill requires Amtrak to change its financial accounting system and develop a five-year financial plan, develop new or improved metrics and standards to measure train performance and service, and utilize an independent auditor to develop and recommend methodologies for Amtrak to determine routes and services.

- Both S. 294 as passed by the Senate and H.R. 6003 as passed by the House contained similar provisions.

Alternate Passenger Rail Service Pilot:

The bill provides for competition in the passenger rail industry by creating a pilot program where rail carriers would be permitted to operate passenger rail on underperforming Amtrak routes.

- S. 294 as passed by the Senate contained a similar provision.
- The House version contained no such provision.

Metrics and Standards:

The bill requires the development of methodology and standards to assess performance and service quality, cost recovery, and ridership. The methodology and metrics must include the percentage of avoidable and fully allocated operating costs covered by passenger revenue per route, ridership per train, on-time performance, delays, and measures of connectivity for certain routes. FRA must publish a quarterly report with related information.

- Both the House and Senate-passed versions of the bill contained this provision.

High-Speed Rail:

The bill includes language authorizing grants for high-speed rail corridor development. The language also requires the Secretary of Transportation to review proposals for additional high-speed rail service on any of the nation's eleven designated high-speed rail corridors. Proposals deemed meritorious would be sent to a commission for review. After review, the Secretary would select proposals for recommendation to Congress. Further action could not occur without further congressional consent. The federal share for projects is capped at 80 percent.

- The Senate bill contained no provision authorizing the review of new high-speed intercity rail service projects. The Senate bill did include language authorizing grants for high-speed rail corridor development.
- The House bill contained similar language to that described above.

Washington Metropolitan Area Transit Authority (WMATA):

The bill authorizes \$1.5 billion for FYs 2009 through 2019 for capital and preventive maintenance grants for the Washington Metropolitan Area Transit Authority (WMATA). These funds are not available until WMATA notifies the Secretary of Transportation that certain amendments to the Washington Metropolitan Area Transit Authority Compact have taken effect, including an amendment requiring that all payments by local signatory governments for WMATA for matching federal funds authorized by this section are derived from dedicated funding sources. In addition, these funds may be used only for the maintenance and upkeep of the Washington Metro system and may not be used to increase the mileage of the rail system.

Access to funds authorized under the section may not be provided unless the Transit Authority ensures that customers of the system will have wireless access within the system under certain conditions; a schedule for completion of the project must be included. The federal share of the grants shall be for 50 percent of the net cost of the project.

- Section 106 of the House-passed bill contained similar language. No such provision was included in the Senate-passed bill.

Labor Provisions:

Section 301 of Title III (Intercity Passenger Rail Policy) creates a new grant program for states for intercity passenger rail service (new sections 49 U.S.C. 24401-24406) “to assist in financing the capital costs of facilities, infrastructure, and equipment necessary to provide or improve intercity passenger rail transportation.” Grant conditions for the program (section 24405) require applicants to comply with the prevailing wage standards of 49 U.S.C. 24312 (Davis Bacon in the Amtrak context) to the same extent as Amtrak complies.

- This provision was included in the Senate and House-passed versions of the bill.

Section 214 of Title II (Amtrak Reform and Operational Improvements) requires the FRA to develop a pilot program to allow a rail carrier to submit a bid to be allowed to take over operation of an Amtrak route. The winning bidder would be subject to grant conditions in section 24405 discussed above, including the Davis Bacon requirements.

- This provision was included in the Senate-passed bill, but not the House-passed bill.

Section 302 of Title III creates congestion grants for financing “the capital costs of facilities, infrastructure, and equipment for high priority rail corridor projects necessary to reduce congestion or facilitate ridership growth in intercity rail passenger transportation.” Davis Bacon requirements attach under the provision that obligates each grant recipient under this section to comply with the requirements of section 24405 of this title, as discussed above.

- This provision was included in both the Senate and House-passed bills.

Section 501 of Title V (High-Speed Rail) creates a new high-speed rail corridor development program “to finance capital projects in high-speed corridors.” “The Secretary shall require each recipient of a grant under this chapter to comply with the grant requirements of section 24405 of this title,” as discussed above.

- This section was included in the House-passed bill. The Senate-passed bill did not include provisions creating such a program.

Section 502 of Title V requires that proposals submitted for high-speed rail projects in the Northeast Corridor and other corridors must include how each project will ensure compliance with section 24405.

- This section was included in the House-passed bill. No similar provision was included in the Senate-passed bill.

Administration Position

A Statement of Administration Policy (SAP) for the consolidated language was not available at press time.